

NATIONAL STATE OF THE ENVIRONMENT PROJECT

ENVIRONMENTAL GOVERNANCE

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3. ENVIRONMENTAL GOVERNANCE

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ENVIRONMENTAL GOVERNANCE AT A GLANCE

A number of new policies and new pieces of legislation have been formulated since the previous state of the environment report. A new and comprehensive environmental compliance monitoring and enforcement capacity was established in the Department of Environmental Affairs and Tourism. Since hosting the World Summit on Sustainable Development, South Africa is playing an increasingly prominent role in international environmental governance.

Since 1999, there has been a steady increase in budget allocations for environmental management at national level. A comprehensive budget reform process is underway for the environmental sector, which includes the development of a medium term sector plan. The first cycle of environmental management and implementation plans was successfully concluded.

There seems to be an increased emphasis to involve poorer communities in public participation processes, and the National Environmental Advisory Forum was established in early 2005. State of the environment reporting has been rolled out to all spheres of government and several sectoral environmental status reports have been completed during the last couple of years. Legal provisions for access to environmental information is strong but the implementation of these laws is weak.

Corporate environmental governance is gaining momentum with 49 companies currently listed on the Social Responsibility Index of the Johannesburg Stock Exchange. However, most companies struggle to report to the public on environmental impacts or performance against environmental targets.

Capacity/resource constraints at all levels, but specifically at the local municipal level, broader access to environmental information such as emission data, environmental justice, and integrating environmental considerations into sectoral policy and activities, remain challenges for effective environmental governance.

3.1. INTRODUCTION

3.1.1. What is environmental governance?

Environmental governance refers to the processes of decision-making involved in the control and management of the environment and natural resources. It is also about the manner in which decisions are made – are they made behind closed doors or with input from the broader public? Principles such as inclusivity, representivity, accountability, efficiency and effectiveness, as well as social equity and justice, form the foundation 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, inappropriate decisions can be made with catastrophic environmental consequences, even with the best possible intentions.

Box 3.1: What is governance?

“the system of values, policies 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: UNDP (2004)¹

Although governments are important players in how 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, trade associations and professional associations influence the way companies do business by, for example, promoting cleaner processes. Governance also includes consumers especially when our individual choices and actions influence public policies or affect corporate behaviour.

Environmental governance is only effective if it leads to fair and sustainable management of ecosystems². Very often, weak governance causes environmental degradation. Likewise, the lack of security over resources, resource scarcity and degradation fuels political strife, particularly in Africa. Improving the processes and institutions we use to make important environmental decisions, will bring better results, with less environmental impact 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, given the breadth and depth of the subject. Quantitative data needs to be supported by qualitative information that provides a deeper understanding of the effectiveness of environmental governance. As far back as 1997, good environmental governance was identified as a critical success factor for environmental management in South Africa. The White Paper on Environmental Management provides us with 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 inter-departmental co-ordination;
- The institutional responsibilities for regulating environmental impacts and promoting resource exploitation should be separated;
- People should have access to information, and
- There needs to be institutional and community capacity building.

The World Resources Institute³ has defined seven elements of environmental governance. These elements have many similarities with those identified in the White Paper on Environmental Management and provide a useful framework of issues for monitoring environmental governance. An eighth element that covers the integration of environmental issues into other sectors (mainstreaming) can be added. An interpretation of environmental governance performance in South Africa against these elements is presented in Box 3.2. In the remainder of this chapter, some of the above aspects are discussed further.

Box 3.2: Eight elements of environmental governance in the South African context

1. Institutions and law

Who makes and enforces the rules for using natural resources? South Africa's policy framework is based on co-operative governance, in which the enforcement of environmental law and policies is a 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 is that there is insufficient and inappropriate engagement with poor, disadvantaged or rural communities⁴. The Access Initiative 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. There is a general trend 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? The right to information is provided for by the Constitution along with the Promotion of Access to Information Act (No. 2 of 2000). In addition, specific provisions in the National Environmental Management Act support the promotion of access to environmental information. In addition, there is a host of international obligations that require reporting on progress on the implementation of international agreements. For example, the new National Environmental Management: Air Quality Act (No. 39 of 2004) requires new pollution permits to be issued. There have been two successful cases in the courts dealing with public access to information regarding the go-ahead for development projects. These cases are the Pebble Bed Modular Reactor (PBMR), and information related to the release of Genetically Modified Organisms (GMO) field trials. There is provision for Government to be taken to court for not delivering or protecting 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. South Africa upholds the right to property in its Constitution. The issue of land reform (including restitution) in South Africa aims to restore control and ownership of resources (depending on the nature of the claim) to the claimant group.

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. At present, the possibilities of a carbon tax, and property rates rebates for environmental improvements by landowners are being considered.

7. Science and risk: *How are ecological and social sciences incorporated into decisions on natural resources use to reduce risks to people and ecosystems and identify new opportunities?* South Africa has good scientific capacity, comparable to that of any developed country. Through the Environmental Impact Assessment (EIA) process, scientific knowledge 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?* The Committee for Environmental Co-ordination (CEC) is the primary statutory body for integration of environmental issues in different resource based departments and levels of government. It has been recognized that legislation is needed in order to enhance intergovernmental co-operation. Interestingly, the CEC represents the development of a mechanism to deal with intergovernmental issues, especially conflicts over different economic, social and environmental interest. 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 on the environment. The drafting of Environmental Implementation and Management Plans aims to ensure that there is co-ordination and harmonization of environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment. Despite these mechanisms being in place, in practise the CEC has not fulfilled its obligations. The National Strategy for Sustainable Development, currently being developed, will aim to integrated environmental issues into all sectoral activities.

Source: Government of South Africa (1997)⁵

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

International measures of environmental governance provide useful ways in which to measure 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 its 2001 TAI evaluation of nine countries, some of the successes achieved in South Africa include the following⁶:

- 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; and
- South Africa's legislation encourages public participation in decision-making – the legislation contains requirements for notice and comment periods in decision-making at both sectoral policies and project-level activities.

Areas needing improvement include:

- The printed media does not promote environmental issues sufficiently;
- Notification procedures do not sufficiently consider the illiterate or all languages of the interested and affected parties;
- Participation in monitoring of environmental performance after a record of decision has been issued for a development, does not take place;
- 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 and a manual for members of the public to find out what information is currently held by the respective public or private body;
- Insufficient awareness exists amongst SA citizens of the rights they have, due to lack of training or newspaper reporting;
- The internet sites of the respective departments are not fully developed to ensure that each person can access information on for example administrative claims, or the procedures surrounding the Access to Information Act; and
- Industrial reporting is still voluntary and information on facility emissions is not easily accessible.

Yale Environmental Sustainability Index (ESI)⁷

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; and
- Global Stewardship.

South Africa scored 0.15 on Environmental Governance, with the average value for its peer group^a being 0.12 and was ranked 46 out of 146 countries. Interestingly the governance ranking of our neighbouring countries was as follows: Botswana 17th, Namibia 57th, Zimbabwe 103rd, and Mozambique 106th.

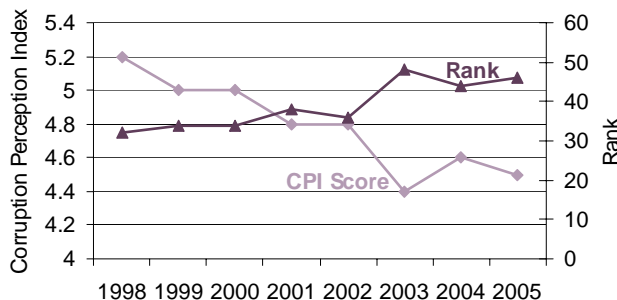
Corruption Perception Index

Transparency International (TI) is an international coalition of civil society, business and governments committed to combating corruption with a central principal in the fight against corruption

^a Countries with GDP per capita between \$5,869-\$12,673

being to promote access to information. Chairman Peter Eigen at TI said in an interview in October 2004 that “corruption in large-scale public projects is a daunting obstacle to sustainable development, and results in a major loss of public funds needed for education, health care and poverty alleviation, both in developed and developing counties”.

In TI’s annual Corruption Index, 106 countries out of 146 scored less than 5 – with 0 being “highly corrupt” and 10 being “highly clean”. Between 1998 and 2000, South Africa scored above 5, but has since been losing its position on the scale (Figure 3.1). This is reflected in South Africa’s overall rank that moved from position 32 in 1998 to 46 in 2005 – showing an increase in corruption on the TI index. South Africa’s most recent score, in 2005, was 4.5, higher than the world average of 4.11. It was ranked 3rd in Africa behind Botswana (32nd) and Tunisia (43rd).



