GUIDE TO THE ENVIRONMENTAL MANAGEMENT ACT

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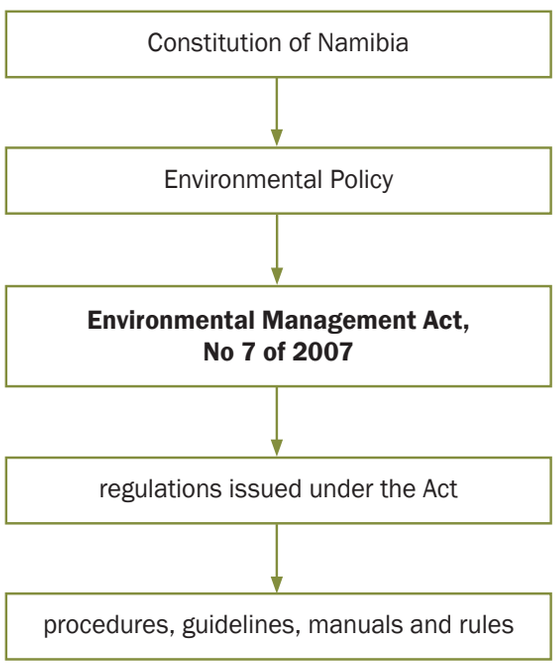
PURPOSE OF THIS GUIDE

This booklet contains a simple summary of the Environmental Management Act. Many people find legal language difficult to understand. This booklet explains what the law says in simple terms. It includes section numbers from the Environmental Management Act so that you can look at the law itself if you need more detail.

The booklet does not cover the regulations issued in terms of the Act.



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Current and future generations of Namibians have a right to an environment which provides for their health, well-being and security.

Current and future generations have a right to share access to all of Namibia's resources.

This means that the Government and all people in Namibia have a duty to protect and conserve Namibia's environment.

CHAPTER 1

BACKGROUND

Key concepts

To understand the Environmental Management Act, you will need to understand some of the key concepts used in the law. Some of these concepts are defined in the law, but not all of them. Some of them are part of the general understanding of the environment.

"biological diversity"

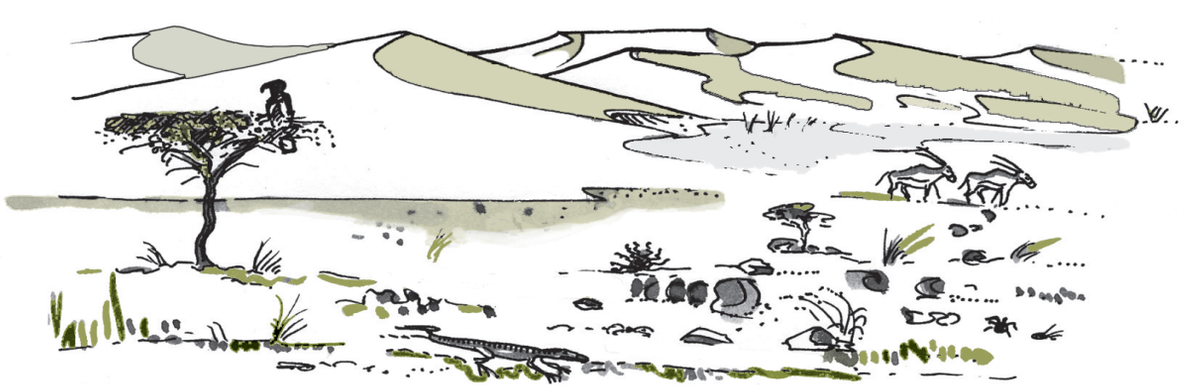
This means the variety of living organisms on land and in water, and the variety of ecological systems where they live. There is diversity within species (such as different varieties of a particular kind of thorn tree), diversity between species (such as the many different kinds of birds in Namibia) and diversity between ecosystems (such as the difference between a river habitat and a desert habitat).

"ecology"

Ecology is the relationships between organisms and their environment in a particular ecosystem.

"ecosystem"

An ecosystem is a particular interconnected community of living organisms and their physical environment. For example, a desert ecosystem would include the plants, animals, insects and micro-organisms which thrive in the desert, along with the desert's physical features such as low rainfall, a fog belt and particular kinds of sand and rocks.



"environment"

The environment is an interconnected system of natural and human-made elements. It includes

(a) *the natural environment:* land, water, air, all living organisms and all matter arising from nature
(b) *the human environment:* the landscape, and our entire natural, cultural, historical, artistic, economic and social heritage and values.

Our environment determines our quality of life.

"genetic resources"

Genes are the blueprints for humans, animals, plants and even organisms so small that they can be seen only through a microscope. Genes determine the particular qualities of each living thing. Genetic resources are any materials which contain genes and which could have value, inside or outside Namibia.

For example, scientists may be interested in using the genes of a person who has natural immunity to some disease to see if they can develop a vaccine for that disease. A plant which is resistant to a certain kind of pest might have genetic material that could be inserted in other plants to give them the same kind of resistance.

Because there are genes in every cell of a living thing, genetic resources can be obtained from a very small amount of living matter.

"pollution"

Pollution is the direct or indirect introduction of something which is harmful to people, property or the environment into the air, land or water. Pollution can be caused by substances, vibrations, heat, radiation or noise. One of the key ideas behind the law is that the polluter must pay the costs of pollution.

"sustainable development"

This means the human use of some natural resource in a way that will give the greatest possible benefit to the present population, while still being able to meet the needs of future generations.

The principle of sustainable development applies to both renewable resources (things which can be reproduced, such as plants and animals) and non-renewable resources (things which cannot be reproduced, such as oil and minerals). One way to achieve sustainable development is to improve the capacity of the environment to reproduce renewable resources.

"sustainable use"

This means using natural resources in a way and at a rate that does not lead to a long-term decline, so that the environment will be able to meet the needs of future generations. Putting

it another way, the natural resources of the earth must be shared fairly between present and future generations.

See section 1, where some of these concepts are defined.

Key terms

To understand the Environmental Management Act clearly, it is also necessary to understand the meaning of certain terms which are specific to the Act.

"environmental plan"

This is a plan which must be made by every Government body which is exercising functions that may affect the environment. The purpose of making environmental plans is to ensure better coordination amongst Government agencies. Private persons and groups (such as private companies) do not have to make environmental plans. The regulations refer to an "environmental plan" as a "Strategic Environmental Assessment" (SEA). This refers to an assessment which aims to integrate environmental considerations into policies, plans and programmes - in contrast to an "Environmental Impact Assessment" (EIA) which aims to analyse environmental impact at project level.

"environmental assessment"

This is the process of identifying, predicting and evaluating the effects of proposed activities on the environment. It should include information about the risks and consequences of activities, possible alternatives, and steps which can be taken to mitigate (minimise or off-set) any negative impacts. It should also discuss steps to increase positive impacts and to promote compliance with the principles of environmental management. Both Government bodies and private persons or groups (such as private companies) can be required to carry out environmental assessments.

"environmental clearance certificate"

This is a certificate which allows a listed activity to go ahead. The certificate means that the Ministry of Environment and Tourism satisfied that the activity in question will not have an unduly negative impact on the environment. It may set conditions for the activity to prevent or to minimise harmful impacts on the environment.

"listed activity"

This is a list of activities which may not take place without an environmental clearance certificate. The Minister responsible for the environment will publish listed activities from time to time, after following a specified consultation process.

"proponent"

This is the person who proposes to undertake a listed activity. It might be a company or a group or a Government body instead of an individual person.

"competent authority"

This is a Government body which is responsible for authorising a listed activity. It could be a Ministry, a regional authority, a local authority, a traditional authority, a Communal Land Board or any Government body created by law.

"organ of state"

This term includes any Government office, Ministry, or agency at national, regional or local level. It also includes any other institution or person who is exercising a power or a function under the Namibian Constitution, or any public power or function under any Namibian law. But it does *not* include courts or judicial officers.

"significant effect"

A *"significant effect"* means that something will have, or is likely to have, a qualitative or quantitative impact on the environment.

> An example of a *"qualitative impact"* would be to spoil the natural beauty of a place by allowing open-pit mining, or to raise the water temperature of a river which might make it impossible for certain fish to exist there. An example of a *"quantitative impact"* would be overfishing which causes fish stocks to drop below a sustainable level in the long term.
>
> A project would have a significant effect on the environment if it caused changes in ecological, aesthetic, cultural, historic, economic or social factors. This would be true regardless of whether the changes occurred directly or indirectly, or whether they took place individually or collectively (as a combined effect of several factors in the long-term).

Section 1

The Namibian Constitution

The Namibian Constitution is the starting point for the Environmental Management Act. Namibia has one of the few constitutions in the world with specific sections on the environment.

The Government's duty to protect the environment

The Namibian Constitution has a section on principles of state policy. These principles cannot be enforced by the courts in the same way as other sections of the Constitution. But they are intended to guide the Government in making laws which can be enforced.

One of these guiding principles says that the Government will take steps to maintain Namibia's ecosystems, essential ecological processes and biological diversity. It says that the Government will try to make sure that all of the nation's living natural resources are used on a sustainable

basis for the benefit of all Namibians, both present and future generations. It also says that the Government will provide measures to prevent the dumping or recycling of foreign nuclear waste or toxic waste on Namibian soil.

Namibian Constitution, Article 95(l)

NAMIBIAN CONSTITUTION

Chapter 11 – Principles of State Policy

Article 95 Promotion of the Welfare of the People

The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following...

l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

The role of the Ombudsman

The Namibian Constitution also talks about the environment in the section on the Ombudsman. The Ombudsman is an independent state official with the power to investigate complaints concerning Government or the Constitution. One of the Ombudsman's functions is to investigate complaints about

- the over-utilisation of living natural resources (such as plants and animals)
- the irrational exploitation of non-renewable resources (such as diamonds or natural gas)
- the degradation and destruction of ecosystems
- failure to protect the beauty and character of Namibia.

The Ombudsman can take a variety of steps to remedy such problems, including negotiation between the parties concerned and court action.

Namibian Constitution, Article 91(c)

NAMIBIAN CONSTITUTION

Chapter 10 – The Ombudsman

Article 91 Functions

The functions of the Ombudsman shall be defined and prescribed by an Act of Parliament and shall include the following...

a) the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;

b) the duty to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;

c) the duty to investigate complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;

d) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place;

e) **the duty and power to take appropriate action to call for the remedying, correction and reversal of instances specified in the preceding Paragraphs through such means as are fair, proper and effective, including:**

aa) negotiation and compromise between the parties concerned;

bb) causing the complaint and his or her finding thereon to be reported to the superior of an offending person;

cc) referring the matter to the Prosecutor-General;

dd) bringing proceedings in a competent Court for an interdict or some other suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures;

ee) bringing proceedings to interdict the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is grossly unreasonable or otherwise ultra vires;

ff) reviewing such laws as were in operation before the date of Independence in order to ascertain whether they violate the letter or the spirit of this Constitution and to make consequential recommendations to the President, the Cabinet or the Attorney-General for appropriate action following thereupon...

