





Part II
**State of the
environment**

Chapter 3
Environmental governance

Chapter 4
Land

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Biodiversity and ecosystem health

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Inland water

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Marine and coastal resources

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Chapter 3 Environmental governance

At a glance

This chapter begins by defining and identifying the key elements of environmental governance. It then highlights the key policies and legislative and institutional changes that have been introduced to ensure more effective decision-making, management, and environmental governance at the national and international levels. It moves on to discuss the participation of civil society in environmental governance, and gives particular attention to the capacity of the three spheres of government to attain improved environmental governance. The last section discusses progress made by the corporate sector in this area and makes proposals for improving corporate environmental governance.

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Good environmental governance should reflect our best understanding of the structure, function, processes, and variability that typify natural systems.

3.1 INTRODUCTION

3.1.1 What is environmental governance?

Environmental governance refers to the processes of decision-making involved in controlling and managing the environment and natural resources. It also includes the manner in which decisions are made – are they made behind closed doors or with input from the broader public? Principles such as inclusivity, representativity, accountability, efficiency, and effectiveness, as well as social equity and justice, are the foundations of good governance. Good environmental governance should reflect our best understanding of the structure, function, processes, and variability that typify natural systems. Without this understanding, it is possible for inappropriate decisions to be made (even with the best possible intentions) that carry disastrous environmental consequences.

Although governments, through their policies, laws, and strategies, are important players in directing the way in which the environment is managed, exploited, and conserved, actors outside government are equally important. The activities of non-governmental organizations such as environmental groups, civic groups, and labour unions have become advocates for better and fairer environmental decisions. The actions of industry as well as those of trade and professional associations influence the way companies do business by, for example, promoting cleaner processes. Governance also includes consumers, especially when their individual choices and actions influence public policies or affect corporate behaviour.

Environmental governance is effective only if it leads to fair and sustainable management of ecosystems². Weak governance very often causes environmental degradation, as do conditions in which people have no means to secure their natural, financial, and personal resources, which can lead to scarcity. In this way, degradation of resources can fuel political strife, particularly in Africa. Improving the processes and institutions we use to make important environmental decisions will bring better results with less harm to the

environment and fairer distribution of the costs and benefits related to natural resources³.

3.1.2 Elements of environmental governance

Assessing the performance of any environmental governance system is complex. Quantitative data need support from qualitative information that provides deeper understanding of the effectiveness of environmental governance. In as far back as 1997, good environmental governance was identified as a critical factor for successful environmental management in South Africa. That year's *White Paper on Environmental Management Policy* offers the following pointers as to what constitutes good environmental governance:

- Governance should be responsible and accountable
- Regulations should be enforced
- Integrating mechanisms and structures that facilitate participation should be established
- There needs to be inter-ministerial and interdepartmental coordination
- The institutional responsibilities for regulating environmental impacts and promoting resource exploitation should be separate
- People should have access to information
- There needs to be institutional and community capacity-building.

The World Resources Institute⁵ has defined seven elements of environmental governance, which are similar to those in the *White Paper on Environmental Management Policy* and provide a useful framework for monitoring environmental governance. An eighth element can be added: the 'mainstreaming' of environmental issues (that is, their inclusion into other sectors). (See Box 3.2.)

International measures of environmental governance are also useful to measuring various aspects of South Africa's environmental governance relative to other countries. (See Box 3.3.)

The next section discusses the key policies, legislative and institutional changes that have been introduced to

Box 3.1 What is governance?

Governance has been defined as "the system of values, polices and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It is the way a society organizes itself to make and implement decisions – achieving mutual understanding, agreements and action... . Governance, including its social, political and economic dimensions, operates at every level of human enterprise, be it the household, village, municipality, nation, region or globe."

Source: United Nations Development Programme (2004)¹



Box 3.2 Eight elements of environmental governance in South Africa

1. Institutions and law

Who makes and enforces the rules for using natural resources? South Africa's policy framework is based on cooperative governance, in which the enforcement of environmental law and policies is the joint responsibility of national, provincial, and local spheres of government. Who resolves disputes? Disputes are resolved by courts or through arbitration.

2. Participation, rights, and representation

How can the public influence or contest the rules over natural resources? Who represents those who use or depend on natural resources when decisions on these resources are made? South Africa has provisions that require public consultation in sectoral policies as well as specific development activities. All environmental impact assessments require public involvement processes, although one of the challenges to overcome is that there is still insufficient and inappropriate engagement with poor, disadvantaged, or rural communities¹³. The Access Initiative (a global coalition of civil society groups that promotes good environmental governance), however, highlighted South Africa's recent water reform process as having been particularly effective at enabling participation.

3. Authority level

At what level (local, provincial, or national) does the authority over resources reside? The Constitution designates the environment as an area of concurrent national and provincial responsibility. The trend is to decentralize environmental management functions from national to provincial and local levels.

4. Accountability and transparency

How do those who control and manage natural resources answer for their decisions and to whom? How open to scrutiny is the decision-making process? Are there rights to environmental information? Those who control and manage natural resources and hold information about them are answerable by law. The Constitution gives the right to information, as does the Promotion of Access to Information Act (No. 2 of 2000). In addition, specific provisions in the National Environmental Management Act (No. 107 of 1998) support access to environmental information. A host of international agreements to which South Africa is a signatory require progress reports on their implementation. There were two successful court cases in 2005 dealing with public access to information regarding the go-ahead for development projects: the Pebble Bed Modular Reactor (PBMR), and information related to the release of Genetically Modified Organisms (GMO) field trials. There is provision for the government to be taken to court for failing to deliver or to protect the rights enshrined in the Constitution.

5. Property rights and tenure

Who owns a natural resource or has the legal right to control it? South Africa has a mix of property-rights systems: freehold, communal, and state-owned. The Constitution upholds the right to property ownership. The issue of land reform (including restitution) in the country aims to restore control and ownership of resources to the claimant group (depending on the nature of the claim).

6. Markets and financial flows

How do financial practices, economic policies, and market behaviour influence authority over natural resources? In 2004, the National Treasury commissioned an extensive review of the use of economic and financial instruments to improve resource protection and governance. Currently under consideration are the possibilities of a carbon tax and property rates rebates for environmental improvements by landowners.

7. Science and risk

How are ecological and social sciences incorporated into decisions about the use of natural resources in ways that reduce risks to people and ecosystems and identify new opportunities? South Africa has good scientific capacity. Through the Environmental Impact Assessment (EIA) process, scientific knowledge, including that provided by the ecological and social sciences, is essential to assess the risk and mitigation measures necessary for any development project.

8. Integration into other sectors

How well are environmental issues integrated into other sectors and into decision-making in those sectors? It has been recognized that legislation is needed to enhance cooperation among different government departments at all levels. The Committee for Environmental Co-ordination (CEC) is the primary statutory body for integrating environmental issues in different resource-based departments and at different levels of government. It is a mechanism to deal with inter-departmental issues, especially disputes arising from conflicting economic, social, and environmental interests. The CEC sub-committee on Law Reform provides a common forum for national, provincial, and statutory bodies to review and discuss draft legislation that may affect the environment. Environmental Implementation and Management Plans aim to ensure co-ordination and harmonization of environmental policies, plans, programmes, and decisions made by various national departments whose functions may affect the environment. The National Strategy on Sustainable Development, currently being developed, aims to integrate environmental issues into all sectoral activities.

Source: Government of South Africa, (1997)⁴

Box 3.3 An international perspective on South Africa's performance in governance

International measures of environmental governance provide useful ways in which to assess different aspects of South Africa's environmental governance relative to other countries. These indices have a core set of performance indicators – they evaluate openness of decision-making, how decisions are influenced, and how decisions are applied and adhered to. Selected studies and indices are described below.

The Access Initiative

The Access Initiative (TAI) is a global coalition of civil society groups that promotes good environmental governance. TAI was established to determine how well Principle 10 of the Rio Declaration of 1992 was being implemented and to develop action plans to improve Principle 10 in each country that participated in the survey. In the 2001 TAI evaluation of nine countries, some of the successes achieved in South Africa included the following⁵:

- South Africa embraces all three types of law that characterize a comprehensive legal framework – the Constitution guarantees access to information, freedom of information laws, special provisions for access to environmental information
- South Africa's legislation encourages public participation in decision-making – the legislation contains requirements for notice and comment periods in decision-making in both sectoral policy and project-level activities.

Areas needing improvement included the following:

- The printed media does not promote environmental issues sufficiently.
- Notification procedures do not sufficiently consider illiterate people nor all the languages of the interested and affected parties.
- Participation does not take place in the monitoring of environmental performance after a record of decision has been issued for a development.
- Although the legislative framework has been formulated, the actual implementation of the legislation at government departments is lagging. In particular, the Promotion of Access to Information Act is not yet fully implemented with respect to information officers or a manual for members of the public that will help them to find out what information is currently held by the respective public or private body.
- Because of lack of training and of newspaper reporting, South Africans have insufficient awareness of their rights.
- The Internet sites of the respective departments are not sufficiently developed to ensure that each person can access information about, for example, administrative claims or about the procedures surrounding the Access to Information Act.
- Industrial reporting is still voluntary and

information about facility emissions is not easily accessible.

Yale Environmental Sustainability Index (ESI)⁶

This index benchmarks the ability of nations to protect their environment in the coming decades. The index is constructed from 76 data sets that are translated into 21 indicators of environmental sustainability. These indicators permit comparison across a range of issues that fall into the following five broad categories:

- Environmental Systems
- Reducing Environmental Stresses
- Reducing Human Vulnerability to Environmental Stresses
- Societal and Institutional Capacity to Respond to Environmental Challenges
- Global Stewardship.

South Africa scored 0.15 on Environmental Governance, with the average value for its peer group⁹ being 0.12. Overall South Africa obtained a rank of 93 but was ranked 46th for governance alone. The governance ranking of our neighbouring countries was as follows: Botswana 17th, Namibia 57th, Zimbabwe 103rd, and Mozambique 106th.

ensure more effective decision-making, management, and environmental governance at the national and international levels.

3.2 INSTITUTIONS AND LAWS

This section highlights the key policies, legislative, and institutional changes that have been introduced to ensure more effective decision-making, management, and environmental governance.

3.2.1 National arena

The primary legislation governing the environment in South Africa is the Constitution – specifically Section 24, which states that South Africans have the right to an environment that is not harmful to their health or well-

being. In 1995, following South Africa's first democratic elections the previous year, the Consultative National Environmental Policy Process (CONNEPP) was launched, resulting in the 1997 White Paper on National Environmental Management. New legislation in 1998 empowered government to implement the policy, and the National Environmental Management Act (No. 107 of 1998) (NEMA) established the concepts of participatory, cooperative, and developmental governance⁷.

Following the release of NEMA, the Department of Environmental Affairs and Tourism (DEAT) embarked on law reform, in order to provide a consolidated legislative framework for environmental management in South Africa. New legislation, developed under NEMA, has aimed to promote sustainable development, with wide-ranging implications for national, provincial, and local government. It moved towards specialized legislation to tackle particular resource issues, such as biodiversity and air quality.

Table 3.1: National legislation with implications for the environmental management function

Department	Act	Objective
Agriculture	The Conservation of Agricultural Resources Act (No. 43 of 1983)	To conserve the natural agricultural resources of the Republic by, amongst other things, maintaining the production potential of the land and combating and preventing erosion.
	The Fertilizers, Farm Feeds, Agricultural Remedies Act (No. 36 of 1947)	To provide for the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilizing plants, and pest control operators; to regulate or prohibit the importation, sale, acquisition, disposal, or use of fertilizers, farm feeds, agricultural remedies, and stock remedies.
	Agricultural Pests Act (No. 36 of 1983)	To provide for measures for control over plants and for the prevention of plant diseases (agricultural pests).
	The Genetically Modified Organisms Act (No. 15 of 1997)	To provide for measures to promote the responsible development, production, use and application of genetically modified organisms; to ensure that all activities involving the use of genetically modified organisms (including importation, production, release, and distribution) shall be carried out in such a way as to limit possible harmful consequences to the environment.
Water Affairs and Forestry	The National Water Act (No. 36 of 1998)	To ensure the protection, use, development, conservation, management, and control of water resources in a sustainable and equitable manner.
	The Water Services Act (No. 108 of 1997)	To provide a regulatory framework for local authorities to supply water and sanitation services in their respective areas.
	The National Forest Act (No. 84 of 1998)	To provide for sustainable forest management and the restructuring of the forestry sector.
	The National Veld and Forest Fire Act (No. 101 of 1998)	To provide for measures to prevent and combat veld, forest, and mountain fires throughout the Republic.
	The Mountain Catchment Areas Act (No. 63 of 1970)	To provide for the conservation, use, management and control of land situated in mountain catchment areas.
Land Affairs	The Development Facilitation Act (No. 67 of 1995)	To introduce measures to facilitate and speed up the implementation of reconstruction and development programmes; it lays down general principles governing land development throughout the Republic.
Minerals and Energy	The Minerals and Petroleum Resources Development Act (No. 28 of 2002)	To provide for the equitable access to and sustainable development of the nation's mineral and petroleum resources.
	The Nuclear Energy Act (No. 46 of 1999)	Sets out the Minister's responsibilities regarding source material, special nuclear material, restricted material, radioactive waste, and the storage of irradiated nuclear fuel.
	The Mine Health and Safety Act (No. 29 of 1996)	To provide for the identification of hazards and the elimination, control, and minimization of risks relating to health and safety in mines.
Health	The Hazardous Substances Act (No. 15 of 1973)	To provide for the control of substances that may cause injury, ill-health, or death to human beings by reason of their toxic, corrosive, irritant, strongly sensitising or flammable nature, or by the generation of pressure.
Arts and Culture	National Heritage Resources Act (No. 25 of 1999)	To introduce an integrated and interactive system for the management of national heritage resources.

