PART III:

ENVIRONMENTAL MANAGEMENT,

WASTE AND POLLUTION

Chapter 8: Environmental Management in Namibia

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1 Introduction

Environmental management is concerned with taking charge and controlling the biological and physical elements of our surroundings including land, air, water, plants and animals. Environmental management has been defined as[1]

> a multi-layered process associated with the interactions of state and non-state environmental managers with the environment and with each other. Environmental managers are those whose livelihoods are primarily dependent on the application of skill in the active and self-conscious direct or indirect, manipulation of the environment with the aim of enhancing predictability in a context of social and environmental uncertainty.

Undertaking environmental management can bring about higher standards of safety and security (e.g. by addressing global warming as a cause for environmental disasters) and benefits to the lifestyle of people (e.g. by protecting the quality of water resources in order to preserve fish stocks as a source of food). The reduction of costs by improving environmental performances (optimising process efficiency minimises the use of raw materials and energy and the amount of waste production) and the minimisation of environmental risks are considered to be further advantages of environmental management.

In the absence of environmental management, people will be more vulnerable to natural disasters and development is unlikely to be sustainable.[2] One main objective of environmental management is thus to work towards ecologically sustainable development.

Several principles guide all environmental management processes. Generally, the principles which are captured in major international environmental agreements, such as the Stockholm Declaration and the Rio Declaration also govern processes of environmental management. Of particular relevance for environmental management are the following principles:[3]

- The principle of responsibility for environmental harm entails firstly the duty to prevent environmental damage and secondly, to compensate for any environmental damage caused.[4]

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1 Wilson / Bryant (1997:7).
2 Barrow (2005:19).
3 See Principle 16 of the Rio Declaration.
4 See Principles 21 and 22 of the Stockholm Declaration and Principles 2 and 13 of the Rio Declaration. International judicial bodies have recognised this principle, for example in the Case on

- Intergenerational equity is another principle important for environmental management. It aims to ensure that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.[5]
- The precautionary principle provides that that if an action has a suspected risk of causing harm, in the absence of scientific consensus that the action is not harmful, the burden of proof that it is not harmful falls on those taking the action. Lack of full certainty about social or environmental threats should thus not be used as a reason for approving any planned action.[6]
- The polluter pays principle states that the cost of avoiding or compensating for social impacts should be borne by the person having caused the environmental harm.

Environmental principles that are generally accepted are to avoid or minimise waste and pollution; to minimise the use of natural resources, non-renewable resources in particular; and to protect biodiversity.

Governments, industry and institutions make use of a number of environmental management tools to address environmental problems, including but not limited to the following:[7]

- Public participation ensures that the public is involved in decision-making by having access to relevant information and by being granted the opportunity to provide input. Stakeholders must have the opportunity to influence decisions that have an environmental component.
- Monitoring compliance ensures compliance with relevant environmental legislation, regulations and other requirements is the cornerstone of making any environmental management processes effective.
- Environmental impact assessment serves as a tool to identify the environmental, social and economic impacts of a project prior to decision-making.
- Strategic environmental assessment is an environmental management tool that usually covers a wider range of activities (it might be applied to an entire sector) or a wider (geographical) area and often over a longer time span than the environmental impact assessment of projects.
- Social impact assessment is applied to analyse, monitor and manage the social consequences (e.g. consequences on human life, livelihoods and human settlements) of development.

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the *Legality of the Threat or Use of Nuclear Weapons* decided by the International Court of Justice.

5 See Principle 2 of the Stockholm Declaration and Principle 3 of the Rio Declaration.

6 See Principle 15 of the Rio Declaration.

7 See Thompson (2005) and Nhamo / Inyang (2011) for more details.

- Environmental management system consists of a number of interrelated processes and practices such as review, analysis, evaluation and monitoring that function together to achieve the objective of effective environmental management.
- Environmental auditing is a systematic assessment of Government, institutional and corporate management systems, practices and policies as the affect the environment.
- Environmental labelling is used to provide information about the environmental impact of a product. Environmental labelling schemes award an environmental label to those products that are judged to be less harmful to the environment than others within the same product group.
- Environmental policies signal a commitment to environmental management and can prepare the way for further environmental management activities. Environmental policies set out the aims and intentions with respect to the environment.
- Environmental reporting is the communication of environmental management initiatives to improve environmental performance to the outside world, e.g. by way of publishing an environmental report.

