

Managing the Expectations between the Regulatory Authority and Consultants in the Environmental Impact Assessment System in Zimbabwe

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Abstract: *This study explored the expectations between the regulatory authority (EMA) and consultants in the environmental impact assessment (EIA) system in Zimbabwe. The consultant's expectations from EMA are (in descending order of priority): fair and ethical treatment, periodic EIA updates, and a code of ethics were identified as critical (4.6-5.0 points) expectations that need to be addressed. Important (4.0-4.5 points) expectations of what EMA should do are proponent EIA education, regulatory consultation and access to library. The less important expectations are newsletter production, consultant's association online marketing and EIA training. EMA's expectations of what consultants should do are transparency and honesty which are critical, followed by objectivity and fairness, proponents EIA education and whistle-blowing which are less important and lastly participation in environmental functions and respect of professional judgments which are least important. The first major finding is that there are obviously unfulfilled expectations mainly as a result of inadequate communication between EMA and consultants. The second is that there are no clear documented standards by which EMA and Consultants should abide. In addition an effective association of consultants and establishment of a code of ethics are critical for the EIA system in Zimbabwe.*

Keywords: EIA, EIA Ethics, EIA Consultants

1. Introduction

According to the Environmental Management Agency of Zimbabwe website: Environmental Impact Assessment (EIA) is a process used to define, quantify and evaluate the potential and known impacts of human activities on ecosystems and to define the mitigation measures that will be implemented to reduce negative impacts while enhancing the positive. It is a decision-making tool used to determine whether a project should proceed and in what manner it should proceed.[1]

The EIA process is therefore applied to a new developmental activity through a scientific study of impacts as well as the implementation of certain measures deemed to sustainably reduce or eliminate impacts of the developmental activity on the environment. The idea of EIAs started in USA in 1969 and was gradually adopted by various developed countries until 1992 [2]. After the Rio Summit of 1992, many countries rapidly adopted the EIA practice and promulgated laws and policies to establish an EIA system [3]. In Zimbabwe, the EIA process was implemented in Zimbabwe between 1997 and 2003 as a policy and thereafter as a law.

The establishment of the EIA system created a number of stakeholder groups with vested interest in the implementation of the EIA system. The first one is the Environmental Management Agency (EMA) which is mandated to administer the EIA legislation through the Environmental Management Act **Error! Reference source not found.** The second is the EIA consultant whose role is

to carry out the EIA studies on behalf of developers as required under the EIA law. The third is the proponent or developer who is the person, company or organization implementing a developmental activity. The fourth stakeholder is the general public and local communities affected directly or indirectly by the implementation of a developmental activity. The fifth are other government departments whose mandates touch on environmental issues. The sixth is the civil society sector which includes non-governmental organizations and associations.

This study considers the first two stakeholders i.e. EMA and the EIA consultants. EIA consultants are private companies hence their participation is first and foremost and a business activity whereby they pursue profit. EMA regulates implementation of the EIA system. These two stakeholders are more informed about the details of the EIA system and they affect the success of the EIA system to a greater extent than all the other stakeholders. More importantly for this study, the EMA requires consultants to pay a certain fee to be registered and allowed to operate as an EIA consultant, i.e. to conduct EIA studies on behalf of developers.

Currently the requirements that EIA consultants must meet to registered are; annual subscription of US\$ 315.00, CVs of a team of 5 core team members including an ecologist, physical scientist, biological scientist, natural scientist and a social scientist, a registered office address, tax clearance certificate and a team leader who has carried out at least 5 EIA studies. This gives rise to two important points. The first is that EIA practice can be said to be recognized by law

as a distinct profession with a special set of skills, knowledge and competencies that define it. The second and more important for this study is that, registration creates a professional relationship and expectations between EMA and the consultants.

1.1 Roles and Expectations

The roles of the stakeholders are the duties and responsibilities they are required to fulfill in terms of the Environmental Management Act. This law states that the role of EMA is “to regulate, monitor, review, and approve environmental impact assessments”.

The role of the consultant is to carry out EIA studies on behalf of proponents. A proponent must engage a registered consultant to carry out an EIA study for a project. Expectations are defined in this study as responsibilities which are not defined by law but are expected to be fulfilled by the stakeholders in the course of executing their legal duties and in relating to each other.

