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An Act to provide for environmental impact assessment to be used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment; to put in place a monitoring process and evaluation of the environmental impacts of implemented activities; and to provide for matters incidental to the foregoing.

Date of Assent: 20th May, 2005

Date of Commencement: 27th May, 2005

ENACTED by the Parliament of Botswana.

Part I – *Preliminary*

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| Short title | 1. This Act may be cited as the Environmental Impact Assessment Act, 2005. |
| Interpretation | 2. In this Act, unless the context otherwise requires —
“activity” includes a project, programme or policy ;
“authorisation” means a document issued under this Act, where the environmental impact of an activity is sufficiently described by the application, scoping exercise or an environmental impact statement, and the proposed mitigation for the impact are acceptable;
“competent authority”, in relation to an activity under this Act, means the Department;
“consultant” has the meaning assigned to it under section 11;
“Department” means the Department of Environment and Conservation;
“developer” means an applicant authorised to undertake an activity; |

“Director” means the Director of the Department of Environment and Conservation;

“environment” includes the physical, ecological, archaeological, aesthetic, cultural, economic, institutional, human health and social aspects of the surroundings of a person;

“environmental audit” means work done to identify and evaluate compliance of the statement and the residual environmental impact of an existing activity, the effectiveness of mitigation measures and the functioning of monitoring mechanisms;

“environmental impact” means any positive or negative effects caused by an activity on the environment;

“environmental impact assessment” means the process and procedure for evaluating and predicting the likely environmental impact of a proposed activity;

“evaluation report” means a report on studies carried to ensure that environmental considerations are taken into account when an activity is implemented;

“local authority” includes a land board;

“mitigation measures” means the reduction or control of the adverse environmental impact of an activity and includes restitution for any damage to the environment caused by such activity through engineering works, technological improvements, management measures or compensation to ameliorate any loss suffered by a person;

“preliminary environmental impact assessment” means a description of the likely environmental impacts of an activity provided by the applicant as part of the application;

“relevant technical department” means a government department responsible for monitoring an activity undertaken under this Act, by virtue of that department having the necessary technical expertise to do so;

“scoping” means consultations with concerned government departments, local authorities, non-governmental organisations, members of the public and any other interested persons, to determine the extent of the likely environmental impact of a proposed activity;

“statement” means a report of the environmental impact assessment study executed in accordance with terms of reference approved by the competent authority;

“strategic environmental assessment” means a process for evaluating the environmental consequences of proposed policy, plan, or programme initiatives in order to ensure that they are fully included and appropriately addressed at the earliest stage of decision making, on par with economic and social considerations;

“threshold” in relation to an environmental impact assessment of an activity, means a measurable level or limit of an output resulting from the operation of a proposed activity indicative of the activity’s environmental impact; and

“terms of reference” means a document which details the main environmental issues which must be addressed in an environmental impact study.

3. (1) This Act applies to the activities in respect of which the Minister, may, after screening them, prescribe by regulations.

(2) Regulations made pursuant to subsection (1) shall prescribe —

(a) a list of activities which are likely to cause significant adverse effects on the environment, or the locations that may be environmentally sensitive, in respect of which a statement shall be mandatory;

(b) threshold determinations of environmental impact assessment with respect to the activities prescribed under paragraph (a); and

(c) criteria which shall be used to determine the likely effects of a proposed activity in order to further determine whether or not a statement is required for the activity.

(3) In this section, “screening” means an initial stage in the environmental impact assessment process where the Minister determines whether an activity should be subjected to an environmental impact assessment or not.

4. (1) No person shall undertake or implement an activity prescribed under section 3 unless the environmental impact of the proposed activity is fully taken into account in accordance with the provisions of this Act and authorisation has been issued under section 14.

(2) Any person who undertakes or implements an activity in contravention of subsection (1) commits an offence and is liable to a fine not exceeding P100,000 or to a term of imprisonment not exceeding two years or to both.

(3) A person who contravenes subsection (1) shall rehabilitate the area affected by the adverse environmental impact of the implemented activity.

(4) In this section, “rehabilitate” means the reinstatement or restoration to a normal or functional environmental state.

(5) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P15 000 or to a term of imprisonment not exceeding 2 years or to both.

(6) In the case of a continued contravention in respect of a person convicted under subsection (2) or (5), that person is liable to a further fine not exceeding P2,000 for every day on which the offence continues.

5. (1) A licensing authority shall, before issuing a permit, licence, consent or approval to any person who has applied to implement an activity prescribed under section 3, ensure that authorisation has been issued for the proposed activity in accordance with this Act.

(2) In this section, “licensing authority” means any authority vested with the responsibility of issuing licenses for any of the activities prescribed under section 3.