International responsibilities

Namibia has already signed several international treaties which concern environmental issues. The Environmental Management Act will help Namibia carry out its obligations under these international treaties.
Some of these international agreements are:

- International Convention on Civil Liability for Oil Pollution Damage, 1969
- Convention on Wetlands of International Importance, especially as Waterfowl Habitat, 1971 (Ramsar Convention)
- Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972
- International Convention for the Prevention of Pollution from Ships, 1973
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973
- World Heritage Convention, 1975
- Vienna Convention for the Protection of the Ozone Layer, 1985
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
- Framework Convention on Climate Change, 1992
- Convention on Biological Diversity, 1992
- Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994
- SADC Protocol on Shared Watercourse Systems in the Southern African Region, 1995
- Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998
- SADC Protocol on Wildlife Conservation and Law Enforcement, 1999
- Cartegena Protocol on Biosafety, 2000
- International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

SADC Protocol on Forestry, 2002.

Goals of the Environmental Management Act

The Environmental Management Act has three main purposes:

(a) to make sure that people consider the impact of activities on the environment carefully and in good time
(b) to make sure that all interested or affected people have a chance to participate in environmental assessments
(c) to make sure that the findings of environmental assessments are considered before any decisions are made about activities which might affect the environment

Section 2

CHAPTER 2

PRINCIPLES OF ENVIRONMENTAL MANAGEMENT

Principles of environmental management

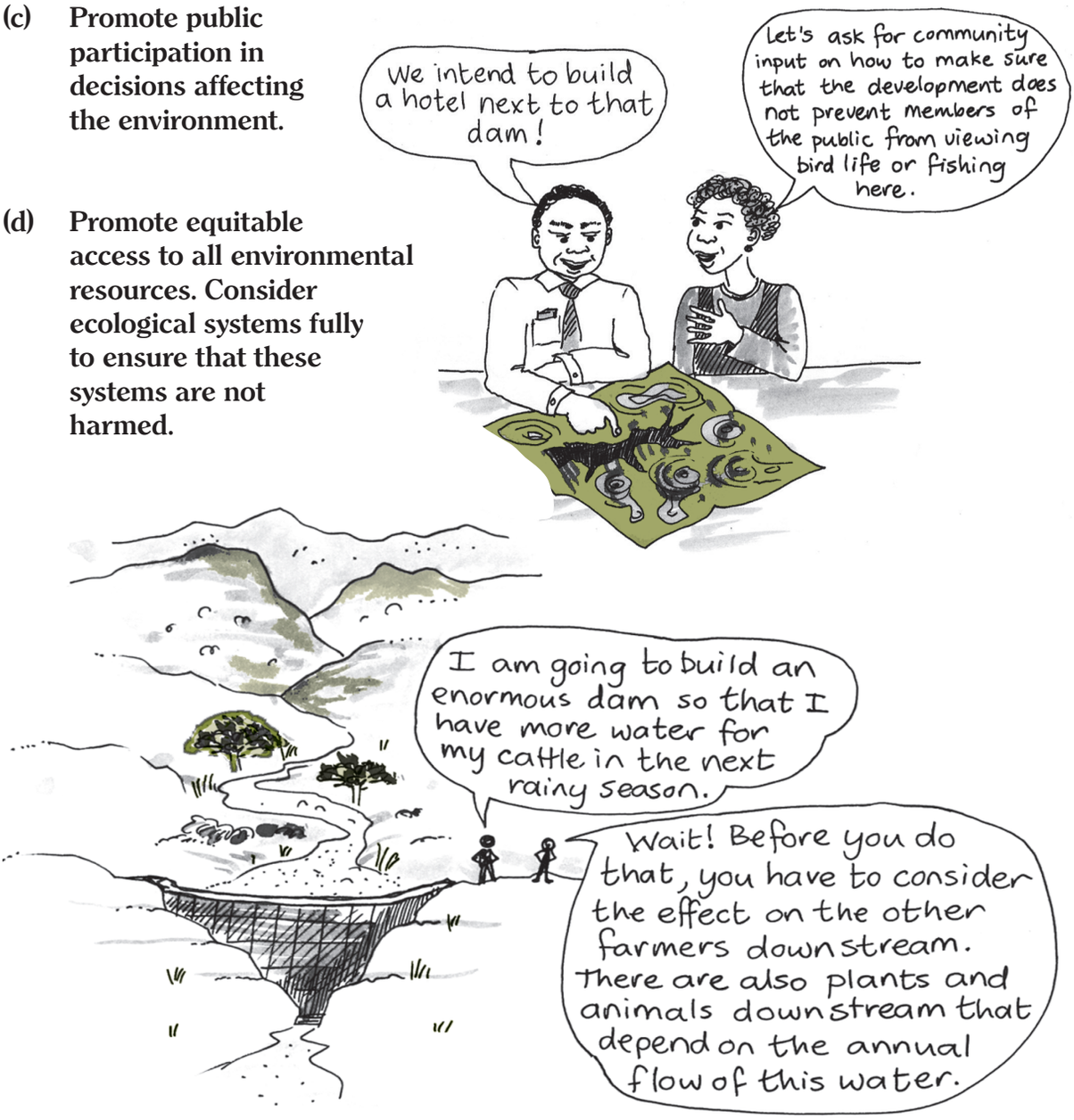
All Government institutions and private persons who are doing – or planning – anything likely to have a significant effect on the environment must apply the following principles. (The term "private persons" includes companies, institutions and other organisations as well as individuals.)

(a) **Use renewable resources on a sustainable basis for the benefit of current and future generations of Namibians.**

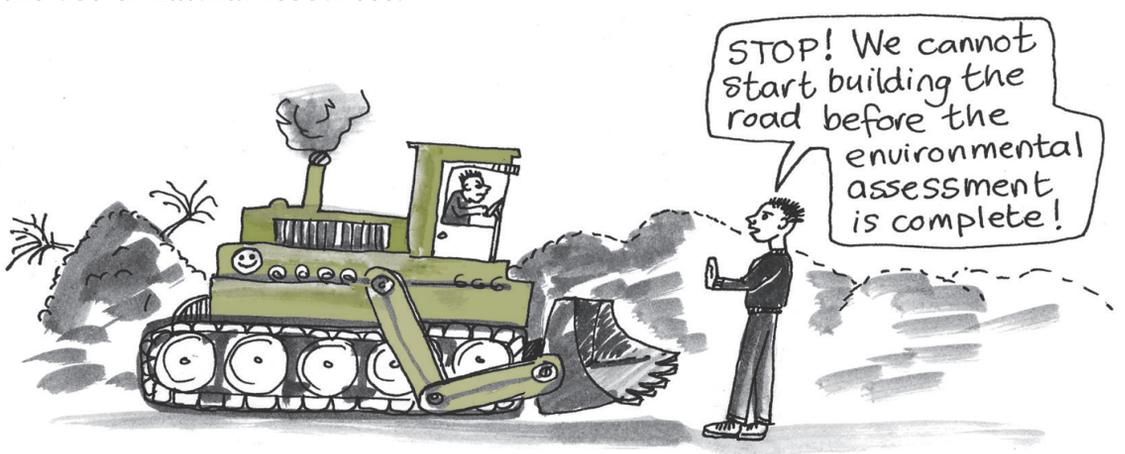
(b) **Promote community involvement in the management of natural resources, and community sharing in the benefits from those resources.**

(c) **Promote public participation in decisions affecting the environment.**

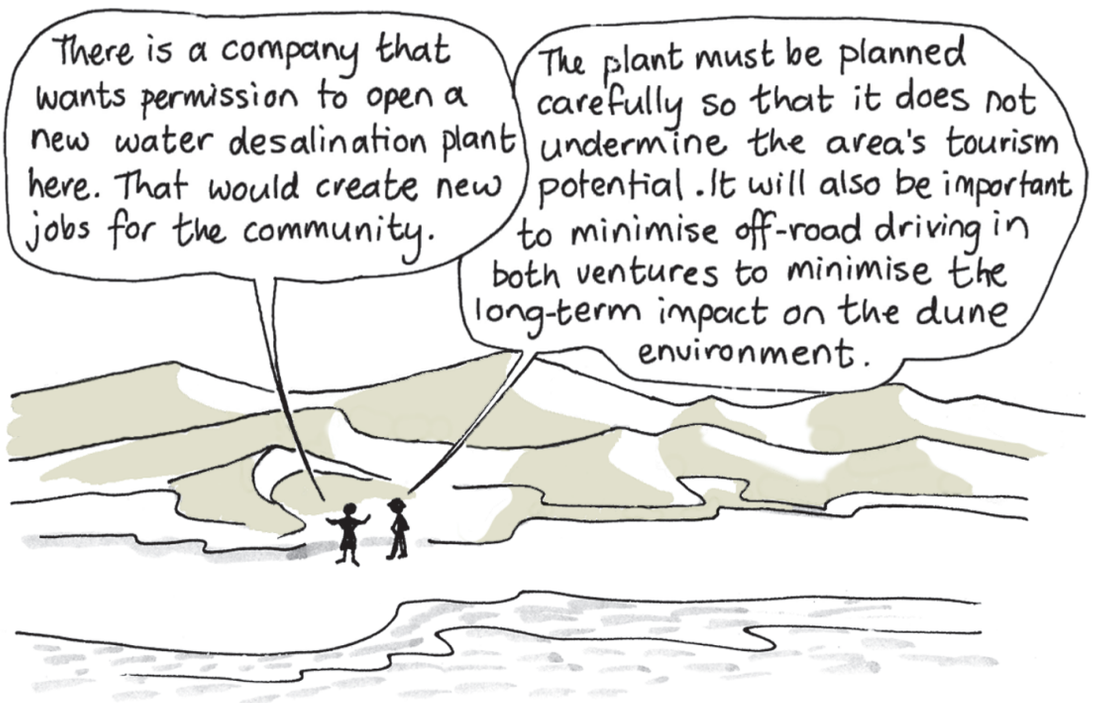
(d) **Promote equitable access to all environmental resources. Consider ecological systems fully to ensure that these systems are not harmed.**



(e) **Do environmental assessments of all projects that may affect the environment or the use of natural resources.**