Source: Transparency International⁸

Figure 3.1: Corruption Perception Index for South Africa

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 we have the right to an environment that is not harmful to our health and well-being. Following South Africa’s first democratic elections in 1994, the Consultative National Environmental Policy Process (CONNEPP) was launched in 1995. The result of this process was the White Paper on National Environmental Management, published in 1997. Having established a solid policy foundation, government published new legislation in 1998 empowering it to implement the policy. The National Environmental Management Act (No. 107 of 1998) (NEMA) established the concepts of participatory, co-operative and developmental governance⁹.

Following the release of NEMA, the Department of Environmental Affairs and Tourism (DEAT) embarked on a Law Reform Programme in order to provide a consolidated legislative framework for environmental management in South Africa. The new suite of legislation, developed under NEMA, is aimed at promoting sustainable development and has wide-ranging implications for national, provincial and local spheres of government. The new suite of legislation has moved away from general policy and broad legislation, like NEMA, towards more specialized legislation to tackle particular resource issues such as biodiversity and air quality.

A short overview of the key pieces of legislation and other legislative developments since 1999 is presented below (all chapters in Part II discuss relevant policy and legislation – refer to these for more detail). A more comprehensive list of key pieces of legislation from other

national departments that have close direct links with the environmental management function is presented in Table 3.1.

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

Department	Act	Objective
Agriculture	The Conservation of Agricultural Resources, 1983 (No. 43 of 1983)	To conserve the natural agricultural resources of the Republic by, <i>inter alia</i> , maintaining the production potential of the land and the combating and prevention of erosion.
	The Fertilizers, Farm Feeds, Agricultural Remedies Act, 1947 (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, 1983 (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, 1997 (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, 1998 (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, 1997 (No. of 1997)	To provide a regulatory framework for local authorities to supply water and sanitation services in their respective areas.
	The National Forest Act, 1998 (No. 84 of 1998)	To provide for sustainable forest management and the restructuring of the forestry sector.
	The National Veld and Forest Fire Act, 1998. (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, 1970 (No. 63 of 1970)	To provide for the conservation, use, management and control of land situated in mountain catchment areas.
Land	The Development Facilitation Act, 1995 (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, 2002 (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, 1999 (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, 1996 (No. 29 of 1996)	Provides for the identification of hazards and elimination, control and minimization of risks relating to health and safety in mines
Health	The Hazardous Substances Act, 1973 (No. 15 of 1973)	To provide for the control of substances which may cause injury or ill-health to or death of human beings by reason of their toxic, corrosive, irritant, strongly sensitising or flammable nature or generation of pressure.
Arts, Culture, Science and	National Heritage Resources	To introduce an integrated and interactive system

Department	Act	Objective
Technology	Act, 1999 (No. 25 of 1999)	for the management of national heritage resources

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

One of the most substantial improvements to environmental governance is reflected in the passing of the National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEMBA). The Act provides the framework, norms and standards for the conservation, sustainable use and equitable benefit-sharing of South Africa's biological resources. It takes a more comprehensive view of biodiversity, in that it instils an ecosystem approach to planning and management and requires the 'mainstreaming' of biodiversity into sectoral policy and planning. NEMBA 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 as part of the National Biodiversity Strategy and Action Plan currently being developed as part of our obligations as a party to the Convention on Biological Diversity (refer to Chapter 5 on Biodiversity and Ecosystem Health).

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

The Protected Areas Act came into force on 1 November 2004. The Protected Areas Amendment Act (No. 31 of 2004) deals with issues relating to national parks. In essence, the Act provides for the protection and management of ecologically viable areas representative of our biological diversity and natural landscapes and seascapes. The Act seeks to increase local level management, control and decision-making around protected areas. The Act's primary aim is to establish greater co-operation between communities on the one hand and between government agencies and the private sector on the other hand. It also proposes a new system of protected areas, linking various kinds of protected environments to replace the existing fragmented system, and allows for the inclusion of private land into the system of protected areas.

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

The new Air Quality Act came into force in December 2004 and replaces the outdated and ineffective Atmospheric Pollution Prevention Act (1965). It provides for a more comprehensive decision-making and management framework for air pollution (refer to Chapter 8 on Atmosphere). The Act acknowledges that many areas of South Africa are not conducive to a healthy environment for people, and furthermore that the burden of health impacts 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 substances have harmful effects on the environment. The Act provides the basis for setting both ambient air quality and emission standards, which will be made in consultation with national, provincial, and local government partners. These standards will directly and indirectly benefit our health. An important standard for air quality dealing with ambient limits for common pollutants (SANS 1929) was published in January 2005. This standard is likely to replace the transitional standards provided for 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

The DEAT launched the Climate Change Response Strategy in October 2004. The strategy was approved by Cabinet in September 2004, and outlines how South Africa should respond to climate change. For the financial year 2005/6, the Department will be conducting intensive sector specific consultation with the view of 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 and Land Affairs, and Minerals and Energy. This

brought national and international leading scientists together with policy-makers in order to develop material for South Africa's Second Communication under the UNFCCC. It was attended by a high level political delegation including the Deputy President, and ministers of the abovementioned departments, and members of parliament. The Deputy President mentioned that climate change considerations will be incorporated into national growth strategies and policy.

Due to the crosscutting nature of climate change, the department has established four formal stakeholder committees, which inform and co-ordinate climate change issues, including the implementation of the Climate Change Response Strategy.

White Paper for Sustainable Coastal Development in South Africa

The White Paper was adopted in April 2000. It sets out a vision for the coast, and principles, goals and objectives for coastal management, together with 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 optimize the economic use thereof, while protecting our environment. The proposed Bill aims to provide a legal and administrative framework that will promote co-operative, co-ordinated and integrated coastal development. It provides for important interventions that will preserve, protect and enhance the status of the coastal environment as the heritage of all, ensure coastal resources are managed in the interests of the whole community, and ensure there is equitable access to the opportunities and benefits derived from the coast. The proposed Bill will be submitted to Cabinet shortly.

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 impacts 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 (SEA) to be used where appropriate. New regulations for impact assessment have been drafted and are aimed at streamlining 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 easier than previously, without appropriate consideration for environmental sustainability. This amendment will repeal all provisions of the current outdated Environment Conservation Act (No. 73 of 1989) which currently controls the EIA process. The EIA regulations also provide for the formulation of environmental management frameworks for designated geographic areas that allow for more pro-active decision-making regarding the approach and choice of development initiatives.

The National Water Resource Strategy

The Department of Water Affairs and Forestry 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 the protection, use, development, conservation, management and control of South Africa's water resources.

As required by the Act, a National Water Resource Strategy was developed and consequently approved by Cabinet on 1 September 2004. With the adoption of the National Water Strategy by Cabinet, South Africa has 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 National Water Resource Strategy sets out the ways in which South Africa aims to achieve integrated water resources management in South Africa (refer to Chapter 6 on Inland Waters). It describes how the water resources of South Africa will be protected, used, developed, conserved, managed and controlled in accordance with the requirements of the policy and law. The National Water Resource Strategy also provides a platform for the essential

collaboration and co-operation among all departments in all spheres of government involved in economic development. It is seen as an important input to the evolving National Spatial Development Framework, helping to provide a better understanding of the contribution that water can make to development in all departments' areas of activity.

A vital element of the National Water Resource Strategy is the progressive decentralization of the responsibility and authority for water resources management to 19 catchment management agencies and, at a local level, water user associations. These institutions, representative of water users and other stakeholders, will facilitate effective participation in the management of water resources in their areas. It will also enable the Department of Water Affairs and Forestry to move from its present multiple roles as operator, developer and regulator to become the sector leader, policy maker, regulator and monitor. The Department will lead the creation of the new institutions, which will take a number of years, and support and guide them in the execution of 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 - pure drinking water and safe sanitation - to all people, but especially to the poor and previously disadvantaged¹⁰.

Energy Efficiency Strategy

Another 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 our economy. The vision of the Strategy is to contribute towards affordable energy for all, and to minimize the negative effects of energy usage upon human health and the environment. This will be achieved by encouraging sustainable energy development and energy use through efficient practices. The Strategy sets a national target for 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 readily achievable¹¹.