In Namibia, the legal foundation for environmental management is the Environmental Management Act No. 7 of 2007 (EMA). In 2012, the Environmental Impact Assessment Regulations (The EIA Regulations) have been made and gazetted by the Ministry of Environment and Tourism (MET).[8] The general features of environmental management as sketched above are mirrored in the EMA, as will be outlined in the following sections.

2 The Environmental Management Act No. 7 of 2007

This important piece of Namibian environmental legislation has been enacted to promote the sustainable management of the environment and the use of natural resources by establishing principles for decision-making on matters affecting the environment. The Act provides for the establishment of a Sustainable Development Advisory Council and the appointment of the Environmental Commissioner and environmental officers. Furthermore, the EMA provides for a process of assessment and control of activities which may have significant effects on the environment.

The EMA was gazetted in 2007[9] and came into force in 2012.[10] It governs all processes related to environmental management and lays down the institutional structures

8 See Government Notice No. 30, Government Gazette No. 4848 (2012).
9 See Government Notice No. 232, Government Gazette No. 3966 (2017).
10 See Government Notice No. 28, Government Gazette No. 4878 (2012).

and legal mechanisms to further the national environmental interest and to ensure that environmental considerations are taken into account in public and private activities and decision-making. The scope of application of the EMA is wide ranging as it functions as framework legislation, covering all sectors of environmental law. The objective of the Act is laid down in its Section 2:

> The object of this Act is to prevent and mitigate, on the basis of the principles set out in section 3, the significant effects of activities on the environment by -
>
> (a) ensuring that the significant effects of activities on the environment are considered in time and carefully;
>
> (b) ensuring that there are opportunities for timeous participation of interested and affected parties throughout the assessment process; and
>
> (c) ensuring that the findings of an assessment are taken into account before any decision is made in respect of activities.

2.1 Environmental Management Principles in the EMA

The principles of environmental management have to be applied by Government institutions and private persons including companies, institutions and organisations, when doing or planning things, which may have a significant effect on the environment. These building the cornerstone of the EMA are well elaborated in Section 3(2) and reflect the general principles of environmental law as already developed on international level, and contained in various international environmental texts such as the Stockholm or the Rio Convention:

(a) Renewable resources must be used on a sustainable basis for the benefit of present and future generations;

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

(c) the participation of all interested and affected parties must be promoted and decisions must take into account the interest, needs and values of interested and affected parties;

(d) equitable access to environmental resources must be promoted and the functional integrity of ecological systems must be taken into account to ensure the sustainability of the systems and to prevent harmful effects;

(e) assessments must be undertaken for activities which may have a significant effects on the environment or the use of natural resources;

(f) sustainable development must be promoted in all aspects relating to the environment;

(g) Namibia's cultural and natural heritage including, its biological diversity, must be protected and respected for the benefit of present and future generations;

(h) the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term must be adopted to reduce the generation of waste and polluting substances at source;

(i) the reduction, re-use and recycling of waste must be promoted;

(j) a person who causes damage to the environment must pay the costs associated with rehabilitation of damage to the environment and to human health caused by pollution, including costs for measures as are reasonably required to be implemented to prevent further environmental damage;

(k) where there is sufficient evidence which establishes that there are threats of serious or irreversible damage to the environment, lack of full scientific certainty may not be used as a reason for postponing cost-effective measures to prevent environmental degradation; and

(l) damage to the environment must be prevented and activities which cause such damage must be reduced, limited or controlled.

The above principles provide a high potential for decision-makers and for courts to develop a foundation for good environmental governance in Namibia.

2.2 Ministerial Competencies

The EMA assigns general functions to Minister of Environment (Forestry) and Tourism in Section 4. The functions are to

(a) determine policies for the management, protection and use of the environment;

(b) prepare and publish policies, strategies, objectives and standards for the management and protection of the environment;

(c) co-ordinate environmental management at national level; and

(d) monitor and ensure compliance with this Act.

Giving effect to international agreements by way of legislation or regulations is a further competence of the Minister laid down in Section 48. Regulations pertaining to the contents of the EMA are made by the Minister according to Section 56. Most importantly, the Ministry of Environment (Forestry) and Tourism under Section 56 of the EMA has drafted the EIA Regulations.[11] Furthermore, the Minister has certain powers with regard to waste as provided in Section 5. The Minister is the instance of appeal for decisions of the Environmental Commissioner in the exercise of any power in terms of the EMA.

