

MAJOR CONSTRAINTS OF THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN BOTSWANA

BOIPELO TSHWENE-MAUCHAZA¹

EXECUTIVE SUMMARY

Botswana has adopted environmental assessments (EAs) as a tool to protect the environment against the adverse impact of developments. Botswana's first EA legislation was enacted in 2005 and revised in 2010, with the accompanying regulations approved in 2012. The act designated the Department of Environmental Affairs (DEA) as the Competent Authority, ie, the custodian of the EA process. However, a number of deficiencies in the EA process have been identified, including technical and human resources capacity limitations, the DEA's lack of independence, limited stakeholder co-ordination, and questions around the long-term sustainability of the Botswana Environmental Impact Assessment Practitioners Association (BEAPA). This policy briefing makes recommendations related to the above deficiencies, including for the development of guidelines for the ministerial prerogative on exemptions and exempted security agencies, and the drafting of a formal arrangement to encourage technically competent partners to participate in the EA process.

RECOMMENDATIONS

- 1** The Ministry of Environment, Wildlife and Tourism should develop operational guidelines for the implementation of Section 3(3) of the Environmental Assessment Act of 2010 and formally constitute the Environmental Impact Special Committee to deal with the EA of security agencies' activities.
- 2** The ministry should consider a formal arrangement (eg, a ministerial directive or revised EA regulations) to encourage the participation of other technical government agencies, its partners (the BEAPA, parastatals and NGOs) and district EA reference committees in the EA process. In the case of reference committees, existing district structures (such as the District Land Use Planning Unit) can be assigned this responsibility.
- 3** The government should recruit additional technical personnel and establish additional district offices to enhance the effectiveness of the DEA.
- 4** To ensure its long-term sustainability, the BEAPA should diversify its revenue streams to reduce its reliance on the government. Options include increasing membership through registering specialists and accrediting companies. Specialist registration could also allow the BEAPA to participate in technical reviews, possibly at a fee, part of which can be retained by the association.

INTRODUCTION

Rapid industrialisation after the Second World War led to the depletion of natural resources and increasing concerns over pollution, quality of life and environmental stress worldwide. In the early 1960s pressure groups attempted to develop a tool that would safeguard the environment in any development², leading to the establishment of the EA process. Broadly, EA can be defined as a study of the effects of a proposed project, plan or programme on the environment. It is a predictive procedure through which potential changes in the ecological, social and economic environments are identified, described and evaluated to develop mitigation strategies and inform the decision on whether permission to proceed with a particular project should be granted.³

Prior to the enactment of specific legislation on EA, environmental protection in Botswana was achieved through often incoherent sections in various national policies and acts (eg, the Mines and Mineral Act of 1999 and the Wildlife and National Parks Act of 1992) and donor funding prescriptions (eg, the World Bank), or through voluntary implementation by some developers (for example, the Department of Water Affairs subjected all its major developments to EAs).⁴ The Environmental Impact Assessment Act of 2005 was the first EA legislation in Botswana. The act was revised through the Environmental Assessment Act of 2010, and EA regulations were promulgated in 2012. The revision of