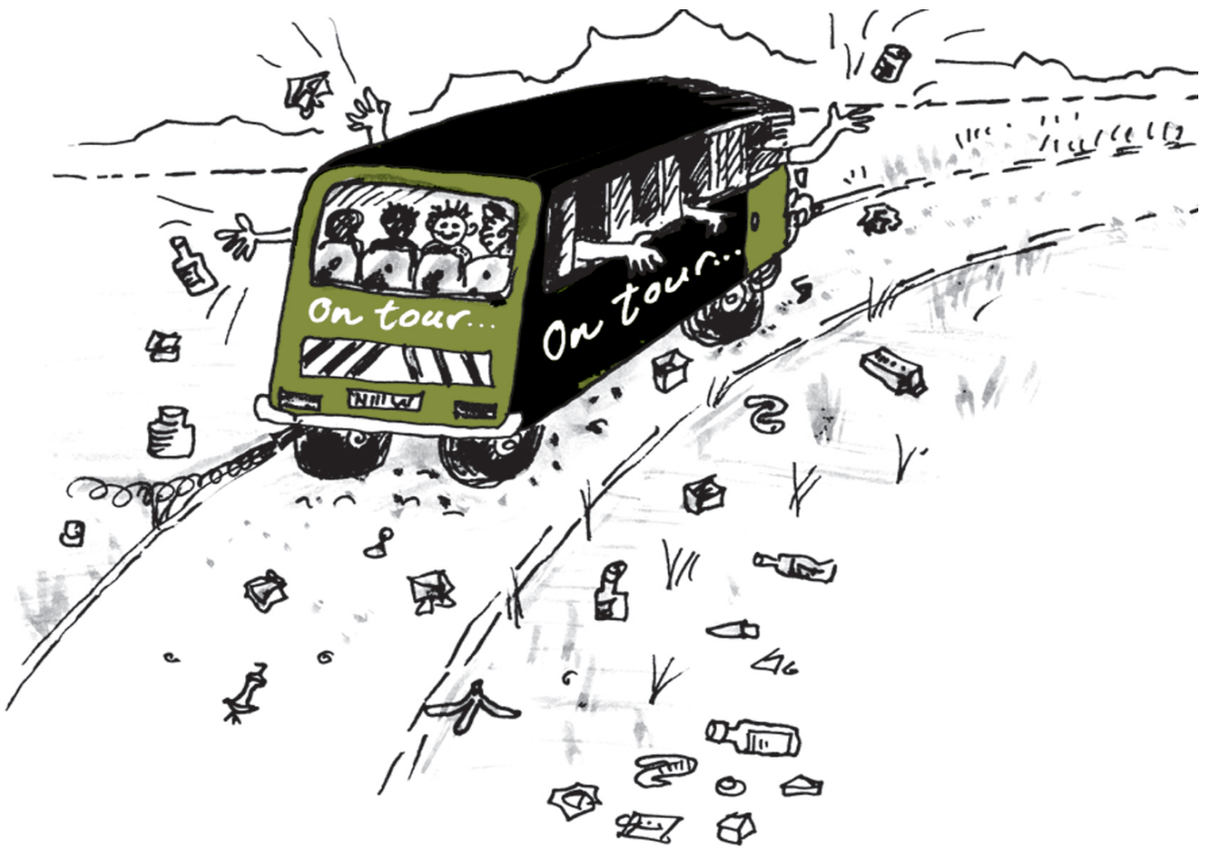
(f) Promote sustainable development in everything that affects the environment.



(g) Protect Namibia's cultural and natural heritage, including its biological diversity, for the benefit of current and future generations.

(h) **Those who generate waste and pollution must adopt the best possible methods for reducing the waste or pollution at its source, taking into account the costs that will be acceptable to society.**

(i) **Promote reduction, re-use and recycling of waste.**



(j) The polluter must pay the costs of pollution, including the costs of preventing further damage.

(l) **Take precautions to prevent environmental damage. If damage cannot be completely prevented, it must be reduced, limited or controlled.**

Sections 3 and 55

These principles are the cornerstones of the Environmental Management Act. They are referred to over and over again in different parts of the Act. So you will want to study these principles very carefully. Compare the summaries with the more detailed language of the Act itself. Try to think of other examples for each of the principles.

Who must follow the principles of environmental management?

The principles of environmental management must be followed by Government institutions as well as private persons and bodies (such as companies and organisations).

Section 55

CHAPTER 3

ROLE OF MINISTER

General functions of Minister

The Minister of Environment and Tourism has four general functions under the Environmental Management Act:

(1) to make policies for the management, protection and use of the environment
(2) to prepare and publish policies, strategies, objectives and standards for environmental management and protection
(3) to co-ordinate environmental management at a national level
(4) to monitor compliance with the Environmental Management Act.

Section 4

Giving effect to international agreements

Where the Government of Namibia has entered into any international agreement relating to the protection of the environment, the Minister of Environment and Tourism may take steps to give the international agreement practical effect in Namibia. The Minister can do this by introducing laws in Parliament, or by making new regulations under existing laws.

This might be necessary to deal with any of the following matters:

- co-ordinating implementation of the international agreement
- deciding which organ of state has responsibility for implementing different aspects of the agreement
- gathering information for reports under the agreement
- publicising information relating to the agreement and reports from international meetings about the agreement
- research, education, training, awareness-raising and capacity-building related to the agreement
- public participation in the implementation of the agreement
- effective implementation of the agreement, including new crimes and penalties if necessary
- anything else required to give effect to the agreement in Namibia.

Section 48

Power to make regulations

The Minister of Environment and Tourism can make regulations about anything covered by the Environmental Management Act, to give more details.

These regulations can set forth penalties for failure to follow any of the regulations. The maximum penalty for failing to follow a regulation is a fine of up to N$100 000, or imprisonment for up to 10 years, or both.

Section 56

Other powers

The Minister also has the power to declare waste disposal sites and to decide certain appeals under the Environmental Management Act. These powers are described in more detail below, in the chapter on waste disposal sites and the chapter on appeals.

Sections 5 and 50

CHAPTER 4

SUSTAINABLE DEVELOPMENT ADVISORY COUNCIL

Functions

The Sustainable Development Advisory Council is a body appointed by the Minister of Environment and Tourism. It has the following functions:

(a) It must promote co-ordination and co-operation on environmental issues amongst Government institutions, NGOs, community-based organisations, the private sector and funding agencies.
(b) It must advise the Minister on the development of policy and strategy for the management, protection and use of the environment.
(c) It must advise the Minister on how to conserve biological diversity, on the sustainable use of environmental resources, and on access to genetic resources.
(d) It must advise the Minister on the best ways to monitor compliance with the principles of environmental management.
(e) It must advise the Minister on the need to change existing laws or make new laws on matters relating to the environment.

Sections 6-7

Members

The Sustainable Development Advisory Council will be made up of eight persons appointed by the Minister of Environment and Tourism:

(a) four persons who represent the interests of the Government

The Minister must invite the government to nominate persons for these positions whenever there are vacancies. The Minister must give the government at least 30 days to make nominations.

(b) four persons who represent the interests of organisations, associations or institutions which are concerned with environmental matters.

The Minister must issue a public notice inviting the public and all relevant organisations to nominate persons for these positions. The Minister must give the public at least 30 days to make nominations.

All of the members must have enough knowledge or experience on environmental matters to be able to make a contribution towards the functions of the Council.

If the Minister does not receive sufficient nominations of suitable persons to fill all the vacancies on the Council, then the Minister may appoint an appropriate person of his or her choosing.

The Environmental Commissioner (described below) will automatically be a member of the Council, but will not have a vote on Council decisions.

The names of all the members and the dates of their terms of office must be published in the *Government Gazette*.

The Council can co-opt additional persons with special expertise to assist with its work, but such persons will not have a vote on Council decisions.

Section 8(1)-(9)

Terms of office and vacancies

Members of the Council will serve for a term of three years. They can be re-appointed.

A membership position will become vacant in the following circumstances:

- The member misses three meetings in a row without the permission of the Council.
- The member resigns by giving a written notice to the Minister of Environment and Tourism.
- The member no longer represents the organisation which was the basis of his or her appointment.
- The member is removed from office by the Minister of Environment and Tourism for a reasonable cause. But before being removed from office, the member in question must first be given written notice of the grounds for removal and a chance to tell his or her side of the story.
- The member dies.

If a position on the Council becomes vacant, the Minister must fill it for the remainder of the term by following the process for nominations described above.

Sections 9-10

Officers

The Minister will designate one of the members of the Council as Chairperson.

The members of the Council must elect a Deputy Chairperson at their first meeting.

The Permanent Secretary of the Ministry of Environment and Tourism must designate a staff member to serve as Secretary for the Council. This person will not be a member of the Council.

Sections 8(7), 11(4) and 12(1)(b)

Meetings

The Council must meet at least twice each year.

The Minister will decide on the time and place for the first meeting. After that, the Chairperson of the Council will set the date, time and place for Council meetings.

The Chairperson may also call a special meeting of the Council at the request of the Minister or a majority of the Council members.

The Chairperson will preside over Council meetings. If the Chairperson is absent, the Deputy Chairperson will preside. If they are both absent or unable to preside, the members present will elect someone from amongst themselves to preside at that meeting.

A majority of Council members will be a quorum for a meeting. Decisions can be made by the vote of a majority of the members present. If there is a tie vote, the person presiding at the meeting will have an extra casting vote to decide the question.

The Council itself can make other rules as necessary about procedures for its meetings.

The Chairperson must arrange for minutes of Council meetings to be submitted to the Minister as soon as possible after the meeting has taken place.

Section 11

Committees

The Council can set up committees as necessary to assist with its functions. These committees can include both members and co-opted persons.

Section 8(10)

Administration

The Permanent Secretary of the Ministry of Environment and Tourism must designate staff members to perform clerical work for the Council, including someone to serve as Secretary for the Council.

The Government will bear all costs associated with the functions of the Council.

Section 12

Allowances for members

The Minister of Environment and Tourism, with the agreement of the Minister of Finance, can make appropriate payments to anyone other than full-time Government employee who is a member of the Council or a member of a Council committee. (This includes co-opted persons who are part of Council committees.)

Section 13

Conflicts of interest

Any member of the Council or a Council committee must disclose conflicts of interest to the Chairperson right away. It will be a conflict of interest if the member has a direct or indirect interest, financial or otherwise, in any matter which the Council or the committee is considering. The disclosure of such a conflict of interest must be noted in the minutes of the meeting in question.

It is a serious crime to fail to disclose a conflict of interest. The penalty is a fine of N$10 000, or imprisonment for up to 2 years, or both.

Section 14

Annual report

As soon as possible after the end of every financial year, the Council must prepare an annual report on its activities, and on any other matter the Minister directs it to include. This report must be given to the Minister, who must table it in the National Assembly within 30 days of receiving it (or within 30 days of the National Assembly's next ordinary session if the National Assembly was not in session at that stage).

Section 15

CHAPTER 5

ENVIRONMENTAL COMMISSIONER

Appointment of Environmental Commissioner and staff

The Minister of Environment and Tourism must appoint a suitably qualified person to work in the public service as an Environmental Commissioner.