11 See Government Gazette no. 4878 (2012), Notice No. 30.

2.3 Institutions / Officials under the EMA

The EMA provides for the following institutions / officials:

- The Sustainable Development Advisory Council (Sections 6 to 15);
- the Environmental Commissioner (Sections 16 and 17);
- Environmental Officers (Section 18).

The EMA provides for a Sustainable Development Advisory Council to be established to advise the Minister on issues that promote cooperation and coordination between organs of state, non-governmental organisations, community-based organisations, the private sector and funding agencies, on environmental issues relating to sustainable development. The Sustainable Development Advisory Council consists of members drawn from both Government and the private sector and the first Council has been inaugurated in January 2013.[12] The Council advises the Minister on the development of a policy and strategy for the management, protection and use of the environment, and on the conservation of biological diversity, access to genetic resources in Namibia, and the use of components of the environment, in a way and at a rate that does not lead to the long-term decline of the environment. According to Section 15, the Sustainable Development Advisory Council must prepare an annual report on its activities to be tabled in the National Assembly by the Minister.

The EMA establishes further institutions responsible for the different concepts under the Act. These include the Environmental Commissioner and the Environmental Officers. By appointing the Environmental Commissioner in February 2012 as required by Section 16 of the EMA, the full operationalisation of the EMA has been underlined.[13] The functions and duties of the Environmental Commissioner include advising Government bodies on the preparation of environment plans, receiving and recording all applications for environmental clearance certificates, determining whether a particular listed activity requires an environmental assessment, reviewing environmental assessment reports, issuing environmental clearance certificates and conducting inspections to monitor compliance with the EMA.

Environmental Officers in the public service assist enforcing the EMA. To this end, Environmental Officers are endowed with certain powers, including the powers to search, seize and issue compliance orders in cases of violations of the EMA.

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12 In February 2012, the Government of Namibia gazetted the Regulation for the implementation of Environmental Management Act No. 7 of 2007. Subsequently, the Ministry of Environment and Tourism invited nominations for appropriate persons from the public, organisations, associations or institutions to sit on the Sustainable Development Advisory Council. For more information see https://sdacnamibia.org, accessed 21 January 2022.

13 In February 2012, Cabinet appointed Teofilus Nghitila as Namibia's first Environmental Commissioner. In March 2020, the MET has appointed Timoteus Mufeti as the new Environmental Commissioner.

2.4 Environmental Plans under the EMA

One mechanism aiming at the realisation of the objectives of the Act is the provision for environmental plans, provided for in Sections 23 to 26 of the EMA, to ensure better co-ordination amongst Government agencies. Organs of state (including Government offices, Ministries or agencies at national, regional or local level) which exercise functions that may affect the environment are supposed to make environmental plans in order to minimise the duplication of procedures and functions and to promote consistency in the exercise of functions that may affect the environment. The organs of State that are supposed to draft such management plans are to be listed by the Ministry of Environment and Tourism in the Government Gazette according to Section 24. Environmental plans are submitted to the Environmental Commissioner who examines whether the environmental plan follows the principles of environmental management, satisfies the objects of environmental plans and takes into account existing environmental plans. Compliance with an environmental plan is monitored by the Environmental Commissioner.

2.5 Environmental Assessment under the EMA

The Act provides for administrative mechanisms such as the necessity of environmental clearance certificates and environmental assessments.[14] The EMA's Sections 27 to 48, together with Namibia's Environmental Assessment Policy and the Environmental Impact Assessment Regulations form the basis of all environmental assessments in Namibia. Furthermore, Procedures and Guidelines for Environmental Impact Assessment and Environmental Management Plans have been drafted in 2008.[15]

The impact of activities on the environment has to be considered and interested or affected parties have to be given an opportunity to participate in environmental assessment when Government institutions or private persons are intending or planning anything likely to have a significant effect on the environment. With regard to such activities, environmental assessments have to be conducted before any decisions are made. For specific activities or projects having an environmental impact, an environmental clearance certificate is required.

