

ECONOMIC AND SOCIAL RIGHTS

5TH REPORT 2002/3



environment

THE RIGHT TO A HEALTHY ENVIRONMENT

**5th Economic and Social Rights Report Series
2002/2003 Financial Year**

South African Human Rights Commission

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PREFACE

In this 10th year of our young but thriving democracy, we are all engaged in some way or the other, in critically reflecting on the achievements we have secured over the past years as well as the unfinished work that lies ahead. In the context of the various rights guaranteed by our Constitution, they seek in their totality to ensure that the individual and the society are able to develop to their full potential and indeed that human rights becomes a central feature of our society. In this regard we have made much progress, and in the main, few argue against the notion that civil and political rights are well secured both in law and in practise.

However, the challenge that is situated at the heart of our Constitutional contract is how we advance social and economic rights and in so doing ensure that we advance the interests of the poor and those many who are still to enjoy the full benefits of our democracy. The inclusion of social and economic rights in the Bill of Rights was a clear articulation that democracy was as much about the right to vote, and of free expression and of association as it was about the right to shelter, the right to food, the right to health care, the right to social security, the right to education and the right to a clean and healthy environment.

The Constitution has tasked the Commission with a specific mandate to advance social and economic rights. In particular, section 184(3) requires that: "Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment."

A healthy and robust debate exists around these measures that the Constitution requires the State to take. In addition, the human rights discourse sees considerable contestation around issues such as the nature and scope of the right, the adequacy or otherwise of the measures taken and the meaning of the phrase 'progressive realisation of rights.' These are difficult issues and it is not always possible, nor may one say desirable, to always have consensus on them. In some instances the Courts have had to rule on them. We see this Report, however, not only as a contribution to those debates but also as a tool that can assist Government, Parliament and civil society in developing a critical understanding about social and economic rights and their implementation.

The modus operandi of the Commission in discharging its constitutional mandate to monitor and assess the observance of economic and social rights has in the main focussed on requiring organs of state to report to us on measures they have taken. This continues to pose several challenges, namely: to ensure that organs of State submit to the Commission reports that are timely, accurate and of good quality. We are pleased that good progress has been made on this front over the past year and the process of presenting draft reports to organs of state and civil society for comment has been most valuable to the Commission in finalising this report.

The launch of the 4th Economic and Social Rights report in April 2003 generated considerable interest and much debate and discussion on the Report ensued. We were invited by numerous parliamentary portfolio committees from the National Assembly and National Council of Provinces to present the Report. We certainly found the

engagement with Parliament a very useful and mutually rewarding exercise. It provided the Commission with a unique opportunity to share its thinking and vision around its work with Parliament while it enables us to better understand Parliament's expectation of the Report and its use to them as a tool in their work. There have been numerous valuable recommendations that have emerged from our presentations to Parliament which we are committed to giving effect to from our side.

So as we commence the beginning of the 2nd decade of our democracy the delivery of social and economic rights become crucial to the ongoing success of our nation and the entrenchment of a culture of human rights. It is certainly our hope, and the intention of this Report, to contribute to ensuring that the promise and the vision underpinning our Constitution is shared and enjoyed by all in our country.

Jody Kollapen

Chairperson - South African Human Rights Commission

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INTRODUCTORY SECTION

The aim of the *Introductory Section* is to provide an outline of the common analytical framework used in the reports, briefly discuss the political and economic context of the year under review, and provide an integrated summary of the key findings and recommendations of all eight reports in the series. Details of the report production process are also included at the end of this introduction.

The 5th Economic and Social Rights Report follows a more user friendly format than previous reports. There are now separately bound, less bulky, reports on Land, Water, Environment, Food, Health, Social Security, Education and Housing. Each report has an executive summary to facilitate access to the main findings and recommendations. Issues that connect one right to another are highlighted in the body of each report to emphasise the interrelatedness and interdependence of the rights in the Bill of Rights of the Constitution of the Republic of South Africa Act 108 of 1996 (simply referred to as the Constitution throughout the reports).

A) Analytical Structure and Framework

Each report in this series follows a basic structure:

1. **Introduction:** a discussion of the meaning and content of the right with reference to the Constitution, case law and relevant international human rights instruments.
2. **Progress in the realisation of the right:** a factual description of measures instituted by government during the period under review and their impact, especially on vulnerable groups.
3. **Challenges for the realisation of the right:** a description of key challenges that hamper the realisation of the right, and in some cases, government's response to these challenges.
4. **Critique of measures instituted:** a consideration of some of the shortcomings of the measures instituted by government.
5. **Recommendations:** a set of recommendations that may encourage progressive realisation of the right as expeditiously as possible.¹

Each report consolidates information from various sources including: relevant government protocol responses, government Annual Reports and Strategic Plans, the Intergovernmental Fiscal Review, as well as research funded by government, international donors or other agencies.