2. Problem Statement

Whilst the law clearly stipulates the duties of both EMA and consultants as explained above (Section 1.1), it does that in a very broad sense primarily in terms of what each stakeholder should do to fulfill the dictates of the law. Finer details about how the stakeholders should relate to each other are not given. In the case of the two stakeholders in question, the fact that consultants pay fees to EMA for administrative purpose creates a situation whereby both EMA and the consultants expect the other to perform certain activities and uphold certain standards. This situation and expectations remain unclear and are a cause of misunderstandings between EMA and the consultants.

It is therefore the aim of this study to explore the expectations that arise in the interaction between EMA and the consultants and possible remedies to points of contention. This raises the research questions:

- What does EMA expects consultants to fulfill by virtue of registration?
- What does consultants expects EMA to fulfill by virtue of registration?
- The aim of this study is to explore the undocumented relational expectations between EMA and EIA consultants.

3. Methodology

Five selected EIA experts (including current and previous EMA employees and consultants) of more than 10 years EIA experience were consulted to give suggested expectations they expect both EMA and consultants to fulfill to each other in the course of their duties. Twelve items which consultants must expect EMA to fulfill and 5 items which EMA must expect consultants to fulfill were identified. The consultant’s expectations are: Fair and Ethical Treatment, Access to Library, Newsletter, Respect of professional Judgments, and Protection from Proponents, Regulatory Consultation, Periodic EIA Updates, EIA Training, Proponent EIA

Education, Code of Ethics, Online Market Linkages, and Consultants’ Association.

The 5 EMA’s expectations were identified as: Participation in Environmental Functions, Proponents’ Education on EIA Matters, Transparency and Honesty in EIA Studies, Objectivity and Fairness, and Whistle-Blowing. Based on the suggested expectations a questionnaire was then drawn and administered to EIA consultants. Over fifty questionnaires were distributed online to EIA experts identified through the linkedin.com professional network. Respondents were also invited through the Environmental Association of Zimbabwe facebook page by posting a link to the questionnaire. Twenty-five responses were received. A likert scale was used to measure how much the respondents agree or disagree with each of the expectations. Mean scores were then calculated and presented in graphs depicted in Figure 1 and Figure 2 below.

The mean scores of each expectation were rated as follows:

- 1.0 to 3.0 – not important at all;
- 3.1 to 3.5 – least important;
- 3.6 to 4.0 – less important;
- 4.1 to 4.5 – important;
- 4.6 to 5.0 – critically important.

Interviews were then held with another 5 different selected EIA experts to obtain deeper insights into the expectations of both EMA and consultants. The data gathered was analyzed for common perspectives and unique points of view. The information was used to explain and augment the findings from the questionnaire data analysis. The author also draws from his own EIA experience to critique and comment on the findings.

4. Results

The expectations which are explored in this study are very broad and often so complex and interlinked that it is not possible to exhaustively explore each of them in one study. Each one can constitute a study of its own.

4.1 What Consultants Expect from EMA

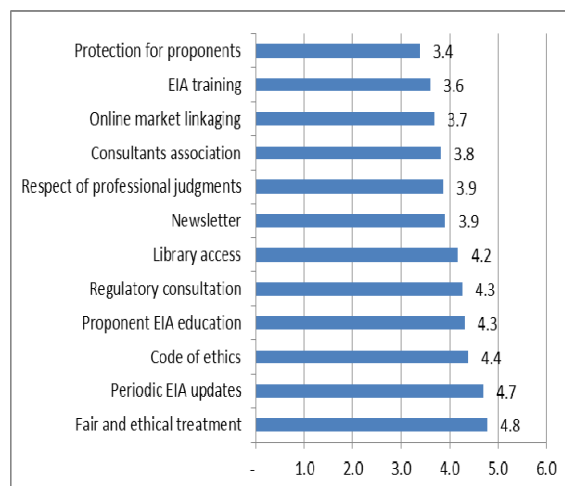


Figure 1: EMA's Obligations to Consultants

4.1.1 Fair and Ethical Treatment

The ratings show that fair and ethical treatment of consultants is a critical expectation (4.8). Interviews with EIA experts yielded that consultants expect EMA to be more objective in the review of EIA reports such that the review is based on the content. Consultants have the experience of radically different comments made on EIA reports of similar nature and content. They expect EMA to review the EIA reports without bias and to uphold values that promote the sound practice of the EIA process. It was also pointed out that since, EMA requires and registers qualified and experienced tax-paying consultants with registered offices, EMA has an obligation to safeguard the work of the consultants by enforcing the EIA regulations such that there is demand for EIA studies so that the consultants can sustain themselves. If EIA remains a part-time profession because there is not enough work causing consultants to do other business for survival, standards will not be maintained. Another common view expressed by interviewees is that of former EMA employees who are now practicing EIA consultants. It was noted that such consultants have easier access to EMA offices and are likely to receive preferential treatment. EIA consultants therefore expect EMA to erect entry barriers to EIA practice and to put in place mechanisms for fair and ethical treatment.