To obtain an environmental clearance certificate, a person who wants to carry out an activity listed in Section 27 of the EMA must follow a multi-stage process in line

14 For a detailed outline of environmental assessment legislation in SADC see Walmsley / Tshipala (2010).

15 GRN (2008e).

with Sections 32 to 37 of the EMA[16] and with the regulations for the implementation of the EMA as gazetted in February 2012 which have listed certain activities that may not be undertaken without an environmental clearance certificate.[17] Environmental clearance certificates are required for specific activities in the following sectors:

- Energy generation, transmission and storage activities: The generation, transmission and supply of electricity; refining of gas, oil and petroleum products; and nuclear reaction, including production, enrichments, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste.
- Waste management, treatment, handling and disposal activities: The construction of facilities for waste sites, treatment of waste and disposal of waste; activities entailing a scheduled process referred to in the Atmospheric Pollution Prevention Ordinance, 1976; and the import, processing, use and recycling, temporary storage, transit or export of waste.
- Mining and quarrying activities: The construction of facilities for any process or activities which requires a licence in terms of the Minerals Prospecting and Mining Act, 1992; other forms of mining or extraction of any natural resources whether regulated by law or not; resource extraction, manipulation, conservation and related activities; the extraction or processing of gas from natural and non-natural resources, including gas from landfill sites; and the extraction of peat.
- Forestry activities: Clearance of forest areas, deforestation, aforestation, timber harvesting or any other activity requiring authorisation in terms of the Forest Act, 2001.
- Land use and development activities: Rezoning of land from residential use to industrial or commercial use; from light industrial use to heavy industrial use; from agricultural use to industrial use; and from use for nature conservation or zoned open space to any other land use; the establishment of land resettlement schemes; and the construction of veterinary protected area or game proof and international boundary fences.
- Tourism development activities: the construction of resorts, lodges, hotels or other tourism and hospitality facilities.
- Agriculture and aquaculture activities: The construction of facilities for aquaculture production in terms of the Aquaculture Act, 2002; the declaration of an area as an aquaculture development zone; the genetic modification of

16 See GRN (2008d:32ff.). For further details see also the Regulations for Environmental Impact Assessment (EIA) and the Procedures and Guidelines for Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) drafted by the Ministry of Environment and Tourism in 2008.

17 Government Gazette No. 4878 (2012) Government Notice No. 29, List of activities that may not be undertaken without Environmental Clearance Certificate: Environmental Management Act, 2007.

any organism; the import, processing and transit of genetically modified organisms; pest control; the release of genetically modified organisms into the environment where an environmental assessment is required; the release of any organism outside its natural area of distribution that is to be used for biological pest control; and the introduction of alien species into local ecosystems.

- Water resource developments: The abstraction of ground or surface water for industrial or commercial purposes as well as the abstraction of groundwater at a volume exceeding the threshold authorised; water abstraction from a river that forms an international boundary; the construction of canals and channels including the diversion of the normal flow of water in a riverbed and water transfer schemes between water catchments and impoundments; the construction of dams, reservoirs, levees and weirs; the construction of wastewater treatment plants and related pipeline systems; irrigation schemes for agriculture excluding domestic irrigation; the construction and other activities in water courses within flood lines or within a catchment area; th reclamation of land from below or above the high-water mark of the sea or associated inland waters; the alteration of natural wetland systems; and the release of brine back into the ocean by desalination plants.
- Hazardous substance treatment, handling and storage: The manufacturing, storage, handling or processing of a hazardous substance as outlined in the Hazardous Substances Ordinance, 1974; any process or activity which requires a permit, licence or other form of authorisation in terms of a law governing the generation or release of emissions, pollution, effluent or waste; the bulk transportation of dangerous goods using pipeline, funiculars or conveyors; the storage and handling of a dangerous goods, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic meters at any one location; the construction of filling stations or any other facility for the underground and aboveground storage of dangerous goods, including petrol, diesel, liquid, petroleum, gas or paraffin.
- Infrastructure: The construction of oil, water, gas and petrochemical and other bulk supply pipelines; public roads; railways and harbours; airports and airfields; any structure below the high water mark of the sea; cableways; communication networks including towers, telecommunication and marine telecommunication lines and cables; motor vehicle and motorcycle racing and test tracks; the outdoor racing sites of motor powered vehicles; masts of any material or type and of any height, including those used for telecommunication broadcasting and radio transmission; the route determination of roads and design of associated physical infrastructure where it is a public road, the road

reserve is wider than 30 meters; or the road caters for more than one lane of traffic in both directions.

- Other activities: The construction of military demonstration and testing sites, as well as of cemeteries, camping, leisure, and recreation sites.