Air pollution carries a high social, economic, and environmental cost that is seldom borne by the polluter, and atmospheric emission of ozone-depleting substances, greenhouse gases, and other harmful substances damage the environment.

An overview of the key pieces of legislation and other legislative developments since 1999 is presented below. (See Table 3.1, and for details of policy and legislation see the relevant chapters in Part II.)

National Environmental Management: Biodiversity Act (No. 10 of 2004)

The passing of the National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEMBA) is one of the most substantial improvements to environmental governance. It provides the framework, norms, and standards for the conservation, sustainable use, and equitable benefit-sharing of South Africa's biological resources. NEMBA takes a comprehensive view of biodiversity in that it instills an ecosystem approach to planning and management and requires the 'mainstreaming' of biodiversity into sectoral policy and planning. It also expands the mandate of the former National Botanical Institute to include responsibilities relating to the full diversity of South Africa's fauna and flora. In its new role as the South African National Biodiversity Institute (SANBI), the institute produced the National Spatial Biodiversity Assessment in 2004 as part of the National Biodiversity Strategy and Action Plan currently being developed as part of South Africa's obligation in terms of the Convention on Biological Diversity (see Chapter 5).

National Environmental Management: Protected Areas Act (No. 57 of 2003)

The Protected Areas Act came into force on 1 November 2004. The initial Protected Areas Act (No. 57 of 2003) was amended (No. 31 of 2004) to make provision for national

parks and marine protected areas. In essence, these Acts provide for the protection and management of ecologically viable areas that represent our biological diversity and natural landscapes and seascapes. They seek to increase local level management, control, and decision-making around protected areas. Their primary aim is to establish greater cooperation between communities, on the one hand, and between government agencies and the private sector on the other. They also propose a new consolidated system of protected areas to replace the existing one, both administratively and geographically fragmented, and allows for the inclusion of private land into the system of protected areas.

National Environmental Management: Air Quality Act (No. 39 of 2004)

The new Air Quality Act (No. 39 of 2004), which came into force in December 2004, replaces the outdated and ineffective Atmospheric Pollution Prevention Act (No. 45 of 1965), and provides for a more comprehensive decision-making and management framework for air pollution (see Chapter 8). It acknowledges that many areas of South Africa do not provide a healthy environment for people and, furthermore, that the burden of ill health associated with polluted ambient air falls most heavily on the poor. It also acknowledges that air pollution carries a high social, economic, and environmental cost that is seldom borne by the polluter, and that atmospheric emission of ozone-depleting substances, greenhouse gases, and other harmful substances damage the environment. The Act provides the basis for setting standards for both ambient air quality and emissions, to be made in consultation with national, provincial, and local government partners. These standards will directly and indirectly benefit the health of South Africans.



Cape Town's dirty winter skies have been found to exceed European guidelines for human health.

Photography: Trace Images / Andrew Ingram

An important standard for air quality, dealing with ambient limits for common pollutants (SANS 1229:2005, Ambient air quality – Limits for common pollutants), was published in January 2005, and is likely to replace the transitional standards provided in the Air Quality Act. The Act further provides for the establishment of air quality monitoring stations to be paid for by industry.

Climate Change Response Strategy

In October 2004, the DEAT launched the Climate Change Response Strategy, which was approved by Cabinet the following month. The strategy outlines South Africa's response to climate change. During the financial year 2005/2006, the DEAT is conducting intensive sector-specific consultation with a view to developing sector adaptation plans and mitigation plans. The first National Climate Change Conference was held in October 2005, and was hosted by the departments of Environmental Affairs and Tourism, Science and Technology, Water Affairs and Forestry, Agriculture, Land Affairs, and Minerals and Energy. This brought leading national and international scientists together with policy-makers so as to develop material for South Africa's Second Communication under the United Nations Framework Convention on Climate Change (UNFCCC). It was attended by a high-level political delegation including the Deputy-President, ministers of the host departments, and members of parliament. The Deputy-President stated that climate change considerations will be incorporated into national growth strategies and policy. Owing to the cross-cutting nature of climate change, the DEAT has established four formal stakeholder committees, which inform and coordinate climate change issues, including the implementation of the Climate Change Response Strategy.

White Paper for Sustainable Coastal Development in South Africa

The White Paper, adopted in April 2000, sets out a vision for the coast, as well as principles, goals, and objectives for coastal management and a Plan of Action for implementation. The proposed National Environmental Management: Coastal Zone Management Bill will give effect to the White Paper. It sets out a new approach to managing our coastal resources with a view to promoting social equity, and to optimizing their economic use while protecting them. The proposed Bill aims to provide a legal and administrative framework for promoting cooperative, coordinated, and integrated coastal development. It provides for important interventions that will preserve, protect, and improve the status of the coastal environment as the heritage of all; ensure that coastal resources are managed in the interests of the whole national community; and ensure equitable access to the opportunities and benefits that the coast offers. The Bill will be tabled with Cabinet's legislative programme in 2006.

Environmental Impact Assessment regulations

Since 1997, developments that could result in significant environmental pollution or degradation are required to have undergone a rigorous assessment of their possible effects through the Environmental Impact Assessment (EIA) process.

The Second Amendment of NEMA (No. 8 of 2004) provides for other tools such as Strategic Environmental Assessments (SEAs) to be used where appropriate. New regulations for environmental impact assessment aim to streamline decision-making for the approval of developments and making the environmental process more flexible to project-specific requirements. Some commentators argue that the process will allow developments to be pushed through more easily than before, without appropriate consideration for environmental sustainability.

This Second Amendment repeals all the provisions of the current outdated Environment Conservation Act (No. 73 of 1989), which currently controls the EIA process. The new EIA regulations also provide for the formulation of environmental management frameworks for designated geographic areas that allow local and provincial environmental departments to decide where development can or cannot take place, so as to avoid lengthy EIA delays in approving such initiatives.

The National Water Resource Strategy

The Department of Water Affairs and Forestry (DWAF) is the custodian of the nation's water resources, which have to be managed in a manner that promotes equity, sustainability, and efficiency. The National Water Act (No. 36 of 1998) is the principal legal instrument relating to water resources management in South Africa and contains comprehensive provisions for protecting, using, developing, conserving, managing, and controlling South Africa's water resources.

The National Water Act has transformed the way water is controlled – from a system of rights based on land ownership to a system designed to allocate water equitably in the public interest. Two important principles guiding the act are the following:

Firstly, the quantity, quality and reliability of water required to maintain the ecological functions on which humans depend must be reserved so that the human use of water does not individually or cumulatively compromise the long term sustainability of aquatic and associated ecosystems.

Secondly, the water required to meet basic human needs and the needs of the environment is identified as "the Reserve" and will enjoy priority of use by right. The use of water for all other purposes shall be subject to authorisation.

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Renewable energy will in future contribute more substantially than before to South Africa's energy mix.

The introduction of the Ecological Reserve was an important development in that it affirms the need to establish and maintain ecological resources or reserves (including water resources) to ensure that the environment can be sustained. (See Chapter 6.)

With the adoption of the National Water Resource Strategy by Cabinet on 1 September 2004, South Africa reached one of the first targets set in the Johannesburg Plan of Action, adopted at the 2002 World Summit on Sustainable Development, namely, to develop national water resource management plans.

The strategy sets out the ways in which South Africa aims to achieve integrated water resources management in South Africa (see Chapter 6). It describes the ways in which South Africa's water resources will be protected, used, developed, conserved, managed, and controlled in accordance with the requirements of the policy and law. The strategy also provides a platform for the necessary collaboration and cooperation amongst all departments in all spheres of government involved in economic development. It is viewed as an important contribution to the evolving National Spatial Development Framework, and leads to better understanding of the contribution that water makes to development in all departments' areas of activity.

The strategy estimates present and future water availability and requirements, and proposes actions to achieve a sustainable balance between water availability and requirements. While the actions proposed include the construction of new storage dams and transmission infrastructure to the value of R21 billion over the next 20 years, most attention is given to arrangements for the careful management, use, and protection of the country's water resources.

A vital element of the strategy is the progressive decentralization of the responsibility and authority for water resources management to 19 catchment management agencies and, at local level, to water user associations. These institutions, representing water users and other stakeholders, will facilitate effective participation in the management of water resources in their areas. It will also enable the DWAF to move from its present multiple roles as operator, developer, and regulator and become the sector leader, policy maker, regulator, and monitor. The DWAF will lead the creation of the new institutions over the next few years, and support and guide them as they execute their tasks.

Because water is essential for human life, the first priority of the National Water Resource Strategy is to ensure that water resources management supports the provision of water services – safe drinking water and sanitation – to all people, but especially to the poor and previously disadvantaged⁹.

Energy Efficiency Strategy

An important development is the first Energy Efficiency Strategy for South Africa, published in March 2005. The strategy acknowledges that significant potential exists for improving energy efficiency across all sectors of the country's economy. Its vision is to contribute towards affordable energy for all, and to minimize the damaging effects of energy use upon human health and the environment. This vision will be achieved by encouraging sustainable energy development and energy use through efficient practices. The strategy's national target is for an energy efficiency improvement of 12% by 2015. This target is expressed in relation to the forecast national energy demand at that time, and therefore allows for current expectations of economic growth. It is accepted that this target will be challenging but, at the same time, it is considered achievable¹⁰.

White Paper on Renewable Energy

Renewable energy will in future contribute more substantially than before to South Africa's energy mix. The White Paper on Renewable Energy, approved by Cabinet in November 2003, sets a specific target of 10 000 GWh (0.8 million tonnes of energy) as the renewable energy contribution to the country's final energy consumption by 2013. The target corresponds to approximately 5% of the present total annual electricity generation, and will be implemented in three phases during the period 2004–2013. The strategy will need to be monitored to determine the effectiveness of the measures and technologies employed to meet the target. Renewable energy will be produced mainly from biomass, solar, and small-scale hydroelectricity plants, and will be used for power generation and non-electric technologies, such as solar water heating and biofuels¹⁰.

These national laws and policies will trigger a similar law reform process in provincial legislatures, as provinces translate them into procedures for implementation. Local government will also have to develop by-laws in accordance with national and provincial norms and standards.

3.2.2 International arena

It is not enough for South Africa to confine its environmental governance to the local or national level. Addressing international environmental problems requires the cooperation and coordinated response of other nations. This, in turn, calls for a coherent system of international environmental governance.

Global governance

The current, relatively loose, international system of environmental governance developed out of the 1972



United Nations Conference on the Human Environment in Stockholm, Sweden; the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, Brazil; and the 2002 World Summit on Sustainable Development in Johannesburg.

It is characterized by three basic elements³:

(1) it is a collection of intergovernmental initiatives, such as the United Nations Environmental Programme (UNEP), the United Nations Development Programme (UNDP), and other specialized agencies and commissions responsible for coordinating environmental policy at the international level

(2) it has a framework of international environmental law that has been developed over several decades, such as the Rotterdam Convention on Prior Informed Consent (PIC) of 1998 and the Stockholm Convention on Persistent Organic Pollutants (POPs) of 2001

(3) it has financing mechanisms such as the Global Environmental Facility (GEF) (which supports capacity-building to carry out treaty commitments and supplements national efforts towards sustainable development in poorer countries) and UN agencies and treaty secretariats that coordinate and carry out environmental efforts.

Together, these three components are meant to set priorities and facilitate steps to protect the world's environment and to further sustainable development. Most of these steps, however, must be implemented by individual nations themselves. South Africa has committed itself actively to international environmental governance by entering into multilateral environmental agreements and by its prominent role in the lead-up to and hosting of the 2002 World Summit on Sustainable Development.