¹ Some reports in the series end with a conclusion.

All reports employ the standard of reasonableness as laid down in the *Grootboom*² and *TAC*³ judgements of the Constitutional Court, in conjunction with relevant international human rights instruments.

The constitutional provisions pertaining to socio-economic rights require the State to “take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of [these rights]”.⁴ This requirement, read with the provision on the obligation of the State to “respect⁵, protect⁶, promote⁷ and fulfil⁸ the rights in the Bill of rights” in section 7(2) of the Constitution ensures an effective guarantee of socio-economic rights in South Africa. The judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the State⁹ and non-State entities also contribute to the effectiveness of the constitutional guarantee of these rights.

The Constitutional Court has played a significant role in ensuring the effective guarantee of socio-economic rights in our country. On the obligation of the State, Judge Yacoob held in the *Grootboom* case:

*The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.*¹⁰

On the effective guarantee of basic necessities of life for the poor, Judge Yacoob further said:

2 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC)

3 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)

4 See sections 26(2), 27(2) and 29(2) of the Constitution.

5 Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights. This also means that the State should abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure which violates the integrity of the individual or which in any way interferes or limits his/her right to pursue the enjoyment of the rights in the Bill of Rights.

6 The obligation to protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party.

7 The obligation to promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

8 The duty to fulfil places a positive obligation on the State to institute active measures that enable each individual to access entitlements to the right and which cannot be secured through exclusively personal efforts. State parties are also obliged to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. e.g. people in disaster situations or those in dire need.

9 See sections 184(1) and (3) of the Constitution.

10 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC) [24]

This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.¹¹

On the role of the courts in ensuring that the State fulfils its role in giving effect to these rights and thus ensuring that there is an effective guarantee of these rights, Judge Yaccob said:

I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.¹²

A similar position was taken by the Constitutional Court in another seminal judgment, *Minister of Health and Others v Treatment Action Campaign and Others*, where the Court held:

The state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society. The courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in section 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the state are reasonable.¹³

In outlining the role of the courts, the Court also stated:

The primary duty of courts is to the Constitution and the law...Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to do so.¹⁴

While there might be some criticism directed at the Constitutional Court pertaining to the determination of when there are no available resources for the State to fulfil its obligation pertaining to socio-economic rights, the courts, particularly the Constitutional Court, have and will continue to play an important role in ensuring that the provisions in the Bill of Rights are effectively guaranteed for our people.

¹¹ Ibid., [93]

¹² Ibid., [94]

¹³ Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033

¹⁴ Ibid., [99]

B) The Political and Economic Context of the Year Under Review

The period under review, 1 April 2002 to 31 March 2003, followed the 11 September 2001 attacks and a 24% depreciation of the South African currency (Rand) near the end of 2001. Consumer Price Inflation, especially for goods and services bought predominantly by the poor, increased sharply to the highest level since 1994. Concerns were signalled to the Competition Commission about the impact of import parity pricing in several sectors of the economy, most notably in food production, processing and retailing as well as metals and engineering. Interest rates were raised in an attempt to curb inflation, with a subsequent dampening effect on the rate of economic growth in the latter part of the financial year. According to the Reserve Bank Quarterly Bulletin for March 2003, economic growth stood at a robust 3% in 2002.

As a result of prudent fiscal management, the government introduced a more expansionary Budget in February 2002. Total government expenditure increased from R262,6 billion in 2001/2002 to R291,8 billion in 2002/2003. Overall, the budget directed more resources towards reducing poverty and vulnerability, improving education and training, developing skills amongst the youth, building and enhancing physical infrastructure and basic municipal services, as well as making communities safer places to live, work and play.

It is also important to note that the February 2003 Budget provided for significantly greater expenditure than the previous year. Total expenditure was R331,7 billion for 2003/2004. The additional allocations accommodated substantial policy changes for all three spheres of government and also provided for *higher than anticipated inflation in 2002*.

By the end of the reporting period in March 2003, the Rand had appreciated by 18%. This created concern about the job losses that could arise out of an increase in import competition. Therefore, during the period under review, the goals of progressively realising economic and social rights took place in the context of significant macro-economic volatility, inflation and an expanding government budget.

C) Key Interrelationships Amongst Economic and Social Rights

The Right to Land

The State was responsible for achieving progressive realisation of the right to land during the reporting period. The Commission demonstrates that there was a year on year improvement in land delivery performance by the State, especially through the Land Restitution and Land Redistribution sub-programmes. Improvements in rural tenure reform were less noticeable.