No listed activity may be undertaken withot an environmental clearance certificate. All activities which need an environmental clearance certificate must follow the Regulations for Environmental Impact Assessments, which have been made according to Section 56 of the EMA. These require *inter alia* that the proponent of an activity designates an environmental assessment practitioner (EAP) to manage the assessment process and ensures that the environmental assessment procedures, specified in the EMA, the regulations and guidelines, are followed. The application for an environmental clearance certificate must be submitted to either the Environmental Commissioner, or to any other organ of State, if so required by Section 30(1) of the EMA.

Depending on whther the proposed project has a significant impact or not, the Environmental Commissioner decides whether an environmental assessment is required. If it is decided that an environmental assessment is not required, the Environmental Commissioner decides further, whether an environmental clearance certificate is granted. This decision can be subject to appeal to the Minister. If it is decided that an environmental assessment is required, the Environmental Commissioner decides on the scope and procedure for the assessment and informs the proponent on the requirements and time frame for the assessment. Environmental assessments are conducted to[18]

- ensure that activities which may have a significant effect on the environment follow the principles of environmental management planning and development process;
- analyse the possible environmental impacts of activities, and look at ways to decrease negative impact and increase positive ones;
- make sure that the environmental effects of activities are given adequate consideration before the activities are carried out; and to
- provide an opportunity for public participation in considering the environmental impact of a project.

The assessment has to be carried out in line with these requirements and an assessment report has to be submitted to the Environmental Commissioner.

Generally speaking, all activities which require an environmental authorisation, follow a process made up of several stages including screening, scoping and assessment followed by a decision and monitoring.[19] In a first step, the proponent designates an environmental assessment practitioner and applies for an environmental clearance certificate. During the screening phase, which must follow the provisions of Section 27

18 GRN (2008d:29).
19 Husselmann (2016).

the need for an EIA is determined as well as the level of assessment required. After submitting the application to the competent authority, the proponent must conduct a public consultation process; open and maintain a register of all interested and affected parties; consider all objections and representations received from interested and affected parties following the public consultation process; prepare a scoping report; and give all registered interested and affected parties an opportunity to comment on the scoping report. In a subsequent step, the proponent must submit the scoping report to the relevant competent authority. The scoping report must be compiled as per Regulation 8 of the EMA Regulations and must among other things contain the curriculum vitae of the EAP who prepared the report; a description of the proposed activity and the location and site on which the activity is to be undertaken; a description of the environment that may be affected by the proposed activity; an identification of laws and guidelines that have been considered in the preparation of the scoping report; details of the public consultation process conducted in connection with the application; identified alternatives to the proposed activity that are feasible and reasonable; a description and assessment of the significance of any significant effects, that may occur as a result of the undertaking of the activity or identified alternatives; terms of reference for the detailed assessment according to Regulation 9 of the EMA Regulations; and a draft management plan according to Regulation 8(j) of the EMA Regulations.

The screening phase concludes with a classification of the project according to its environmental sensitivity and a confirmation as to whether an ElA is required (Section 33 EMA). This decision is subject to a consultative process according to Section 44 EMA and several aspects must be taken into account in the process of decision making such as the nature and extend of the proposed activity, whether the proposed activity has a significant effect of on the environment and also the comments received in terms of the consultative process. If it is decided that an EIA is not required, the Environmental Comissioner either issues an environmental clearance certificate or refuses the application and provides reasons for the refusal. If it is decided that an EIA is required, the Environmental Comissioner determines the scope of the assessment and the procedures and methods for conducting the assessment. In the screening phase the project is thus classified according to its likely environmental sensitivity to determine whether or not an EIA is required and what the level of assessment should be. This forms the basis for the scoping phase, where key issues to be studied are identified, and terms of reference for an EIA are elaborated. Within the scoping phase, environmental issues and concerns that require investigation are identified and feasible alternatives that require assessment need to be determined through consultation with the authorities, interested and affected parties and specialists. The information gathered as a result from this is in a next step used to determine the scope of the EIA.

If the Environmental Commissioner decides that the proposed activity requires an assessment, the Environmental Commissioner determines the scope, procedures and methods for assessment in terms of Section 35 of the EMA. An assessment report will

have to be prepared subsequently, containing all information that is necessary for the Environmental Commissioner to consider and to make a decision on the application following Regulation 15(2) of the EMA Regulations. Public participation is ensured in that it is required, that persons who may be affected by the activity applied for must be notified and given a chance to inspect the assessment report and make submissions on it (see Regulation 21 of the EMA Regulations on the details for the public consultation process).

