

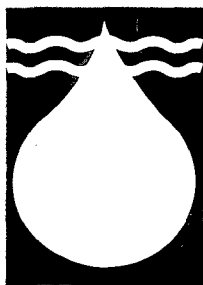
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GUIDELINES FOR INCLUDING PUBLIC PARTICIPATION IN THE PERMITTING PROCESS

Dianne Scott

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**GUIDELINES FOR INCLUDING PUBLIC
PARTICIPATION IN THE PERMITTING PROCESS**

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EXECUTIVE SUMMARY**Guidelines for including Public Participation in the Permitting Process****Introduction**

The report consists of three sections:

1. Introduction
2. Guidelines
3. Background to the report

The Guidelines appear first in the report as they are the most important element.

Increasingly, in South Africa and internationally, decision-making in relation to environmental issues requires statutory procedures of public participation to be followed. Many of these procedures are in the initial stages of being implemented, and the participatory processes are experimental in nature.

This report aims to provide a set of guidelines for the Department of Water Affairs and Forestry (DWAF) which could be used as the basis for the establishment of a range of participatory processes. The guidelines provide the basis for devising a set of 'minimum requirements' that would be necessary to ensure equitable public participation and democracy in environmental decision-making. Adherence to the guidelines would allow members of the public and citizens to have access to environmental decision-making around issues that impact on their well-being and living environments, in partnership with the regulating bodies and developers (public or private).

Guidelines (Section 2)

The guidelines include recommendations regarding:

- the establishment of participatory mechanisms (committee/forum/panel);
- their role;
- the representation of stakeholders,
- the initial composition and size of the these mechanisms;
- the operation or function of the body;
- capacity-building and information-sharing,
- decision-making procedures,
- management; and
- reporting.

The guidelines are prefaced by a set of terms which are defined for purposes of clarity.

Background (Section 3)

The background of the report provides a context in which to understand the development of the Guidelines in Section 2.

By way of introduction, the issue of increasing public participation in environmental decision-making world-wide, and the devolvement of decision-making powers to lower levels of civil society, is examined to provide a *global framework* for contextualising the emergence of public participation in South Africa.

The background then presents a *Conceptual and Methodological framework*. The key role of the principle of public participation and the issues of procedural equity in sustainable development are discussed. The methodology of participation observation and the sources of data are described.

The background then provides a description of the *case study* and the institution of the two Permit Advisory Panels to monitor effluent disposal along the Upper South Coast of KwaZulu-Natal. The public involvement in the issue of marine pollution is discussed.

The analysis of *issues emerging from the establishment and operation of the PAPs* provides an overview of how the following issues have been dealt with in the two panels:

- Establishment of the Permit Advisory Panels
- Representation and attendance of stakeholders and feedback to constituencies
- Terms of Reference/Constitution
- Decision-making procedures
- Reporting procedures
- Administration
- Role of specialist advisors
- The Establishment of Trust and Transparency through the Participatory Process
- Capacity-building and Information dissemination

The Report contains a set of *Appendices* providing useful illustrations of various aspects of the case study.

GUIDELINES FOR INCLUDING PUBLIC PARTICIPATION IN THE PERMITTING PROCESS

1. Definition of terms

Participatory process: An ongoing process of decision-making by which the views of all stakeholders who have an interest in, or are affected by, an issue or project, are incorporated into decisions regarding the issue at hand. Other terms used are public involvement in decision-making; community consultation or public consultation.

Participatory environmental decision-making: An ongoing process of decision-making regarding the potential or existing impacts of development on the environment, which incorporates the views of all stakeholders who have an interest in, or are affected by, the issues at hand. It is currently accepted that sustainability is the goal of environmental decision-making.

The Environment: This includes the dimensions of both the biophysical environment (water, air, soil etc) and the social environment (quality of life, employment and livable environments).

Stakeholders: These are all parties (social groups or individuals), who have an interest in, or are affected by, the impacts on the social and/or biophysical environment of a particular development. They therefore have a stake in the issues. Alternatively they are known as Interested and Affected Parties (I&APs) in Environmental Impact Assessment discourse.