Between 2000 and 2001 there were 12 094 settled Restitution claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. The people working on the Land Redistribution for Agricultural Development sub-programme delivered 103 682 ha against a target of 81 555 ha for the year under review. Whereas the Department had targeted to benefit 3 601 people, the programme ended up benefiting 6 170. Concerning

tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill.

Throughout the report, the Commission reflects on the demand, voiced by landless people and others, that the pace of land redress is too slow and inattentive to vulnerable groups. The report recommends accelerating land reform to meet its new targets by relieving budgetary constraints and the associated problems of personnel shortages, lack of quality training and understandable communication; land acquisition; and improvements in monitoring and evaluation.

The Commission would also like to highlight that it was informed by the Department of Land Affairs that it was impossible to represent the racial and gender composition of land purchase transactions and reposessions, according to the size and value of land parcels.

The Right to Education

The right to education is analysed as a continuum of three bands of schooling- General Education and Training, Further Education and Training and Higher Education and Training. The State instituted measures to respect, protect, promote and fulfil the right to General Education and Training, and in the Commission's overall assessment, it succeeded in achieving progressive realisation of this right.

The Department of Education succeeded in ensuring that all targcoeted Early Childhood Development sites for children between the ages of five and six were operating. However, the Department acknowledges the challenge, which has budgetary implications, that only 13% of all children have access to the programme. In the context of a substantial increase in the rate of student enrolment in primary schools between 1994 and 2001, the National Department focused on further increasing access to General Education and Training through reviewing public school financing and the system of school fee exemptions. The report highlights the shortcoming that some schools and Provincial Departments of Education failed to make parents aware of the school fee exemption.

While progress was made in eliminating instances where learners are forced to receive education in environments that are not conducive to teaching and learning, the report emphasises that more needs to be done to address infrastructure backlogs, especially when it comes to water and sanitation. The Department also made progress in developing a redistribution model for personnel and operating expenditure that would achieve equality of teaching quality and equality of learning outcomes in the schooling system from 2003/2004 onwards. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could be measurable and relatively easy to monitor.

Conditions in farm schools were identified as hinderance to progress in the realisation of the right to General Education and Training. The issue of street-children also has to be given some serious attention by all the relevant stakeholders. Amongst other recommendations to further observance of the right to General Education and Training,

the report calls for better-published medium term strategies and improved spending on Adult Basic Education and Training. In the 2001 Census, 4,5 million people aged 20 years and older did not have a formal education and 4 million people had primary schooling only.

Most of the developments in the Further Education and Training band met the Constitutional requirement to respect, protect, promote and fulfil the right. *Dinaledi*, the programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST), reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation. The development of Recognition of Prior Learning (RPL) is another development that contributes to the realisation of the right to Further Education and Training. RPL recognises non-formal and/or non-academic education. RPL also stands to maximise learning opportunities for those without formal and/or academic qualifications to acquire formal qualifications in Further Education and Training institutions, which must all be registered with the State.

Areas where the State fell short of its obligations to progressively realise the right to Further Education and Training include: insufficient public education on school fee exemptions and insufficient Learner Support Materials and/or their late delivery. The report also highlights that participation rates in education by girl learners were being negatively affected by girls' involvement in income generating activities.

While Higher Education and Training is not explicitly recognised as a right in the Constitution, it obviously depends on the learning outcomes achieved in General and Further Education and Training. Here, there seems to be room for improvement as the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%.

Key challenges associated with the Higher Education and Training band include assisting potential students with subject selection choices and career guidance at school and university level, as well as lowering the high costs of accessing higher education and applying to different tertiary institutions. The report recommends ensuring that admission requirements to tertiary institutions are transparent and fair, promoting indigenous languages as academic/scientific/legal languages, mobilising funds for bridging courses and improving access for mature and post-graduate students, including part time students.

The Right to Water

Ever since 2001 and the introduction of Regulations Relating to Compulsory National Standards and Measures to Conserve Water, the State instituted a national measure to fulfil the right to water by supplying 6000 litres of free, clean water, per household per month, otherwise known as Free Basic Water.

During the reporting period, approximately 1,6 million people gained access to improved piped water supplies through Department of Water Affairs and Forestry's Community Water Supply and Sanitation Programme. Approximately 65 thousand toilets facilities were constructed during the reporting period under the same programme, but it should be noted that these figures exclude the large number of

sanitation facilities that were delivered as part of the State's housing programmes. Less than 530 000 households also benefited from water and sanitation projects through the Department of Provincial and Local Government's Consolidated Municipal Infrastructure Programme. Although the above indicates that the roll-out of water and sanitation infrastructure is proceeding towards the Department's medium delivery targets, the report raises concerns about the level of dysfunctional infrastructure and projects, especially in rural areas.