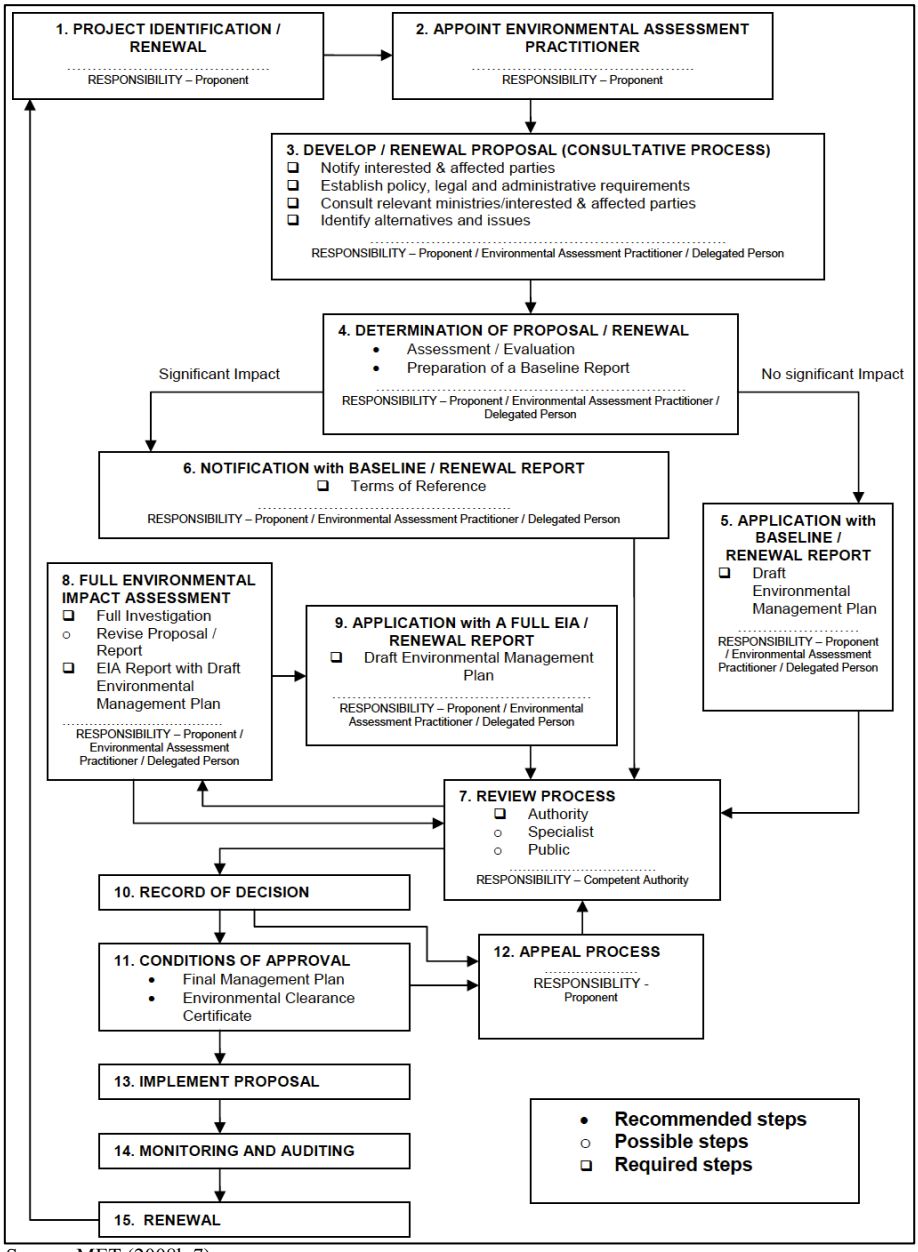
Upon review of the assessment report, the Environmental Commissioner decides whether an environmental clearance certificate is granted. The Commissioner's decision may be subject to appeal to the Minister of Environment and Tourism according to Section 50 of the EMA.

An environmental clearance certificate usually remains effective for a period not exceeding three years. However, an environmental clearance certificate can be suspended or canceled if the holder of the certificate has contravened any condition of the certificate, has contravened the EMA, or is convicted of an offence in terms of the EMA (Section 42 of the EMA).

An environmental clearance certificate may be amended either upon request by the proponent (Section 39(1)(a) of the EMA and Regulation 19(1) of the EMA Regulations) or at the Environmental Commissioner's initiative under Section 39(1)(b) and Regulation 19(2) of the EMA Regulations.