White Paper on Renewable Energy

Renewable energy will in future make a more substantial contribution to the energy mix in South Africa. The White Paper on Renewable Energy, approved by Cabinet in November 2003, sets a specific target of 10 000 GWh (0.8 Mtoe) renewable energy contribution to final energy consumption by 2013. The target corresponds to approximately 5% of the present total annual electricity generation. The target will be implemented in three phases during the 2004 - 2013 period. The strategy will need to be monitored periodically to determine the effectiveness of the measures and technologies employed to meet the above target. Renewable energy will be produced mainly from biomass, solar and small-scale hydro plants and will be used for power generation and non-electric technologies such as solar water heating and biofuels¹¹.

Because of the compilation of the above-mentioned national laws and policies, a similar law reform process will be triggered in Provincial Legislatures as provinces translate these into procedures for implementation. Local government will also have to develop by-laws in accordance with national and provincial norms and standards¹².

3.2.2. International arena

As a nation, it is not enough to confine our environmental governance to the local or national level only. Addressing international environmental problems requires the co-operation and co-ordinated response of all nations. This requires a coherent system of international environmental governance.

Global governance

The current system of environmental governance is a rather loose system, which developed out of the United Nations Conference on the Human Environment in Stockholm, Sweden (1972), 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) Firstly, it is a collection of intergovernmental organizations such as the United Nations Environmental Programme (UNEP), the United Nations Development Programme (UNDP) and other specialized agencies and commissions that are responsible for co-ordinating policy on the environment at the international level; (2) the second element is the framework of international environmental law that has developed over several decades, such as the Rotterdam Convention on Prior Informed Consent (PIC) and Stockholm Convention on Persistent Organic Pollutants (POPs); and (3) a third element is financing mechanisms such as the Global Environmental Facility (GEF) that supports capacity building to carry out treaty commitments, supplements national efforts towards sustainable development in poorer countries and UN agencies and treaty secretariats that co-ordinate and carry out environmental efforts³.

Together these three components are supposed to set priorities and facilitate steps to protect the environment and further sustainable development. Most of these steps must be implemented by individual nations themselves. South Africa's commitment to international environmental governance is clearly demonstrated by the number of multilateral environmental agreements entered into as well as the prominent role in the lead up to and hosting of the World Summit on Sustainable Development.

Multilateral Environmental Agreements

Multilateral Environmental Agreements provide the global framework for governance in regions and countries. Table 3.2 details South Africa's engagement in Multilateral Environmental Agreements.

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

Multilateral Environmental Agreement^b	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 with entry into force: 3 August 1994
United Nations Framework Convention on Climate Change	Signed: 15 June 1993, 27 August 1997 (though DEAT submission to parliament indicates: 1994) Ratified: 29 August 1997 Kyoto Protocol: acceded in 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; and ratified: 30 September 1997
Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean	Signed: 20 April 2001

^b 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.

Multilateral Environmental Agreement^b	Status
Convention on International Trade in Endangered Species of Wild Life and Fauna	Ratified: 1973 and entry 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 and ratified 4 September 2002
Convention on the Conservation of Antarctic Marine Living Resources	Acceded to: September 1980 and ratified: 1982
Protocol for the Protection of the Ozone Layer or the 'Montreal Protocol'	Acceded to: 15 January 1990; Ratified: 15 January 1990 (Though the Montreal Amendments to the Protocol (1997) still have 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 or the 'World Heritage Convention'	Ratified: 10 July 1997
Stockholm Convention on Persistent Organic Pollutants	Signed: 21 May 2001 and ratified: 4 September 2002
Southern African Developing Countries Protocol on Fisheries	Signed: 14 August 2001 and ratified: July 2003
Southern African Developing Countries Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community	Signed: 18 August 1999 and ratified: October 2003
Transfrontier Conservation Areas Initiative	
– Ais/-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

Source: DEAT website <http://www.environment.gov.za>; Urquhart (2002)⁹

Box 3.4: The World Commission on Dams

The World Commission on Dams was an independent, international, multi-stakeholder process that addressed the controversial issues associated with large dams. It provided a unique opportunity to bring into focus the many assumptions and paradigms that are at the centre of the search to reconcile economic growth, social equity, environmental conservation and political participation in the changing global context. The World Commission on Dams commenced its activities in May 1998 under the chair of Professor Kader Asmal, then Minister of Water Affairs and Forestry in the South African Government. The Commission's Secretariat was located in Cape Town - South Africa, reinforcing its intention to serve developing countries in its approach to the task at hand. The Commission completed its work with the launch of its final report and disbanded.

Source: <http://www.dams.org/>

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 environmental projects of global significance. Examples include:

- Richtersveld Community Biodiversity Conservation Project;
- African Ivory Stockpile Programme;
- South Africa Wind Energy Programme;
- Maloti-Drakensberg Transfrontier Conservation and Development; and
- Southwest Indian Ocean Fisheries Project.

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

World Summit on Sustainable Development

One of the most important events that profiled South Africa's growing role in international governance, was the hosting of the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002. While some argue that the WSSD resulted in the distraction of regular policy implementation, for example the delay in the development of the National Strategy for Sustainable Development (NSSD) and the National Action Programme to Combat Land Degradation, the WSSD did result in the concept of sustainable development gaining greater prominence within discourse and thinking amongst government and other stakeholders. Furthermore, negotiations resulted in commitments in five priority areas: water and sanitation, energy, health, agriculture and biodiversity and ecosystem management. Governments also approved two major negotiate documents: The Johannesburg Declaration on Sustainable Development in which heads of state committed broadly to make sustainable development a reality, and the Johannesburg Plan of Implementation (JPOI) which spells out the required action in some detail. South Africa played an important role in facilitating agreement on the JPOI.

As host country, South Africa has remained involved in the implementation of the outputs from the Summit. South Africa was appointed the Chair of the 11th session of the UN Commission on Sustainable Development held in 2003 during which the work programme of the realization of the WSSD goals was defined. South Africa has committed to meet the agreements reached at the WSSD, including the development of the NSSD. It will be an important tool for ensuring that environmental issues are addressed holistically and that the environment and biodiversity 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 adequate information and knowledge to support their development decisions. From the JPOI perspective, the NSSD is a framework that builds on existing programmes, strategies and interventions at all government and multi-stakeholder levels. The comprehensive NSSD will be completed by the end of 2005.

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

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

Regional and cross-border governance

Natural systems are not subject to the arbitrary political borders imposed by humans. In this context, and considering the scarcity and disparity in access to resources like water in southern Africa, and the future implications of climate change, regional co-operation, interaction and co-management is becoming increasingly important. As mentioned above, South Africa has played

a meaningful role in the development of the environmental components of NEPAD, which provides a framework for environmental action for African nations. Cross-border issues affect biodiversity and water substantially. South Africa and its neighbouring countries have pioneered the Transfrontier Conservation Areas concept of biodiversity protection. South Africa consequently shares protected areas with Namibia, Botswana, Zimbabwe, Mozambique, Swaziland and Lesotho (Table 3.2) (Map 1) (refer to Chapter 5 on Biodiversity). It remains to be seen whether the political and economic instability in Zimbabwe 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 the countries in southern Africa. South Africa interacts on water issues with a number of countries both within and beyond Africa¹⁰. Issues addressed 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. Co-operation in southern Africa takes place within the framework of the Revised Protocol on Shared Watercourses in the Southern African Development Community. A number of bilateral and multi-lateral commissions and committees have been established under this framework. These include:

- 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; and
- Swaziland/Mozambique/South Africa Tripartite Permanent Technical Committee.

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

3.3. PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

Meaningful participation by all sectors of society is a key element of effective environmental governance. Providing for public participation and input provides a voice to society and legitimacy to decision-making processes while failure to provide for public input can lead to conflict and resistance. Internationally, and specifically within UN processes, civil society activity has intensified¹³, and governance has been moving toward a more participatory style¹⁴. In South Africa, similar trends are being observed.

NEMA creates the framework for facilitating the role of civil society in environmental governance. The framework includes the National Environmental Advisory Forum, which advises the Minister on, among other things, appropriate methods of monitoring compliance with the principles in section 2 of NEMA, and Environmental Management Co-operation Agreements. These provide a mechanism through which government can enter into an agreement with any person or community for promoting compliance with the principles set out in section 2 of NEMA.

For effective public participation in environmental debate and decision-making processes, easy access to environmental information is crucial.