In the case of environmental decision-making processes, the stakeholders are drawn from three main groupings:

- The affected (a variety of civic groupings including NGOs and individuals);
- The regulated (the developers, public or private); and
- The regulators (the relevant regulating authority).

Stakeholders may be further classified according to the degree to which they are affected by an existing or proposed development:

- *Primary stakeholders* are those who are directly affected by the development due to their proximity adjacent to the development, e.g. residential communities adjacent a landfill site.
- *Secondary stakeholders* are those who have a broad interest in, or responsibility for, the issues related to a development, e.g. an environmental NGO whose mandate is to protect and conserve the biophysical environment, or a local authority.

Participatory Mechanism: A body set up as a vehicle to facilitate the process of participation by all stakeholders. This may be formal (a statutory monitoring committee) or informal (a local forum of interested parties set up to resolve conflict around a development). This mechanism may be called a Panel or Committee if its role is formalised through legislation, or Forum if its role is less formal. In these guidelines the term Committee will be used to refer to the participatory mechanism.

Regulatory body: A local, provincial or national government body whose mandate it is to control, in this case, the impacts of development upon natural resources.

The Community: This is a widely used term to refer to a variety of civic or social groups, or alternatively to those affected by a development. There is not one ‘community’ but a wide variety of social groupings based on age, gender, race, ethnicity, class and place, each with different interests and access to power. This complex variety of groups are represented through social organisations, associations or wards varying from civic organisations, to democratically elected councillors and NGOs.

The Developer: This is a private company or public body undertaking to establish or continue operating a development. This can occur at a wide variety of scales ranging from a single organisation, such as pulp and paper business, to the state of South Africa.

A Development: A development, in this case, is a physical activity or enterprise, which through its processes or the activities it engages in, either uses natural resources or has an impact on the social or biophysical environment around it. This include *primary sector* development (e.g. mining, forestry, power), *secondary sector* industrial development (productive processes), and *tertiary sector* development (e.g. housing, tourism, commercial and infrastructural development - transport, telecommunications, public facilities). Developments range in both complexity and scale.

Permit: This is a legal contract whereby the regulator permits a developer to use natural resources, or carry out activities that impact on biophysical or social environments, under certain conditions which are subject to a monitoring process.

2. Establishment of the Committee

- 2.1 It is the responsibility of the developer as one of the conditions of the permit, to *facilitate the establishment and functioning* of the Committee and support the necessary *capacity-building* of stakeholders in order to strive towards the equitable participation of all groups. All costs incurred are to the account of the developer.

3. Role of the Committee

- 3.1 The Committee serves in an *advisory* capacity to the relevant authority, in this case the Department of Water Affairs and Forestry (DWAF), dealing chiefly with the potential impacts of the development on both the biophysical and social environment.

- 3.2 In this advisory role, the Committee is to *facilitate public participation* in decision-making processes to ensure social and environmental justice. Thus the Committee has a procedural role to play as an objective *vehicle or platform* to bring the parties with interests in the development process together to:

- build relationships between stakeholders;
- solve problems and resolve conflicts related to the development;
- gain understanding of the potential impacts of the development on the social and natural environment;
- gain an understanding of the viewpoints of other stakeholders;

- make information available and ensure transparency;
- recognise the value of both expert scientific knowledge and local knowledge in environmental problem-solving;
- monitor the impacts of the development process and ensure the long term management of the environment; and
- provide a forum for open discussion and debate.

4. Representation, Composition and Size of the Committee

- 4.1 The developer needs to be *proactive in facilitating* as broad a *representation* of relevant stakeholders as possible in the initial stage of Committee ensuring that there are *representatives from a range of stakeholder groups*, i.e. those groups who have an interest in the issues related to the development and its potential impacts. These would include both primary and secondary stakeholders.

These stakeholders can be broadly grouped into the following categories of which all should be represented on the Committee:

- the developer (the regulated),
- Community/other business/Conservation/NGOs/individuals/landowners (the affected), and
- the Authorities (the regulators).

- 4.2 The developer and relevant authorities need to recognise that they are also equal shareholders in the process of making recommendations to the regulating authority and so should be considered as stakeholders. The constitution of the Committee should be such that the representation of the regulators and the developer do not outweigh community/conservation/business representation.