An environmental clearance certificate may not be transferred unless permitted by the Environmental Commissioner as per Section 41 of the EMA. An application for the transfer of an environmental clearance certificate can be submitted and must follow the provisions of Section 41(2) EMA in connection with and Regulation 20 of the EMA Regulations.

Figure 1: Stages and Procedures of Environmental Assessment



Source: MET (2008b:7).

2.6 Enforcement and Appeal under the EMA

Environmental officers are appointed to carry out the provisions of the EMA. They are the main persons responsible for enforcement of the EMA. Environmental officers not only have specific powers such as the powers of entry and inspection, they can also issue compliance orders to any person who has violated the EMA or a condition of an environmental clearance certificate (Sections 19 and 20). Decisions of the Environmental Commissioner are subject to appeal to the Minister According to Sections 50 and Section 25 of the Regulations. Decisions of the Minister are subject to appeal to the High Court according to Section 51.

2.7 Selected Practical Implications of the EMA and EMA Regulations

The EMA together with the EMA Regulations has become a vital tool for environmental management in Namibia in recent years. In the financial year 2017/18,[20] a total of 490 environmental clearance certificates has been issued, this number increased to 564 in the 2019/20.[21] The majority of clearance certificates have been issued for developments in the mining and exploration and in the infrastructure sectors, followed by the management of hazardous wastes. Other important sectors included agriculture and irrigation, tourism, rezoning and waste. In order to ensure monitoring and compliance, several sites have been inspected across the country by the Ministry of Environment (Forestry) and Tourism, 82 in 2017/18[22] and 113 in 2019/2020, including including waste disposal sites, mines, sand-mining operations, clinics and hospitals, timber harvesting operations, lodges, and schools and hostels.[23]

Several developments have been in the focus of environmental management in recent years. One major topic has for example been an investigation into the operations of a Tsumeb Smelter after complaints were made by residents and workers about air quality, skin rashes and water quality due to the Smelter operations. This resulted in a major project to monitor the environment in the area, to upgrade the technologies applied at the Smelter and improvements to the health and safety operations of the company.[24]

A number of awareness meetings on the issue of illegal sand mining have been held with Traditional Authorities in communal areas. As a result of these meetings, new

20 GRN (2018a:35).
21 GRN (2020c:52).
22 GRN (2018a:36).
23 GRN (2020c:54).
24 GRN (2018a:36). Health impact assessment for the environmental impact assessment of the Dundee Precious Metals Tsumeb Smelter expansion is available at https://bit.ly/3rNqvNp, accessed 14 February 2022.

procedures seeking to improve compliance and allowing for Traditional Authorities and Regional Councils to be the proponent in cases of sand mining were developed and are being applied for sand mining in communal areas.[25]

In the focus of current environmental debates involving various important questions around environmental conservation and environmental management is a Canadian-based company, that has leased more than 34,000 square kilometres of land across Namibia and Botswana and is searching for oil in Namibia's Okavango region, where the company suspects one of the largest oil fields in the world. Although oil, alongside the diamonds for which Namibia is famous could bring wealth to the country, inhabitants and environmentalsists worldwide fear that large-scale oil production could not only have an adverse impact on people's water supplies in the water-scarce region, but also cause massive environmental damage to the area's sensitive ecosystems, particularly the contamination and pollution of the Okavango Delta. The environmental assessment process for this development[26] is ongoing and will most likely continue to be subject to critical debate.[27]

The implementation of the EMA has also been subject to first high profile court cases.[28] An important judgement delivered on 11 May 2018 by the High Court[29] related to an application for environmental clearance for marine phosphate mining. In 2016, the appellant, Namibian Marine Phosphate (Proprietary) Limited, was granted an environmental clearance certificate to develop a marine phosphate project off the coast of Namibia by the Environmental Commissioner. The decision to grant the environmental clearance certificate and the alleged secrecy under which the clearance certificate was issued resulted in lively debates amongst the Namibian public and became – after the period within which appeals can be submitted against the issuance of the environmental clearance certificate had been extended by the Minister of Mines and Energy based on Section 50 of the EMA and Regulation 25(7) of the EMA Regulations – subject to an appeal as per Section 50 of the EMA to the Minsiter by a community activist and trustee of the Economic Social Justice Trust, the second respondent in the case at hand. Upon appeal, the Minister set aside the decision of the Environmental Commissioner to award an environmental clearance certificate to the appellant. The granting of the certificate was set aside primarily on the ground that the Commissioner

25 GRN (2018a:36).

26 The Environmental Impact Assessment Report to support the application for an environmental clearance certificate is available at http://the-eis.com/elibrary/search/23969, accessed 21 May 2021.