Box 3.5: Principle 10 of the Rio Declaration

A decade ago, **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, one hundred governments reaffirmed these goals during the World Summit on Sustainable Development.

Participation, representivity, accountability and access to information relating to civil society, corporations and other private sector actors are the key components described below. Data however are scant and this needs to be addressed for future evaluation of the effectiveness of environmental governance in South Africa.

3.3.1. Citizen participation and representation in environmental issues

Since the previous political regime, South Africa has made solid strides in extending participation to a diverse array of voices from civil society. This is shown by the consultative processes undertaken to compile the Constitution, the CONNEP process to develop the White Paper on Environmental Management, the various institutions^c set up to promote participation, as well as the significant progress in representation of women in parliament. There has been substantial public participation in policy development, but less so in decision-making and implementation¹⁴. The participation of the poor, disadvantaged and rural communities, including women, youth, indigenous peoples and farmers, has, in the past, been insufficient and inappropriate⁴. These groups are faced with severe constraints regarding access to information, communication networks, transport and thus participatory processes¹⁴. However, greater emphasis is now being placed on engaging poor communities.

The locations of environmental debates are also a useful indicator of participation. Debates tend to take place in small circles, with the same voices being heard, and seldom extend into broader civil society or government. This may relate to the inaccessibility and/or limited accessibility of information related to environmental issues, or it may have other drivers. However, these and other issues raised in this report highlight the importance of developing and implementing a consolidated framework and systematic approach to participation. Tracking participation in environmental governance that enables these trends, biases, effectiveness, performance and other nuances in participation processes to be detected and better understood, is required.

Some of the challenges faced in creating 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 go to service delivery activities¹⁴.

Non-profit organizations

The size and scope of South African non-profit organization (NPO) sector concerning environmental governance is difficult to measure. There has however been a dramatic improvement in civil society involvement and the social movement is growing¹⁵.

In 2002, there were about 98 920 non-profit organizations in South Africa, of which 53% are less formalized community based organizations (CBOs). South Africa's civil society is as large (proportionally) and as vibrant as in all but a handful of 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 comparative figure for other countries was 2%) (Table 3.3).

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

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

Sector	Full Time	Part-time	Volunteers
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^c For example the Human Rights Commission, Independent Electoral Commission, National Youth Commission and the Commission on Gender Equality

	Employees	employees	
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	31 6991

Source: Swilling & Russel (2002)¹⁶

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

NPO type	Major areas of Work	Number of NPOs	Total number of sub-groups
Environment	Environment	624	
	Pollution abatement/control		-
	Natural Resources conservation and open spaces		165
	Environment beautification and open spaces		459
	Animal protection	2 766	
	Animal protection/welfare		269
	Wildlife preservation and protection		148
Veterinary services	Veterinary services		2 349

Source: Swilling & Russel (2002)¹⁶

3.3.2. The National Environmental Advisory Forum

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

Its members represent organized labour, organized business, NGOs, CBOs, women, the disabled, youth and persons with relevant specialist skills and knowledge. The forum had its inaugural meeting in May 2005. Some key priorities that the NEAF will provide the Minister with advice on include:

- Genetic Modified Organisms;
- The National Strategy for Sustainable Development;
- Climate Change;
- Transfrontier Parks; and
- Quotas and permits for coastal protected areas.

"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

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 of government or corporate decision-makers and more capable of discussing issues³.

While Agenda 21 calls for nations to improve the quality of and access to environmental information, several laws in South Africa govern the access to information, including the Constitution, the Promotion of Access to Information Act (No. 2 of 2000), the Promotion of Access to Administrative Justice Act (No. 3 of 2000) and the Protected Disclosures Act (No. 26 of 2000). In section 31 of NEMA, access to information on the state of the environment and threats to the environment is guaranteed. 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 of 2001, and came into effect on 9 March of the same year. It is one of the constitutionally mandated acts to make the right to information a practical reality. It was passed in order to promote democracy and to better realize the promotion of the protection of human rights. It provides for the right of access to information, including the records of public and private bodies. It 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 which 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; and
- A description of the records of the body, which are available in accordance with other legislation.

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 3.6: What does the Johannesburg Plan of Implementation say about access to information?

Paragraph 128 of the World Summit on Sustainable Development Plan of Implementation 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.

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 is a requirement of the Act that a section 14 Manual must, if necessary, be update and published at intervals of not more than one year. It is a requirement that private and public bodies comply with the Act by 31 August 2005. Although several environmental departments have published section 14 manuals, at the time of finalising this report (August/September 2005), the Department of Environmental Affairs and Tourism had not published its manual.

In a recent study, a global coalition of 25 civil society groups called the Access Initiative measured the public's access 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; and
- Information about emergencies and risks.

The above 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. The Access Initiative also found that despite the general strength of legal provisions for access to environmental information, the implementation of these laws are weak amongst the surveyed countries. Few countries mandate that public entities maintain a central environmental information service and few have established requirements for 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 that aim to satisfy the legal requirements for access to information. They are used by governments to inform citizens about their nation's environmental status and long-term environmental trend data. DEAT started in 1997 with a state of the environment initiative, which resulted in the publication of the first National report in 1999, as well as state of the environment reports for the following metropolitan areas – Cape Town, Durban, Johannesburg and Pretoria. The metropolitan initiative formed part of the Cities State of the Environment Report on the Internet of ICLEI.

In 2002, DEAT obtained funding from the Norwegian Agency for Development Co-operation (NORAD), and initiated a Provincial State of the Environment Programme, and later also provided funding for selected municipalities for purposes of state of the environment reporting. An important component of this initiative focused on training and capacity building in the area of environmental assessment and reporting, and developing tools to disseminate environmental information on the Internet.

With the exception of the Western Cape and KwaZulu-Natal, all provinces have completed a state of the environment report. At the municipal level, a number of local authorities have over the last two years initiated state of the environment reports including Mbombela and Nkangala District in Mpumalanga province, Mangaung in the Free State, and the City of Johannesburg, Ekurhuleni, Sedibeng, West Rand District Municipality and Tshwane in Gauteng, Knysna Local Municipality in the Eastern Cape.

As custodians of the River Health Programme, the Department of Water Affairs and Forestry, the Department of Environmental Affairs and Tourism and the Water Research Commission are promoting access to river quality information through State of River Reports. To date, reports for more than 9 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.

Sectoral state of the environment reports are gaining in popularity with a State of Coast report (part of the WSSD implementation plan) nearing completion at the time of finalizing this report, a State of Air Report on the cards, and a State of Rivers Report being a legal requirement in the Water Act, and a State of Forests report having been completed.

Box 3.7: How are state of the environment reports used?

In a recent survey respondents indicated for what purposes state of the environment reports are used. This included:

- To facilitate land use management decision-making;
- To develop course material for river rehabilitation training;
- To identify provincial needs and/or priorities for the National Water Resources Strategy and Internal Strategic Perspectives of DWAF;
- To facilitate policy formulation and the development of a municipal Environmental Management Plan;
- Academic research and decision support;
- To obtain general information on environmental status and trends informing policy decisions;
- Information and general knowledge;
- Provided baseline information for the IDP, and is also used for the formulation of the Integrated Environmental Policy;
- Awareness raising, communication tool; and
- Informed the strategic planning process conducted for the Maloti-Drakensberg Transfrontier Project.

Source: DEAT (2005)¹⁷

Development of registers and information systems

Information about pollution at industrial facilities is often the hardest information for the public to access. Emission inventories such as a Pollutant Release and Transfer Register (PRTR) provides important information about whether facilities are obeying the standards that limit releases into air and water. Countries such as Australia, Canada, Japan, Norway, South Korea, United Kingdom, and the United States have an operating PRTR while Mexico and many countries in Europe have taken steps toward establishing a PRTR. The attention to PRTRs in these countries reflects a growing interest worldwide in promoting greater corporate environmental accountability at the facility level. It also illustrates the role of international agreements and collaboration on access to specific types of information, such as information about facility performance. South Africa currently does not have a PRTR.

Box 3.8: Emergency Access

Emergency Access

In August 2000, cholera broke out in KwaZulu-Natal. Almost immediately, national, provincial and local authorities began supplying daily reports to communities, regular media reports and patient and death statistics. They also offered road shows in local languages, distributed posters and leaflets, and supplied drinking water in an effort to contain and epidemic of as many as 100 000 cases.

WRI 2003: p 56.