Multilateral Environmental Agreements

Multilateral Environmental Agreements (MEAs) provide the global framework for governance in regions and countries (see Table 3.2).

Access to financing mechanisms

South Africa has been able to tap into various multilateral funding sources available to developing countries in order to meet its global environmental commitments. For example, US\$80 million in grant funding has been secured from the Global Environmental Facility for several globally significant environmental projects, such as:

- The Richtersveld Community Biodiversity Conservation Project
- The African Ivory Stockpile Programme
- The South African Wind Energy Programme

- The Maloti-Drakensberg Transfrontier Conservation and Development Programme
- The Southwest Indian Ocean Fisheries Project.

South Africa has also been accepted into the GEF Small Grants Programme, which unlocks a further US\$500 000 each year for community-based environmental projects.

World Summit on Sustainable Development

A most important event, which profiled South Africa's growing role in international governance, was its hosting of the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002.

While some argue that the WSSD resulted in distracting attention away from regular policy implementation (for example, causing the delay in the development of the National Strategy for Sustainable Development [NSSD] as well as of the National Action Programme to Combat Land Degradation), it gave the concept of sustainable development greater prominence within the discourse and thinking of government and other stakeholders. Furthermore, a variety of international commitments were negotiated in five priority areas: water and sanitation, energy, health, agriculture, and biodiversity and ecosystem management. Governments also approved two major negotiated documents: The *Johannesburg Declaration on Sustainable Development*, in which heads of state made broad commitments to make sustainable development a reality, and the *Johannesburg Plan of Implementation (JPOI)*, which spells out in some details the action required. South Africa played an important role in facilitating agreement on the JPOI among the signatories.

As host country, South Africa has remained involved in the implementation of the WSSD's outputs. The country chaired the 11th session of the UN Commission on Sustainable Development in 2003, during which the work programme for the realization of the WSSD goals was defined.

South Africa has committed itself at national level to meet the agreements reached at the WSSD, including the development of a NSSD, which will be an important tool for ensuring that environmental issues are addressed holistically and that environmental and biodiversity considerations are 'mainstreamed' into the formal economy. It will serve as a platform for strategic choices for the longer-term, and will provide decision-makers with the information and knowledge they need to support their development decisions. From the JPOI perspective, the NSSD is a framework that builds on the existing programmes, strategies, and interventions of all three spheres of government and multi-stakeholder forums.

Table 3.2: South Africa's engagement in Multilateral Environmental Agreements

Multilateral Environmental Agreement*	Status
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	Ratified: June 2003 (acceded)
Agreement on the Conservation of Albatrosses and Petrels	Signed and ratified: 6 November 2003
Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)	Acceded to and ratified by May 1994; came into force: 3 August 1994
United Nations Framework Convention on Climate Change	Signed: 15 June 1993, 27 August 1997 (although DEAT submission to parliament indicates 1994)
	Ratified: 29 August 1997
	Kyoto Protocol: acceded to in July 2002
Convention on Biological Diversity	Ratified: 2 November 1995. Biosafety Protocol currently under debate
United Nations Convention to Combat Desertification	Acceded to: June 1994; signed: 1995; ratified: 30 September 1997
Convention on International Trade in Endangered Species of Wild Life and Fauna	Ratified: 1973; came into force: October 1975
Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade or the 'Rotterdam Convention'	Signed: September 1998; ratified: 4 September 2002
Convention on the Conservation of Antarctic Marine Living Resources	Acceded to: September 1980; ratified: 1982
Protocol for the Protection of the Ozone Layer (Montreal Protocol)	Acceded to: 15 January 1990; ratified: 15 January 1990 (the Montreal Amendments to the Protocol (1997) have yet to be ratified)
Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the East and Central African Region and related Protocol (Abidjan Convention)	Ratified: 5 November 2002 (acceded)
Convention for the Protection, Management and Development of the Marine and Coastal Environment of the East African Region and related Protocols (Nairobi Convention)	Ratified: 5 November 2002 (acceded)
Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention)	Ratified: 10 July 1997
Stockholm Convention on Persistent Organic Pollutants	Signed: 21 May 2001; ratified: 4 September 2002
Southern African Developing Countries Protocol on Fisheries	Signed: 14 August 2001; ratified: July 2003
Southern African Developing Countries Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community	Signed: 18 August 1999; ratified: October 2003
Transfrontier Conservation Areas Initiative	
- Ai-Ais/Richtersveld Treaty	Signed and ratified: 1 August 2003
- Kgalagadi Transfrontier Park Agreement	Signed and ratified: 12 May 2000
- Greater Limpopo Transfrontier Park Treaty	Signed and ratified: 9 December 2002
- Lubombo Transfrontier and Resource Area (Lubombo Protocol)	Signed and ratified: 22 June 2000

*When a government representative signs an international convention on behalf of the country, a State becomes party to that convention. The convention is later ratified by the government, which signifies agreement to be bound by the convention. If the state does not sign the convention when it was open for signature, but later formally agrees to be bound by the convention, a government accedes to the convention.

Source: <http://www.environment.gov.za>; Urquhart (2002)⁷

The comprehensive N5SD is to be completed by the end 2006.

Other examples of South Africa's increasingly prominent role in international environmental governance include the following:

- South Africa is a founding member of the Group of Like-minded Countries with Mega-Biodiversity (the others include Mexico, Brazil, India, and China), set up in January 2002
- South Africa hosted the IUCN World Parks Congress in September 2003, hosted the XXVII Antarctic Treaty Consultative Meetings in Cape Town in 2004, and chaired the World Commission on Dams (from 1998 to 2000)
- South Africa is a member of the steering committee of the African Ministerial Conference on Environment (AMCEN), which played a key role in developing the Action Plan for NEPAD's Environment Initiative.

Regional and cross-border governance

Natural systems are not subject to the arbitrary political borders imposed by humans. The scarcity and disparity of access to resources such as water in southern Africa and the future implications of climate change make regional cooperation, interaction, and co-management increasingly important.

South Africa has played a meaningful part in developing the environmental components of NEPAD, which provides a framework for environmental action for African nations. Cross-border issues have a substantial influence on biodiversity and water resources, and South Africa and its neighbouring countries have pioneered the Transfrontier Conservation Areas concept of biodiversity protection. As a result, South Africa now shares protected areas with Namibia, Botswana, Zimbabwe, Mozambique, Swaziland, and Lesotho (see Table 3.2, Map 3.1 and Chapter 5 of this report). It remains to be seen whether or not Zimbabwe's political and economic instability will affect the viability of the Great Limpopo Transfrontier Conservation Area, but other areas are well placed to improve the protection of biodiversity in the region.

The co-management of water resources is critical for southern Africa, and South Africa interacts on water issues with countries both within and beyond Africa⁸ in ways that range from water-sharing agreements in international river basins with neighbouring countries, to arrangements for sharing technical information and other resources with developing and developed countries. Cooperation in southern Africa takes place within the framework of the Revised Protocol on Shared Watercourses in the Southern African Development Community. Several bilateral and multilateral commissions and committees have been established within this framework, including the:



Travelling through the Khalagadi Transfrontier Park. *Photography: South African Tourism*

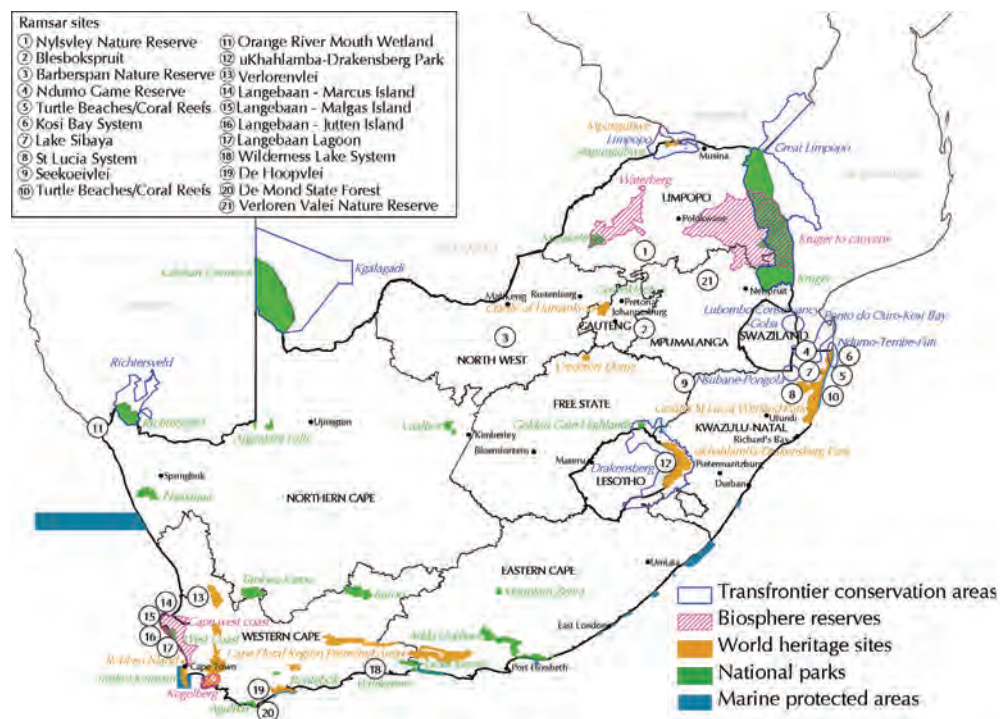
- Botswana/South Africa Joint Permanent Technical Water Committee
- Lesotho Highlands Water Commission (Lesotho, South Africa)
- Limpopo Basin Permanent Technical Committee (Botswana, Mozambique, South Africa, and Zimbabwe)
- Mozambique/South Africa Joint Water Commission
- Orange/Senqu River Basin Commission (Botswana, Lesotho, Namibia, and South Africa)
- Permanent Water Commission (Namibia, South Africa)
- Swaziland/South Africa Joint Water Commission
- Swaziland/Mozambique/South Africa Tripartite Permanent Technical Committee.

The key challenge, however, is to move beyond the spirit of cooperation and make delivery and implementation a reality.

3.3 PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

Meaningful participation by all sectors of society is crucial for effective environmental governance. Providing for public participation and input gives a voice to society and legitimacy to decision-making processes, whereas failing to provide for public input can lead to conflict and resistance. Internationally, and specifically within UN processes, civil

For effective public participation in environmental debate and decision-making, easy access to relevant, accurate, and up-to-date environmental information is crucial.



Map 3.1: Protected areas in South Africa

Source: Department of Environmental Affairs and Tourism (2005)

society activity has intensified¹¹ and governance styles have become more participatory¹². South Africa has followed this trend.

NEMA creates the framework for facilitating the role of civil society in environmental governance. It includes the National Environmental Advisory Forum, which advises the Minister on, amongst other things, appropriate methods of monitoring compliance with the principles in Section 2 of NEMA, and Environmental Management Cooperation Agreements. Through these mechanisms, government

can enter into an agreement with any person or community for promoting compliance with the principles in Section 2 of NEMA.

For effective public participation in environmental debate and decision-making, easy access to relevant, accurate, and up-to-date environmental information is crucial.

Participation, representativity, accountability, and access to information relevant to civil society, corporations, and



Energy discussion at the World Summit on Sustainable Development. Photography: ENB

other private sector actors are described below. Scant data are available, however, and this information gap needs to be addressed for future evaluations of the effectiveness of environmental governance in South Africa.

3.3.1 Citizen participation and representation in environmental issues

Since 1994, South Africa has extended participation to diverse voices from civil society, as shown by the consultative processes undertaken to compile the Constitution, the CONNEP process to develop the White Paper on Environmental Management Policy, the various institutions^b set up to promote participation around the country, as well as significant progress in the representation of women in parliament.

Substantial public participation has taken place in policy development, but less in decision-making and implementation¹². The participation of the poor, disadvantaged, and rural communities (including women, youth, indigenous peoples, and subsistence farmers), has, in the past, been insufficient and inappropriate¹³. These groups are severely constrained regarding access to information, to communication networks, to transport, and, thus, to participatory processes¹². However, greater emphasis is now being placed on engaging poor communities.

Box 3.4 Principle 10 of the Rio Declaration

Over a decade ago, in 1992, Principle 10 of the Rio Declaration articulated public access to information, participation in decision-making, and access to justice as key principles of environmental governance. A decade later, during the World Summit on Sustainable Development in Johannesburg in 2002, 100 governments reaffirmed these goals.