The Minister must also appoint a suitably qualified person to work in the public service as a Deputy Environmental Commissioner, who will stand in for the Environmental Commissioner whenever necessary.

The Permanent Secretary must make Ministry staff available to assist the Commissioner in performing his or her functions.

Section 16

Duties of Environmental Commissioner

The Environmental Commissioner has the following functions and duties:

(a) to advise Government bodies on the preparation of environmental plans
(b) to receive and record all applications for environmental clearance certificates
(c) to determine whether or not a particular listed activity requires an environmental assessment
(d) to determine the scope, procedure and methods for a particular environmental assessment
(e) to review environmental assessment reports
(f) to issue environmental clearance certificates
(g) to maintain a register of all environmental assessments
(h) to maintain a register of all environmental clearance certificates
(i) to conduct inspections to monitor compliance with the Environmental Management Act.
(i) to perform any other functions assigned to him or her by the Minister of Environment and Tourism.

Section 17

Commissioner's power to delegate authority

The Environmental Commissioner can delegate his or her powers, functions and duties to

- the Deputy Environmental Commissioner
  OR
- any organ of state.

Such a delegation must be made in writing. Delegations may be made subject to certain conditions. For example, the Environmental Commissioner might delegate certain powers to a regional authority but only in respect of their own region.

A delegation of powers, functions or duties can be withdrawn at any time by the Environmental Commissioner.

The Environmental Commissioner can always exercise all of his or her powers, functions and duties, even if there has been a delegation of authority.

Section 49

CHAPTER 6

ENVIRONMENTAL OFFICERS

Appointment of environmental officers

The Minister of Environment and Tourism may appoint environmental officers in the public service to help enforce the Environmental Management Act.

The Minster of Environment and Tourism, in consultation with the Ministry of Finance, may also appoint persons outside Government as honorary environmental officers if necessary, to assist generally or in a particular case.

All environmental officers must be given certificates of appointment. If the appointment is limited to a specific purpose or function, the certificate of appointment must state this. When an environmental officer is performing his or her duties, anyone who is affected can demand to see this certificate of appointment if they wish.

The Minister of Environment and Tourism can withdraw an appointment as an environmental officer.

Section 18

Duties of environmental officers

Environmental officers help to enforce the Environmental Management Act. They have powers of search and seizure, and powers to issue compliance orders when someone is violating the law. This is discussed in more detail in Chapter 10 below.

Sections 19-22

CHAPTER 7

ENVIRONMENTAL PLANS BY ORGANS OF STATE

Organs of state

The rules on environmental plans apply only to "organs of state" which are exercising functions that may affect the environment.

As explained above, the term "organ of state" includes any Government office, Ministry, or agency at national, regional or local level. It also includes any other institution or person who is exercising a power or a function under the Namibian Constitution, or any public power or function under any Namibian law. But it does not include courts or judicial officers.

To avoid confusion, the Minister of Environment and Tourism may list the organs of state which are supposed to make environmental plans in the *Government Gazette*.

Sections 1 and 24(1)-(2)

Objects of environmental plans

Organs of state (including the Ministry of Environment and Tourism) are required to make environmental plans to allow for better coordination of policies, plans and programmes affecting the environment. This can be done through Strategic Environmental Assessments. Requiring these assessments and plans will help to minimise duplication and promote consistency. They will also help the Minister to monitor national progress in working towards a sustainable environment.

Section 23

Making environmental plans

Because one of the goals of the environmental planning system is consistency, every organ of state which is drafting an environmental plan must take into account all the other environmental plans that have already been adopted.

The Minister will make regulations which give details about the form and contents of an environmental plan. The Minister may also issue guidelines about the preparation of the plans.

The Environmental Commissioner can help with the preparation of an environmental plan, if any organ of state requests assistance.

The environmental plan which is prepared must be submitted to the Environmental Commissioner for approval before the deadline set by the Minister.

The Environmental Commissioner will study each environmental plan to see if it:

(a) follows all the principles of environmental management
(b) satisfies the objects of environmental plans
(c) takes into account existing environmental plans.

If the environmental plan does not meet these three criteria, the Environmental Commissioner may recommend some changes. If it does satisfy all three criteria adequately, the Environmental Commissioner will recommend that the Minister should adopt the environmental plan.

All environmental plans can be examined by members of the public at the office of the Environmental Commissioner.

Sections 24-25 and 26(4)

Compliance with environmental plans

Once an environmental plan has been approved, the organ of state in question must follow it. It must report any substantial departure from the plan to the Environmental Commissioner. The organ of state must also give the Minister of Environment and Tourism an annual report on how it is implementing its environmental plan.

It is the duty of the Environmental Commissioner to monitor compliance with the environmental plans. The Environmental Commissioner can take any steps or make any enquiries which are necessary to make sure that organs of state are following their approved plans.

If an organ of state is not following its approved environmental plan, the Environmental Commissioner can issue a written notice directing the organ of state in question to take the necessary steps to fix the problem.

The fact that environmental plans are open for pubic inspection allows members of the public to push for compliance if necessary.

Section 26

CHAPTER 8

WASTE DISPOSAL SITES

Key terms

"disposal site"

A "disposal site" is a site used for collecting waste so that it can be treated or discarded.

"waste"

"Waste" is anything which is listed by the Minister by notice in the *Government Gazette* (or in regulations) as an undesirable or excess product of any process or activity. Waste can be solid, liquid or gas, or any combination of these.

Section 5(1)

Establishing waste disposal sites

The Minister of Environment and Tourism has the power to declare that any site is a waste disposal site. Before doing this, the Minister must consult with any organs of state whose areas of responsibility may be affected. The Environmental Commissioner may also decide to consult with other persons who may be interested or affected by the activities in question.

If a waste disposal site already exists before the Environmental Management Act comes into force, the Minister can approve that site as a waste disposal site under the Act, without any specific consultation.

Section 5(2)-(3) and 44

Prohibition on waste disposal other than at waste disposal sites

It is a crime to dispose of waste anywhere other than at a waste disposal site. It is also a crime to cause anyone else (such as an employee) to do this.

The only exception is where the Minister has specified some other facility or method for disposing of the particular kind of waste in question, by means of notice in the *Government Gazette* or in regulations made under the Environmental Management Act.

The penalty for disposing of waste in any unauthorised way is very heavy – a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

Section 5(4)-(5)

CHAPTER 9

ENVIRONMENTAL CLEARANCE CERTIFICATES AND ENVIRONMENTAL ASSESSMENTS

No one – including private bodies and Government bodies – can carry out any listed activity without an environmental clearance certificate. If an environmental clearance certificate is required, the Environmental Commissioner may first require an environmental assessment. In some cases, an environmental clearance certificate can be issued without an environmental assessment.

Environmental assessments serve the following purposes:

- *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 impacts and increase positive ones*
- *make sure that the environmental effects of activities are given adequate consideration BEFORE the activities are carried out*
- *provide an opportunity for public participation in considering the environmental impact of a project.*

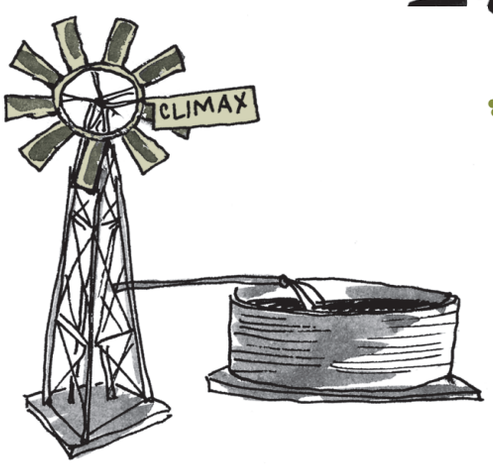
Listed activities

The Minister of Environment and Tourism will publish a list of activities in the *Government Gazette* which may not be undertaken without an environmental clearance certificate. Before compiling this list, the Minister must consult with any organs of state whose areas of responsibility may be affected. The Minister may also decide to consult with other persons who may be interested or affected by the activities in question.

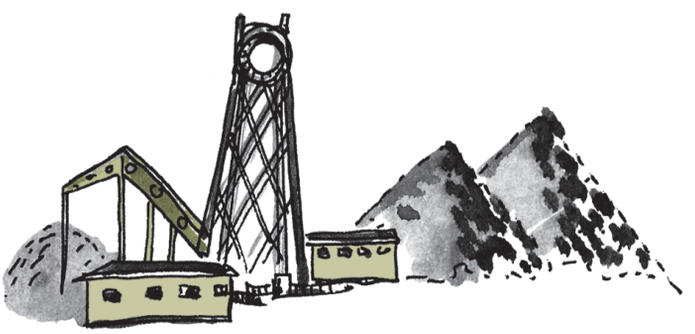
The Minister can include any activity with potential environmental consequences in the list. However, some of the activities which are listed are likely to fall into the following categories:

- **land use and transformation**

- **water use and disposal**



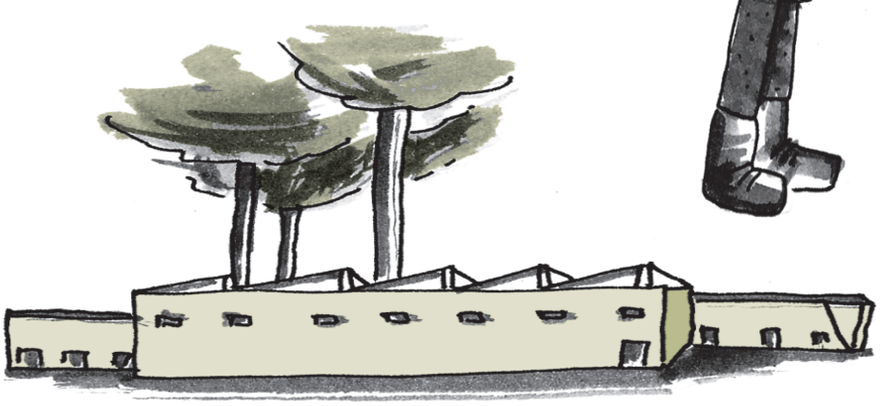
- **the removal of resources (including natural living resources)**



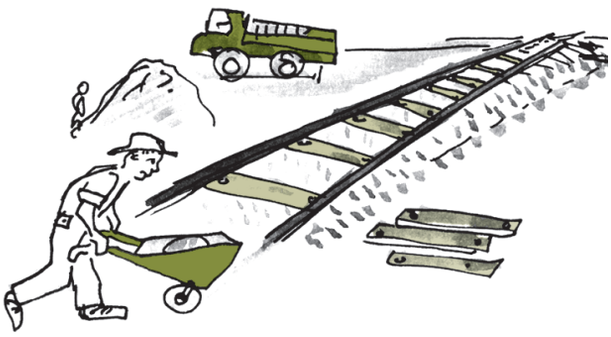
- **resource renewal**

- **agricultural processes**

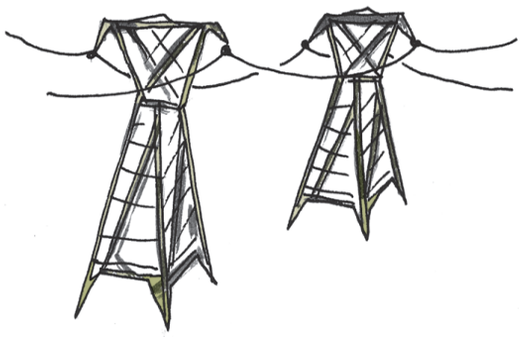
- **industrial processes**



- **transportation**



- **energy generation and distribution**



- **waste and sewage disposal**

- **recreation**

The Minister can makes changes to the listed activities from time to time, after carrying out the same consultation process required for the initial list.