4.1.2 Periodic Update

The results show that respondents expect EMA to update consultants periodically about the developments in the EIA sector. This is also a critical expectation with 4.7 points. The general feeling among EIA stakeholders was that the lack of communication and information flow in the EIA sector. Other stakeholders expect EMA to inform them of what is taking place in the sector, new developments, challenges and good practices among other issues since EIA has become such a significant part of the economy in Zimbabwe.

4.1.3 Code of Ethics

The results show that need for a code of ethics is an important expectation (4.4 points). Currently there is no code of ethics or such document which cultivates suitable values and norms in the practice of EIA by both EMA and consultants. It is also standard in recognized professional practices to have an instrument for promoting values and norms. Some EIA practitioners were of the opinion that a code of ethics will support EMA's mandate by eliminating bogus practitioners through enforcement of strict EIA practice standards. However, the general opinion is that EMA should not spearhead the formulation and enforcement of standards itself, but just stimulate and support their establishment. At the same time it remains within EMA's best interest to promote professionalism in EIA practice.

The production of a code of ethics document with involvement of all interested stakeholders was therefore recommended. This document will promote values and conduct necessary for the professional operation of the EIA as a sector and to develop towards self-regulation as a professional guild.

Another off-shoot of the lack of standards enforcement is that of the proliferation of bogus EIA consultants and the resulting lowering of EIA fees. Low EIA fees do not augur

well for quality EIA practice, but bogus EIA practitioners are known to charge very low EIA consultancy fees.

4.1.4 Proponent EIA Education

Although the level of EIA awareness has increased over the years, Proponents are often uninformed about what EIA really is. The study found out that it is an important expectation (4.3 points) that EMA must educate proponents fully. The respondents expect EMA to deliberately plan programmes to educate Proponents about the EIA system in Zimbabwe.

Respondents were of the opinion that it makes business sense for consultants to educate the proponents who come to them about EIA, but consultants will only do that if there are no extra costs. However, general education of proponents remains a key role of EMA so that EIA education can reach a wider population of proponents faster, even if the proponent is not in need of EIA services at that moment.

4.1.5 Regulatory Consultation

The respondents (4.3 points) also expect EMA to consult the consultants when planning to make EIA regulatory changes or modifications to the EIA process. Such consultations show that EMA is recognizing consultants as important stakeholders with vast knowledge useful for EIA system improvement. However, without some representative body of consultants, consultations on an individual basis are a challenge. Currently, consultants often find out that there are new requirements only when they come to submit EIA reports.

4.1.6 Access to Library

Access to EMA's Library for the purpose of producing EIA reports is an important expectation (4.2 points). This is related to the availability of background information for use in EIA studies especially in baseline surveys. Respondents believe that EMA has gathered a wealth of environmental information over the years and that such information can enrich the EIA studies. Secondary baseline information is generally difficult to find.

Specific reference was made to EIA reports within EMA that they should be publicly available documents for reference including in EIA studies. However this is not just a relational issue but a matter of the law. The EMA Act stipulates that EIA reports can only be accessed for litigation purposes related to protection of the environment at the payment of a fee (Section 108). A further point was raised here that instead of making all EIA reports available, EMA can make certain best-practice reports for reference and information.

4.1.7 Newsletter

The publication of a newsletter for sharing information in the environment sector was considered a less important expectation (3.9 points). EMA provides a number of communication channels to communicate with consultants and environmental stakeholders at large. These are; an interactive website, annual reports and annual functions.

Consultants also expect EMA to produce a newsletter for various reasons including that; i) other government departments are doing so; ii) EMA promised consultants that a newsletter will be produced; and iii) that it is a vital tool for sharing information, networking, raising awareness,

upholding standards and continuous improvement of the EIA process.

4.1.8 Respect of Professional Judgments

Respect of professional judgments proffered by consultants in the EIA reports is less important (3.9 points). Consultants are usually highly qualified and experienced individuals very specialized in their fields of endeavor. During the EIA studies, consultants use their knowledge to suggest certain ways of implementing projects or mitigating impacts which EMA may not agree with.