Source: United Nations, (1992)⁹

The location of environmental debates is also a useful indicator of participation. In practice, they tend to involve small groups of people, with the same representatives of government, NGOs, and business taking part each time. This means that the opinions or views expressed in public debates are those of a limited number of people, and debate seldom extends into broader civil society or government. This may be due to the inaccessibility and/or limited accessibility of information related to environmental issues, or there may be other reasons. These and other conditions outlined in this report highlight the importance of developing and implementing a consolidated framework and systematic approach to participation, and of tracking participation in environmental governance in ways that enable such trends and biases, as well as the effectiveness,

Table 3.3: Number of non-profit sector employees, by sector

Sector	Full-time employees	Part-time employees	Volunteers
Culture and recreation	27 729	307	70 740
Education and research	23 962	1 629	5 548
Health	39 494	1 225	15 577
Social services	81 692	12 066	50 450
Environment	21 098	2 039	9 818
Development and housing	55 113	1 464	43 935
Advocacy and politics	24 370	879	64 457
Philanthropic intermediaries	1 551	72	865
International activities	100	13	145
Religion	26 597	3 558	52 743
Business and professionals	3 305	62	2 713
Total	305 011	23 314	316 991

Source: Swilling & Russell (2002)¹⁵



“The establishment of the NEAF is one of the most important and concrete steps ever taken by Government to recognize the value of stakeholder partnerships in promoting environmental management and governance.”

**Marthinus van Schalkwyk,
Minister of Environmental Affairs
and Tourism**

Table 3.4: Areas of work of non-profit sector organizations in the environmental sector

Non-profit organization (NPO) type	Major areas of work	Number of NPOs	Total number of sub-groups
Environment	Environment	624	-
	Pollution abatement/control	-	-
	Natural resources conservation	-	165
	Environment beautification	-	459
	Animal protection	2 766	-
	Animal protection/welfare	-	269
	Wildlife preservation and protection	-	148
Veterinary services	Veterinary services	-	2 349

Source: Swilling & Russell (2002)¹⁵

performance, and other nuances of the public participation processes, to be detected and better understood.

Some of the obstacles to meaningful participation include limited capacity (both in government and civil society), limited access to information by marginalized groups, and limited funds for participation, particularly at the local level where the bulk of finances are allocated to activities connected with service delivery¹².

Non-profit organizations

It is difficult to measure the size and scope of South Africa’s non-profit organization (NPO) sector concerned with

environmental governance, but civil society involvement has improved dramatically and the movement to involve the public in issues of social importance and in influencing government decisions is growing¹⁴.

In 2002, there were about 98 920 non-profit organizations in South Africa, of which 53% are semi-formal community-based organizations (CBOs). South Africa’s civil society is as large (proportionally) and as vibrant as in all but a few advanced industrialized countries, while the non-profit workforce is well above the international average.

Environmental non-profit organizations accounted for 5% of the non-profit organizations’ workforce, which is more than in almost all of the other 27 countries studied (the average figure for other countries was 2%). (See Table 3.3)

The environmental non-profit organizations group is divided into two major areas: environment and animal protection. In each, three sub-groups were found (see Table 3.4). The major group with most non-profit organizations occurred in the veterinary sector.



Listening to what the public has to say at a recent fishers Imbizo.

Photography: Tony van Dalsen

3.3.2 The National Environmental Advisory Forum

The National Environmental Advisory Forum (NEAF) is a statutory body, established on 24 February 2005 in terms of Chapter 2 of NEMA. It is a multi-stakeholder advisory forum to provide the Minister with strategic advice on issues of environmental management and governance, and on appropriate methods of monitoring compliance with the principles set out in Chapter 2, Section 2 of NEMA.

Its members represent organized labour, organized business, NGOs, CBOs, women, the disabled, and youth, and they include people with relevant specialist skills and



knowledge. The forum had its inaugural meeting in May 2005. Some key priorities on which the NEAF will advise the Minister include:

- Genetically modified organisms
- The National Strategy for Sustainable Development
- Climate change
- Transfrontier parks
- Quotas and permits for coastal protected areas.

3.3.3 Access to environmental information

Access to environmental information is important because an informed public is more alert to environmental problems, more apt to challenge assumptions presented by government or by corporate decision-makers, and more capable of productive, constructive, and critical discussion of the issues³.

While Agenda 21 calls for nations to improve the quality

of and access to environmental information (see Box 3.4), several laws in South Africa govern the access to information, including the:

- Constitution
- Promotion of Access to Information Act (No. 2 of 2000)
- Promotion of Access to Administrative Justice Act (No. 3 of 2000)
- Protected Disclosures Act (No. 26 of 2000).

Section 31 of NEMA guarantees access to information on the state of the environment and threats to it. Furthermore, Section 16(5) of NEMA allows for access by the public to all environmental management and implementation plans.

The Promotion of Access to Information Act was passed in February 2001 and came into effect on 9 March of the same year, to make the right to information a practical reality, to promote democracy, and to promote the protection of human rights. It provides for the right of access to information, including the records of public and

“Every person is entitled to access to information held by the State..., and to the state of the environment and actual and future threats to the environment...”

NEMA, Section 31

Box 3.5 What the Johannesburg Plan of Implementation says about access to information

The World Summit on Sustainable Development Plan of Implementation recognizes the importance of having access to information. This is articulated in paragraphs 128–132 of the plan, which aims to:

- Ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further Principle 10 of the Rio Declaration on Environment and Development.
- Strengthen national and regional information and statistical and analytical services relevant to sustainable development policies and programmes
- Encourage further work on indicators for sustainable development by countries at the national level
- Promote the development and wider use of earth observation technologies (including satellite remote sensing, global mapping, and geographic information systems) to collect quality data on environmental impacts, land use and land-use changes, including through urgent actions at all levels to:
 - (a) Strengthen cooperation and coordination among global observing systems and research programmes for integrated global observations
 - (b) Develop information systems that make the sharing of valuable data possible, including the
 - (c) active exchange of Earth observation data
 - (c) Encourage initiatives and partnerships for global mapping
- Support countries, particularly developing countries, in their national efforts to:
 - (a) Collect data that are accurate, long-term, consistent, and reliable
 - (b) Use satellite and remote-sensing technologies for data collection and further improvement of ground-based observations
 - (c) Access, explore, and use geographic information by utilizing the technologies of satellite remote sensing, satellite global positioning, mapping, and geographic information systems
- Support efforts to prevent and mitigate the impacts of natural disasters, including through urgent actions at all levels to:
 - (a) Provide affordable access to disaster-related information for early warning purposes
 - (b) Translate available data, particularly from global meteorological observation systems, into timely and useful products.

Source: United Nations Department of Economic and Social Affairs, Division for Sustainable Development.
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm

private bodies, and requires all private and public bodies to compile a Section 14 Manual in three official languages containing information such as:

- A description of its structure and functions
- Sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records, and the categories of records held on each subject
- The latest notice regarding the categories of records of the body that are available without a person having to request access in terms of this Act
- A description of the services available to members of the public from the body and how to gain access to those services
- Postal address, telephone, fax number, web site address
- A description of the records of the body that are available in accordance with other legislation.

The Promotion of Access to Information Act applies to all private and public bodies including companies, close corporations, partnerships, trusts, sole proprietors, and even bodies corporate of residential complexes. It requires a Section 14 Manual to be updated and published at least once a year, and private and public bodies had to comply with the act by 31 August 2005. Although several environmental departments had published Section 14 manuals, at the time of finalising this report the DEAT had not published its manual.

In a recent study, *Closing the Gap*, published in the United States of America in 2002 by the World Resources Institute, a global coalition of 25 civil society groups called the Access Initiative measured the public's "access to participate" (that is, its ability to participate) in decisions about the environment – including access to environmental information – in nine countries including South Africa. The Access Initiative focussed on access to four critical types of environmental information:

- Information about day-to-day environmental quality (such as air and water quality)
- Information about environmental trends
- Information about pollution from industrial facilities
- Information about emergencies and risks.

These categories present a minimum standard for public authorities to use in providing environmental information. South Africa scored strongly (on a scale from weak to strong) in all three measures regarding legal guarantees to environmental information (namely, constitutional guarantees of access to information, legislation addressing access to information, and

legislation addressing access to environmental information specifically). Despite the general strength of legal provisions for access to environmental information, however, the implementation of these laws were found to be weak amongst the surveyed countries. Few countries require public entities to maintain a central environmental information service and few require public disclosure of industry reports on compliance and enforcement. South Africa and the United States were the only countries that actively disseminated information on drinking water quality to the public.

State of the environment reports

State of the environment reports are important tools for satisfying the legal requirements for access to information. Governments use these to inform citizens about their nation's environmental status and long-term environmental trends. The DEAT started a state of the environment initiative in 1997, which resulted in the publication of the first national report in 1999, as well as state of the environment reports for the metropolitan areas of Cape Town, Durban, Johannesburg, and Pretoria. The metropolitan initiative formed part of the "Cities State of the Environment Report on the Internet", a project supported by the International Council for Local Environment Initiatives (ICLEI).

In 2002, the DEAT initiated a Provincial State of the Environment Programme (with half of the funding coming from the Norwegian Agency for Development Cooperation [NORAD] and the other half from the Medium Term Expenditure Framework [MTEF] of the DEAT). The Department subsequently also provided funding to selected municipalities for purposes of state of the environment reporting, and invested in training and capacity-building in the area of environmental assessment and reporting, and in developing tools (such as standardised indicators) to disseminate environmental information on the Internet.

In August 2005, the National Youth Commission, in partnership with the DEAT, launched a process to develop a youth version of the National State of Environment Report. When completed at end 2006, this report will help to raise awareness among the youth about environmental governance. (See Box 3.6.)

Apart from the Free State and KwaZulu-Natal, each of South Africa's provinces has completed a state of the environment report. Since 2000, some 14 local, metro and district municipalities have initiated state of the environment reports. As custodians of the River Health Programme, the Department of Water Affairs and Forestry, the DEAT, and the Water Research Commission are promoting access to river quality information through State of River Reports. To date, reports for more than

Box 3.6 How are state of the environment reports used?

In a survey conducted in 2005¹⁶, respondents indicated that state of the environment reports are used to:

- Facilitate land-use management decision-making
- Develop course material for river rehabilitation training
- Identify provincial needs and/or priorities for the National Water Resources Strategy and Internal Strategic Perspectives of the Department of Water Affairs and Forestry
- Provide data for academic research and decision support
- Obtain general information on environmental status and trends informing policy decisions
- Acquire information and general knowledge
- Provide baseline information for the integrated development plan (IDP) and for the formulation of the Integrated Environmental Policy
- Raise awareness as a communication tool
- Inform the strategic planning process conducted for the Maloti-Drakensberg Transfrontier Project.

Youth version of the National State of the Environment Report

It is important to engage young people in environmental issues. The national state of the environment project provided the ideal opportunity to inform young people of pressing environmental issues, so the South African National Youth Commission and the Department of Environmental Affairs and Tourism agreed on an initiative with youth groups

that would culminate in a Youth Version of the South African National State of the Environment Report. It is meant to develop activities in the areas of capacity building, environmental awareness, and information exchange, and to facilitate the involvement of young people in decision-making mechanisms.

The process began with a national youth environmental conference from 16–18 August 2005 in Gauteng. More than 100 youth attended the conference where they were informed of the contents of the specialist studies commissioned for the National State of Environment Report. Following the youth conference, provincial editorial teams were established with the objective of reaching out to youth in their respective provinces, providing editorial input to translate the contents of the specialist studies into a youth friendly version of the national report, and to obtain contributions (such as case studies, artworks, poems, and photographs) from youth organizations, schools, and young people. In the months that followed, most provinces hosted provincial workshops to discuss and debate the issues and to elicit contributions from young people. The provincial editorial teams then forwarded text comments to the national coordinator, which were subsequently used to draft the various chapters of the youth report.

The involvement of youth in this process stimulated environmental debate, built the capacity of youth involved, helped to relate local concerns with the emerging national picture, and provided an opportunity for youth action on relevant environmental issues. The Youth State of the Environment Initiative is aligned to the United Nations Environmental Programme's long-term strategy for engaging young people in environmental activities.

“Young people should be at the forefront of global change and innovation. Empowered, they can be key agents for development and peace. If, however, they are left on society's margins, all of us will be impoverished. Let us ensure that all young people have every opportunity to participate fully in the lives of their societies.”

United Nations
Secretary-General Kofi Annan
on International Youth Day,
12 August 2001



The concept of sustainable development is explained at the national youth conference with the aid of a sign language interpreter.