Any person can make representations to the Minister on why a certain activity should be listed – or removed from the list. The Minister is not required to agree with any representations. The Minister should consider them and then make his or her own decision.

Sections 27(1)-(2) and 29

Competent authorities

For every listed activity, there must be a competent authority which has responsibility for authorising the activity.

In many cases, the competent authority will already be established by some other law. For example, if you want to build a house or open a factory in a municipal area, you must get approval from the municipality. If you want to prospect for minerals, you must get a licence form the Ministry of Mines and Energy.

If there is no competent authority for a listed activity, the Minister of Environment and Tourism must identify the competent authority when the list of activities is published in the *Government Gazette*.

Sections 30 and 44

Environmental clearance certificates

No one may carry out a listed activity without an environmental clearance certificate for that activity – unless the Minister of Environment and Tourism has issued an exemption for the activity by notice in the *Government Gazette*.

Violation of this rule is a very serious crime. The penalty is a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

The competent authority which has responsibility for authorising a listed activity may not give authorisation unless there is an environmental clearance certificate for the activity. Any authorisation given without the certificate is invalid.

The environmental clearance certificate may set conditions for the listed activity. It is a crime to fail to follow any of the conditions in the certificate. The penalty is a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

Sections 27(3)-(4), 28, 31, 34(3) and 37

No person is allowed to carry out a listed activity without an environmental clearance certificate.

No competent authority may authorise a listed activity without an environmental clearance certificate.

How to get an environmental clearance certificate

1. APPLICATION:

A person who wants to carry out a listed activity (the "proponent") applies to the competent authority for an environmental clearance certificate. The competent authority forwards the application to the Environmental Commissioner.

The proponent must go to the competent authority and fill in an application form for an environmental clearance certificate for the proposed activity. The proponent must also pay an application fee.

The application form is in the regulations made under the Environmental Management Act. Application fees are also set out in the regulations.

The competent authority will forward the application to the Environmental Commissioner so that the Environmental Commissioner will use the information on the form to decide whether an environmental assessment is needed.

HOW TO GET AN ENVIRONMENTAL CLEARANCE CERTIFICATE

1. **APPLICATION:** A person who wants to carry out a listed activity (the "proponent") applies to the competent authority for an environmental clearance certificate. The competent authority forwards the application to the Environmental Commissioner.

2. **SCREENING:** The Environmental Commissioner decides if an environmental assessment is required.

If an assessment IS NOT required....

3. **DECISION ON CERTIFICATE:** The Environmental Commissioner decides whether or not to grant the environmental clearance certificate.

If an assessment IS required....

3. **SCOPING:** The Environmental Commissioner decides on the scope and procedure for the assessment. The Environmental Commissioner tells the proponent what must be done and sets a time frame for the assessment.

4. **ASSESSMENT:** The proponent carries out the assessment and submits an assessment report to the Environmental Commissioner.

5. **PUBLIC CONSULTATION:** Persons who may be affected by the activity must be notified and given a chance to inspect the assessment report and make submissions on it.

6. **REVIEW:** The Environmental Commissioner reviews the application for the environmental clearance certificate. This process can include further consultations or investigations.

7. **DECISION ON CERTIFICATE:** The Environmental Commissioner decides whether or not to grant the environmental clearance certificate.

8. **APPEAL:** Any person who feels that the Environmental Commissioner's decision was not fair can appeal to the Minister.

The proponent must also fulfil any other requirements for the activity in question. For example, a proponent who is seeking a mining licence must satisfy all the other legal requirements for mining licences. Otherwise, it would be a waste of time to carry out an environmental assessment.

Section 32

2. SCREENING:

The Environmental Commissioner decides if an environmental assessment is required.

The Environmental Commissioner must record the application in an environmental assessment register. The regulations made under the Environmental Management Act give more detail about what information must be included in this register.

The Environmental Commissioner must then decide whether the proposed activity requires an environmental assessment. This decision must be made within the time period set by the regulations, to avoid long delays.

Before making a decision on whether or not to require an assessment, the Environmental Commissioner must consult with any organs of state whose areas of responsibility may be affected. The Environmental Commissioner may also decide to consult with other persons who may be interested or affected by the activities in question.

The Environmental Commissioner must also consider the following factors:

- any comments received during the consultation process
- the nature and extent of the proposed activity
- whether the proposed activity will have significant effects on the environment
- the principles of environmental management
- any other factor stated in the regulations issued under the Environmental Management Act.

Sections 33 and 44

3(a) DECISION ON CERTIFICATE:

If an assessment IS NOT required....

the Environmental Commissioner decides whether or not to grant the environmental clearance certificate.

If no assessment is required, the Environmental Commissioner must make a decision on the environmental clearance certificate and notify the proponent of this decision.

To avoid delays, the regulations set a deadline for this decision.

If the certificate is granted, then it must be given to the proponent after the proponent pays the required fee. (The fees are set by the regulations issued under the Environmental Management Act.)

Section 34(1)-(2)

OR

3(b) SCOPING:

If an assessment IS required....

the Environmental Commissioner decides on the scope and procedure for the assessment. The Environmental Commissioner tells the proponent what must be done and sets a time frame for the assessment.

The Environmental Commissioner must decide on the scope, procedures and methods for the assessment. The framework for the assessment will be based on the principles of environmental management.

Before making a decision on the scope and procedure for the assessment, the Environmental Commissioner must consult with any organs of state whose areas of responsibility may be affected. The Environmental Commissioner may also decide to consult with other persons who may be interested or affected by the activities in question.

The Environmental Commissioner notifies the proponent of what must be done and sets a reasonable time frame for the completion of the assessment.

The Environmental Commissioner has the power to vary the scope, procedures and methods for the assessment. This could be done in response to a proposal from the proponent. The Environmental Commissioner can also suggest modifications if necessary to make sure that there is an effective and timely assessment.

The Environmental Commissioner can extend the time frame for the assessment if the proponent can show a good reason why this is necessary.

Sections 35(1) and 44

4. ASSESSMENT:

The proponent carries out the assessment and submits an assessment report to the Environmental Commissioner.

The proponent must carry out the assessment and pay all the costs involved. The proponent must then submit an assessment report to the Environmental Commissioner.

The Environmental Commissioner must make sure that the assessment report includes all of the contents which are required.

Section 35

5. PUBLIC CONSULTATION:

Persons who may be affected by the activity must be notified and given a chance to inspect the assessment report and make submissions on it.

Interested persons must then be notified about the report. For example, this could be done by publication of a notice in local newspapers. The regulations give more details about the notification process.

The Environmental Commissioner can take care of the notification and require the proponent to pay all of the costs. Alternatively, the Environmental Commissioner can require that the proponent take care of the notification (and then provide the Environmental Commissioner with proof that it has been properly done).

The notification must say that interested persons can view the full application and assessment report at the Office of the Environmental Commissioner. It must also invite interested persons to make written submissions to the Environmental Commissioner and give the deadlines for these submissions.

Section 35(6)-(8)

6. REVIEW:

The Environmental Commissioner reviews the application for the environmental clearance certificate. This process can include further consultations or investigations.

After receiving the Environmental Assessment Report, the Environmental Commissioner must review the application for the environmental clearance certificate.

In carrying out this review, the Environmental Commissioner may consult any person, institution or authority about anything in the assessment or the submissions received in response to it. The Environmental Commissioner can also appoint a person or a committee to carry out any relevant investigation.

The Environmental Commissioner may decide to hold a public hearing on the report, or to appoint a person or a committee to carry out a process of public consultations.

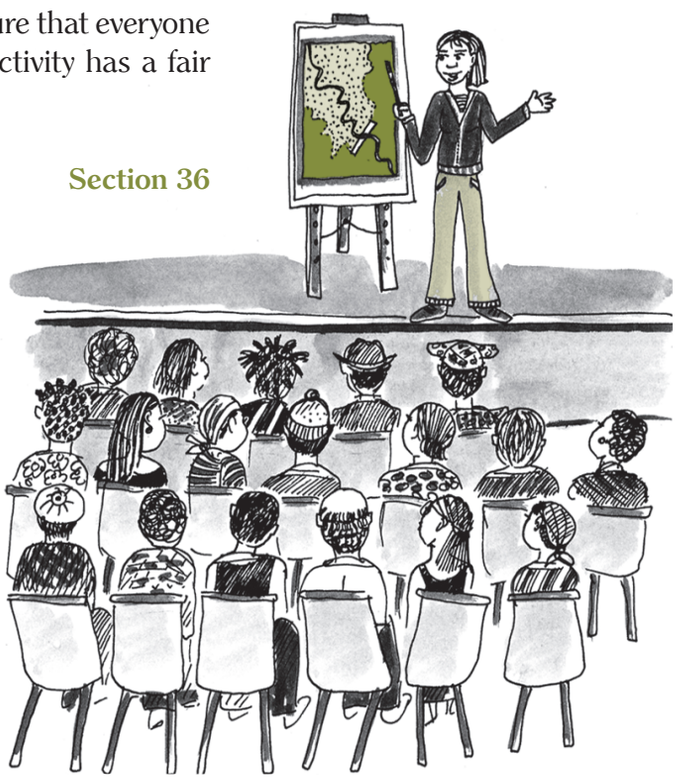
If there is a public hearing, the Environmental Commissioner must give 14 days advance notice to the proponent and to every person who made written submission on the assessment.

Public notice of the meeting must also be published 14 days in advance, with

(a) the date, time and place of the hearing and
(b) a brief description of the proposed activity which is under consideration.

This process is intended to make sure that everyone with an interest in the proposed activity has a fair chance to have a say.

Section 36



7. DECISION ON CERTIFICATE:

The Environmental Commissioner decides whether or not to grant the environmental clearance certificate.

At the end of this process, the Environmental Commissioner will make a decision on the application for an environmental clearance certificate and notify the proponent of the decision.

If the certificate is granted, then it must be given to the proponent after the proponent pays the required fee. (The fees are set by the regulations issued under the Environmental Management Act.)