PART II – Preparation of environmental impact assessment documentation

Requirement for authorisation

6. (1) Every —

(a) application made to obtain authorisation for a proposed activity shall contain or be accompanied by a preliminary environmental impact assessment which shall include a description of the activity; and

(b) formulation of a policy or programme, shall contain or be accompanied by an approved strategic environmental assessment, which strategic environmental assessment shall contain a description of the proposed policy or programme.

(2) An application made under subsection (1) (a) shall be in the prescribed form and shall be accompanied by such fee as may be prescribed.

(3) Where the competent authority is satisfied that all relevant information is available in the application and that the activity can be carried out without any adverse environmental impact, the competent authority shall authorise the implementation of the activity.

(4) Where the competent authority finds that information provided in the application is insufficient, the competent authority shall require and specify to the applicant the additional information to be provided.

7. (1) An applicant shall take all measures necessary to seek the views of the people or communities which are likely to be affected by the activity.

Public participation and scoping exercise

(2) In seeking the views of the people or communities in accordance with subsection (1) the applicant shall —

(a) publicise the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and

(b) after the expiration of the period of 21 days, hold meetings with the affected people or communities to explain the activity and its effects.

8. (1) Where, upon a consideration of all the information submitted by the applicant, the competent authority decides that an environmental impact assessment is required, the authority shall inform the applicant, in writing, to prepare terms of reference for the environmental impact assessment, which terms of reference shall be in the prescribed form.

Terms of reference

(2) An applicant shall, after complying with section 7 and subsection (1) of this section, submit the terms of reference and the results of the scoping exercise to the competent authority.

(3) In considering the terms of reference, the competent authority shall consult with the relevant technical departments or local authorities, and may —

(a) conduct such investigation as it considers necessary to ascertain the validity of the scoping exercise of the activity; or

(b) request the applicant to provide additional information for a better understanding of the terms of reference.

(4) Where the competent authority is satisfied that the terms of reference will adequately assist in guiding the environmental impact assessment of the proposed activity, the competent authority shall approve the terms of reference.

(5) Where an applicant requires the services of a consultant to prepare the terms of reference required in terms of subsection (1), the applicant shall appoint the consultant at the applicant's own expense.

9. (1) Where the competent authority determines that the proposed activity is likely to have a significant adverse environmental impact, it shall require that such activity undergo an environmental impact assessment, the costs of which shall be borne by the developer.

(2) An environmental impact assessment shall identify and evaluate the environmental impact of an activity with particular reference to the —

- (a) health, safety or quality of life of people;
- (b) archaeological, aesthetic, cultural or sanitary conditions of the environment; and
- (c) configuration, quality and diversity of natural resources.

(3) Where the competent authority determines that an environmental impact assessment be made under subsection (1), upon being informed in writing about the decision, the applicant shall, before undertaking or implementing the activity, prepare and submit a statement to the competent authority within the period of time prescribed in the approved terms of reference.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P100,000 or to a term of imprisonment not exceeding five years or to both.

10. (1) A statement shall be made in the prescribed form and shall include —

- (a) the name of the applicant;
- (b) a description of the proposed activity and its purpose;
- (c) an outline of alternative sites of the proposed activity including the non-action alternative;
- (d) a description of the likely environmental impact on local environment and socio-economic consequences;
- (e) an environmental management plan;
- (f) the time period for which environmental impact is predicted;
- (g) an account of the predicted environmental impact and an assessment of each kind of environmental impact;
- (h) a discussion of the distribution of the expected environmental impact;
- (i) a description of mitigating measures to keep adverse environmental impact to a minimum;
- (j) a description of residual environmental impact;

- (k) a proposed monitoring programme and evaluation exercise;
- (l) the potential uses to be prevented or impaired by the proposed activity;
- (m) the possible effects of an environmental impact of an activity;
- (n) the potential trans-boundary environmental impact of an activity;
- (o) a brief, non-technical or executive summary; and
- (p) such other relevant information as the Minister may consider necessary.

(2) In this section, “environmental management plan” means a document representing the administration of efforts that will be made to manage any significant environmental impact resulting from the implementation of the activity; and

“residual environmental impact” means an environmental impact which arises after the implementation of mitigation measures for an activity.

11. (1) A person shall be qualified to be engaged as a consultant for the purposes of this Act, if the person —

Registration and qualifications of consultants

- (a) is registered as a consultant in accordance with the provisions of subsection (2); and
- (b) has, in his or her employment, or has access to the services of, persons specialising in such disciplines as the Minister may prescribe.

(2) Where an individual applies for registration as a consultant under this Act, the individual shall satisfy the Minister that he or she has obtained by examination, any one of the disciplines prescribed in terms of subsection (1) and has —

- (a) at least 2 years experience in undertaking environmental assessments, as part of a team; and
- (b) knowledge of the basic processes on the environmental impact assessment process, and of international guidelines on the preparation of terms of reference and statements.