Photography: National Youth Commission

Source: Department of Environmental Affairs and Tourism (2005)¹⁶

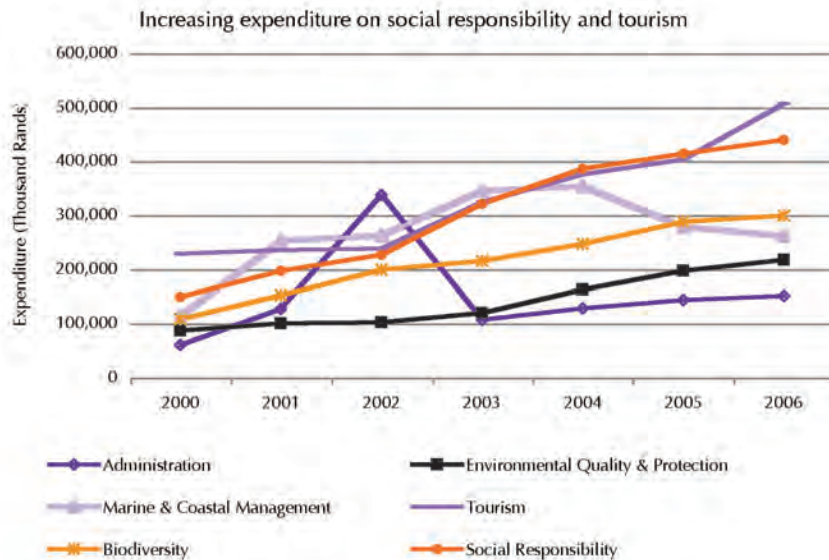


Figure 3.1: Department of Environmental Affairs and Tourism programme expenditure estimates, 2000–2006

Source: National Treasury (2005)¹⁷

nine river systems have been published. In total, more than 25 state of the environment reports have been published in South Africa during the last seven years (see Annexure 1).

Sectoral state of the environment reports are gaining recognition and increasingly being used as a tool by government, with a State of Forest Report to be completed in 2006, a State of Coast Report (part of the WSSD implementation plan) and a State of Air Report nearing completion at the time of finalizing this report.



Online information systems such as AirOnline will improve access to environmental information.

<http://www2.nilu.no/airquality/>

Development of registers and information systems

Information about pollution at industrial facilities is often the most difficult for the public to access. Emission inventories, such as a Pollutant Release and Transfer Register (PRTR), provides important information about the extent to which facilities are complying with other standards that limit releases into air and water. Developed countries including Australia, Canada, Japan, Norway, the United Kingdom, and the United States of America have an operating PRTR, while Mexico and many countries in Europe have taken steps towards establishing one. The attention being paid to PRTRs reflects a growing interest worldwide in promoting greater corporate environmental accountability at the industrial facility level. It also illustrates the contribution of international agreements and collaboration in promoting access to specific types of information, such as information about facilities' performance.

Although South Africa currently does not have a PRTR, significant progress has been made in the development of a National Waste Information System (WIS), which will contain information on the quantities, types, and sources of waste of the country's landfill sites. The WIS, which is expected to be operational in 2006, supports the improvement of integrated waste management in South Africa through the dissemination and use of reliable waste information, thereby contributing to the protection of the environment and human health. It is planned that the public will have Internet access to data and standard reports based on the information contained in the WIS.

Significant progress has also been made in developing a digital register of protected areas for the implementation of Section 10 of the National Environmental Management: Protected Areas Act (No. 57 of 2003). This register will be an Internet-based tool allowing for regular and timely reports on the status of South Africa's protected area estate^c. At the time of finalising this report, a prototype register has been developed, and is to become operational in 2006. The system allows for data-capturing and for the database to be kept current through the relevant implementing agencies of the Protected Areas Act.

3.4 RESPONSIBLE AND ACCOUNTABLE GOVERNANCE

Improved environmental governance is attainable only if government employs sufficient people with the necessary skills to carry out its functions effectively, and only if it secures sufficient funding to give effect to the policy established in the *White Paper on Environmental Management Policy*. This section gives a broad overview of financial and human resources that support environmental governance in the DEAT, provincial counterparts and local authorities.

3.4.1 National level

Financial resources

Changes in budgetary allocation can indicate political commitment to overall environmental issues. The financial resources allocated to the environment also present implementation constraints. The changes in budgets allocated for priority programmes within the DEAT, as provided below, give a rough estimate, as there are other sources^d of public spending directed at environmental protection.

The DEAT budget has traditionally been below 0.2% of national budget expenditure¹². The overall DEAT budget allocation for programmes increased steadily from just over R1 billion (actual rands) in the 2001/2002 financial year to R1.7 billion in the 2005/2006 financial year (see Figure 3.1).

This budget is expected to grow to just over R2 billion in 2007/2008.

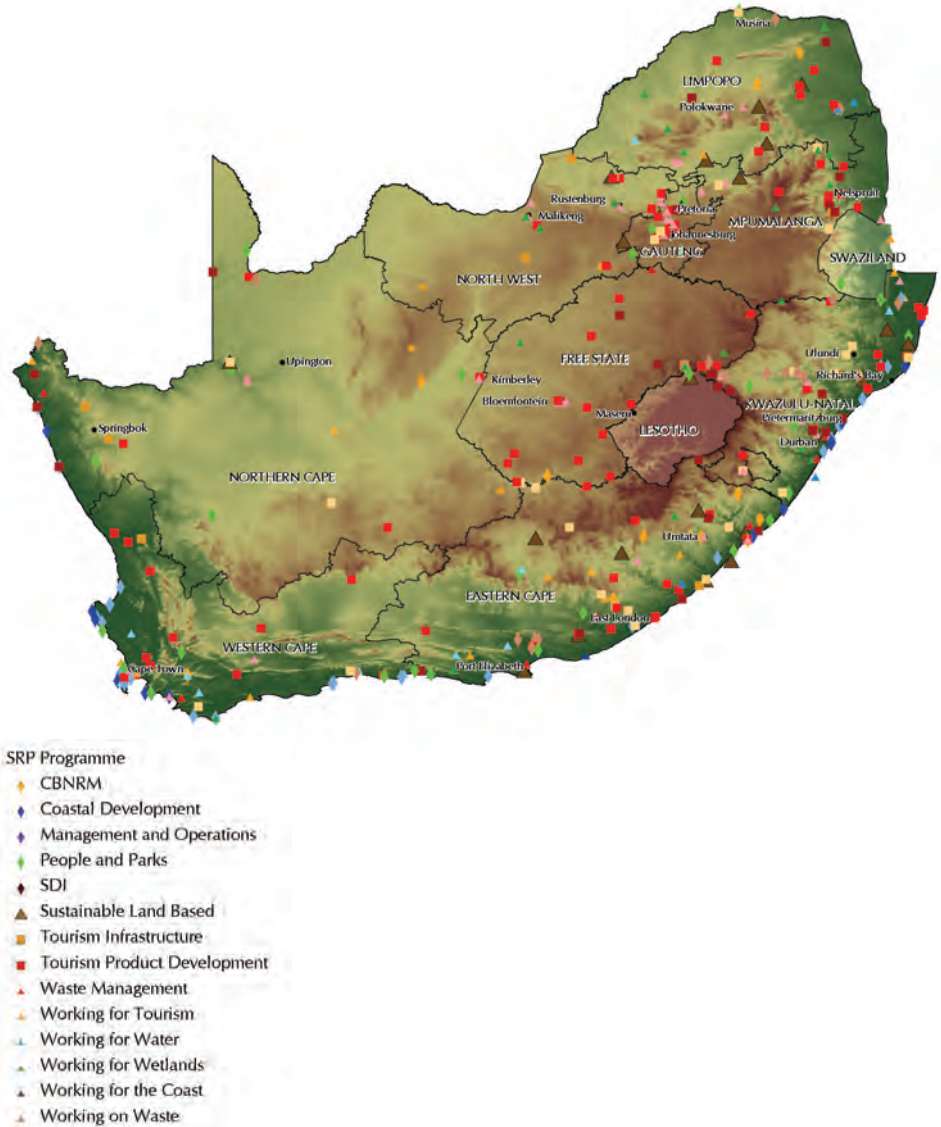
Transfers and subsidies make up a significant component of the department's budget, taking up almost 70% of the total allocation in 2005/2006. These transfers go to a range of bodies promoting tourism and managing national parks and gardens, for fisheries, for social responsibility projects, and for the weather service. The proportion of the total DEAT is set to stay more or less the same.

The fastest growth during this period is within the DEAT's Social Responsibility Programme, mainly because the Department's share of the Expanded Public Works Programme has increased*. This Social Responsibility Programme promotes job creation, community training, and infrastructure development by implementing projects in sustainable land-based livelihoods, coast care, people and parks, tourism, and waste disposal and recycling projects (see Map 3.2). These projects are mostly in the rural and urban nodes prioritized by government as part of its Integrated Sustainable Rural Development Programme and Urban Renewal Strategy.

There is significant growth in the budgets allocated for tourism and environmental quality and protection. The increased tourism budget is linked to the fact that South Africa is one of the world's fastest growing tourist destinations. The growth in the environmental quality and protection budget is due to the implementation and enforcement of pollution and waste management policy and legislation, and the expenditure for the biodiversity programme is increasing steadily. (The dramatic increase in budget allocation for administration in 2002 covered costs associated with hosting the World Summit on Sustainable Development.)

Staff numbers

The number of DEAT members of staff is expected to increase by 113 people (11.2%) between 2001 and 2006, with the biggest increase within the tourism and social responsibility programmes (78% and 62%, respectively; see Table 3.5). This also matches the expenditure forecast for the same two programmes. Administration, environmental quality protection, biodiversity and conservation will have a more moderate increase of 13%, 22% and 13% respectively. The marine and coastal management programme currently has most staff and the increase for the period will only be 0.7%. An interesting aspect of this information is that the total personnel cost will increase by 100%, while total increase in staff in numbers is only 11.2%. The unit cost will increase from R111 000 to R199 000 which equals a 79.3% increase. This may be attributed to a strengthening of the management component in the department rather than an increase in salaries.



Map 3.2: Social Responsibility Projects

Source: Department of Environmental Affairs and Tourism (2005)

Skills training

Expenditure on training has stayed relatively constant over the past five years, but per capita expenditure varies significantly between programmes, ranging from less than R1 000 per person per year to more than R3 000 per person per year for staff providing administrative support (see Figure 3.2). The biodiversity programme is the only one in which spending per person has increased over the past five years, while most of the other programmes have reduced spending since 2003/2004.

Skills training in various aspects of environmental work has also taken place at provincial level. For example, DEAT conducted provincial workshops to raise awareness and offer training on Local Agenda 21 and environmental indicators, and it developed guidelines covering a wide range of topics, including environmental impact assessment, waste collection, and recycling. There is an urgent need, however, to develop the skills and capacity of local government so as to put into operation the concept of



Table 3.5: Department of Environmental Affairs and Tourism personnel numbers and employee cost per programme

Programme	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
	Number of employees				
Administration	217	217	222	229	245
Environmental Quality and Protection	103	103	105	108	126
Marine and Coastal Management	558	558	562	562	562
Tourism	36	36	52	60	64
Biodiversity and Conservation	55	55	53	55	62
Social Responsibility	37	37	36	38	60
Total	1 006	1 006	1 030	1 052	1 119
	R 000's				
Total personnel cost	111 450	127 304	139 390	172 531	223 164
Average cost per employee	111	127	135	164	199

Source: National Treasury (2005)¹⁷

sustainable development in all planning and service delivery activities.

The DEAT also announced in August 2005 that R10 million would be set aside in 2006 for an environmental awareness campaign to implement more environmentally friendly practices. Existing awareness initiatives will be combined to give the single campaign greater prominence.

Donor assistance

The United Nations target for official foreign aid from developed member nations is 0.7% of their gross national products. With the exception of Nordic countries and the Netherlands, foreign aid levels fall short of this goal (averaging approximately 0.3% in 2002) and have generally declined over the past decade. South Africa is not aid-dependent, but is nevertheless a beneficiary, receiving foreign aid for the environmental sector in particular and, since 1994, for a variety of environmental programmes. Donor assistance to the DEAT constituted less than 4.5% of its annual budget in 2004/2005¹⁸, having declined from 20% in the 1999/2000 budget¹² (see Figure 3.3). (The sudden increase in 2002/2003 was due to South Africa's hosting of the WSSD, and the peak in 2005/2006 relates to Denmark's funding of the National Waste Management Strategy Implementation Project¹.) The decline in donor assistance is set to continue over the next couple of years and is expected to drop to a total of about R9 million by 2007/2008.

Non-governmental organizations overall are experiencing significant barriers in accessing foreign aid support for advocacy, watchdog, and programme-orientated work¹², as most foreign aid funding is being restricted to projects with a service emphasis.