- 4.3 *The community* should be viewed not as one stakeholder, but as a wide range of interested parties or groups representing different sectors of the community. The participation of primary stakeholders, i.e. those who would be directly affected due to their proximity adjacent developments, is of great importance in the Committee. These groups are usually represented by a range of civic bodies or associations. 'The community', is therefore represented by relevant *NGOs*; *ward Councillors* of Transitional Local Councils (who would provide democratically elected representation of potentially affected urban residents); and diverse *civic associations* and individuals. Representation from the Regional Councils would be necessary to represent the interests of those rural communities living outside TLC areas, but who may be affected by developments within or without the TLC boundaries.

- 4.4 Once the Committee is operational, the *representation should be maintained and reviewed* by the members on an ongoing basis to ascertain whether there are any further interested parties that would enhance its accountability. The comprehensiveness of representation is a key factor in determining the equitable functioning of the Committee.

- 4.5 Each stakeholder group representative should have an *alternate*, and it is the responsibility of the representative to instruct his/her alternate to attend meetings if he/she is unable to do so. The contact numbers of representatives and alternates should be furnished to the Administrator of the Committee along with a *written submission of intent* to join the Committee.
- 4.6 All interested parties should be welcome to attend the Committee meetings but may only participate in decision-making when their long-term interests and credentials have been established and their constituencies known via a *written submission of their commitment to the process*.
- 4.7 Each representative will undertake to *report to his/her constituency* regarding the proceedings of the Committee meetings and obtain a mandate for any decisions which need to be taken on their behalf.
- 4.8 In order to ensure continuity, the absence of any representative from a stakeholder group for two consecutive meetings should require investigation as to whether the representative has withdrawn from the process. It is proposed that it is the duty of the Administrator to determine the constraints facing the representative and act promptly to solve the problem of representation regarding the particular stakeholder group. The Committee needs to actively ensure continued representation.

Decisions need to be made about continued absence of stakeholders from meetings. As long as it is ascertained that a reasonable attempt has been made to contact these stakeholders, absence can then be interpreted as a choice not to participate.

- 4.9 At the outset the Committee should be as large as necessary so as to include all interested parties. *No restriction should be placed on the size* of the Committee other than restricting representation to one representative from each organisation/ authority/ business/ community organisation/ and the developer. The size will stabilize once the parties which have shown a concerted interest maintain their representation with other less interested parties falling away.
- 4.10 The Committee may request the advice of technical expert advisors; or *invite participants from interested parties or bodies* as deemed relevant to the issues at hand, who will attend/contribute as *observers* as and when considered appropriate. Such members will play no direct part in the decision-making process of the Committee.

5. **Operation/Function of the Committee**

5.1 *Phase 1: Definition of Guiding Principles and Terms of Reference, and Monitoring Impacts of Development*

In this initial phase, the Committee is to formally constitute itself into a decision-making body which will provide a *platform* from where problems are debated and understanding gained regarding the issues at hand. The immediate function is to achieve working relationships among stakeholders with different interests in order that it may proceed with

the substantive issues at hand. At the outset it is necessary that the Committee devise a set of *guiding principles* upon which is to define its *Terms of Reference* (Constitution). In this early phase the Committee must commence with the immediate task of *monitoring* the developer's compliance with permit conditions.

5.1.1 *Guiding Principles:*

The initial task of the newly constituted Committee is for the stakeholders to agree upon a set of guiding principles, (a 'vision' or 'charter') as to how they perceive environmental management and decision-making should take place. These will include both *distributional principles* related to the distribution of impacts, and *procedural principles* related to how the process should take place (see Appendix 1 for Principles of Procedural Equity). These principles would be the basis for proposing the *Terms of Reference* for the Committee.

5.1.2 *Terms of Reference:*

The Committee should at the outset establish their Terms of Reference (Constitution). This would form the formal framework for efficient and equitable functioning of the Committee as a vehicle or mechanism to make equitable decisions related to monitoring and managing the impacts of development. A set of guidelines provided by the regulating body would provide a set of Minimum Requirements for the establishment of the Terms of Reference.