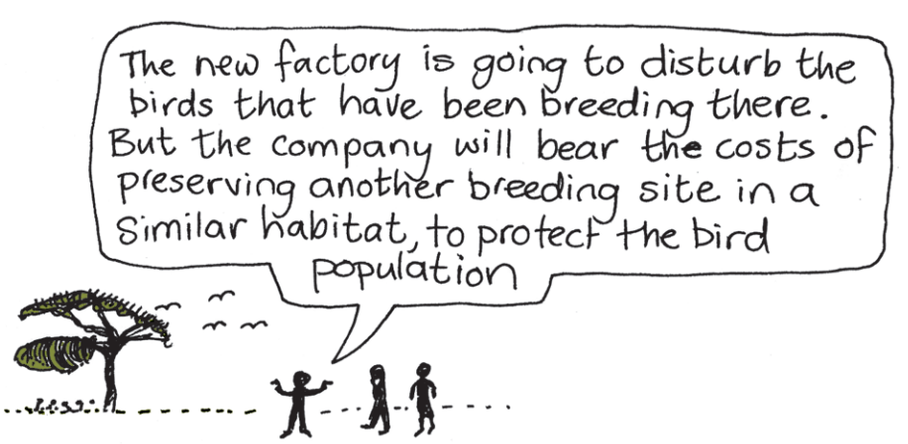
Section 37

CONTENT OF ENVIRONMENTAL ASSESSMENT REPORTS

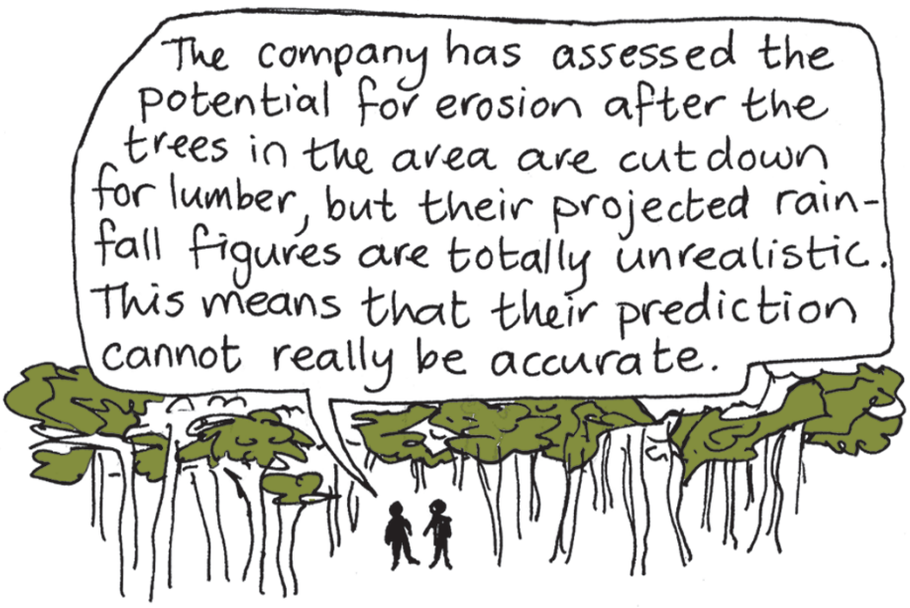
The minimum content of Environmental Assessment Reports is set by regulations issued in terms of the Environmental Management Act. A good report would contain the following items:

(a) **description of the proposed project** and its purpose
(b) **description of the environment** which is likely to be significantly affected by the proposed project, and by alternatives to the proposed project
(c) **description of the potential environmental impact** of the proposed project and possible alternatives to the proposed project, and an estimation of the importance of this impact

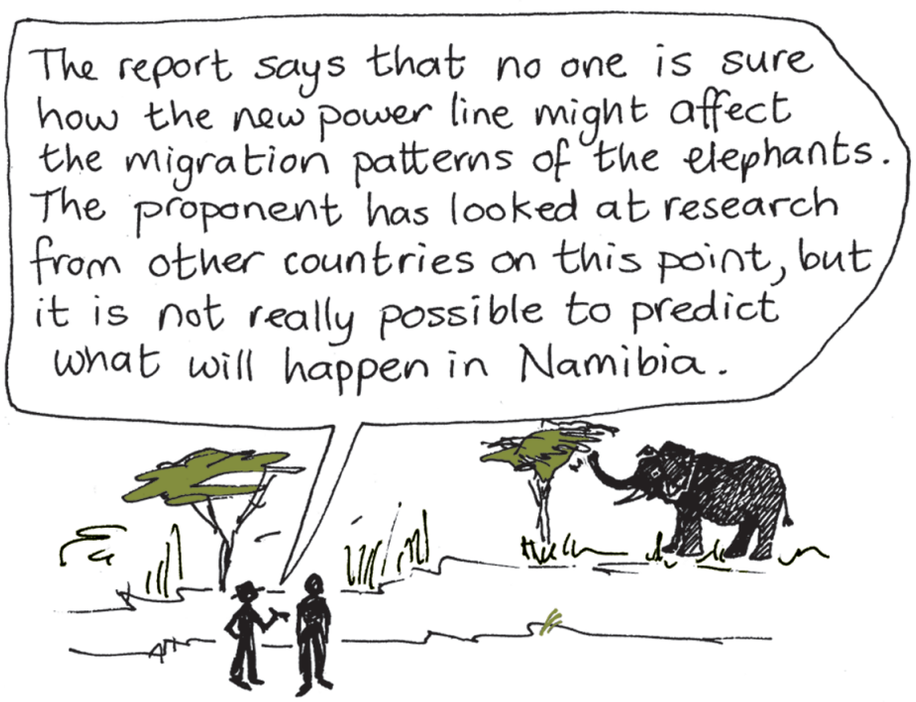
(d) **description of the effects on Namibia's cultural heritage**, and of the impact these effects will have on social and economic conditions (such as a loss in tourism income resulting from alteration of a tourist attraction)
(e) **description of mitigation measures** (steps that could reduce or make up for negative impacts on the environment)



(f) **detailed explanation of how the predictions in the report were made**, what assumptions these predictions were based on, and what data was used for the calculations



(g) **identification of gaps in knowledge or uncertainties about environmental impacts**

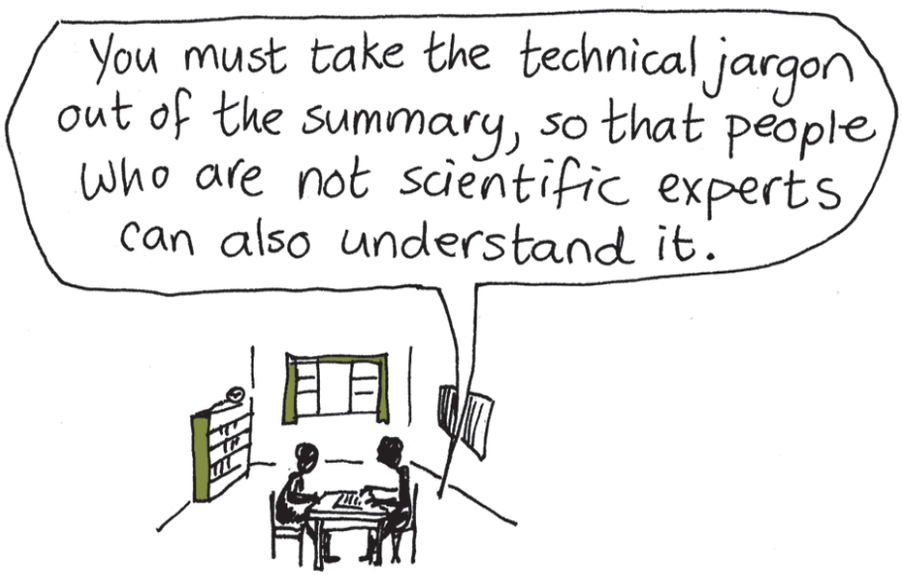


(h) **description of steps taken to consult persons who may be affected by the activity**

(i) **outline for monitoring and managing the environmental impact of the activity, and for analysis of the activity after it is complete** (where any of these steps would be appropriate)

(j) **description of measures for restoring the environment after the activity is over, if appropriate** (such as plans for rehabilitating an area used for open-cast mining after the mining operation ceases)

(k) **summary in non-technical language.**



Appointing external specialists to assist with assessments

The Environmental Commissioner may need to use a specialist from outside the Ministry of Environment and Tourism to assist with environmental assessments IF

(a) no one in the Ministry has the necessary technical expertise
OR

(b) the documents submitted by the proponent do not appear to contain sufficient objective information to allow proper decision-making on the assessment.

The appointment of an external specialist must be approved by the Minister of Environment and Tourism.

Section 45

Costs of environmental assessments

The Environmental Commissioner may order the proponent to pay fees for the assessment. The fees are set by the regulations issued under the Environmental Management Act from time to time. The Environmental Commissioner may also order the proponent to pay all or any part of the costs of carrying out the assessment, including the costs of employing an external specialist.

Sections 45-46

Record of decisions

The Environmental Commissioner must keep a record of all decisions on environmental clearance certificates, and on whether assessments were required before deciding on the application.

The regulations issued in terms of the Environmental Management Act give more information about the details which this record must include.

Copies of the record must be available for public inspection at the Office of the Environmental Commissioner.

Section 38

Amending conditions of environmental clearance certificates

As noted above, environmental clearance certificates may set conditions for the proposed activity. These conditions can be amended.

An amendment could be proposed by the certificate holder. In this case the Environmental Commissioner must consider the same matters which had to be taken into account in deciding on the initial application.

An amendment could also be made by the Environmental Commissioner, by means of a written notice to the certificate holder.

Before deciding on any amendments, the Environmental Commissioner must consult with any organs of state whose areas of responsibility may be affected. The Environmental Commissioner may also decide to consult with other persons who may be interested or affected by the activities in question.

The Environmental Commissioner may amend a condition of an environmental clearance certificate only if the amendment will not have a significant effect on the environment or a negative impact on any other person's interests.

Sections 39 and 44

Duration of environmental clearance certificates

An environmental clearance certificate operates from the date written on the certificate. If it is not cancelled or suspended, then it will be valid for three years from that date.

Section 40

Transfer of environmental clearance certificates

No one can transfer an environmental clearance certificate to another person without the permission of the Environmental Commissioner. If a person with a certificate wants to transfer it (such as in a case where a business has been sold), the certificate holder must make an application for a transfer to the Environmental Commissioner. The application forms for transfers are contained in the regulations issued under the Environmental Management Act.

Section 41

Cancelling or suspending environmental clearance certificates

The Environmental Commissioner can suspend or cancel an environmental clearance certificate if the certificate holder –

- is violating any condition of the certificate
- is violating the Environmental Management Act
- is convicted of any crime under the Environmental Management Act.