Consultants argue that an EIA report which is produced by several specialists in various diverse fields is reviewed by EMA without using specialists of the same diversity and experience. Hence, during review, the reviewers may not be competent to review the expert judgments expressed therein. Thus EMA is expected to employ competent reviewers as required for each particular type of EIA.

As a regulatory authority, it is not to be expected that EMA will simply respect professional judgments but if there is discussion between EMA and the consultants on these professional judgments, the two parties can understand each other better. There is also an expectation of technical justification to the refutation of professional judgments from expert EIA consultants.

Some respondents suggested that EMA can consider engaging consultants to review EIA reports where the capacity is lacking within EMA. This idea is said to be in operation in some countries across the world.

4.1.9 Consultants' Association

Respondents expect EMA to facilitate the formation of an association of consultants. However, this is a less important expectation with 3.8 points. An association is an opportunity to improve communication with consultants and to create a platform for development and implementation of ethical values and norms in EIA practice.

4.1.10 Online Market Linkages

This idea is borrowed from other countries where developers who wish to engage consultants post via internet through EMA and consultants can respond and compete in a transparent manner. This idea though did not receive much support from the respondents with only 3.7 points. However, it was noted that the current competition for clients among consultants results in lowering of standards as some charge fees so low that it becomes impossible to carry out a thorough scientific EIA study.

4.1.11 EIA Training

Respondents' expectation for EMA to provide EIA training to consultants is less important (3.3 points). EMA has run two EIA workshops for Consultants in the last 5 years. Interviewees varied widely in their views on EIA training. Others felt that EMA should not train consultants but just provide periodic updates of developments within the EIA sector to keep consultants informed of recent trends. Others felt that EIA training may be necessary especially on those issues that EMA may find that consultants are not doing well or not standardized. Therefore the thrust of the training is not to cover the entire EIA process, but to improve practice in certain identified areas of deficiency.

4.1.12 Protection from Proponents

Expecting EMA to protect consultants in the event of a dispute between the developer and the consultant is the least important expectation (3.4 points). This is may be difficult given that the nature of disputes varies and in some cases the consultant may be beyond protection. However, a dispute resolution mechanism can be envisaged.

One of the points which lack clarity is that it is unknown how much EMA can be involved in the relationship/interaction between consultants and proponents especially in the case of a dispute between the two. It may be that, what is required is not the protection of consultants from proponents, but rather the creation of a dispute resolution mechanism which is fair to all parties involved.

The common dispute identified in this case is that of non-payment of EIA consultancy fees by proponents after the EIA certificate has been issued by EMA. The background to this dispute is that EMA accepts a consultant submitting an EIA report on behalf of the proponent but does not allow the consultant to collect the EIA certificate on behalf of the proponent. Now when a proponent collects a certificate before he has fully paid the consultant, he/she may be unwilling to settle his/her debt with the consultants. However, if the consultant could collect the EIA certificate, then he/she could hold on to it until payment is done. Without clear, efficient and fair methods of handling disputes, the EIA profession becomes a frustrating sector and that has repercussions throughout EIA practice. An effective association of consultants is an important structure for handling such disputes.

4.2 What EMA Should Expect from Consultants

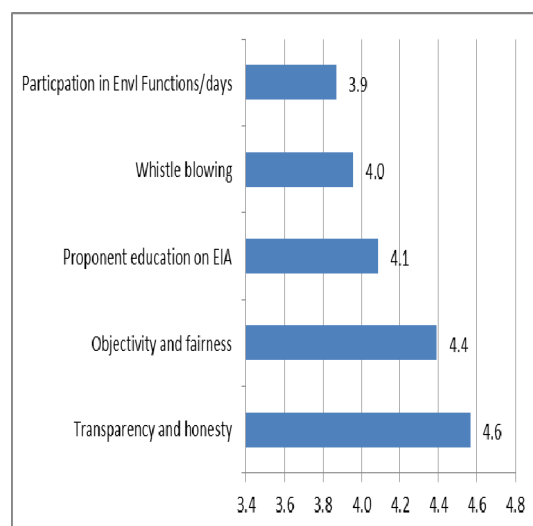


Figure 2: Consultants' Obligations to EMA

The study also explored what are considered obligations of consultants to EMA by virtue of being registered (Figure 2).

