

Right of access to environmental information as a public participation tool in some SADC countries

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The challenge

- * “Throughout the SADC region the poverty of the poor majority remains the main cause and consequence of environmental degradation which in turn undermines the possibilities for future economic growth.
- * But the poor are not the problem.
- * The National development and international aid policies which fail to reach, involve and benefit the poor majority are the problem.”
 - * *SADC Policy and Strategy for Environment and Sustainable Development of 1997*

New concepts?

- ✳ **Right of access to information as a public participation tool is fairly recent development in SADC**
- ✳ **But not novel to Africa**
- ✳ **Communities claim that decision-making is more democratic than political decision-making**
- ✳ **Based on consensus and reflect the will of the community**
- ✳ **In reality – not always entire community – women and youth excluded**

Effective tools

- ✳ **Right of access to information does not guarantee environmental protection**
- ✳ **Tool to manage or control behaviour of individuals or governments**
- ✳ **Gives effect to principle of management by outsiders – to empower society to influence decision-making**

In this paper

- ✧ **Inter-linkage of environmental rights, access to information and public participation and environmental information rights-based approach**
- ✧ **African Union and SADC**
- ✧ **Constitutions and environmental framework laws of**
 - ◆ **South Africa**
 - ◆ **Mozambique**
 - ◆ **Swaziland**
 - ◆ **Lesotho**

Perceptions

* Various reports

- ◆ Views of rural communities are ignored (although 65% of Africa's people in rural areas)
- ◆ Only small powerful groups and economic elite benefit
- ◆ Misconceptions about knowledge of local communities
 - ◆ Have nothing to contribute
 - ◆ Illiterate / no education = no knowledge
 - ◆ Would not understand technical data

True statement?

- ✳ **Local knowledge not accessible to scientific experts**
- ✳ **Dependent on the environment for survival – sometimes more knowledgeable**
- ✳ **Public participation may be hampered by cultural or traditional practices or different socio-economic expectations**
- ✳ **In South Africa – traditional and poor communities are no longer victims – but use the courts to enforce their Constitutional and other rights**

Inter-linkage of rights

- ✧ **Environmental rights, rights of access to information and public participation of the indigent, marginalized and vulnerable are inter-linked**
- ✧ **In order to enforce environmental rights and to participate in public participation meetings information is necessary**
- ✧ **The public does not become decision-makers but may influence decision-making or ensure enforcement of rights and laws**

Environmental information rights-based impact assessment (EIRBIA)

- ✧ **Used Paul & McNaughten (2006) human rights based impact assessment principles**
- ✧ **To develop**
- ✧ **Environmental information rights-based impact assessment principles**



ERBIA – principle 1

- ✳ **(1) the inclusion of**
 - ◆ **an environmental right**
 - ◆ **either as a fundamental right or imbedded into the Constitutional principles**
 - ◆ **South Africa and Lesotho – environmental rights**
 - ◆ **Mozambique and Swaziland – environmental directive principles**
 - ◆ **Included in AU and SADC Treaties & Protocols**

EIRBIA – principle 1

- ✱ **“(1) the inclusion of a right of access to information and public participation in the Constitutions of the countries concerned, either as a fundamental right or imbedded into the Constitutional principles**
 - ◆ **All Constitutions right of access to information**
 - ◆ **Not to public participation (except SA Constitution)**
 - ◆ **AU and SADC – no clear rights – except African Convention on the Conservation of Nature and Natural Resources of 2003 – not in force yet**
 - ◆ **Recent Kampala Declaration**

EIRBIA – principle 2

- ✧ (2) these rights should be enforceable or should be progressively implemented
 - ◆ In all 4 countries – all rights and public participation either enforceable or are being progressively implemented
 - ◆ AU and SADC – AU recently established court – SADC not yet enforcing mechanisms

EIRBIA – principle 3

- ✳ **(3) the right of access to information and public participation should provide equality and non-discrimination (not only with regard to race and gender but also regarding the indigent, marginalized, vulnerable communities) in process and policy relating to the environment**
 - ◆ **All countries, AU and SADC – clear provisions on non-discrimination, role of women, youth, aged and disabled as well as marginalized groups**

EIRBIA – principle 4

- ✱ **(4) ensure meaningful participation by all stakeholders**
 - ◆ **In all 4 countries the legal framework is established**
 - ◆ **If in EIA processes**
 - ◆ **Participation from inception or**
 - ◆ **Participation ex post facto**
 - ◆ **Novel enforcement tools – e.g. Swaziland – any member of public may approach Environmental Authority to issue an order against non-compliance**
 - ◆ **In South Africa –enforced by the courts**
 - ◆ **AU and SADC less clear provisions**

EIRBIA– principle 5

- * (5) provision of accessible and understandable information, voluntarily or on request, including freedom of speech
- * In all 4 countries the legal framework is established
 - ◆ Provision for compulsory publication of information by government – e.g. state of environment reports
 - ◆ Voluntary release of information – in more understandable format
 - ◆ Internet information
 - ◆ All countries provide for information on request
 - ◆ All countries provide for freedom of speech
- * AU and SADC – right to freedom of speech – less clear on right of access to information

EIRBIA– principle 6

- ✱ **(6) establish mechanisms to hold the State accountable when it does not realize the right of access to information or public participation**
 - ◆ **The accountability of governments differ in the countries**
 - ◆ **South Africa and Lesotho specific provisions in Constitutions**
 - ◆ **Swaziland – enforcement by public through Environmental Authority**
 - ◆ **Mozambique – less clear**
 - ◆ **AU and SADC – no provisions**

EIRBIA – principle 7

- ✳ (7) recognition of the inter-dependence of all human rights (including the right of access to information, public participation and the rights of the disadvantaged)
 - ◆ In all 4 countries and AU and SADC theoretically at least all rights are inter-linked – whether it happens in practice is another question

Conclusion

- ✧ **Environmental rights, rights of access to information and public participation are inter-linked**
- ✧ **That it may provide the indigent and marginalized groups a tool to participate meaningfully in environmental discussions**

AU / SADC / Countries

- * **If measured against EIRBA:**
- * **To more or lesser extent provide for**
 - ◆ **Environmental rights**
 - ◆ **Rights of access to information (or freedom of speech) – mostly national legislation**
 - ◆ **National legislation: include public participation**
 - ◆ **Regional and national laws refer to role and enhancement of marginalized groups not necessarily the poor**
- * **The SADC countries' legislative frameworks already moved beyond AU and SADC Treaties and Protocols**
- * **Question – is it realised in practiced or if not - how?**

Implementation

- ✱ **To successfully implement these rights and processes:**
 - ◆ **Governments & private sector must ensure that rights are realized**
 - ◆ **Governments must test their legislation and actions against EIRBA**
 - ◆ **That marginalized groups receive sufficient & understandable information to enable them to participate**
 - ◆ **That governments & private sector realize that they are also dependent on rural, indigent and marginalized communities for information**

Former President Mandela

- ✧ **“People living in poverty have the least access to power to shape policies – to shape their future.**
- ✧ **But they have the right to a voice. They must not be made to sit in silence as ‘development’ happens around them, at their expense.**
- ✧ **True development is impossible without the participation of those concerned.**
- ✧ **All of us – rich and poor, governments, companies and individuals – share the responsibility of ensuring that everyone has access to information ... and our starting point must be respect for individual’s rights.”**
 - ✧ **World Resources Institute, 2008**