Budget reform

The environment sector has engaged in a budget reform process in order to articulate its needs and the constraints it experiences in giving effect to policy, and to articulate what ought to be taken into account when government

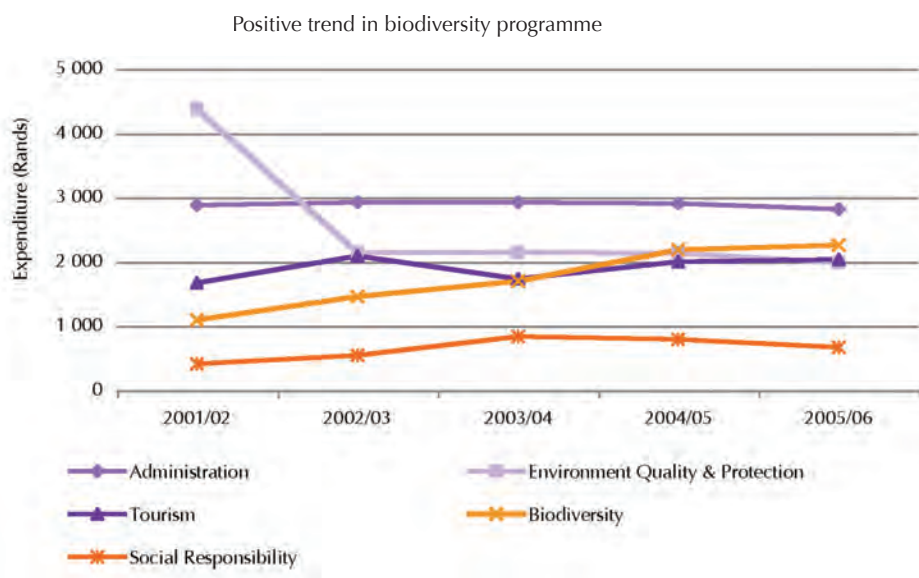


Figure 3.2: Department of Environmental Affairs and Tourism expenditure on training per person per programme

Source: National Treasury (2005)¹⁷



sets budget priorities and decides how to allocate resources.

These reforms include the development of a common budget structure for the sector, the drafting of an environmental chapter for the Intergovernmental Fiscal Review (IGFR), the development of a medium-term sector plan, and a policy review of the key areas of work in the sector. The IGFR environmental chapter analyses expenditure and budget trends and the contribution of provincial budgets to the sector's development. The medium-term plan sets out the sector's implementation priorities and challenges for the next Medium Term Expenditure Framework period (2006/2007–2008/2009). The environmental sector plan will ensure that the implementation priorities and plans of national, provincial, and local departments are aligned in future.

3.4.2 Provincial government

A common theme in this report is evident: South Africa has a progressive governance framework for environmental management at national level, but the lack of enforcement and implementation of policy and legislation on the ground is a major hindrance to ensuring environmentally sustainable development. This section sketches the major challenges and what has been done so far.

The provincial and local spheres of government are its implementation arms. Successful enforcement and implementation of the environmental management framework, therefore, depends largely on the resources, skills, and related effectiveness of these spheres¹².

Provincial government plays an important part in setting provincial norms and standards, and assists local governments in conducting activities to manage and protect the environment. Local government has a constitutional mandate to conduct its business in a way that is consistent with sustainable development principles (see Box 3.7) and to integrate environmental issues into its planning processes. In addition to the constraints faced at national level, however, both provincial and local government experience constraints that interfere with the countrywide enforcement and implementation of environmental policy.

In most provinces, environmental staff members are over-committed and have little capacity left for the activities required for coordinated governance.

The situation varies across provinces. Although most provinces have declining environmental budgets, Gauteng, the Western Cape, and KwaZulu-Natal are relatively better off in terms of people and experience, and have relatively adequate budgets to do their work¹⁹. Other provinces (such as the Northern Cape) have an extremely limited staff complement, so effective functioning is not possible. Provinces need increasingly to strengthen the monitoring and the evaluation and reporting framework, to ensure

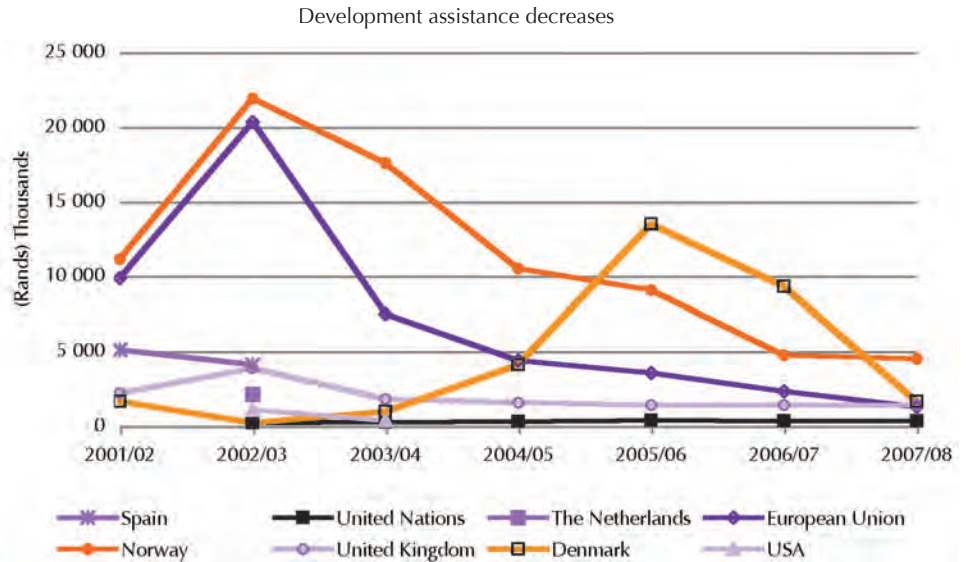


Figure 3.3: Summary of official development assistance expenditure on South Africa per source country

Source: National Treasury (2005)¹⁷

compliance with legislation for environmental management.

Historically, conservation has been the core function of provincial environmental departments. Since 1994, however, the environmental function of provinces has been extended, resulting in comprehensive restructuring and a reprioritization of funds. Waste management, environmental impact assessment, and air quality management are just some of the environmental management functions that have received priority in recent years. Furthermore, provincial responsibilities with regard to marine and coastal management are on the increase, especially in the areas of compliance and enforcement.

Currently, provincial Departments of Environmental Management are structured differently across provinces. Some provinces combine environmental management with agriculture in a single department, while others have combined it with economic affairs. Five of the provincial environmental departments have formed a combined department with tourism.

This review has isolated the expenditure on environmental management⁹ from the rest of the departmental budgets and excludes expenditure on administration.

Expenditure on environmental management

Total provincial expenditure on environmental management has increased by 45% overall between 2001/2002 and

Overall, environmental management functions receive less than one half of a percent of provincial budgets.

2004/2005, from R656 million to R955 million (see Table 3.6). The rate of increase varies among provinces, with some provinces (such as Limpopo and the Northern Cape) starting off a very low base. KwaZulu-Natal accounts for 29% of environmental expenditure, just over double that of Mpumalanga, which has the next largest expenditure of R139 million, and an average share of 14.5% of provincial expenditure in 2004/2005. Overall, environmental management functions receive less than one half of a percent of provincial budgets.

Salaries and transfers constitute the bulk of expenditure in the environmental sector, together accounting for 61% of expenditure in 2004/2005. Compensation of employees is the largest component, comprising 27% of expenditure.

Vacancies

The development of human resources has been identified as one of the main challenges facing the environmental sector, particularly in enabling successful implementation of new environmental legislation. The high vacancy rates across provinces (see Table 3.7) are therefore a cause for concern. The high number of vacancies is due to a combination of factors, including high staff turnover and lack of funding, which in turn affect the ability of environmental departments to retain qualified staff.

Capacity constraints at the provincial level can have significant impact in two areas: in the processing of EIAs and in the compilation of waste management plans.

The aim of EIAs is to guide development and to minimize adverse impacts rather than to prevent development. As such, they play a major role in ensuring the sustainability of projects while sheltering society and ecosystems from negative externalities that might otherwise be associated with developments. Although provinces are currently improving systems and reducing turnaround times with regard to the processing of EIAs, there is a significant number of awaiting processing. (See Table 3.7.)

Waste management plans are a new requirement, and the lack of capacity at present is indicated by the fact that in no province have all waste management plans been completed. Mpumalanga, KwaZulu-Natal, and North West have seen the most progress, however, with half of all waste management plans completed. No waste management plans have been completed in the Northern Cape. (See Table 3.7.)

Skills training

The growing profile of the environmental sector, together with new legislation and the identified capacity challenge, highlights the need to improve skills within the environmental sector. According to Table 3.7, training does not receive sufficient attention in all provinces, and the expenditure on training per staff member also varies considerably, ranging from R161 in the case of North West Province to more than R5 000 in Gauteng and KwaZulu-Natal.

Table 3.6: Provincial expenditure on environmental management, 2001/2002–2007/2008

Province	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008
	Outcome			Preliminary Outcome	Medium-term estimates		
	R 000's						
Eastern Cape	80 619	95 576	109 338	107 443	116 312	124 496	135 813
Free State	33 643	57 522	77 484	72 181	62 900	66 050	69 400
Gauteng	37 449	120 679	63 334	69 654	82 299	87 204	92 542
KwaZulu-Natal	226 937	232 953	256 632	279 019	362 296	405 088	444 387
Limpopo	3 400	39 690	46 233	53 548	46 641	55 520	70 371
Mpumalanga	121 743	136 982	134 344	139 200	135 074	130 575	168 436
Northern Cape	9 311	12 029	14 411	17 736	22 546	25 653	28 565
North West	60 859	72 124	96 614	98 116	84 097	81 237	85 574
Western Cape	82 157	103 929	105 010	118 377	140 137	143 969	142 771
Total	656 118	871 484	903 400	955 274	1 052 302	1 119 792	1 237 859

Source: National Treasury provincial database

3.4.3 Local government

Implementation failure at local level limits the effective functioning of the environmental governance framework⁷ and the progress that can be made towards sustainable development. Decentralization and the delegation of environmental management functions to the lowest possible level is called for by Agenda 21, but it places increasing responsibility on local government, and expands its primary role from that of being mainly a service provider to becoming an active development agent⁷. The delegation of functions should be consistent with the Constitutional imperative for effective government. In terms of cooperative environmental governance (that is, the requirement for different spheres of government to work together), local government is now also obliged to be responsible for:

- Implementing environmental policies, plans, and programmes of national and provincial government
- Ensuring alignment of Integrated Development Plans (IDPs) and provincial Environmental Implementation Plans (EIPs)
- Ensuring that Integrated Development Plans comply with NEMA principles.

Given the practical constraints, this is a tall order. The environmental framework does not extend fully to local government, so politicians and senior officials are not clear about what their mandate is for environmental management. Furthermore, there is an imperative for them to deliver services. Consequently, insufficient budgets are allocated to environmental functions. The result is that there is a lack of trained enforcement officers, and environmental and sustainability principles have, on the whole, not been incorporated into local planning processes.

With the exception of some metropolitan municipalities (such as the City of Cape Town, Johannesburg, and Ekurhuleni, and some of the municipalities in Mpumalanga), little capacity-building has been achieved at local level. The levels of government closest to the people are consequently weak in general, and in environmental management in particular⁷. In a recent training course for councillors and senior officials in local government in Mpumalanga Province, for example, the following problems were noted²⁰:

- Politicians, officials, and the general public have little understanding or awareness of environmental issues and of the extent to which human well-being depends on the environment
- Cooperative governance is not effective within local authorities and among different levels of government
- Confusion exists as to the mandate of local government in environmental management, and, in particular, regarding the responsibilities of the different categories of municipality

Box 3.7 The Constitutional objectives of local government

The Constitutional objectives of local government include:

- the sustainable provision of services to communities
- promoting social and economic development
- ensuring a safe and healthy environment
- encouraging community involvement in local government matters.

Source: Urquhart, (2002)⁷

- Provinces in some cases lack confidence in local authorities and often overrule their decisions
- There is a high staff turnover rate among officials, a lack of succession planning, and little sharing of skills and information
- Many municipalities have no staff positions dedicated to environmental management

Without cooperative governance (see section 3.6), roles and responsibilities can overlap and become indistinct, the system is fragmented and uncoordinated, and no adequate and efficient implementation and enforcement can take place.

Capacity-building at all provincial and local government levels is particularly critical, because the shortage of skills and infrastructure in environmental management is coupled with an increasing emphasis at the local level for integrated planning and for greater involvement in environmental functions⁷. Increasing the numbers of environmental advisors and technical staff, especially at district municipal level, is being considered to address these challenges.

Improved compliance and enforcement will depend on clarity about responsibilities being assigned, increased budgetary and human resources, and a greater general awareness among politicians of the environment's crucial contributions to human well-being.

Expenditure on environmental management

Although the local sphere shares constitutional responsibility for environmental management in South Africa, there is currently no information on the expenditure by local government on environmental management functions, of which waste management is expected to be the dominant component. Future reviews should therefore

Although the local sphere shares constitutional responsibility for environmental management in South Africa, there is currently no information on the expenditure by local government on environmental management functions, of which waste management is expected to be the dominant component.