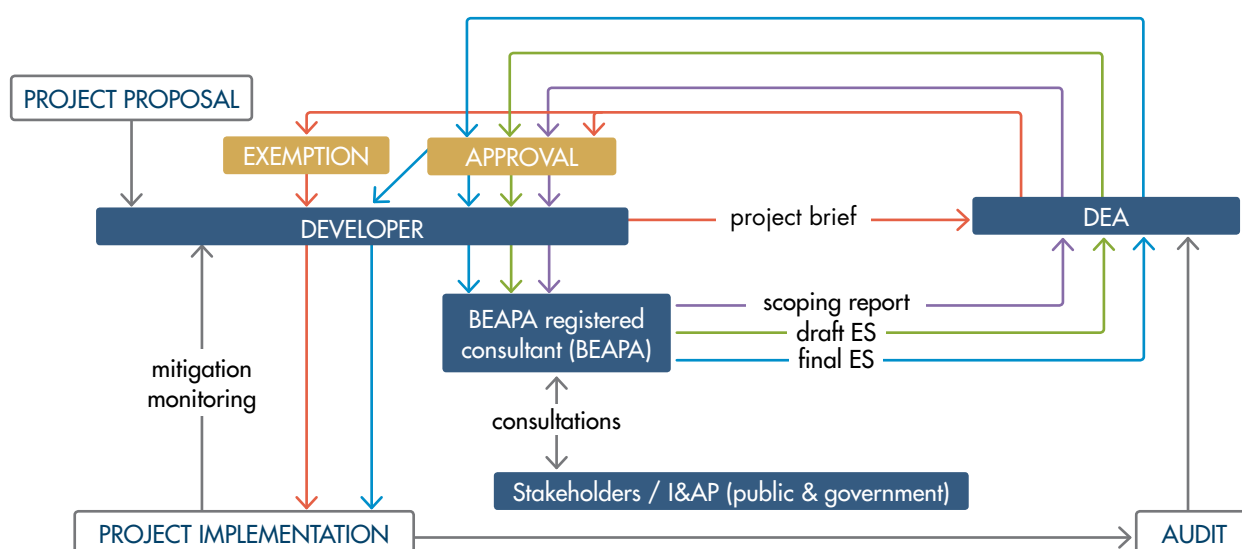
the act was primarily aimed at increasing the efficiency and quality of the EA process through the prescription of the EA process (eg, reporting formats, assigning responsibility for auditing and environmental statements' review), as well as the establishment of a practitioners' regulatory institution, the BEAPA.

Despite the revision of the act and the development of the accompanying regulations, the EA process in Botswana is still characterised by capacity constraints and operational inefficiencies. These limitations often lead to delays in project implementation and significant costs to the very environment the process is intended to protect. This briefing highlights some of the major challenges faced by the EA process in Botswana.

LACK OF INDEPENDENCE OF THE COMPETENT AUTHORITY

The Environmental Assessment Act designates the DEA, under the Ministry of Environment, Wildlife and Tourism, as the Competent Authority, with numerous functions and responsibilities in relation to the act. Section 3(3) of the act empowers the minister to exempt projects from the EA process at his/her discretion, while Section 76(2) exempts all government security agencies from subjecting their activities to EA processes, on the basis of national security. Given that the director of the DEA falls under the chain of command of the Minister of Environment, Wildlife and Tourism, the director may

FIGURE 1 SUMMARY OF THE EIA PROCESS IN BOTSWANA



Source: Compiled by author, based on the Environmental Assessment Act and its regulations

find it problematic to contest ministerial directives for exemption, thereby potentially compromising the EA process. This institutional set-up presents significant challenges to the application of the act, particularly with regard to public projects.

Considering the often large-scale nature of public projects, the application of these two clauses can compromise the fundamental principles of the EA, ie, the protection of the ecological, economic and social environment. In addition, the discretionary application of the EA process on public projects risks being viewed as a double standard on the part of the government, especially as there are no detailed guidelines for exemption. Most importantly, the activities of the four exempted security agencies could have adverse environmental consequences (eg, airfields in protected areas, or the disposal of artillery waste and specialised military hardware). An example of this is the development of a radioactive waste storage facility near the village of Pilikwe.⁵ Among the major concerns raised in relation to the Pilikwe radioactive waste facility is its lack of compliance with EA provisions, particularly in-depth public consultations commensurate with the inherent human health risk associated with radioactive materials.⁶ Critics also argue that the EA process was not sufficiently rigorous.⁷

Invoking Section 61 of the Environmental Assessment Act, residents of Pilikwe village took the government to court, challenging the legality of the site selection process and the assessment of the potential negative effects on human safety. However, in general, attempts at seeking legal redress in the event of the act's violation have been rare. Furthermore, the current government structures make it difficult for the DEA to prosecute non-compliant government departments, as both departments would seek representation from the same agency, ie, the attorney general.

INADEQUATE INSTITUTIONAL CAPACITY AND STAKEHOLDER CO-ORDINATION

One of the factors that significantly hamper the effectiveness of EA in Botswana is the lack of human resources to monitor, audit and enforce compliance. The DEA has only six offices across the country with an average of three qualified officers per station.⁸ These limited human resources, combined with the country's geographical size, constrain efficiency, as project sites are often far from the nearest DEA office. Currently, it also seems as though some developers only conduct

EIAs to obtain permission to proceed with projects. Once the EIA has been approved and development authorised, these developers tend to disregard the EIA's recommendations.⁹ This pattern can be attributed, in part, to the ineffectiveness of the DEA.