PART III – Review process of the environmental impact statement

12. (1) The competent authority shall, within 60 days of receiving a statement from a developer, examine the statement to determine whether such statement complies with the requirements of section 10.

Public review of statement

(2) Where the statement complies with the requirements of section 10, the competent authority shall —

- (a) place a notification in the Gazette and in a newspaper circulating at least once weekly, for four consecutive weeks, inviting comments or objections of those persons who are most likely to be affected by the proposed activity and other interested persons, stating the —
 - (i) nature and magnitude of the activity,
 - (ii) location of the activity,
 - (iii) anticipated environmental impact of the activity, and
 - (iv) proposed mitigation measures to respond to the negative environmental impact; and

Conduct of
public hearing

(b) in its decision making, consider the comments or objections raised by persons who are likely to be affected by the proposed activity and other interested persons.

13. (1) The competent authority may hold a public hearing if —

(a) after examining the statement, the competent authority is of the opinion that the activity is of such a nature that the public should have the opportunity to make submissions or comments at a public hearing; or

(b) the public concern over the activity is that the activity may have a significant adverse impact on the environment.

(2) The Minister may, in consultation with the competent authority, prescribe the procedure for conducting a public hearing.

(3) The competent authority shall, after a public hearing, consider the findings in determining the adequacy of the environmental impact statement.

Approval or
rejection of
statement

14. (1) Where the competent authority's review of the statement is complete, the competent authority shall —

(a) grant authorisation to the developer, with such terms and conditions as the competent authority considers necessary, where —

(i) the competent authority is satisfied that the statement sufficiently identifies the environmental impact likely to be caused, and

(ii) the prescribed mitigation measures in the statement, to avert or minimise the potential adverse environmental impact, are effective and sufficient; or

(b) where the competent authority is of the view that —

(i) the statement does not sufficiently identify the environmental impact likely to be caused, or

(ii) the prescribed mitigation measures to avert or minimise the potential adverse environmental impact, are insufficient and ineffective, afford the developer an opportunity to comply with the provisions of the Act; or

(c) reject the statement, where the developer fails to satisfy the conditions under paragraph (b).

(2) In deferring or rejecting the statement, the competent authority shall furnish the applicant with a written statement of the reasons for its decision.

(3) An authorisation issued under subsection (1) (a) shall be in the prescribed form and shall include —

(a) what has been decided;

(b) why the decision has been made; and

(c) how the statement influenced the decision.

(4) The competent authority may, in issuing an authorisation, prescribe, in writing, specific requirements for monitoring during and after implementation of the proposed activity, by the technical departments, local authorities and the developer.

15. A person aggrieved by a decision of the competent authority may appeal to the High Court within 30 days of receiving the decision of the competent authority.

Appeals

PART IV – *Authorisation of a statement*

16. An authorisation granted under section 14 (1) (a) shall be valid for such period as may be stipulated therein and may be subject to renewal at the end of such period.

Validity of an authorisation

17. (1) The competent authority may revoke or modify an authorisation to implement an activity where there is an unanticipated irreversible adverse environmental impact, or a developer fails to comply with any term or condition subject to which the developer's authorisation was issued.

Revocation or modification of authorisation

(2) The competent authority shall not revoke or modify any authorisation granted to a developer until the competent authority has, by notice in writing, given the opportunity to the developer concerned, to—

(a) rectify any contravention; or

(b) show cause, within a period not exceeding 21 days from the date of such notice, why the authorisation should not be so revoked or modified.

(3) The competent authority shall publish a notice of any revocation or modification made under this section, in two consecutive issues of—

(a) the Gazette; and

(b) two newspapers in circulation in Botswana.

18. (1) No person shall transfer, assign or encumber in any way, without the written consent of the competent authority, an authorisation issued under section 14 (1) (a).

Transfer of authorisation

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a period not exceeding two years or to both.

19. In assessing applications for an authorisation under this Act, and in making a decision as to whether it ought to issue or renew an authorisation under this Act, the competent authority shall take into account the contents of the terms of reference, the statement, the recommendations of other government departments, local authorities and the comments and objections of interested persons and the public.

Decision making by competent authority

PART V – *Post environmental impact assessment of implemented activities*

20. (1) The relevant technical department or local authority, shall, during and after implementation of an activity, monitor the implementation of the activity to determine compliance with the agreed mitigation measures.

Monitoring programme and evaluation report

(2) The developer shall submit an evaluation report to the relevant technical department or local authority, at such times as the department or local authority shall determine.

Environmental
audit by
competent
authority

21. (1) The competent authority shall carry out or cause to be carried out biennially at its own expense, environmental audits for approval and operational purposes.

(2) After carrying out an environmental audit under subsection (1), the competent authority may require a developer to take —

- (a) specific mitigation measures to ensure compliance with predictions made in the statement; or
- (b) mitigation measures to address environmental impacts not anticipated at the time of the authorisation.