The *Terms of Reference* should contain the following:

- Guiding Principles (Vision)
- Purpose/Aim of Committee
- Composition and Representation
- Tasks and Functions
- Capacity Building and Information Sharing
- Decision-making procedures
- Management
- Administration
- Reporting

5.1.3 *Monitoring the Impacts of Development*

The initial role of the Committee is to review the conditions of the developer's permit. Once an acceptable permit is in place, the Committee will monitor the compliance of the developer in meeting the conditions contained in an existing permit on a regular basis. This function is essentially a *reactive* role where the Committee responds and reacts to the developer's proposed conditions of operating which have been negotiated with the regulating body and set down in the developer's permit.

If a Committee is established to include public participation in the establishment of a new permit, then this body would function initially as a permit review mechanism in this case, and thereafter become a monitoring mechanism.

5.2 *Phase 2: Management of the Impacts of Development*

By this phase, the Committee will be established and functioning. Permits allowing developers to operate subject to certain conditions relating to the use of resources, disposal of wastes etc will be in place. This phase is one of reworking the *vision* contained in the guiding principles, through public participation, into *actions* to ensure the monitoring and management of the impacts of development. This phase is envisaged as a more *proactive* phase, where the Committee, having gained experience and knowledge, will move towards facilitating continual improvement of the impacts of the particular development and adopt a more holistic approach towards environmental management.

6. Capacity-Building and Information Sharing

6.1 The role of the Committee is to *facilitate public participation* in the process of monitoring the impacts of development and in decision-making relating to the impacts of a development. In order to fulfil this condition and for meaningful participation to occur:

- *A programme of environmental education* should be designed by and for committee members on substantive topics related to the issues at hand and according to their needs. This programme of education should be instituted from the outset and be undertaken on an ongoing basis.
- *Peer education* is to be promoted and encouraged to ensure that members understand each other's viewpoints.
- The developer should be encouraged to sympathetically consider any requests for *resources* which might be necessary in order to allow for participation and for the consultation of constituencies. This may vary according to the needs of the different stakeholder groups.
- The minutes of meetings serve as a useful capacity-building vehicle and therefore *'expanded' minutes* which include explanatory material are a channel for information to be distributed at little extra cost.
- The initiation and sponsorship of *research projects* to provide substantive information which would assist in environmental decision-making issues at hand is an additional capacity-building mechanism through which all stakeholders engage in an ongoing learning process through progress reports.

7. Decision-Making

- 7.1 As the Committee is an *advisory* body undertaking a monitoring and environmental management function, it is necessary to devise an agreed upon decision-making procedure regarding any recommendations to be made to the regulating body. Where possible consensus should be negotiated among all stakeholders. Alternatively, where this is not possible, a majority recommendation accompanied by a minority statement from those parties not concurring, would provide the regulating body with input regarding the conflict over the issue at hand and unresolved issues.
- 7.2 Should any *party be absent* from any given meeting for which reasonable notice was given, a procedure for obtaining their views on recommendations made in their absence is necessary in order for equitable participation to occur. This procedure should include a decision-making mechanism for decisions to be made outside meetings should the issue require urgent response. This is particularly important in the case where primary stakeholders are absent from meetings where important decisions need to be taken.
- 7.3 In the case where a decision is required from a Committee that involves a choice of one of a number of options, e.g. a landfill site selection decision, procedures may be necessary to come to a decision despite opposition from certain parties. Such 'blockbusting' procedures would need to be agreed upon beforehand in order to prevent deadlocks and lengthy time delays when decision-making occurs.
- 7.4 As participatory decision-making is a lengthy and dynamic process, all stakeholders need to take this into account and allow for adequate consultation and negotiation to occur in a spirit of *constructive engagement*.