Table 3.7: Provincial vacancies, number of Environmental Impact Assessments processed, waste management plans completed and training cost per staff member in 2004/2005

Province	Percentage (%) of vacant posts as at 31 March 2005	Number of EIAs processed during 2004/2005	Number of EIAs awaiting processing & outstanding	Percentage (%) of waste management plans completed	Training cost (Rands)	*Cost per staff member (Rands)
Eastern Cape	35	480	336	14	-	-
Free State	55	113	242	20	495 000	918
Gauteng	-	2 555	1 220	33	1 543 000	5 611
KwaZulu-Natal	-	764	609	50	354 000	5 057
Limpopo	20	-	-	-	-	-
Mpumalanga	48	339	117	60	199 000	299
Northern Cape	50	136	189	-	186 000	949
North West	-	310	374	60	15 000	161
Western Cape	12	742	864	10	867 000	4 090

Source: National Treasury provincial database

include a greater emphasis on expenditure throughout the entire environmental sector, including local government.

With the exception of Limpopo, for which a breakdown of transfers by programme could not be obtained, there appears to be great volatility and uncertainty in the size of transfers to local government for environmental management. Transfers currently consist mainly of project-related costs, such as clean-up operations, or spatial

development frameworks, and are not intended to cover operating costs.

In light of new legislation, which has provided a clearer and expanded role for local government, there is a need to ensure that local municipalities are able to secure sufficient funding to pursue their mandated objectives over the medium term, either through increased transfers or by developing their own revenue sources. There is also an

Table 3.8: Transfers to local government for environmental management

Province	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008
	Outcome			Preliminary Outcome	Medium-term estimates		
	R 000's						
Eastern Cape	-	-	-	147	377	343	364
Free State	-	-	-	96	-	-	-
Gauteng	13	5 235	13 150	-	-	-	-
KwaZulu-Natal	743	1 575	1 031	4 660	3 299	3 542	3 780
Limpopo	-	-	-	-	-	-	-
Mpumalanga	-	-	-	-	269	135	145
Northern Cape	-	-	-	144	148	162	175
North West	6	8	8	14	563	476	495
Western Cape	5 005	10 485	9 000	8 950	7 250	7 320	7 360
Total	5 767	17 303	23 189	14 011	11 906	11 978	12 319

Source: National Treasury provincial database

urgent need to address skills and capacity in the municipal environmental sector, particularly with regard to air quality and waste management.

3.4.4 Challenges

Having completed a process of legislative reform, the environmental sector in South Africa is entering a new phase and is moving towards implementation of the new legislation, including compliance and enforcement (see Box 3.8). Improved training and capacity building is a priority throughout the sector, both for provincial and municipal officials. In many cases provincial departments have only recently completed a process of restructuring and are still in the process of undertaking budgetary reform. Ongoing budgetary reform in the sector should provide greater clarity on interprovincial expenditure trends in future.

The key challenges facing the sector over the medium term centre on budget and capacity issues. Concerns have been raised about the need to identify adequate funding to enable the successful implementation of new legislation.

Three main challenges were identified by the environmental sector in the Medium Term Environmental Plan. The first includes the need for cooperative governance and improved coordination, in order to implement the suite of new environmental management and sustainable development laws. Regulatory, monitoring, and compliance frameworks need to be coordinated, even as the consistent application of standards, procedures, and services across the country needs to be ensured. Successful reform of the budget process (including agreement on and implementation of a common reporting format and programme definitions) is essential for enabling meaningful regulation and monitoring of the sector.

The second challenge concerns the need to harness and develop the financial, technological, and human resources necessary to enable the implementation of new legislation. Concerns have been raised about the lack of clear funding mechanisms for many of the new obligations stemming from recent legislation.

The final challenge recognises the complex and fragmented nature of environmental management and sustainable development in South Africa, which are concurrent competencies and also concern multi- and cross-sectoral functions. There is therefore an ongoing need to harmonize planning and reporting systems amongst all actors in the environment sector.

3.5 INTEGRATION AND COOPERATION

Chapter 3 of South Africa's Constitution states that the three national, provincial, and local spheres of government are distinctive, interdependent, and interrelated²¹. Because

the environment is a complex, cross-cutting area of responsibility, national and provincial governments have concurrent legislative competence for its management (that is, both spheres are constitutionally responsible for it).

Responsibility for managing the environment is highly fragmented because, at present, it is allocated to a wide range of agencies in all spheres of government⁷. A system of cooperative governance was needed across and among spheres of government so, to promote its implementation, institutions and procedures were established (under Chapter 3 of the NEMA) as outlined below.

3.5.1 The Committee for Environmental Coordination

The Committee for Environmental Coordination (CEC), a statutory body, was established by the NEMA to promote the integration and coordination of environmental functions by the relevant organs of state, and, in particular, to promote the achievement of the purpose and objectives of environmental implementation plans and environmental management plans.

The CEC comprises the Director-General of DEAT, who acts as chairperson, the directors-general of those national departments that conduct activities affecting the environment, heads of department of the provincial environmental departments, and a representative from SALGA (South African Local Government Association). To assist the CEC in the performance of its function, sub-committees on law reform and biodiversity have been established, as well as on environmental management plans and implementation plans.

The CEC sub-committee on Law Reform aims to build an integrated, coherent regulatory framework for environmental management at all levels of government²². The horizontal (across the national departments) and vertical (between and within national and provincial departments) alignment of environmental legislation will promote its effective implementation. The CEC sub-committee has reviewed numerous pieces of national and provincial legislation, including those from the water, land, agricultural, and minerals and energy sectors. It remains to be seen to what extent this cooperative approach to the drafting of legislation helps when practical implementation of laws is under way.

3.5.2 Environmental Management and Implementation Plans

The NEMA requires national and provincial government departments whose activities involve environmental management to prepare environmental management plans (EMPs), and departments (including those at provincial



Box 3.8 'Green Scorpions' and environmental courts

To improve the general lack of compliance and enforcement of environmental legislation and to fight environmental crime successfully, a new DEAT directorate dealing specifically with the enforcement of pollution and waste legislation was set up in September 2003. A recent amendment to the NEMA, the National Environmental Management Amendment Act (No. 46 of 2003), provides for employment of environmental compliance and enforcement officials (Environmental Management Inspectors, or EMIs) at all three levels of government, with wide-ranging powers to carry out compliance monitoring and enforcement activities.

The designation of EMIs establishes a strong basis for the future monitoring of management and of environmental law enforcement. The inspectors are expected to have the powers, amongst other things, to: conduct routine inspections, question people, inspect books and records, take samples and execute search warrants. Natural resources protection and conservation, pollution, and waste management are a few examples of areas in which the EMIs

actively operate. Often referred to in the media as the 'Green Scorpions', this unit has already facilitated several arrests.

A further development was the establishment of the Environmental Court in Hermanus in February 2003 as a joint initiative between the Director of Public Prosecutions in Cape Town, Marine and Coastal Management, and Department of Justice and Constitutional Development.

The court focuses on abalone poaching and operates at the level of a regional court. It therefore has legal jurisdiction within the regional division of the Western Cape. During its first 18 months, it was monitored, evaluated, and found to be successful, having been in session for 229 days and having finalized 166 cases. Of these, 125 resulted in guilty verdicts, with a conviction rate of almost 75%. A second court was established in Port Elizabeth in March 2003. Since South Africa's first environmental court was established in Hermanus in 2003, conviction rates have improved from 10% in 2003 to more than 70% in 2005.

level) whose activities may affect the environment to prepare environmental implementation plans (EIPs). The purposes of these plans are to:

- Coordinate and harmonize environmental policies, plans, programmes, and decisions among departments so as to minimize the duplication of procedures and functions and to promote consistency in the exercise of functions that could affect the environment
- Give effect to the principle of cooperative governance
- Secure the protection of the environment across South Africa as a whole
- Prevent unreasonable actions by provinces in respect of the environment that may affect the economic or health interests of other provinces or the country as a whole.

EMPs focus on policies and mechanisms to ensure that other bodies comply with departments' environmental management mandate, while EIPs focus on ways in which general policies and functions take account of environmental management⁷.

Prepared every four years, EIPs and EMPs are important ways of addressing the fragmented nature of environmental management in South Africa, both horizontally among departments and vertically among spheres or levels of government. Progress on the implementation of these plans is reported within four months of the end of each financial year (see Box 3.9). According to the DEAT, the first cycle (2000–2004) is in place and all first-edition plans (that is, the first versions) have been submitted²³.

3.5.3 MINTEC

The Ministerial Technical Committee (MINTEC) is a structure set up to facilitate coordination between the national DEAT and provincial environmental departments. Several working groups meet regularly to discuss and advise on issues of biodiversity and heritage, impact management, pollution and waste management, and planning and reporting.

3.5.4 Government clusters and Cabinet committees

The South African government is structured in a series of clusters and forums to promote and facilitate cooperative governance and relationships among the respective spheres of government. Four Ministerial Cabinet clusters promote programme integration at national and provincial level. These include the Economic Investment and Employment cluster; the Governance and Administration cluster; the International Relations, Peace and Security cluster; the Justice, Crime Prevention and Security cluster; and the Social cluster.

The DEAT is represented on all the clusters to ensure improved cooperation on developmental issues. In terms of Ministerial Cabinet Committees, DEAT is formally represented on the Economic Cabinet Committee and the International Relations, Peace and Security Cabinet Committee. The DEAT also attends the other Cabinet Committee meetings when the need arises.

Despite these institutions and processes and budgetary



increases, finances and personnel still appear to be insufficient to cater for the additional demands of cross-cutting cooperative governance. This is certainly the case in provinces and municipalities, and where there is already variable administrative capacity for managing existing programmes. Progress towards cooperative governance in South Africa is a major challenge, particularly given the shortage of skills and infrastructure within provincial and local spheres of government.

3.6 CORPORATE GOVERNANCE, ACCOUNTABILITY, AND TRANSPARENCY

Successful environmental governance depends largely on the extent to which environmental issues are effectively integrated into and addressed by a variety of sectors.

The corporate sector has made substantial progress with the development of a governance code of conduct (see Box 3.11), and has also made some progress in improving environmental governance, as shown in the following summary.

3.6.1 Socially Responsible Investment (SRI) Index

The Johannesburg Securities Exchange (JSE) has developed criteria to measure the 'triple bottom line' performance (see Box 3.11) of companies in the FTSE/JSE All Share

Index. In May 2004, it launched the first Socially Responsible Investment (SRI) Index, which is built on four pillars of sustainability, namely: corporate governance, the economy, the environment, and society. Currently, 49 companies are listed on the SRI Index.

Because listing is voluntary, the sample population on which data⁶ are based is heavily weighted towards the leading performers in the field of corporate sustainability, and the results from a random sample of listed companies would produce lower, less positive results. It is known, however, that holding, property, and investment companies have extremely limited awareness of environmental impacts and issues and have no significant institutional structures in place to deal with them.

Most companies dealing in the material economy (that is, those that handle, process, and transform materials/substances) are addressing environmental concerns at some level and nearly three-quarters of the companies assessed on the SRI Index (71%) had enshrined environmental principles in a policy or formal mission statement. Only 55% of the companies listed, however, have formal policies in place to ensure that their suppliers are paying attention to sustainability, and there is little evidence that these policies are influencing supplier behaviour.

Most of the companies claim to have all the elements of environmental governance and management in place, but it was difficult to assess their effectiveness in practice. Of these companies, 84% give responsibility for the environment to a senior executive and/or a board committee. Moreover, the particular line function or person

Box 3.9 Lessons from the first edition Environmental Implementation and Management Plans (EIPs/EMPs)

The development of the first edition Environmental Implementation Plans (EIPs) and Environmental Management Plans (EMPs) has revealed that, because of concurrent responsibilities for the environment in different government departments, many functions overlap and areas of responsibility are not clearly enough defined, which creates difficulties for implementation and management.

The situation is being addressed through analysis of the functions of different government departments whose work involves managing and/or affecting the environment; assessing ways in which these functions can become clearer and more streamlined; and clarifying their roles and responsibilities in respect of the environment.

Special attention is being paid to:

- Understanding the execution of functions in sectors that deal with water and agriculture
- Pollution and waste management
- The activities of the key impacting sectors of housing, transport, trade, and industry.

This analytical exercise seeks to clarify roles and responsibilities so as to identify for which law reform is needed. The need for the Department of Provincial and Local Government to compile an EIP has been raised, and recommendations have been made for government agencies and parastatals also to compile EIPs.