PART VI – Miscellaneous

Enforcement
of provisions

22. (1) If a person alleges that any provision of this Act has been, is being, or is likely to be contravened in relation to him or her, or any other person or group of persons who have a substantial interest, that person may apply to the High Court for redress.

(2) In subsection (1), interest shall be established in accordance with the common law rules of standing.

Public
documents
and register

23. (1) Any terms of reference, statement, report, decision or any other document produced under this Act shall be a public document.

(2) The competent authority shall maintain a register of public documents referred to under subsection (1), which shall be open for public inspection.

Confidentiality

24. No person appointed, employed or duly authorised by the competent authority, shall disclose any information which the person acquired in the performance of any duty, or the exercise of any function under this Act, except for the purposes of the performance of a duty or the exercise of a function or when lawfully required to do so by a court.

Protection
from personal
liability

25. An officer, employee or agent of the competent authority shall not be subject to any liability, action, claim or demand, for an act done by the officer, employee or agent, *bona fide* for the purposes of carrying the provisions of this Act into effect.

Powers of
entry

26. (1) For the purposes of the administration of this Act, an officer of the competent authority who has been authorised by the Director, in writing, may, without previous notice and at any time —

- (a) enter upon any land or premises for the purposes of undertaking investigations and inspections to ensure compliance with this Act;
- (b) stop, seize and search any vehicle, boat or aircraft, which the officer believes to have been used in the commission of an offence or to contain anything which might provide evidence of the offence; or
- (c) require the driver of the vehicle, the person in charge of the boat, or the pilot of the aircraft, referred to in paragraph (b), to furnish the officer with the details of any licence, permit, authority or permission issued to him under this Act.

(2) A person authorised to act under subsection (1) shall, if so required, produce evidence of the authorisation signed by the Director.

(3) Any person who wilfully obstructs a person authorised to exercise the powers under this section, or who gives information which he knows or ought reasonably to know is false, commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a term not exceeding two years or to both.

(4) Any power conferred by this section shall be construed as including power to search for the purpose of ascertaining the environmental impact of the activity.

27. (1) A person duly authorised under section 26 may, for the purpose of ensuring compliance with this Act, require the owner or occupier of any premises to provide any information which may be required for the purposes of this Act.

Power to require information

(2) Any person who —

(a) refuses to give the information required under subsection (1); or

(b) gives information which is false or misleading,

commits an offence and is liable to a fine not exceeding P10, 000 or to imprisonment for a term not exceeding one year or to both.

28. (1) Where a proposed activity is likely to have a significant adverse environmental impact in another country, the competent authority shall consult the Minister.

Trans-boundary environmental impact

(2) The Minister shall, through the Minister responsible for foreign affairs, inform the country concerned about the intended activity, by sending to that country's Minister responsible for foreign affairs, the terms of reference or a statement, and any other relevant information.

(3) This section applies to any country —

(a) in respect of which the Minister, having regard to any reciprocal provisions under the laws of that country, so directs; or

(b) that is a party to an international agreement or treaty to which Botswana is a party, has acceded to or ratified, where the parties to the international agreement or treaty are obliged to so inform one another.

29. Any person who contravenes the provisions of this Act for which no penalty is otherwise provided and is convicted of an offence shall be liable to a fine not exceeding P15 000 or to a term of imprisonment not exceeding two years or to both.

General penalty

30. The Minister may make Regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for —

Regulations

(a) guidelines for the scoping exercise;

(b) a list of activities or environmentally sensitive areas for which a statement is mandatory, criteria for determining whether a statement is required and threshold determinations of environmental impact assessment to activities;

(c) qualifications to conduct an environmental impact assessment;

(d) forms and content of terms of reference or statement;

(e) the manner of preparing the terms of reference, statement, monitoring programme or evaluation report;

- (f) reviewing of the terms of reference, the statement, the monitoring programme, the evaluation report and the environmental audit report;
- (g) the manner of holding public hearings;
- (h) revoking or modifying an authorisation issued under this Act;
- (i) the manner in which entry into premises may be achieved to investigate or evaluate an environmental impact, or to monitor and audit the environmental impact of an activity; and
- (j) the trans-boundary environmental impact of an activity.

Transitional

31. (1) Where on the coming into force of this Act, a person is actively engaged in an activity prescribed under section 3, the person may continue to engage in that activity without an authorisation under this Act for a period of twelve months from the coming into force of the Act.

(2) A person referred to under subsection (1) shall, within the twelve months referred to, apply for authorisation in accordance with the provisions of this Act.

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.

Act to bind
State.

32. This Act binds the Sate.

PASSED by the National Assembly this 29th March, 2005.

A. MATLHAKU,
Clerk of the National Assembly.