This will normally be done after giving the certificate holder notice and a chance to tell his or her side of the story, unless there is an emergency which warrants immediate action.

Before deciding on a cancellation or a suspension, the Environmental Commissioner must consult with any organs of state whose areas of responsibility may be affected. The Environmental Commissioner may also decide to consult with other persons who may be interested or affected by the activities in question.

If the certificate is suspended, the suspension will last

for the time period stated in the notice of suspension

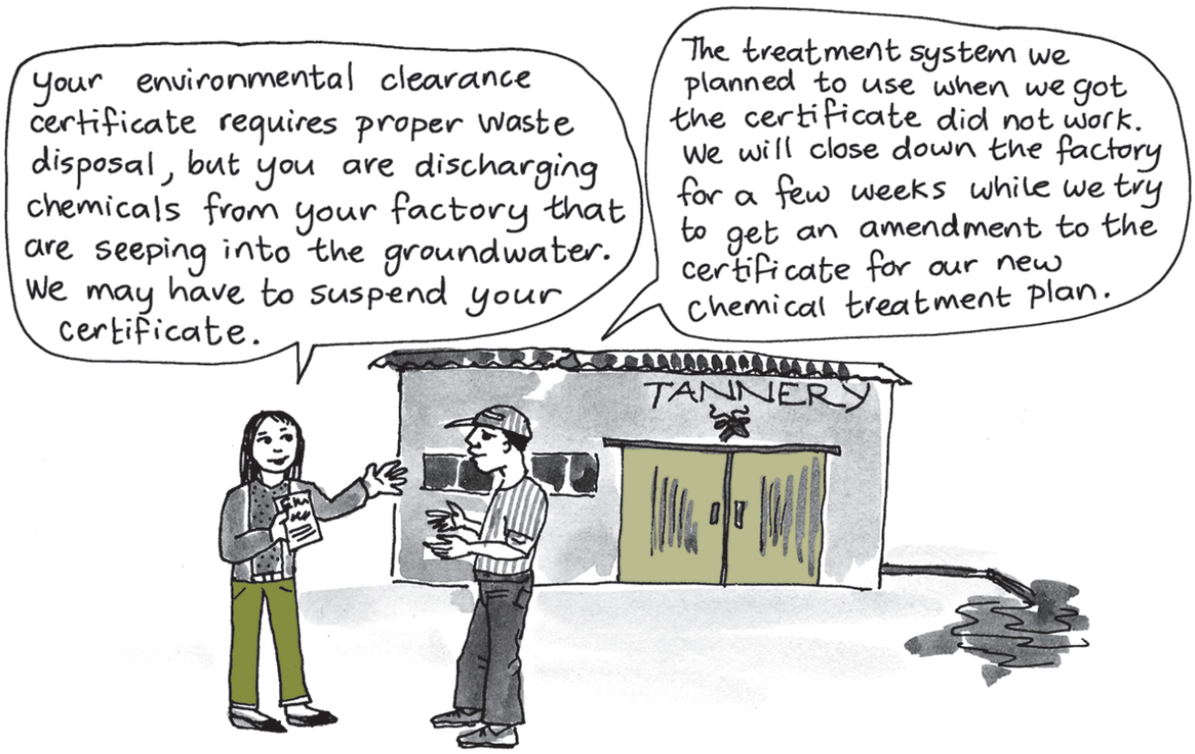
OR

until the Environmental Commissioner is satisfied that the problem which led to the suspension has been addressed.

The Environmental Commissioner can reverse a suspension or a cancellation if there is a good reason for this.

Before deciding to reverse a cancellation or a suspension, the Environmental Commissioner must follow a similar consultation process as for the initial cancellation or suspension.

Section 42



Environmental rehabilitation

Companies will also have to assume liability for rehabilitation of the environment after their operation period. The regulations require that companies must present a guarantee when applying for an Environmental Clearance Certificate, to cover the full costs of environmental rehabilitation to repair the impact of their activities. The costs would otherwise have to be paid by the State. Requiring companies to pay forces them to calculate the costs of rehabilitating the environment into the costs of doing business.

Crimes relating to environmental clearance certificates

It is a crime to forge an environmental clearance certificate or any notices or documents relating to these certificates.

It is a crime to give false information in an application for an environmental clearance certificate.

It is a crime to give false information, or to withhold relevant information, relating to environmental clearance certificates.

It is a crime to put false information in any register, record or documents relating to environmental clearance certificates.

The penalty for any of these crimes is a fine of N$100 000, or imprisonment for up to 10 years, or both.

If someone is convicted of a crime relating to environmental clearance certificates, but then carries on with the same criminal activity, then this person can be found guilty of a continuing offence. The penalty for this is a fine of up to N$10 000, or imprisonment for up to 1 year, or both, *for each day that the activity continues*. The purpose of this is to make the consequences of such criminal activity so expensive and so serious that no one will be prepared to carry on with the prohibited activity.

Section 43

Transitional provisions

Suppose that a person (including an individual, a company or an institution) already has the necessary State authorisation to carry out a listed activity when the Environmental Management Act comes into force.

This person can continue to carry out the listed activity for a maximum of 1 year. Before this year is up, the person in question must apply for an environmental certificate.

The person in question can apply to the Minister for a longer transition period if necessary.

The listed activity can continue for while the procedure of obtaining an environmental clearance certificate is underway, as long as the application for the certificate was submitted before the approved transition period is up.

Section 57

CHAPTER 10

ENFORCING THE ENVIRONMENTAL MANAGEMENT ACT – COMPLIANCE ORDERS

Powers of entry and inspection

If an environmental officer has a reasonable suspicion that the Environmental Management Act is being violated, that environmental officer can ask the High Court or a magistrate's court to issue a warrant empowering him or her to search the place in question for relevant evidence. The warrant can also order anyone at these premises to provide relevant information, documents or records, or to assist the environmental officer in any way necessary.

The warrant can also authorise the environmental officer to inspect or take possession of any material, substance or document which may be relevant. It can authorise the environmental officer to take samples of any such suspicious material or substance for analysis.

An environmental officer can get help from a member of the Namibian Police Force for the search and inspection if necessary.

An environmental officer can also ask any person to assist with the search, such as by acting as an interpreter or by assisting in some other way.

The person in control of the premises which is being searched has a right to ask the environmental officer for proper identification and for a copy of the warrant.

The environmental officer should demand entry to the premises out loud and state the purpose of the entry, unless there is a good reason to believe that these steps would result in destruction of the relevant evidence.

Entries and searches must ordinarily take place during the day, unless there is a reason why it is necessary and justifiable to do an entry and search at night.

Warrants issued in terms of this section are valid for a maximum of one month.

An environmental officer can enter premises, search the premises and take possession of items WITHOUT a warrant IF –

(a) a person with proper authority over the premises or the items in question gives consent
(b) there are reasonable grounds to believe that a warrant would be issued, but that the delay in obtaining the warrant would mean that the evidence in question would be hidden, destroyed or otherwise made unavailable.

Any property taken by an environmental officer as potential evidence in terms of the Environmental Management Act must be treated in the same way as property taken by a police officer as potential evidence in any other crime.

Section 19

Compliance orders

An environmental officer has the power to issue a compliance order to any person who has

(a) violated the Environmental Management Act
(b) violated a condition of an environment clearance certificate.

The compliance order must state:

- the name of the person it applies to
- the provisions of the Act or the conditions of the environmental clearance certificate which has been violated
- details about the violation
- the steps which must be taken to correct the violation
- the deadline for taking the required steps
- the penalty that can be imposed if the required steps are not taken
- the procedure for lodging an objection to the compliance order.

If a delay in issuing a written compliance order would endanger human life or the environment, then the compliance order can be given orally and followed up with a written order within the next 7 days.

If a person who receives a compliance order fails to take the required steps, the environmental officer can arrange for the necessary actions to be carried out and recover the costs involved from the person who ignored the compliance order.

Failure to obey a compliance order is also a serious crime. The penalty is heavy – a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

Section 20

Objections to compliance orders

A person who is given a compliance order can ask the Minister of Environment and Tourism to review the order. This request must normally be made within 14 days of receiving the order, unless the period is extended by the Minister for some good reason. The procedure for raising an objection to the order will be explained in more detail in the regulations made under the Act. After considering the objection, the Minister may change or cancel the order, or some parts of it. The Minister may also confirm the order as it stands. It is the duty of the environmental officer to inform the person who raised the objection of the Minister's decision, and the reasons for the decision.

Section 21

Appeal to High Court

Any person who feels harmed or unfairly treated by a decision of the Minister on an objection to a compliance order may ask the High Court to decide the matter. The High Court will consider only legal questions, and not facts.

For example, the High Court might consider whether a compliance certificate was correctly issued. But it would not examine the factual findings which were the basis of the compliance order.

The time period, procedure and fees for appeal to the High Court are explained in the regulations made under the Environmental Management Act. The appeal will work in the same way as an appeal from a Magistrate's Court to the High Court.

Section 51

Crimes relating to enforcement of the law by environmental officers

It is a crime –

- to interfere with an environmental officer who is trying to do his or her job
- to refuse to answer questions asked by an environmental officer, unless there is a lawful excuse
- to give false or misleading information to an environmental officer
- to falsely pretend to be an environmental officer.

The penalty for any of these crimes is a fine of up to N$20 000 or imprisonment for up to 2 years, or both.

Section 22

CHAPTER 11

APPEALS

Appeal to Minister

Any person who feels harmed or unfairly treated by a decision of the Environmental Commissioner may appeal to the Minister of Environment and Tourism to change the decision. The time period, procedure and fees for such appeals are explained in the regulations made under the Environmental Management Act.

The Minister can consider the appeal personally. Alternatively, the Minister can appoint an appeal panel of persons with relevant expertise to give advice on the decision. The costs of setting up this appeal panel will be paid by Government.

The Minister may confirm, cancel or alter the decision of the Environmental Commissioner. If fees were involved in the matter under dispute, the Minister can order that all or part of the fees must be refunded (if this would be appropriate given the final decision).

The decision which is being appealed must be carried out while the appeal is being decided, unless the Minister has directed that it can be suspended while the appeal is underway.

Section 50

Appeal to High Court

Any person who feels harmed or unfairly treated by a decision of the Minister on an appeal may ask the High Court to decide the matter. The High Court will consider only legal questions, and not facts.

For example, the High Court might consider whether an environmental assessment followed the procedures set out in the law. But it would not decide if the factual conclusions in the report were correct.

The time period, procedure and fees for appeal to the High Court are explained in the regulations made under the Environmental Management Act. The appeal will work in the same way as an appeal from a Magistrate's Court to the High Court.

