

Environmental Ethics in the Environmental Impact Assessment Field

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The difficulty I have is that to date the field of environmental ethics is a rather theoretical debate which does little to help solving practical problems in the Environmental Impact Assessment (EIA) field. It is very difficult to incorporate theoretical discussions into policies formulation or to use it to inform decision making. The current debates on environmental ethics must still evolve to add practical value to the EIA field and inform decisions on sustainable development.

The field of Environmental Impact Assessments has expanded significantly since EIAs became a legal requirement with the initial promulgation of the EIA regulations in 1997. Interestingly, (and it is my personal opinion rather than a broadly accepted fact) the EIA field has not been overly interested in the field of environmental ethics *per se*, but more interested in how the application of environmental ethics (or ethics) influences stakeholder's behavior within the EIA process. Those involved in the EIA field are less interested in defining ethical behavior or debating the merits of the various ethical positions, but are very opinionated about what constitutes unethical behavior. Perhaps it is because our interest in environmental ethics is limited to ensuring that stakeholders participate in the EIA process in a manner that protects the integrity of the process.

Literature clearly highlights the fact that there is no unified opinion on what constitutes environmental ethics and that the chances are slim for a common ethical position to soon evolve from these theoretical debates. This diversity of ethical positions is also quite evident within the EIA field and the manner in which stakeholders participate in the EIA process, ranging from deep ecology to pro-development stances. One of the main challenges in the EIA process will always be the ability to reflect the various ethical positions in a balanced, objective, fair and non-confrontational manner that retains the integrity of the EIA process. There is also a slow realization that ethical opinions and subjective values are an integrated part of the EIA process, including decision-making. Principles, criteria and ethical values are central to effective EIA processes - providing the benchmarks for conducting, reviewing and appraising the quality and performance of EIAs.

At first glance it appears that the debates on environmental ethics and ethical behavior in the EIA field are primarily founded on the existing legal framework that governs EIAs in South Africa. In other words, people measure ethical behavior against legal requirements and equally (if not more) important, the intention of legislation. Discussed below are a number of the key debates that evolved from the ECA EIA regulations over the last few years. The new NEMA EIA regulations have not yet had a chance to influence these debates, but will without doubt add new dimensions to these debates:

Independence of the Environmental Practitioner.— Since the inception of the EIA regulations in 1997, the independence of the EAP generated lively debates. The “legal trigger” for independence in the regulations to date focused primarily on financial independence, but part of the unresolved ethical debate is the fact that the practitioner is being paid by a proponent. The new NEMA regulations do not necessarily address this dilemma, but simply state that an EAP must have “*no business, financial, personal or other interest in the activity, application or appeal..... other than fair remuneration for work performed.....*” and that there must be “*.....no circumstances that may compromise the objectivity of that EAP or person in performing such work*”. This clearly does not address the ethical concerns and still leaves scope for lively debate.

There are many who advocate that the independence clause should be omitted from the legislation, because financial independence provides no guarantee for independence (or more specifically, the provision of an unbiased and objective professional service). I maintain however, that legislation cannot and should not clarify an ethical position, but it should provide a framework within which the intention of the legislation and the ethics related to implementation should be debated. The legislative frameworks are therefore more concerned about preventing the possibility of bias, and not actual proof thereof. Furthermore, the important role that the inclusion of the independence clause in legislation has played in establishing a level of trust in the EIA process should not be underestimated.

It is probably unreasonable to expect an EAP to be neutral when the essence of his/her job is to form an opinion during the EIA process. It is however, not unreasonable to demand that this opinion be based on the objective evaluation of the facts of each case (in such a manner that a reasonable person can come to the same conclusion).

Appropriate expertise of the EAP – The issue related to the level of expertise of the EAP has also entered into the environmental ethics debate in the EIA field. In short, it is required that an EAP must have the appropriate professional qualifications with the appropriate/relevant expertise to undertake an EIA or specialist studies. It is argued by many that accepting a job as an EAP for which you are not qualified is unethical and goes against the professional code of ethics.

There is a need for the creation of a formal structure for the regulation and registration of environmental assessment practitioners in South Africa. The Department of Environmental Affairs and Tourism in association with the Interim Certification Board for environmental assessment practitioners (ICB) has started a process that will hopefully lead to the establishment of a registration authority for environmental assessment practitioners. However, the ability of such a registration authority to change ethical behavior of EAPs remains to be seen. The success of self regulation will be further complicated by the holistic definition of “environment” and the equally challenging and complex task of defining what an EAP is (compared to other more clearly define professions).

Accountability and Responsibility – To date the focus has fallen more on the requirement that the EAP’s primary allegiance should be to information and the goal of sustainable development (i.e. the environmental profession is an information profession, with primary allegiance to information, which can be subject to checks and verification). Perhaps this debate should be expanded to discuss the level of accountability and responsibility of other stakeholders in the EIA process, and the supply of unbiased, accurate information?

The “who’s the client” debate has been an ongoing discussion between all stakeholders. I believe however, that government’s view on this matter has been clear from the start, strongly promoting the client to be the broader environment and the goal of sustainable development. The new NEMA EIA regulations gave impetus to this viewpoint by requiring “an applicant or EAP or other person in possession of that information must, on request by the competent authority, disclose that information to the competent authority, whether or not such information is favourable to the applicant...” This provision clearly illustrates the intention of the regulations – that the allegiance of all parties should be focused on the supply of accurate and unbiased information. In addition, I argue that this provision could even be interpreted as promoting the environment to be the client?