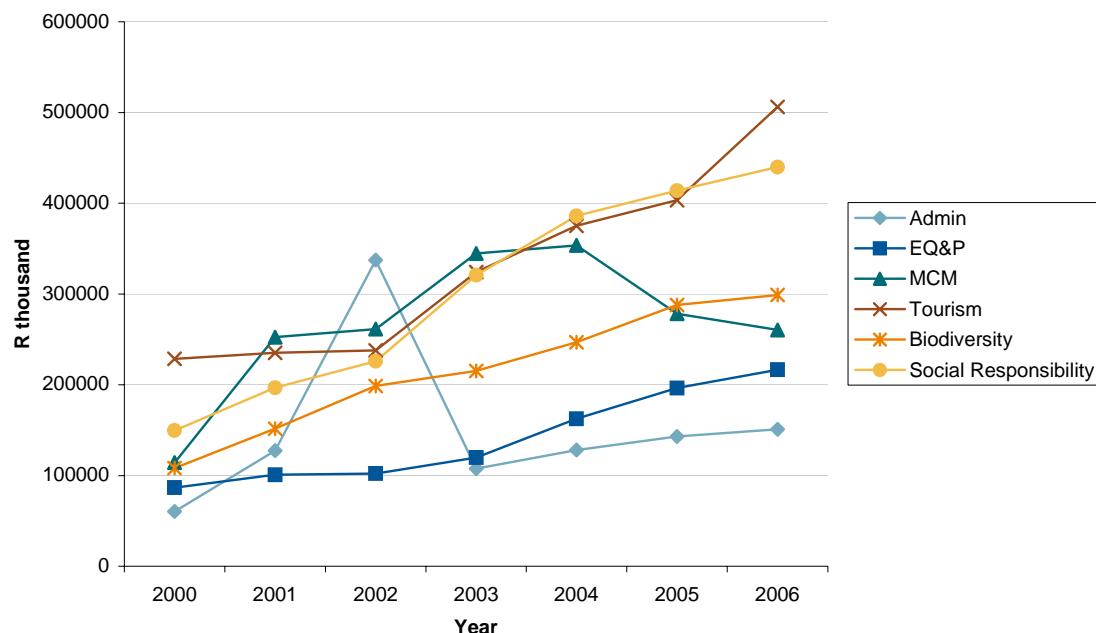
3.4. RESPONSIBLE AND ACCOUNTABLE GOVERNANCE

Improved environmental governance is only attainable if government employs sufficient personnel with the necessary skills to carry out its functions effectively, and it secures sufficient financial resources to give effect to this policy (White Paper on Environmental Management).

This section gives a broad overview of financial and human resources that support environmental governance in the National Department of Environmental Affairs and Tourism.

3.4.1. Financial resources

Changes in budgetary allocation can be used as an indication of political commitment to overall environmental issues. The financial resources allocated towards the environment also relate to implementation constraints. Changes in budgets allocated for priority programmes in the Department of Environmental Affairs and Tourism are provided below. These give a crude estimate as there are other areas^d of spending directed at environmental protection.



Source: National Treasury (2005)¹⁸

Figure 3.2: DEAT programme expenditure estimates (2000-2006)

The DEAT budget has traditionally been below 0.2% of national budget expenditure¹⁴. The overall DEAT budget allocation for programmes has seen a steady increase from just over R1 billion in the 2001/02 financial year to R1.7 billion in the 2005/06 financial year (Figure 3.2). This budget is expected to grow to just over R2 billion in 2007/08. Transfers and subsidies make up a significant component of the department's budget, taking up almost 70% of the total allocation in 2005/06. 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 services. The percentage of the total allocation is set to stay more or less the same.

The fastest growth during this period is within the Social Responsibility programme, which is mainly due to an increase of the department's share of the Expanded Public Works Programme. 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 projects. 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.

^d For example in the Department of Water Affairs and Forestry, Agriculture, Land, Health, Minerals and Energy, and Defence

Furthermore, the budgets for tourism and environmental quality and protection are showing significant growth. The increase in the tourism budget can be linked to the fact that South Africa is one of the fastest growing tourism destinations in the world. The growth in the environmental quality and protection budget can be attributed to the implementation and enforcement of pollution and waste management policy and legislation. The expenditure for the biodiversity programme shows a steady increase. The dramatic increase in budget allocation for administration 2002 can be explained by costs associated for hosting the World Summit on Sustainable Development.

3.4.2. Staff numbers

The number 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 (Table 3.5). This also matches the expenditure forecast for the same two programmes. Administration, environmental quality protection and 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.

Table 3.5: Personnel numbers and compensation of employees per programme

Programme	2001/2	2002/3	2003/4	2004/05	2005/06
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	1006	1006	1030	1052	1119
Total personnel cost (R thousand)	111,450	127,304	139,390	172,531	223,164
Unit cost^e (R thousand)	111	127	135	164	199

Source: National Treasury (2005)¹⁸

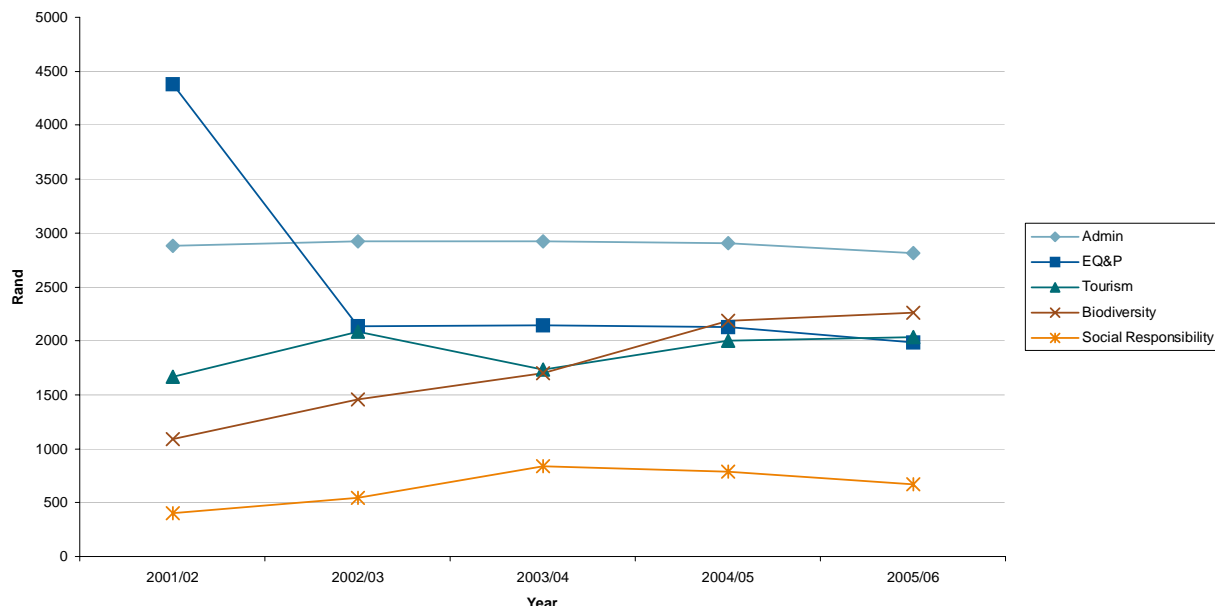
3.4.3. Skills training

Expenditure on training has stayed relatively constant over the past 5 years. However, 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 (Figure 3.3). The only programme that shows a positive trend is the biodiversity programme where there has been an increase in spending per person over the past five years, while the majority of the other programmes have decreased spending since 2003/4.

Skills training in various environmental aspects took place at the provincial level as well. For example, DEAT conducted provincial workshops to raise awareness and training on Local Agenda 21 and environmental indicators, and developed guidelines covering a wide range of topics, including environmental impact assessment, waste collection and recycling. However, there is an urgent need to develop the skills and capacity of local government in order to operationalize the concept of sustainable development into all planning and service delivery activities.

^e Budgeted full-time equivalent

The Department 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 so that the single campaign will have a greater impact.