8. Management

- 8.1 The Committee should be facilitated by an *external facilitator* until it is agreed by the Committee that it does not require or desire an external facilitator. It should be the goal of the Committee that the development of cordial relationships between the parties would be conducive to appropriate and constructive self-management. The choice of the facilitator is to be acceptable to the Committee, and the cost borne by the developer.
- 8.2 In the case of self-management, a Chairperson and Vice-Chairperson should be elected by the Committee on an annual basis. The Chairperson is to ensure that meetings are efficiently run and that the Administrator is directed according to the decisions taken by the Committee. (see 8.4 for duties of Administrator).
- 8.3 The Chairperson or Vice-Chairperson, when elected, is to call on his/her alternate representative of his/her stakeholder group to represent him/her for the duration of his/her office as chairperson.
- 8.4 Most representatives on the Committee, coming from the broader public and residential communities, would be already over committed in terms of work responsibilities. The

voluntary participation of these representatives on such committees is often costly, both in time, money and in personal terms. It is recommended therefore that an efficient *Administrator and secretariat*, acceptable to the Committee, should be appointed in order to allow the Committee to function efficiently. The cost of this service is to be funded by the developer.

- 8.5 The *Administrator* would be to be accountable to the Committee, act upon instruction from the Committee, and perform the required tasks:
- Take and circulate minutes of meetings timeously.
 - Draw up and circulate agendas for Committee meetings.
 - Convene/call committee meetings on behalf of the Committee.
 - Receive and distribute correspondence addressed to the Committee and reply to same on behalf and upon instruction from the Committee.
 - Generally assist the Committee with all administrative and organisational tasks.
 - Engage in the process of networking to maximise participation by stakeholders and determine proactively any stumbling blocks to adequate participation by all stakeholders.
- 8.6 For purposes of clarity and full understanding and to allow for equal participation, discussions at Committee meetings may require *interpretation* by a professional interpreter. The assistance of an external translator is therefore deemed essential if stakeholders require this service. The cost of this facility is to be borne by the developer.
- 8.7 The Committee should meet at a *neutral venue* acceptable and accessible to all participants.
- 8.8 The Panel should *meet at least once monthly* initially and less often once the Committee is established and fully functional, according to the decision of the Committee. Additional meetings may need to be called if urgent issues arise that require attention.
- 8.9 The monthly *impact reports* presented at meetings by the developer, detailing permit compliance, are to be included in the minutes of each meeting of the Committee. DWAF's monitoring reports of the developer's performance are also to be attached to minutes.
- 8.10 The establishment and facilitation of the Committee by the developer will be a condition of the permit when issued. Therefore, its efficient functioning as an advisory body consisting of active members from all stakeholder groups should be periodically *reviewed* by the following procedures:
- The Committee should encourage the regional representatives of the Department of Water Affairs and Forestry to participate and *review* the progress of the Committee in fulfilling the condition of public participation which will be set out in the permit.
 - Furthermore, a periodic progress review in the form of a *self-evaluation* by the Committee members themselves is recommended as a benchmark of performance.

The outcome is to be reported to the regulating body.

- 8.11 The *costs* of maintaining and facilitating the Committee should be presented as an annual audit so that stakeholders are aware of the financial implications of public participation, and in order that transparency is achieved. This would ensure that the Committee is run as a cost efficient vehicle for public participation.

9. Reporting

- 9.1 The minutes of Committee meetings are to be made available for *public scrutiny*, along with the attached monthly emission reports of the developer.
- 9.2 In order to promote transparency and publicise the activities of the Committee, *the local press* should periodically be invited to attend Committee meetings.
- 9.3 A priority item on the agenda of every meeting is the *monthly emission report* of the developer detailing their progress in attempts at continual improvement of environmental quality. Decisions need to be made as to the extent and format of the information presented in order that it be comprehensive and at the same time accessible to those who are not scientifically trained.