4.2.1 Transparency and Honesty In EIA Studies

The results show that consultants' transparency and honesty in carrying out the EIA studies is a critically important expectation (4.6 points). Transparency entails that the EIA study process should be open to all interested individuals and be evidenced with reports such as minutes of meetings. The

process of conducting EIA studies should be clear and traceable through adhering to the EIA guidelines. The relationship between the consultant and proponent should also be above board and not subject to conspiracy or unethical intentions. Honesty means that the consultants should declare all the relevant information that affects the decisions to grant an EIA certificate. EMA should expect a professional EIA report that meets the expected standard and contains all the relevant information. All the necessary experts must be involved in producing an EIA report. This expectation is another reason for a code of ethics to be established.

4.2.2 Objectivity and Fairness

The results show that it is important (4.4 points) to expect consultants to exercise objectivity and fairness in conducting EIA studies. Objectivity is necessary to ensure that the contents of EIA reports represent a true picture of the project and its impacts and that the consultant is not biased by any other interest except that of sustainably managing the environment. The consultant should also be fair to all the participants involve in the EIA study to ensure that their views are correctly represented in the EIA reports.

4.2.3 Proponents' Education on EIA Matters

Respondents think that it is also important that EMA should expect the consultants to educate developers on EIA matters. It is interesting to note that both EMA and the consultant are expected to educate the developers on EIA matters. Consultants tend to spend more time with the developers in the course of EIA studies and therefore have a better opportunity to educate developers on EIA matters than EMA. At the same time, only those developers in need of EIA services are in contact with consultants therefore most of potential developers are left out. Therefore it is prudent for EMA to arrange mechanism to reach a wider population of developers/proponents in the economy. Periodic seminars and sectoral workshops are one way of reaching all the developers.

4.2.4 Whistle-Blowing

Respondents expect consultants to alert EMA of unsustainable, or environmentally unfriendly or unethical practices that they may come across, but surprisingly, this is less important (4.0 points). This expectation reinforces the standard view that environmental management is a collective responsibility and that consultants should have environmental management at heart not just profit-making from EIA services. EMA provides a website through which whistle-blowing can be done. However, some respondents were of the opinion that there is no incentive for whistle-blowing. They feel that whistle-blowing will work better if there is a standing arrangement to reward the whistle-blower.

4.2.5 Participation in Environmental Functions

The least expectation (3.9 points) was that of participation in environmental functions with 78% of the respondents. Respondents expect consultants to participate in annual days such as the World Environment Day as part of their commitment to environmental management at large. By so doing consultants improve their networking, show commitment to environmental management, market themselves, keep up to date with developments in their field

and contribute to the common goal of sustainable management of the environment. However, there is need for such functions to be communicated to them. A single body representing consultants provides a platform for such communication between consultants and EMA.

5. Conclusion

This research showed that there are expectations between the regulatory authority and the consultants which are not being fulfilled by either party. Ethical issues are clearly of concern to most respondents as shown by expectations such as fair and ethical treatment, transparency and honesty, objectivity and fairness, whistle blowing, respect of professional judgments and code of ethics.

Other expectations such as participation in environmental functions, whistle-blowing suggest that consultants are expected to be more than just EIA practitioners but also to be companies interested in the general sustainable environmental management. Consultants can show this by participating in many environmental activities across the year as well as in whistle-blowing against unscrupulous environmental management practices.

Capacity expectations are also important. Both EMA and consultants are expected to build the capacity of developers to understand EIA issues and environmental management in general. At the same, some expect EMA to build the capacity of consultants to conduct EIA studies. One key issue is that EMA is expected to give access to its library for the purpose of availing information required to carry out EIA studies.

The last major expectation is that consultants expect to be consulted when EIA regulatory changes are being formulated and to be informed of them when put into force. Hence the study found out that consultants are an important stakeholder with vast potential to contribute to the betterment of EIA system in Zimbabwe and that cooperation between EMA and the consultants is necessary.

6. Recommendations

Since most issues are of ethical nature, it is recommended that EMA and Consultants should work together to establish an ethical standards framework to guide both parties in executing their duties. For this to happen there is need for constant dialogue between EMA and the consultants on the expectations identified in this study and more. Some consultants interviewed note that currently, the atmosphere in EIA practice is tainted with some suspicion between EMA and consultants. Only a round table communication can dissipate the differences, clarify expectations and create an atmosphere where the two stakeholders work together for the betterment of EIA practice.

Central to this communication is the association of consultants. This has many advantages to both the consultants and EMA and therefore to the EIA system as a whole. On one hand EMA will have a single body through which to communicate EIA matters, consult and enforce

standards. The consultants will have one united front to safeguard their interests and improve the profession.

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