Source: National Treasury (2005)¹⁸

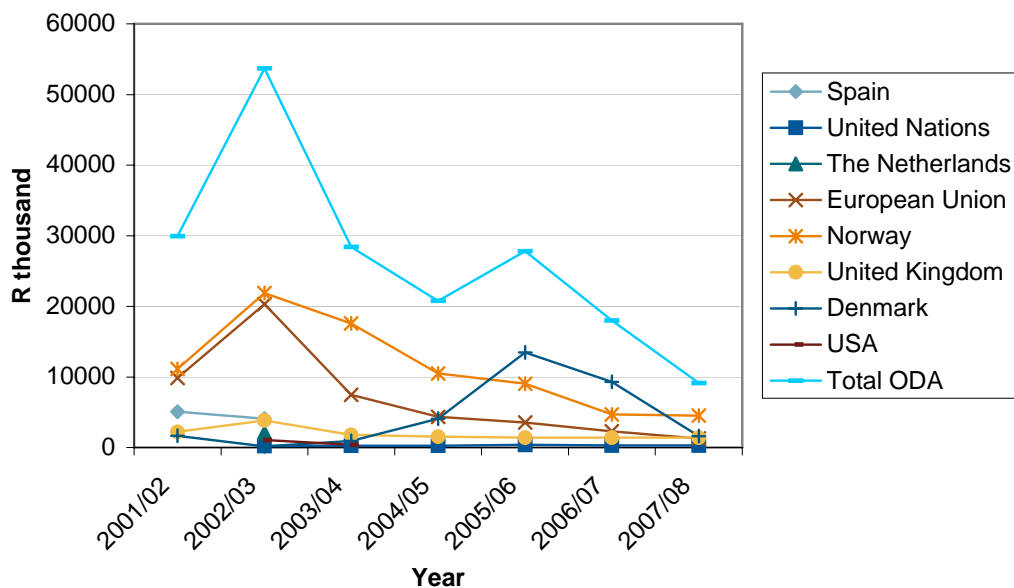
Figure 3.3: Expenditure on training per person per programme

3.4.4. Donor assistance

The United Nations target for official foreign aid from nations is 0.7% of those nations' gross national products. With the exception of Nordic countries and the Netherlands, foreign aid levels fall short of this goal (approximately 0.3% in 2002) and have generally declined over the past decade. While South Africa is not an aid-dependent country, it does benefit from foreign aid, particularly in the environmental sector. Since 1994, South Africa received foreign aid for various environmental programmes. External assistance to the Department of Environmental Affairs and Tourism constituted less than 4.5% of its annual budget in 2004/05¹⁹, having declined from 20% in the 1999/00 budget¹⁴. As Figure 3.4 indicates, there has been a substantial decline in external donor assistance of environmental issues for the past 5 years. The sudden increase in 2002/3 can be explained with South Africa hosting the WSSD, while the peak in 2005/6 relates to Denmark funding the National Waste Management Strategy Implementation Project^f. The declining trend with donor assistance is set to continue over the next couple of years and is expected to be about R9 million by 2007/08.

Non-governmental organizations are in general experiencing significant barriers in accessing foreign aid support for advocacy, watchdog and programme orientated work¹⁴. Most foreign aid funding has been restricted to project-based funding with a service emphasis.

^f See <http://www.nwmsi.co.za/>



Source: National Treasury (2005)¹⁸

Figure 3.4: Summary of official development assistance expenditure on South Africa per source country

3.4.5. Budget reform

To articulate needs and constraints of the sector in giving effect to policy and to articulate consideration to be taken into account when Government sets budget priorities and takes decisions on the allocation of resources between resources, the environmental sector has been engaged in a budget reform process. This includes 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 the medium term sector plan and a policy review of the key areas of work in the sector. The IGFR Chapter provides an analysis of expenditure and budget trends and the contribution of provincial budgets to the development of the sector. The medium term sector plan sets out the implementation priorities and challenges of the sector for the next Medium Term Expenditure Framework period. The environmental sector plan will in future ensure that the implementation priorities and plans of national, provincial and local departments are aligned.

3.5. ENFORCEMENT AND IMPLEMENTATION

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

3.5.1. Challenges to implementation faced by provincial and local government

The provincial and local spheres of government are the implementation arms of government. The successful enforcement and implementation of the environmental management framework therefore depends largely on the extent of resources, skills and related effectiveness of these spheres¹⁴. Provincial government has an important role to play in setting provincial norms and standards, while also assisting local governments carry out 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 (Box 3.9), and to integrate environmental issues into its planning processes. However, in addition to the constraints faced at national level, there are many constraints faced by both provincial and local government that are preventing the enforcement and implementation of environmental policy countrywide.

Box 3.9: The Constitutional objectives of local government

These include:

- The sustainable provision of services to communities;
- Promoting social and economic development;
- Ensuring a safe and healthy environment; and
- Encouraging community involvement in local government matters.

Source: taken from Urquhart (2002)⁹

Provincial government

In most provinces, environmental staff members are over-committed and there is little capacity for co-ordinated governance. This situation varies across provinces. Gauteng, the Western Cape and KwaZulu-Natal have relative capacity in terms of people and experience, and have relatively adequate budgets to do the work²⁰ (although most provinces have declining environmental budgets). Other provinces e.g. Northern Cape has extremely limited staff complement and so effective functioning is not possible.

Local government

Implementation failure at local level is a critical constraint to the effective functioning of the environmental governance framework⁹ and to making progress towards sustainable development. Decentralization and the delegation of environmental management functions to the lowest possible level, as called for by Agenda 21, has placed increasing responsibility on local government and expanded its primary role from mainly service provision to that of an active development agent⁹. However, the delegation of functions should be balanced with the Constitutional imperative for effective government. In terms of co-operative environmental governance, local government is responsible for:

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

This seems to be a tall order given the constraints faced. The environmental framework does not fully extend to local government, which results in politicians and senior officials not knowing what their mandate is for environmental management. There are therefore insufficient budgets allocated to environmental functions, also partly due to the imperative to deliver services. The result has been a lack of incorporation of environmental and sustainable principles into local planning processes as well as a lack of trained enforcement officers. With the exception of some metropolitan municipalities like the City of Cape Town, Johannesburg and Ekurhuleni, and in municipalities in some provinces like Mpumalanga, little capacity building has been achieved at local level. The spheres closest to the people are consequently weak generally and in environmental management in particular⁹. In a recent training course for

Councillors and senior officials in local government in Mpumalanga Province, the following problems were noted²¹:

- There is a lack of understanding and awareness of environmental issues and how human well-being is dependent on the environment, by politicians, officials and the public;
- Co-operative governance is not effective within local authorities and between spheres of government;
- Confusion exists as to the mandate of local government in environmental management, and particularly regarding responsibilities between the different categories of municipality;
- Provinces in some cases have no confidence in local authorities and often overrule decisions made by them;
- There is a high turnover rate of officials and a lack of succession planning and sharing of skills and information;
- Many municipalities have no positions dedicated to environmental management; and
- Politicians often neglect to plan for the medium to long-term, and are concerned with making noticeable gains in activities like services delivery in the short term.

This relates to co-operative governance (see section 3.6), without which adequate and efficient implementation and enforcement cannot take place. Much remains to be done in capacity building for provincial & local government. This is particularly critical given the shortage of skills and infrastructure in environmental management, coupled with the increasing emphasis on local level for integrated planning and environmental functions⁹.

Improvement in compliance and enforcement and implementation will depend on the clarification of responsibilities being assigned, increased budget and human resources, and a general raising of awareness of the importance of the environment in human well-being amongst politicians.

3.5.2. “Green Scorpions” and environmental courts

To improve the general lack of compliance and enforcement of environmental legislation and fight environmental crime, a new directorate dealing specifically with the enforcement of pollution and waste legislation was set up in DEAT in September 2003. A recent amendment to the NEMA provides for the designation of environmental compliance and enforcement officials (Environmental Management Inspectors (EMI)) at all three levels of government, with wide-ranging powers to carry out compliance monitoring and enforcement activities. The designation of environmental management inspectors has provided a strong basis for future monitoring of management and enforcement of environmental legislation. These inspectors may be designated with powers to, among others things: 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 where the environmental management inspectors are active. Often referred to in the media as the “Green Scorpions”, this unit has already facilitated several arrests.

Box 3.10: Fighting back – the Hermanus environmental court

Since the first environmental court was established in Hermanus, conviction rates have improved from 10% to more than 70%. Some examples include the following:

- Hout Bay fishing Industries and two of its directors were convicted of 301 charges of over fishing and corruption.
- In 2002, Patagonian toothfish worth R 500 000 was seized from a foreign registered vessel, the Viola.