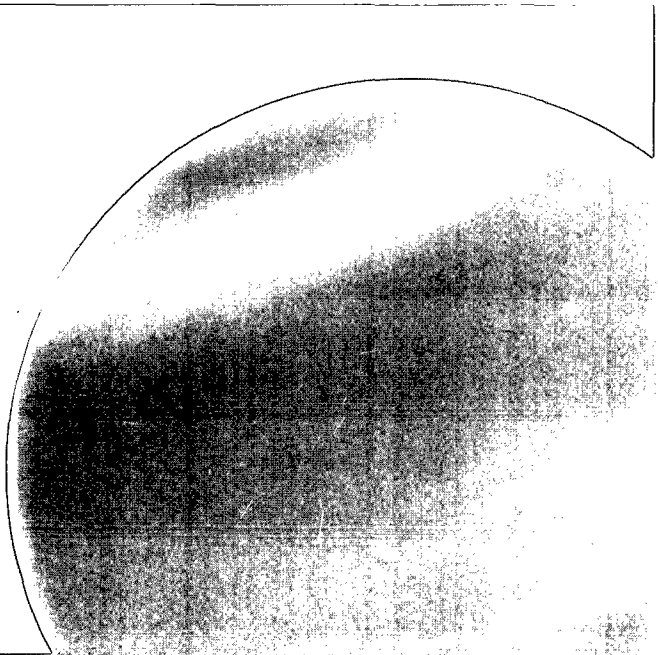
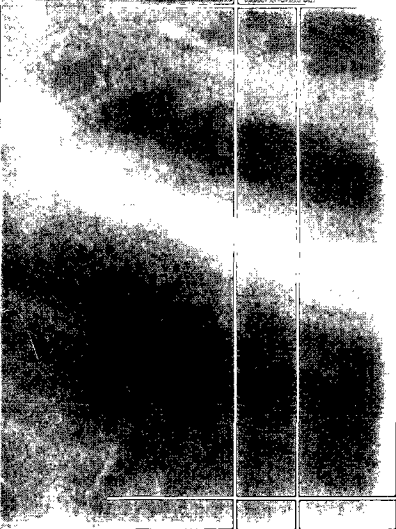
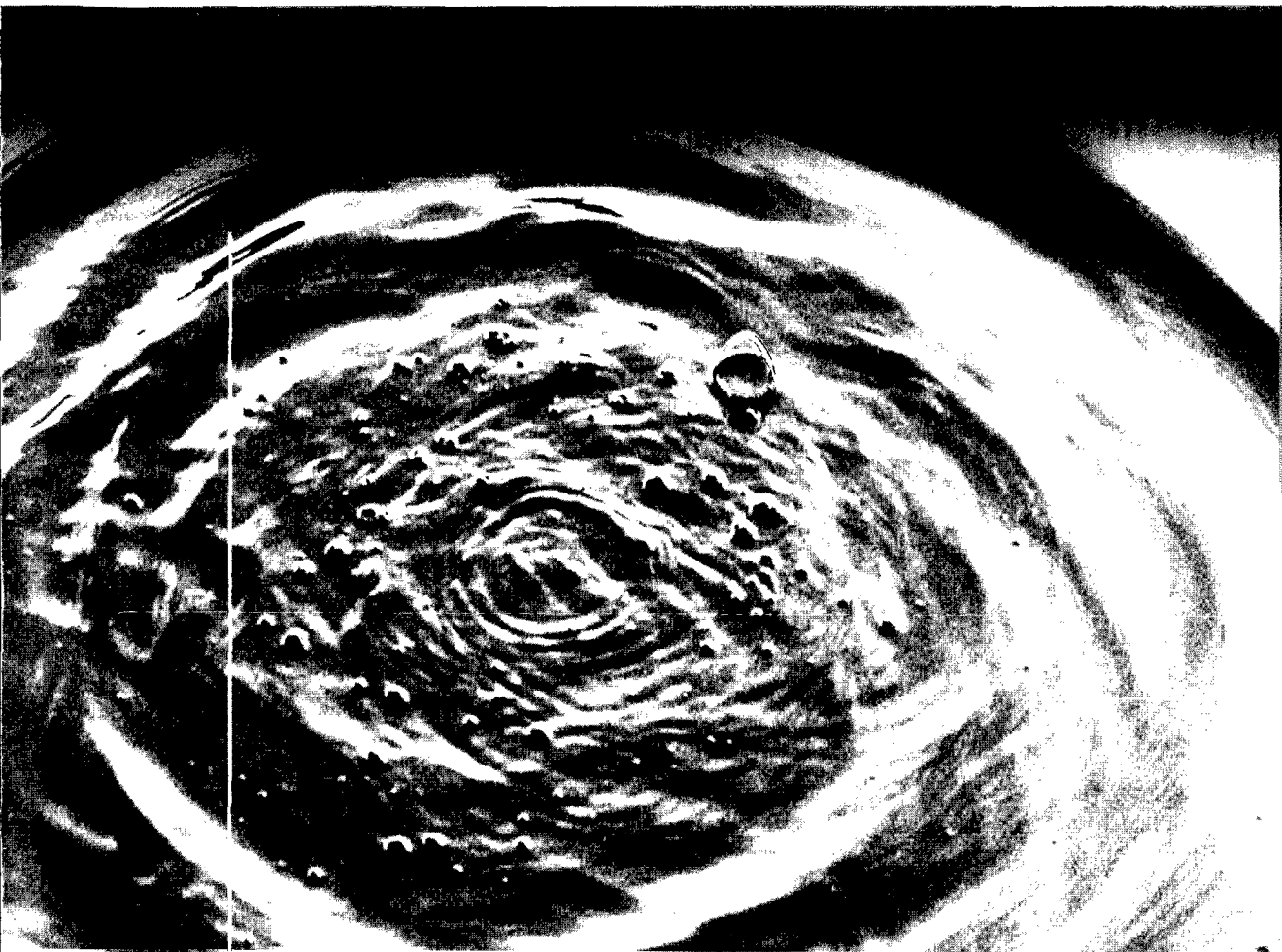
Appendix 1: Guidelines to achieve Procedural Equity in A Participatory Process.