Section 51

CHAPTER 12

CRIMES, PENALTIES AND FORFEITURE

Crimes relating to waste disposal

It is a crime to dispose of waste anywhere other than at a waste disposal site, or to cause anyone else (such as an employee) to do this - unless the waste disposal in question falls under an exception to the general rule which the Minister has published in a notice in the *Government Gazette* or in regulations made under the Environmental Management Act. The penalty is a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

Section 5(4)-(5)

Crimes relating to environmental clearance certificates

It is a crime to proceed with a listed activity without the required environmental clearance certificate, or to fail to follow the conditions in an environmental clearance certificate. The penalty for either crime is a fine of up to N$500 000 or imprisonment for up to 25 years, or both.

It is also a crime -

- to forge an environmental clearance certificate or any notices or documents relating to these certificates
- to give false information in an application for an environmental clearance certificate
- to give false information, or to withhold relevant information, relating to environmental clearance certificates
- to put false information in any register, record or documents relating to environmental clearance certificates.

The penalty for any of these crimes is a fine of N$100 000, or imprisonment for up to 10 years, or both.

If someone is convicted of a crime relating to environmental clearance certificates, but then carries on with the same criminal activity, then this person can be found guilty of a continuing offence. The penalty for this is a fine of up to N$10 000, or imprisonment for up to 1 year, or both, *for each day that the activity continues.* The purpose of this is to make the consequences of such criminal activity so expensive and so serious that no one will be prepared to carry on with the prohibited activity.

Sections 27(3)-(4), 34(3), 37 and 43

Crimes relating to enforcement of the law by environmental officers

It is a crime -

- to interfere with an environmental officer who is trying to do his or her job
- to refuse to answer questions asked by an environmental officer, unless there is a lawful excuse
- to give false or misleading information to an environmental officer
- to falsely pretend to be an environmental officer.

The penalty for any of these crime is a fine of up to N$20 000 or imprisonment for up to 2 years, or both.

Section 22

Liability of directors, members, managers, trustees and other officers

If it is a crime for a legal entity (such as a company or an organisation) to do something, then any officer or member of that body who consents to the crime or is involved in the crime - or even allows it to happen through neglect - also commits a crime. This rule is intended to encourage individual responsibility.

Section 53

Forfeiting the advantages gained from the crime

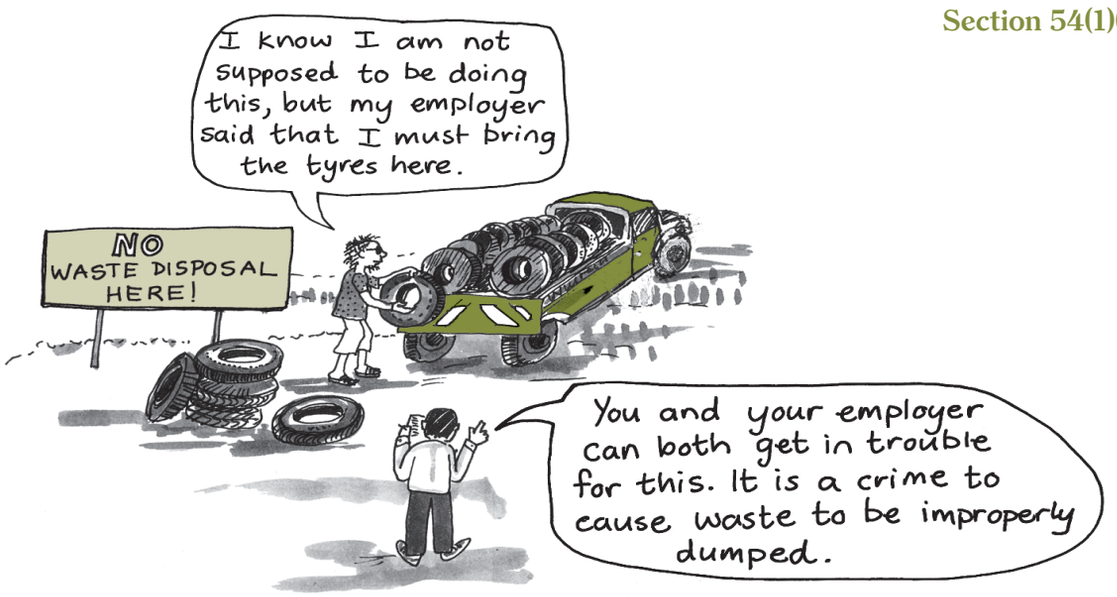
If a person who is convicted of a crime under the Environmental Management Act profited from the crime, the court can order that person to pay an extra fine equal to the amount of that profit. The penalty for failing to pay this extra fine is imprisonment for up to 1 year.

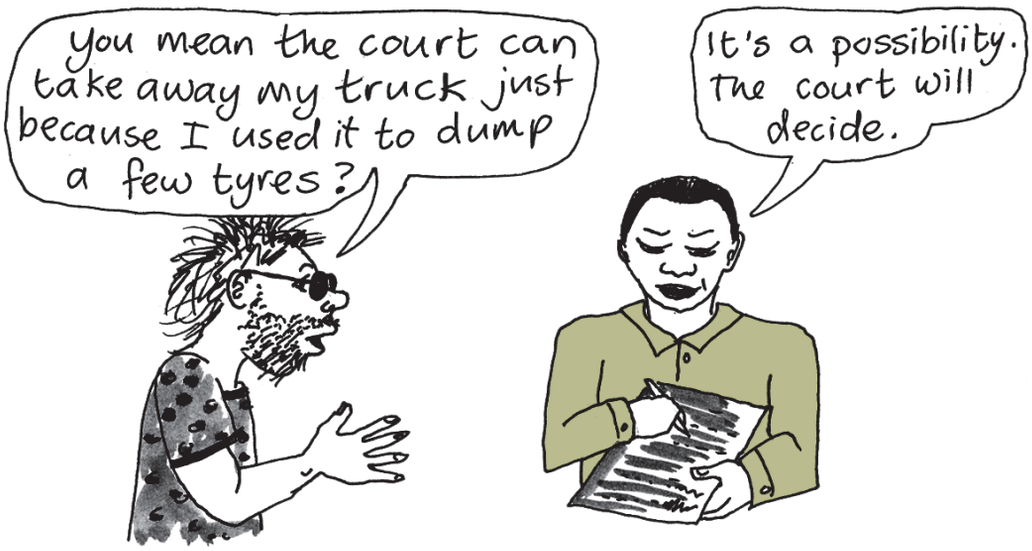
Section 54(1)(b)

Forfeiting property used in the crime

Anything used in the commission of any crime under the Environmental Management Act might have to be forfeited to the State. For example, the court could order the forfeiture of a vehicle which was used to transport waste for illegal dumping. The Government would then have the right to sell the forfeited property and use the proceeds for environmental protection.

Section 54(1)(a)





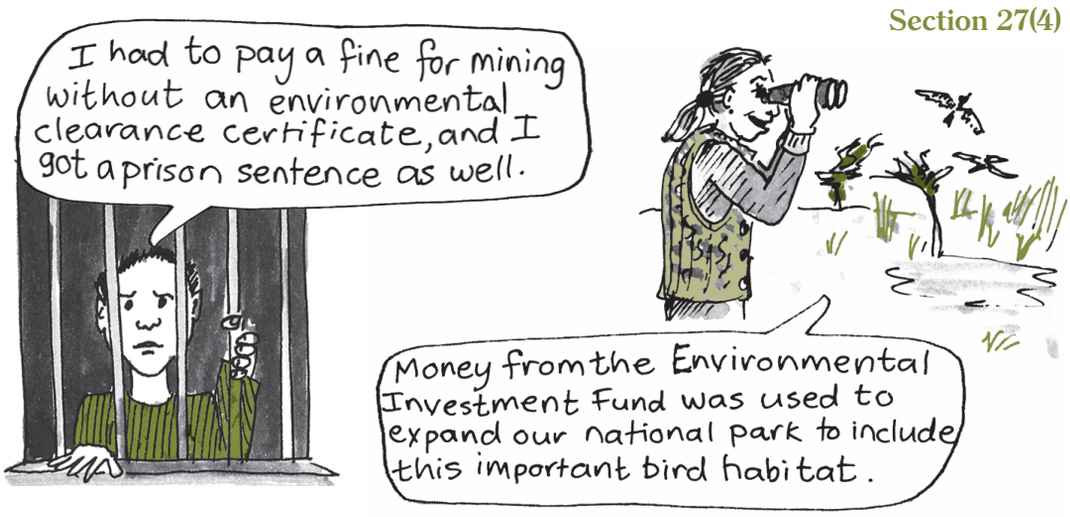
TURNING CRIME INTO POSITIVE PROTECTION FOR THE ENVIRONMENT

Fines paid in terms of the Environmental Management Act, and money made from the sale of property which is forfeited in connection with such crimes, will be paid into the Environmental Investment Fund of Namibia established by the Environmental Investment Fund Act 13 of 2001.

The money in this Fund is used for -

- sustainable use and management of natural resources
- maintaining the natural resource base and protecting ecological processes
- maintaining biological diversity and ecosystems
- economic improvements in the use of natural resources for sustainable rural and urban development.

Section 27(4)



CHAPTER 13

GENERAL RULES

Application of law

Government and all Governmental institutions must follow the rules in the Environmental Management Act, just like private persons and bodies.

Section 55

Access to environmental information

Organs of state have a right of access to the environmental information listed in the regulations made under the Environmental Management Act whenever they need this information in order to carry out their duties under the Environmental Management Act or any other law relating to environmental protection or the use of natural resources.

> Remember that an "organ of state" includes any Government office, Ministry, or agency at national, regional or local level.

Section 47

Limitation of liability

No one is liable for any damage or loss that results from carrying out a power or a duty under the Environmental Management Act – or from failing to carry out a power or a duty under the Environmental Management Act. However, a person can be liable for damage from acting – or failing to act – if this was negligent, unlawful or in bad faith

Section 52

Rules on consultations

Many provisions of the Environmental Management Act require consultation of organs of state when their areas of responsibility are affected by the matter under consideration. The duty to consult these organs of state is satisfied if the Minister or the Environmental Commissioner sends a notice about the matter to the organ of state and no response is received within a reasonable time. This rule is intended to avoid delays.

The law does not *require* that the Minister or the Environmental Commissioner must consult interested or affected persons outside of Government, but widespread public consultation is clearly necessary if the Act is to work well in practice. Public participation in decisions affecting the environment is also one of the basic principles of environmental management listed in section 2 of the Act.

When people outside Government are being consulted, the same rule applies as for consultations of organs of state. The consultation is considered to be done if the persons in question are sent a notice about the matter and they fail to respond within a reasonable time.

The regulations issued under the Environmental Management Act may include more details about public consultations.

Section 44

**“The earth
is not ours,
it is
a treasure
we hold
in trust
for
future
generations.”**

Ministry of Environment and Tourism
Republic of Namibia
2008