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 on the level of a regional court. It therefore has legal jurisdiction within the regional division of the Cape. During its first 18 months, the court was monitored and evaluated on an ongoing basis and was found to be successful. During the first 18 months, the court was in session for 229 days and finalized 166 cases. Of these, 125 resulted in guilty verdicts, with a conviction rate of almost 75%. Since establishing the environmental court in Hermanus, a second court was established in Port Elisabeth. The establishment of these courts is certainly a step in the right direction, however, there is a lack of understanding of environmental and sustainable development issues and concepts within the judiciary, and a capacity building in this regard is urgently required.

3.6. INTEGRATION AND CO-OPERATION

Chapter 3 of the Constitution of South Africa states that the national, provincial and local spheres of government are distinctive, interdependent and interrelated²². Given the complex, crosscutting nature of the environment, national and provincial government have concurrent legislative competence for environmental management. In addition, responsibility for the environment is allocated to a wide range of agencies in all spheres of government resulting in a highly fragmented responsibility for environmental management⁹. This has necessitated a system of co-operative governance across and between spheres of government. Consequently, institutions and procedures have been established under Chapter 3 of the NEMA to promote co-operative governance. The following sections describe these.

3.6.1. The Committee for Environmental Co-ordination

The Committee for Environmental Co-ordination (CEC), a statutory body, was established by the NEMA to promote the integration and co-ordination of environmental functions by the relevant organs of state. The CEC is chaired by the Director General of DEAT, and is represented by the Directors General of national departments conducting activities affecting the environment, as well as Heads of Department of the provincial environmental departments. The CEC is currently attended by more junior officials and not Directors General, which undermines the extent to which it is taken seriously and results in little buy-in²³. Sub-committees established under the Committee on law reform and environmental management and implementation plans serve as technical working groups facilitating the alignment and harmonization of environmental management.

The CEC sub-committee on Law Reform aims to build an integrated, coherent regulatory framework for environmental management at all levels of government²⁴. The horizontal (between scheduled national departments) and vertical (between national and provincial departments) alignment of environmental legislation will promote the effective implementation of legislative provisions. The forum has reviewed numerous pieces of national and provincial legislation, including those from the water, land, agricultural and minerals and energy sectors. A challenge is to determine whether this co-operative approach to the drafting of legislation is having practical benefits when laws are actually implemented.

3.6.2. Environmental Management and Implementation Plans

The NEMA requires scheduled departments, whose activities involve the management of the environment to prepare environmental management plans (EMPs), and departments whose activities may effect the environment, as well as provincial departments, to prepare environmental implementation plans (EIPs). The purposes of these plans are:

- to co-ordinate and harmonize environmental policies, plans, programmes and decisions between departments in order to minimize the duplication of procedures and functions, and to promote consistency in the exercise of functions that may affect the environment;
- give effect to the principle of co-operative 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.

Environmental management plans focus on policies and mechanisms to ensure that departments' environmental management mandate is complied with by other bodies, while environmental implementation plans focus on how general policies and functions take account of environmental management⁹.

Prepared every four years, environmental implementation plans and environmental management plans are important ways of addressing the fragmented nature of environmental management in South Africa, both horizontally between departments, and vertically between spheres of government. Progress on implementation of these plans is reported within four months at the end of each financial year. According to DEAT, the first cycle (2000-2004) is in place and all first edition plans have been submitted²⁵.

Box 3.11: Lessons from the first edition EIPs/EMPs

The development of the first edition EIPs/EMPs has revealed that the overlap of functions is poorly understood and this situation is being addressed through careful and detailed examination of the functions of different managing and impacting departments and how these can be streamlined. Further attention is being paid to understanding the execution of functions around the water and agriculture sectors, pollution and waste management, and the key impacting sectors of housing, transport and trade and industry. This exercise is aimed at clarification of roles and responsibilities in order to identify where law reform is needed. Importantly, the need for the Department of Provincial and Local Government to compile an EIP has been raised, as well as recommendations for the government agencies and parastatals to compile EIPs. Practical recommendations made in the Gauteng Environmental Implementation Plan in order to improve co-operative governance include requiring that NEMA principles and sustainable development issues are considered in policy and legislation development, and that the Business Plans of departments significantly affecting the environment in future include a formal review of NEMA compliance prior to approval by provincial cabinet. This positive situation is ascribed to both continued support, as well as activities on the part of the provincial environmental department that have proven the worth of integrating environmental considerations when dealing with key issues such as waste and housing²⁰.

Source: Urquhart (2002)⁹

3.6.3. MINTEC

MINTEC is a structure set up to facilitate co-ordination between the national Department of Environmental Affairs and Tourism and provincial environmental departments. Several working groups have been set up to discuss issues on biodiversity and heritage, impact management, pollution and waste management and planning and reporting. These working groups meet on a regular basis.

3.6.4. Government clusters

The South African government is structured in a series of clusters and forums to promote and facilitate co-operative governance and intergovernmental relations between the respective spheres of government. Four Ministerial 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. DEAT is represented in the Social cluster to ensure more effective co-operation on developmental issues.

Despite these institutions and processes, and despite the increasing budget discussed above, it is felt that budget allocations and personnel are insufficient for co-operative governance. This

is the case for provinces and municipalities also where there is variable administrative capacity for managing programmes. There are therefore significant challenges ahead to making progress towards co-operative governance in South Africa, particularly in the face of a shortage of skills and infrastructure at provincial and local spheres of government.

3.7. CORPORATE GOVERNANCE, ACCOUNTABILITY AND TRANSPARENCY

The extent to which environmental issues are effectively integrated into and addressed by other sectors is a key aspect of environmental governance. The corporate sector is brought into sharp focus with the imperatives of corporate social responsibility and triple-bottom-line reporting. The corporate sector has made substantial progress in terms of the development of a governance code of conduct (Box 3.12), and some progress has been made in improving environmental governance in the corporate sector. This section highlights the performance of the corporate sector in this regard.

Box 3.12: South Africa's code of corporate governance

The King code of corporate governance aims to promote the highest standards of corporate conduct in South Africa. The code mirrors international trends in that it includes the "triple-bottom-line" approach, embracing economic, environmental and social aspects of the company's business. Thus, non-financial reporting becomes a criterion of good governance. The new approach requires that companies consider stakeholders, who need not be contractually linked to the company, when formulating strategies. The scope of the code includes all listed companies, banks, financial and insurance entities, and parastatals. The review of the corporate code of governance was carried out as it was considered of paramount importance that companies understand and adopt the principles set out in Chapter 1 of the National Environmental Management Act. Apart from the regulatory need to apply the principles, it is recommended that their application constitutes good corporate governance given that they "reflect a holistic approach to the environment, social justice and the protection of rights".

Source: Urquhart (2002)⁹

3.7.1. Socially Responsible Investment (SRI) Index

The Johannesburg Stock Exchange (JSE) has developed criteria to measure the triple bottom line performance of those companies in the FTSE/JSE All Share Index that choose to participate. In this regard, the JSE launched the first Socially Responsible Investment (SRI) Index in May 2004. The SRI index is built on four pillars of sustainability, namely corporate governance, the economy, the environment and society. There are 49 companies currently listed on the SRI index.

Among the leading performing companies in corporate sustainability listed on the SRI index, the environment is unequivocally a consideration for companies in most sectors. It should be noted that the sample population on which data[§] are based is heavily weighted towards the leading performers in the field of corporate sustainability and a random sample of listed companies would produce lower, less positive results. However, 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 these.

Most companies dealing in the material economy are addressing environmental concerns at some level and the majority of companies assessed (71%) had enshrined environmental principles in a policy or formal mission statement. However, only 55% of companies have formal policies in place to ensure suppliers are paying attention to sustainability. Further, evidence that these policies are being used to influence supplier behaviour is even less prominent.

[§] SR&I provided research and analysis on the environmental governance of South African companies listed on the JSE Securities Exchange SA. See <http://www.jse.co.za/sri/>

The majority of companies claim to have all the elements of environmental governance and management in place, but it is difficult to assess the effectiveness of these governance and management systems. Although responsibility for the environment is attributed to a senior executive and / or board committee in 84% of companies, responsibility for the environment was claimed by the least number of participating companies (88%). It must also be considered that although responsibility may be assigned to a particular line function or person, that competence or capacity does not follow automatically. It was difficult to identify any South African-based company that demonstrated technical environmental competency for any of the executives assigned to oversee environmental management and governance.