Often the DEA officers themselves assess project briefs and EA reports. This is despite the fact that some issues are highly technical and complex (eg, ecological, hydrological or radioactivity issues), requiring expertise outside the DEA. This arrangement results in complex environmental issues not being fully scrutinised during the project reviews and environmental statements, leading to non-optimal decisions and actions.

Considering the wide spectrum and technical complexity of EA projects, it is not possible for the DEA to have all the requisite technical expertise to comprehensively review submitted statements. To this effect, the act does, to some extent (in sections 8(3) & 18(1)) allow the DEA to request technical input from other government agencies, specifically to assist in reviewing terms of reference and monitoring. As a result, in some instances the DEA does organise reference groups to review projects. However, in most cases the DEA itself conducts the reviews, due to the lack of effective participation by other government agencies and partners.¹⁰ This lack of participation is due to the fact that each government agency has a specific mandate, which does not include participation in the EA process. It is thus important that the EA process is factored into the mandates of other government agencies, thereby ensuring that highly technical projects are reviewed correctly. This can be achieved through including EA in the performance management systems of such agencies or revising the legislative framework to define the role of other government agencies and/or existing technical district committees (such as the District Land Use Planning Unit) in relation to the EA process.

SUSTAINABILITY OF THE BOTSWANA ENVIRONMENTAL ASSESSMENT PRACTITIONERS ASSOCIATION

The BEAPA is constituted by the Environmental Assessment Act with the intention of improving the quality and effectiveness of the EA process in Botswana. Its mandate is to ensure EA consultants are technically competent, through accreditation, registration and regulation. According to Section 37(1) of the BEAPA Constitution, only registered consultants can perform EAs in Botswana. BEAPA funding comes from members'

registration fees, annual subscriptions, fees from services, grants and donations, and the government.¹¹ However, according to its secretariat,¹² currently the BEAPA is funded only by the government and through member subscriptions. The association earns about BWP¹³ 150,000 (about \$13,700) from annual subscriptions, representing at most only 10% of its required annual budget of approximately BWP 1.5–1.75 million (about \$137,000–\$160,000). Currently the bulk (approximately 90%) of the association's budget is government funded. With only about 100 members, the BEAPA runs the risk of inadequate operational funds, should the government discontinue its support. It should urgently explore additional revenue streams.

EA is an intrinsically complex and multi-dimensional process involving multiple actors and expertise.¹⁴ However, the BEAPA's constitution, the act and its associated regulations do not explicitly define the necessary qualifications for registration. The association's constitution requires a 'qualification in an environmental discipline' or in an environmental impact assessment course as the minimum for registration. These requirements in essence prohibit the registration of other technical experts who do not possess an 'environmental qualification' but whose participation may be required by the multi-disciplinary nature of the EA process. Overall, the lack of clarity on registration requirements has a direct effect on the number of registered consultants and the quality and effectiveness of the EA process in achieving environmental protection. This ambiguity could be a contributing factor to the observed low BEAPA membership. The combined effect of low membership numbers and restricted revenue streams makes the long-term sustainability of the BEAPA uncertain.

CONCLUSION

The government of Botswana should be commended for putting in place a legislative framework that aims to consider environmental protection in the planning and implementation of projects. However, a number of challenges remain that require immediate attention to enhance the effectiveness and efficiency of the EA process. These include the need to strengthen the capacity and independence of the Competent Authority, ineffective stakeholder participation and questions around the long-term sustainability of the BEAPA. This policy briefing makes some recommendations to address the identified challenges, centred on policy review and administrative procedures (eg, increasing the DEA staff

complement, out-sourcing the technical reviews of EAs and ensuring the long-term sustainability of the BEAPA).

ENDNOTES

- 1 Boipelo Tshwene-Mauchaza is a doctoral candidate at the University of Oxford, researching biodiversity and climate change. She is a registered Environmental Practitioner with the Botswana Environmental Assessment Practitioners Association (BEAPA).
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