Another aspect that should also be debated is the difference between environmental consultants and planning consultants – should the primary allegiance of planning consultants not also be to supply information? There seems to be a tendency for planning consultants to act more as development agents on behalf of the client?

Quality of Information – Again, to date the focus fell on the EAP and the need that they provide information that is truthful, complete, unbiased, reliable, consistent, appropriately contextualized, with the appropriate level of emphasis, being explicit about assumptions made, sourced and stated in such a way that it can be understood by people with a non-technical background.

Perhaps this requirement should be expanded to other stakeholders in the EIA process. The provision in the new NEMA EIA regulations that requires interested and affected parties to disclose “: *any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application....*”, could form the basis for such a debate. Another provision contained in the new NEMA EIA regulations that supports this view requires that “*an applicant or EAP or other person in possession of that information must, on request by the competent authority, disclose that information to the competent authority, whether or not such information is favourable to the applicant....*”.

It will be interesting to see how these new provisions will shape the ethical debates on participation of parties other than the EAP in the EIA process.

Credibility of the EIA process – There is an overarching goal that everyone should protect the integrity of the EIA process. There is therefore a need for all stakeholders (not only EAPs) to ensure that the EIA process is fair, objective, impartial, transparent and conducted with professionalism. I am not convinced that everyone share this view?

Transparency, accountability and responsibility – The process must strive to promote transparency and social accountability, taking into account the interests, needs and values of all stakeholders. This point is emphasized by the provisions in the new NEMA EIA regulations quoted above.

There is especially a need to ensure that stakeholders take part in the public participation process in a responsible and accountable manner. It is not unethical to have different viewpoints (ethical positions), but it is unethical to force your viewpoint onto others. Currently, great harm is done to the integrity of the EIA process by those who are only prepared to tolerate different opinions if they believe that they can change these opinions to coincide with their own. If they cannot, they are in certain instances prepared to go to any lengths to react, even accuse different viewpoints as being unethical, or attack the process *per se* without being able to raise any significant substantive concerns.

Broad and Holistic Definition of the Term Environment – This issue more than any other, highlight the strong divergence of the different ethical positions that are prevalent in the EIA field. This can range from positions firmly founded in *deep ecology* to that of the *unscrupulous developer* to *bioregionalism*. A problem exists when these opposing views are presented within the EIA process without the ability (or the willingness) to find common ground.

The principles of sustainability entrenched in NEMA certainly call for all stakeholders to consider a broad and holistic definition of the term ‘environment’, that includes biophysical and socio-economic concerns. Perhaps debates in environmental ethics should focus more on the extent to

which the various ethical positions supports the goal of sustainability (i.e. the triple bottomline), or deviates from a balanced consideration of all the NEMA principles.

The triple bottomline argument must however, be used with responsibility and within a logical context. For example, the triple bottomline concept should be viewed differently in a pristine wilderness area vs a vacant property within the urban edge.

Reasonable Alternatives – The provision in the EIA legislation that calls for the “identification and assessment” of alternatives is probably one of the most debated (and misused) elements of the EIA process. In terms of the EIA regulations, alternatives refer to different means of meeting the general purpose and requirements of the activity.

The issue of alternatives must be handled with responsibility by all stakeholders. It touches on the essence of EIA by providing an opportunity to optimise the benefits and mitigate/ avoid impacts. However, currently there are many examples where alternatives are misused to “push through” a desired project proposal, or used as a stalling tactic by demanding unreasonable alternatives to be considered.

Focus on Key Issues – stakeholders should concentrate on significant impacts, key issues and concerns not on the process *per se*. Unfortunately the “environment” has increasingly become a legal and procedural entity and stakeholders are more and more focused on procedural issues (and sometimes misusing them as a means to an end). The intention is that the EIA process and procedures simply provide the framework within which information is gathered (identification and assessment of substantive information) – it should not become the primary issue of contention.

The decision-making role of Government in the EIA process with reference to how it relates to environmental ethics

Firstly, government’s approach to its decision-making role must be consistent with the constitutional environmental right, contained in the Bill of Rights. Secondly, the National Environmental Management Act is the primary enabling environmental statute that provides organs of state with a framework to implement their constitutional duty to protect the (holistic) environment. Most importantly are the principles of sustainability contained in Chapter 2 of the Act.

In exercising its decision-making powers, government must therefore weigh up an applicant’s right to lodge applications for material benefit, against the rights of society “...*to an environment that is not harmful to his or her health or well-being, and the right to have the environment protected for the benefits of present and future generations....*”

The problem, however, is that although the principles contained in NEMA provide government with some guidance in the decision-making process, the range and nature of these principles are strategic and broad, still leaving decision-makers with a wide discretionary interpretation of “sustainable development”.

Governments constitutional mandate does however, suggest that we consider these principles in a balanced or “middle of the road” approach (somewhere between non-anthropogenic intrinsic value position and the anthropogenic instrumental value position). Although this view does not always help us in weighing up short term social or economic benefits against long term social or ecological concerns, the fact of the matter is that government is obliged to take a long-term and holistic/strategic position in decision making. This is a balancing act that is not pre-disposed to any ethical position, but rather depends on a case by case evaluation of the facts.