- The public need to be included through all stages of a development plan.
- The process should give power to previously disempowered groups to influence decisions which affect their livelihood and quality of life.
- The process should be an open transparent process subject to public scrutiny.
- The participatory process cannot be prescribed from beginning to end, as a number of deviations, additions and amendments are likely to be made according to the needs perceived by the parties involved. However, the broad outlines of a likely route which it might take can be pre-designed.
- The process of participation needs active participation from as many stakeholders as possible who have an interest in the decision-making process.
- The process requires a recognition of social differentiation and a respect for diversity. This requires attention to social organisations as a means for gaining access to social groupings.
- All parties are to be accountable to their constituencies to make decisions and participate on their behalf and undertake to feed back information to them. They need also to be accountable to the process that they have agreed to establish.
- The stakeholders will guide and steer the process as it proceeds in accordance with their needs.
- All outcomes are to be the choices of these stakeholders and agreed upon.
- In order that all stakeholders have an equal opportunity to participate, it is proposed that an education and information sharing process is a necessary prerequisite and therefore an integral part of the process. The method and content of this education process is to be prompted by the participants according to their interests. Participation should therefore involve capacity-building.
- The use of outside facilitators/mediators in most stages of the process will maximize the potential for achieving consensual solutions as it will allow the parties to move beyond adversarial positions and explore their underlying interests in a non-threatening environment. Participation in such a manner will allow for the sustainability of the process of participation when it moves into the operationalizing the outcomes of the process.
- All the facilitators and other personnel working on the process should have no interests in the conflict and therefore would provide a neutral and non-judgemental position with regard to the issues that emerge.
- The choice of a neutral venue and a round table approach will ensure the equalizing of power differentials. This will provide a human rights culture in which all participants can

Speak freely, promote their interests and hold decision-makers accountable.

- The process should be documented with outputs in the form of reports from each stage in the process which would be fed back to stakeholders.
- The process needs to recognize that all individuals have a constitutional right to participate in the decision-making process.
- There needs to be a commitment to an integration of local and scientific knowledge in an interactive, on-going process between an informed public bringing their local knowledge to bear and the scientific experts.
- There needs to be free and open access to all information, available in the languages of the stakeholders.
- Mechanisms for appeal or conflict resolution procedures should be available in the absence of consensus.
- The equitable provision of resources if necessary to facilitate equitable participation. This may be necessary for travel purposes.
- Participation requires active engagement - this implies co-operation, dissent, debate, problem-solving and negotiation.
- Care must be taken that participation does not mean legitimation and that the process becomes one of co-opting local elites and leadership for exogenously derived programmes.
- The process needs to be purpose driven - people need a reason to enter the process.
- Participation requires realistic deadlines.

It must be noted that participation is a requirement of the Integrated Environmental Management (IEM) process and a number of the above listed principles are requirements of the IEM process (Department of Environment Affairs, 1992).



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