Gauteng's first edition EIP has made practical

recommendations to improve cooperative governance. They include the requirement that NEMA principles and sustainable development issues be considered in the development of policy and legislation, and that the business plans of departments whose activities will in future significantly affect the environment include a formal review of NEMA compliance before being submitted to provincial cabinet for approval. These proactive responses in Gauteng are ascribed to continued support by the province's environmental department, as well as activities that it has undertaken to prove the value of integrating environmental considerations in dealing with key issues such as waste and housing.

Source: Urquhart (2002)⁷



The interior of the new Constitutional Court, Johannesburg, South Africa.

Photography: IMAGES24.co.za / Beeld / Halden Krog

assigned responsibility for environmental issues does not necessarily have the technical competence or capacity to deal with them. It was not possible to identify any South African-based company that demonstrated technical environmental competence in any of the executives assigned to oversee environmental management and governance.

Another indicator of effective environmental governance is reflected in reports by the companies on environmental

matters. Data suggest that, whereas environmental governance and management are embedded in the processes and policies of many of the companies listed on the SRI Index, public reporting by independent, external bodies on a company's environmental performance is not. This may be because the companies do not fully understand the environmental impacts of their activities, or because they feel uncomfortable about reporting on their environmental impacts, or a combination of both. Many companies (59% of those listed on the SRI Index), despite having environmental governance structures in place, do not disclose performance against environmental targets. 54% do not provide quantitative and comparable data when disclosing performance against environmental targets.

It is clear from the assessment of the SRI Index listed companies that while governance of environmental issues is in place on paper, reporting on these issues remains insufficient, as does the demonstration by these companies to stakeholders and the public of their management of environmental matters. This could be because their understanding of their impacts on the environment is incomplete, or because their environmental management systems are not fully operational, or a combination of the two.

The sector in which a company operates influences the manner in which it deals with environmental issues. Companies that have a direct and obvious environmental impact, and that are answerable for that impact (such as mining companies), appear to have implemented environmental management and governance systems to a greater extent than companies with a lower or less obvious direct impact (such as retail outlets).

3.6.2 Improving corporate environmental governance

To entrench environmental governance and management within companies further, a range of actors and actions need to be mobilized. The public needs to become more

The public needs to become more engaged with regard to the environmental performance of companies in which they have an interest.

Box 3.10 South Africa's code of corporate governance

The King Committee on Corporate Governance Report of March 2002 provides a code that aims to promote the highest standards of corporate conduct in South Africa. It mirrors international trends by including the 'triple-bottom-line' approach, which embraces economic, environmental, and social aspects of a company's business, and which makes non-financial reporting into a criterion of good governance.

When formulating strategies, companies now need to consider the effects of their activities on stakeholders who are not necessarily contractually linked to the company. This corporate code of governance applies to all listed companies, banks, financial and insurance entities, and parastatals. It was brought into being because companies needed to understand and adopt the principles set out in Chapter 1 of the National Environmental Management Act. Apart from the regulatory need to apply these principles, the King Report concluded that applying them constitutes good corporate governance because they "reflect a holistic approach to the environment, social justice and the protection of rights".

Source: Urquhart, (2002)⁷

Box 3.11 Environmental governance in the corporate sector: key statistics and activities

ISO 14001

ISO 14001 is the standard set by the International Standards Organization that specifies the requirements of environmental management systems (EMS), to assist organizations to achieve environmental and economic goals. The overall aim of ISO 14001 is to support environmental protection and prevention of pollution as socio-economic needs are being met.

- By July 2005, 176 companies and 240 company sites had accredited EMSs through the South African Bureau of Standards (SABS)²⁴
- In total (including sites not certified through SABS), there has been an increase in certification: there were 82 sites in 1999; 126 in 2000; 169 in 2001; 264 in 2002; and 378 in 2003²⁵.

International sustainability indices

*Dow Jones Sustainability Index*²⁶

The Dow Jones Sustainability Indexes (DJSI), launched in 1999, are the first global indices tracking the financial performance of the leading sustainability-driven companies worldwide.

- Four South Africa companies (two in the financial and two in the industrial sector) were listed on the DJSI by 30 September 2004.

*FTSE4Good*²⁷

The FTSE4Good Index Series has four tradable and four benchmark indices, representing Global, European, US, and UK markets.

- Five South African companies are currently listed on the FTSE4Good index.

Cleaner production mechanisms

Waste Minimization Clubs

The Waste Minimization Club (WMC) concept was developed in the early 1990s in Europe and the United Kingdom, to reduce the environmental impact of industry operating in the same geographical area and discharging to the same sewer (or receiving waterbody). It was thought that this approach could be used in South Africa to promote sustainable industrial development.

- Since 1998, 18 WMCs have been formed in all parts of South Africa in the industrial, commercial, and public sectors. Since then, most of them have closed owing to budgetary constraints.
- One WMC has transformed itself into an

association, the KwaZulu-Natal Metal Finishing Waste Minimization Association. Its membership was 70 (made up of individuals and organization) in February 2004²⁸.

Corporate participation in international initiatives

Responsible Care

Responsible Care is the global chemical industry's environmental, health, and safety (EHS) initiative. It aims for continuous improvement by meeting and going beyond legislative and regulatory compliance, and by adopting cooperative and voluntary initiatives with government and other stakeholders.

- In South Africa, 99 companies are signatories to the Responsible Care initiative.
- The Chemical and Allied Industries' Association (CAIA)²⁹, the custodian of Responsible Care in South Africa, has 140 member companies.

Extractive Industry Transparency Initiative

United Kingdom Prime Minister Tony Blair announced the Extractive Industries Transparency Initiative at the Johannesburg World Summit on Sustainable Development in 2002. It aims to increase transparency in transactions between governments and companies in extractive industries (such as mining, oil, and gas).

- Three companies on the list are prominent in South and southern Africa⁵⁰. More South African companies could participate in the initiative, given the expansion of South African investments into other African countries.
- Ten further South African mining houses could also participate in the initiative. It is important for South African companies to participate in such initiatives because doing so contributes to transparency and accountability.

United Nations Global Compact

The Global Compact is a voluntary corporate citizenship initiative of the UN Secretary General, offering facilitation and engagement through several mechanisms: policy dialogues, learning, local structures, and projects.

- Eight South African companies participate in the Global Compact⁵¹.
- More South African corporations need to participate, as the initiative helps them to share lessons and best practice, and to

engage locally, regionally, and internationally on issues relating to human rights, labour, the environment, and corruption and bribery.

Global Reporting Initiative

The Global Reporting Initiative (GRI) is a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable sustainability reporting guidelines. These are for voluntary use by organizations for reporting on the economic, environmental, and social dimensions of their activities, products, and services. These guidelines has improved the quality of sustainability reporting in South Africa.

- Up to July 2005, 25 companies (more than half of them in the financial and mining sectors) had registered with the GRI secretariat as users of the guidelines⁵².

World Business Council for Sustainable Development

The World Business Council on Sustainable Development (WBCSD) is a coalition of 175 international companies, drawn from 35 countries and 20 major industrial sectors. Membership of the WBCSD is by invitation of the Executive Committee to companies committed to sustainable development and to promoting the role of Eco-Efficiency, Innovation and Corporate Social Responsibility (CSR).

- Two South African corporations (one in energy and one in paper) are members⁵³.

*National Business Initiative (Sustainable Futures)*³⁴

The Business Council for Sustainable Development (BCSD) South Africa was formally incorporated into the National Business Initiative (NBI) in 2003, and was subsequently renamed the Sustainable Futures Unit (SFU) within the NBI. This NBI unit covers:

- Information services – developing and disseminating case studies from business that highlight sustainability issues and best practice
- Leadership development – providing a business leaders' forum for debates and exchange of information
- Projects, including:
 - Sustainable livelihoods and capacity building
 - Sustainability reporting
 - Greenhouse protocol.

Source: Government of South Africa (1997)⁴

engaged with regard to the environmental performance of companies in which they have an interest – either a direct financial interest (such as an investment); or an interest based on the fact that a particular company is located in the same neighbourhood as their community; or as an employee. Few South African companies have been taken to task over poor environmental performance, and even fewer understand their full environmental ‘footprint’. Where companies have in fact been challenged by external stakeholder groupings – and the number is increasing – they tend either to be companies with significant environmental impacts, usually located close to neighbouring communities, or companies wanting to exploit resources in environmentally sensitive areas that have large and influential supporter bases. An example of the former is the ongoing environmental dispute in the South Durban area, where local communities and the oil sector have ‘engaged’ about the effects of industrial pollution on human health over the last decade. Two examples of the latter are the dune mining in St Lucia proposed by Richards Bay Minerals, and Sasol’s coal mining projects. In both cases, affluent pressure groups contributed to the fact that neither project was given the go-ahead. In the case of Sasol, the matter was decided in court.

Institutional investors are especially well-placed to exert pressure on companies, since they are so heavily invested in listed companies. But such investors need to familiarize themselves with environmental issues and begin asking the right questions of companies.

In South Africa, the environment is not yet a strong enough issue to ensure support for better environmental governance. To drive change in company behaviour, institutional investors need greater understanding of the company’s environmental effects and of the risks these pose to an investment. Certainly, if the Public Investment Commissioner decided that environmental issues were important, one would expect to see changes in company behaviour. It is therefore important to position environmental concerns on the agenda of the institutional investors.

Internationally, companies are beginning to realize that their environmental risks are significant and many organizations are taking the necessary steps to ensure sound environmental governance. The Equator Principles, for example (which offer guidelines for sustainable development), are a combined initiative of the world’s leading private lending institutions. They have adopted the World Bank’s environmental and social Safeguard Policies as a way of managing their risk profiles, and they reduce the environmental damage caused by projects in which they are involved by making their loans or their funding support conditional on compliance with these Safeguard Policies.

From a regulatory perspective, companies that are required to comply with environmental laws and regulations probably do so already, or knowingly do not. The new

environmental legislation following from the NEMA has brought greater clarity to government, business, and civil society about environmental rights, responsibilities, and liabilities. Over the past five years, it has obliged companies to establish internal environmental governance structures.

The combination of legislative changes and the new Green Scorpions unit conveys the message that the authorities will actively tackle serious cases of environmental malpractice. These new conditions, coupled with increased awareness amongst stakeholders and investors, are a significant force in the drive for better environmental governance.

Effective environmental governance within companies will be achieved by the combined forces of stakeholder groups, effective enforcement of the law, and the impact of the investment community on company behaviour.

3.7 CONCLUSION AND RECOMMENDATIONS

Under the previous state of environment reporting period (for the five years up to 1999), broad frameworks were put in place for environmental governance in South Africa and the overall policy and legislation were put in place to ensure that natural resources and ecosystems would be managed in fair and sustainable way. Since then, environmental governance work has focused on more specific issues (such as protected areas, biodiversity, and air quality) and on strengthening environmental governance in provincial and local spheres of government and in the private sector.

While policy and legislation are, broadly speaking, in place, implementation and enforcement have been inadequate, particularly at provincial and local government levels, where a suite of constraints hinder progress toward sustainable development. Local government politicians and officials need training in environmental and sustainable development concepts and issues.

Encouragingly, civil society and the private sector are increasing their participation in environmental management, and environmental information has been more widely available to the public in the past decade, although public consultation processes still need to be improved.

A robust framework and system need to be established for monitoring environmental governance and for ensuring that it is implemented in the private sector and across all spheres of government.

We also need to collect information that tells us how effective is our governance of natural resources, as without it we will not be able to ascertain where and how to take corrective action. Future reporting needs, well ahead of time, to identify and involve the institutions that are mandated to track the qualitative aspects of

environmental governance (early on in the process and well ahead of future state of the environment reports). Part of this data-gathering process would require identifying in advance the indicators that provide a broad overview of the extent and depth of a country's performance.

NOTES

- a. Countries with gross domestic product (GDP) per capita between US\$5 869–\$12 673.
- b. For example the Human Rights Commission, Independent Electoral Commission, National Youth Commission, and the Commission on Gender Equality.
- c. In heritage terms, a country's national assets are referred to as its 'estate'.
- d. There are additional sources of public funding directed at environmental protection in the departments of Water Affairs and Forestry, Agriculture, Land, Health, Minerals and Energy, and Defence.
- e. The Public Works Programme is a large, government-wide programme aimed at employment creation and improvement of services. Like other departments, the DEAT receives a share of funding from this wide-ranging programme for its Social Responsibility Programme.
- f. <http://www.nwmsi.co.za/>
- g. This includes, for example, land management and planning, natural resource management, coastal management, environmental education, and transfers to provincial parks boards, but excludes tourism-related functions.
- h. SRI provided research and analysis on the environmental governance of South African companies listed on the Johannesburg Securities Exchange South Africa. <http://www.jse.co.za/sri/>

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