27 McKenzie / Formanek (2021); Barbee / Neme (2021).

28 E.g. *Auas Valley Residents Association v Minister of Environment and Tourism* (HC-MD-CIV-APP-ALT-2019/00002) [2020] NAHCMD 139 (7 May 2020); *Namibia Marine Phosphate (Proprietary) Limited v Minister of Environment and Tourism* (CA 119/2016) [2018] NAHCMD 122 (11 May 2018).

29 *Namibia Marine Phosphate (Proprietary) Limited v Minister of Environment and Tourism* (CA 119/2016) [2018] NAHCMD 122 (11 May 2018).

did not adequately consult the public and interested persons. The Minister's decision was appealed by Namibian Marine Phosphate (Pty) Ltd.

The questions addressed by the Court related among others to the legality of the extention of the time period to lodge an appeal against the granting of en environmental clearance certificate, *locus standi* of the second respondent to institute an appeal before the Minister, and Articles 12 and 18 of the Constitution. On the issue of locus standi, the Court held that the "ordinary common-law principle is that a litigant must have a direct and substantial legal interest in the outcome of the proceedings" and that[30]

> in the context of the Act (the context being that in respect of an application for environmental clearance certificate the Commissioner is required to consult the public and hold public meetings, how else than who a member of the public who is aggrieved by the Commissioner's decision obtain redress if they are excluded by the strict rules of standing), Mr Gaweseb [the second respondent] has a legal grievance and is, in the context of s 50, an aggrieved person and is entitled to approach courts to determine his rights. I conclude, therefore, that Mr Gaweseb did have standing to launch the s 50 appeal.

The Court furthermore ruled that the appellant's complaint that the Minister acted unfairly (thus violating Articles 12 and 18 of the Constitution) when he arrived at his decision to set aside the Commissioner's decision to grant the appellant an environmental clearance certificate is a question of law rather than a question of fact. In a subsequent step, the Court opined that the Minister in the process of setting aside the decision of the Environmental Comissioner failed to listen fairly to both, the appellant and the second respondent, which, in view of the Court, is fatal to the procedural fairness of the hearing and must lead to the conclusion that the decision of the Minister to set aside the environmental clearance certificate granted by the Commissioner must be declared to be no decision at all as the principles of natural justice had been violated.

2.8 Proposed Amendments to the EMA

It has been announced by the MEFT that the EMA is currently being reviewed and several amendments of the EMA have been proposed.[31] One of the major shortcomings of the EMA is that it does not explicitely regulate or refer to Strategic Environmental Assessments (SEAs), although such assessments are being performed in practice. It has been proposed to repeal Part IV of the current EMA with a new Part on SEAs. SEAs are conducted as an extension of the EIA's principles, procedures and methods to higher levels of decision-making. SEA is a tool able to evaluate a set of policies with broader lenses and within a more systematic and comprehensive process of evaluating the environmental impacts of a policy plan or programme and its alternatives. SEA is the process by which environmental considerations are fully integrated into the

30 Ibid: at [29].
31 SDAC (2018:12).

preparation of plans and programmes prior to their final adoption.[32] The objectives of the SEA process are to provide for a high level of protection of the environment and to promote sustainable development by contributing to the integration of environmental considerations into the preparation and adoption of specified plans and programmes.

A further important aspect that is being considered for an amendment of the EMA are provisions relating to Environmental Assessment Practitioners as mentioned in the EMA Regulations. Of particular concern is the fact that Environmental Assessment Practitioners are currently not regulated and that there is a lack of quality control in the sector. There is no current mention of EAPs in the Act. Moreover, the focus on compliance with Environmental Management Plans and monitoring and enforcement has been described as being insufficient, just like the provisions to ensure the rehabilitation and restoration of sites.

3 Concluding Remarks

Namibia has a relatively young history of environmental management under the new legal framework with the EMA, which is in operation since 2012. The body of cases giving practical meaning to the Act by decision-makers and courts has grown in recent years and environmental assessments in various forms have become important mechanisms in terms of environmental management in Namibia. The EMA together with the EMA Regulations provide a solid legal framework for environmental management in Namibia and implementation of the Act increasingly gains pace.

32 Sabeva (2015).