Possibly a clearer indication of the depth of environmental governance is reflected by the trends observed in reporting on environmental matters. Data suggest that external public reporting on the environment is not as embedded as environmental governance and management. This may be because of companies not fully understanding their environmental impacts, companies not feeling comfortable reporting on their environmental impacts, or a combination of both. Many companies, despite having environmental governance structures in place, do not disclose performance against environmental targets (59%) and do not provide quantitative and comparable data when disclosing performance against environmental targets (54%).

It is clear from the assessment that whilst the governance of environmental issues is, on paper, in place, that companies are still struggling to report on these issues and thus demonstrate to stakeholders and the public their management of environmental matters. This could suggest that their understanding of their environmental impacts is not complete, or that the management systems to address environmental issues are not fully operational, or a combination of the two.

The sector in which the company operates greatly influences the manner in which environmental issues are dealt with. Companies which have a direct and obvious environmental impact, and which would have to answer to questions related to that impact, appear to have implemented environmental management and governance systems to a greater extent than, for example, lower impact retailers.

Box 3.13: Environmental governance in the corporate sector – key statistics and activities

ISO 14001

ISO 14001 is the standard set by the International Standards Organization, which specifies the requirements of environmental management systems (EMS). EMSs can be integrated, with other management requirements, to assist organizations to achieve environmental and economic goals. The overall aim of ISO 14001 is to support environmental protection and prevention of pollution in balance with socio-economic needs.

- By July 2005, 176 companies and 240 company sites had accredited EMSs through the South African Bureau of Standards (SABS)²⁶;
- In total including sites not certified through SABS, there has been an increase in certification from 82 sites in 1999, 126 sites in 2000, 169 sites in 2001, 264 sites in 2002 to 378 sites in 2003²⁷.

International sustainability indices

Dow Jones Sustainability Index²⁸

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

- 4 South Africa companies (2 in the financial and 2 in the industrial sectors) were listed on the DJSI by 30 September 2004.

FTSE4Good²⁹

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

- 5 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 1990's in Europe and the United Kingdom. WMCs were established as an initiative 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 was one that could be used in South Africa to promote sustainable industrial development.

- 18 WMCs have been formed in all parts of South Africa in the industry, commercial and public sectors since 1998. However, the majority of these clubs were operational and have since closed due to budgetary constraints.
- 1 WMC has transformed itself into an association, the KZN Metal Finishing Waste Minimization Association. There were 70 members in February 2004³⁰.

Corporate participation in international initiatives

Responsible Care

Responsible Care is the global chemical industry's environmental, health and safety (EHS) initiative to drive continuous improvement in performance. It achieves this objective by meeting and going beyond legislative and regulatory compliance, and by adopting co-operative and voluntary initiatives with government and other stakeholders.

- 99 companies are signatories to the Responsible Care initiative in South Africa.
- The Chemical and Allied Industries' Association (CAIA)³¹, the custodian of Responsible Care in South Africa has 140 members.

Extractive Industry Transparency Initiative

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

- 3 companies on the list have a huge presence in South Africa and southern Africa³². More South African companies could participate in the initiative given the expansion of SA investments into other African countries.
- There are potentially 10 other South African mining houses that could participate in the initiative. It is important that South African companies participate in initiatives such as these because as they do so they contribute to transparency and accountability of governments and business alike.

United Nations Global Compact

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

- 8 South African companies participate in the Global Compact³³.

There is a need for a greater uptake and participation of South African corporations given that the initiative provides corporations with a platform to share lessons and best practice, and to engage locally, regionally and internationally on human rights issues, labour issues, environmental issues and issues of 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. The uptake and use of the guidelines has improved the quality of sustainability reporting in South Africa.

- 25 companies up to July 2005 (over half in the financial and mining sectors) had registered with the GRI secretariat as users of the guidelines³⁴.

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).

- 2 South African corporations (one energy and one paper) are members of the WBCSD³⁵.

National Business Initiative (Sustainable Futures)³⁶

The Business Council for Sustainable Development (BCSD) South Africa was formally incorporated into the National Business Initiative (NBI) in 2003. With the incorporation, the BCSD SA's regional member relationship with the WBCSD transferred to the NBI while the BCSD SA was renamed the Sustainable Futures Unit (SFU) within the NBI. Sustainable Futures is programme of NBI that covers the following:

- Information services – sustainability issues case studies;
- Leadership development – business leaders' forum for debates and information exchange;
- Selected projects:
 - Sustainable livelihoods and capacity building;
 - Sustainability reporting;
- Greenhouse protocol.

3.7.2. Improving corporate environmental governance

In order to further entrench environmental governance and management within companies a range of different actors and actions need to be mobilized. The public needs to become more engaged with regard to the environmental performance of companies in which the public either has a direct financial or other interest, a direct interest because a particular company is located in the same neighbourhood as a community, or as a result of the company employing members of the public. Few South African companies have been taken to task over their environmental performance, and fewer understand their environmental footprint. Those companies that have been challenged by external stakeholder groupings, and the number is increasing, tend to be companies with significant environmental impacts usually located within close proximity to neighbouring communities, or have wanted to exploit resources in environmentally sensitive areas which have large and influential supporter bases. The ongoing issues in the South Durban area where communities and the oil sector have been 'engaged' for many years exemplify the former instance. The proposed St Lucia heavy minerals and SASOL coal mining projects are examples where affluent pressure groups contributed to both projects not being given the go-ahead. In the case of SASOL, the matter went to court in a landmark case.

Institutional investors are especially well placed to begin exerting pressure on companies since they are so heavily invested in listed companies. This requires that the pension fund representatives need to familiarize themselves with environmental issues and begin asking the right questions of companies that they are invested in. Locally, environmental issues are not yet a force for better environmental governance. However, better understanding of company environmental issues, and the risks these pose to the investment, is needed amongst institutional investors in order for them to drive change in company behaviour. Certainly, if the Public Investment Commissioner decided that environmental issues were of importance, then one would expect to see a change in company behaviour. Thus, it is 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 are taking the necessary steps to ensure sound environmental governance. The Equator Principles, for example, is a combined initiative of the world's leading private lending institutions whereby they have adopted the World Bank's environmental and social Safeguard Policies as a means of managing their risk profiles, and also minimizing the negative impacts of projects they are involved with, either by not lending money, or ensuring that those projects for which funds are provided comply with the Safeguard Policies.

Secondly, from a regulatory perspective, those companies that are required to comply with environmental laws and regulations probably do so already, or knowingly do not. The introduction of the new environmental legislation following on from the NEMA has created greater clarity among government, business and civil society with respect to environmental rights, responsibilities and liabilities. This was a key driver for the establishment of environmental governance structures within companies over the past five years. The combined change in legislation plus the new Green Scorpions unit conveys the message that the authorities are prepared to tackle serious cases of environmental malpractice. This, coupled with increased awareness amongst stakeholders and investors, exerts a significant force in driving better environmental governance.

Ensuring 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.

3.8. CONCLUSIONS AND RECOMMENDATIONS

Under the previous state of environment reporting period (up until 1999), environmental governance in South Africa was characterized by putting in place the broad frameworks for governance – developing the policy and legislation at a broad level to ensure that natural resources and ecosystems are managed in a way that is fair and sustainable. Since then, we have been able to target environmental governance by focusing on more specific issues such as protected areas, biodiversity and air quality, and strengthen environmental governance in provincial and local spheres of government and other sectors.

There are substantial challenges to improving environmental governance. While the policy and legislation is broadly speaking in place, implementation and enforcement has been inadequate, particularly at provincial and local government level. These spheres of government, particularly at the local level, are faced with a suite constraints hindering progress toward sustainable development. There is a critical need for the capacity building of local government politicians and officials in environmental and sustainable development concepts and issues.

Encouragingly, there is increased participation in environmental management by civil society and the private sector. Environmental information is more widely available to the public, although public consultation processes could be improved.

There is the need to develop a robust framework and system for monitoring environmental governance, and to ensure that this system is implemented throughout all sectors and spheres of government. Until we are able to collect information that tells us how effective our governance of natural resources is, we will not be able to identify where and how to take corrective action.

In order to address this problem, future reporting needs to identify and involve the institutions whose mandate it is to track more qualitative aspects of environmental governance, early on in the process and well ahead of future state of the environment reports. Part of this process would be identifying the indicators that would provide a broad overview of the extent and depth of a country's performance in environmental governance in advance and ensuring that this information is collected between state of the environment reports.

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