At the end of the reporting period in March 2003, access to Free Basic Water by poor people stood at 38% or approximately 12,2 million people. Access to Free Basic Water by non-poor households stood at close to 100% or approximately 14,2 million people. A large number of poor people (19,6 million) were still to receive their Free Basic Water allocation. Where Free Basic Water was not available, the average cost of 6 kilolitres (kl) was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high average charges for life-line supplies where Free Basic Water services were not operational.

In order to remove these glaring inequities in Free Basic Water provision, the report calls for an urgent revision of the pricing system to include a significantly greater level cross-subsidisation from high volume water users to low volume users in the 0-6 kl range. More support and funding is required to assist municipalities with capacity problems in implementing Free Basic Water. During droughts, local governments should ensure that Free Basic Water supplies for domestic users are assured and that a situation cannot develop where agricultural, mining and industrial users are allocated large volumes of water at similar prices to low-volume users.

The report describes some aspects of the devolution of domestic water quality monitoring and testing from Provincial Departments of Health to local municipalities and calls for rapidly providing sufficient funds for water quality monitoring to prevent serious disease outbreaks and illness.

The report recommends that the Department of Water Affairs and Forestry (DWAF) should take a leading role in making sure that farm dwellers, residents near commercial farms and poor households in rural and urban areas access clean water and proper sanitation services. DWAF should also ensure that it develops and implements a plan to address the specific problems of water access experienced by people living with HIV/AIDS.

The report suggests that monitoring bodies should be created at local level to effectively monitor the implementation of policies and laws aimed at fulfilling the right of access to water. The report warns that monitoring will only be effective if monitoring bodies from local, regional and national spheres work together. Where possible and when possible, the Free Basic Water allocation should be increased to cater for higher levels of domestic water consumption. A 50kl water allocation per household per month would bring South Africa's Free Basic Water allocation into the 'low level of health concern' range defined by the World Health Organisation.

The Right to Health Care

The report on the right to health care focuses on key developments in three key health programmes of the State (Health Service Delivery, Strategic Health Programmes and Administration). Although the policy and legislative measures developed in the fiscal year under review can be said to be “reasonable” in their conception, there remain large gaps in implementing them in a manner such that all the provinces, urban and rural peoples, rich and the poor have equal access to the same high quality of care.

The three most important, and universally acknowledged, indicators to measure the health status of a nation are Life Expectancy at Birth, the Maternal Mortality Ratio, and the Infant Mortality Rate. Life expectancy has fallen from 56 years in 1996 to 52,5 in 2002 and is projected to fall to 47 by 2005. The infant mortality rate has increased from 45 in 1998 to 59 in 2002. This means that more children under the age of one died in 2002 as compared to 1998. The under five-mortality rate has risen from 61 in 1998 to 100 in 2002. Similarly, the maternal mortality ratio shows a steady increase since 1998 and is estimated to be 150 per 100 000 live births. The National Department of Health, as well as independent researchers, have concluded that this is due to HIV/AIDS related deaths.

The single most important challenge that government faces is the one posed by the AIDS pandemic and the high incidence of opportunistic diseases such as tuberculosis. It is estimated that about one tenth of the population of the population is infected with the HI virus i.e. close to 5 million people. The number of AIDS orphans is estimated to be one million. In a landmark case instituted by Treatment Action Campaign against the Minister of Health, the Constitutional Court, in 2002 confirmed the finding of the High Court that government’s policy to limit Nevirapine to research and training sites was in “breach of the States obligations under section 27(2) read with 27(1)(a) of the Constitution.” The report recommends that the Comprehensive National Aids Plan should be rolled out effectively in all the provinces so as to meet targets and timelines in order to substantially reduce new infections and to prolong the lives of those already infected.

In spite of the fact that policies and programmes directed at improving the health status of the country have been put in place such as the Integrated Management of Childhood Illnesses, the AIDS pandemic continues to be the single most cause of death in South Africa. This has placed an enormous strain on an already overburdened health system and undermines the efforts made by the State. This is compounded by the fact that the other economic and social rights, which contribute substantially to the health status of a nation, are also not fully enjoyed by the vast majority of poor South Africans due to the huge backlogs inherited from the past. Inadequate housing, poor sanitation, overcrowding, lack of clean drinking water, lack of efficiently run social services, insufficient nutrition and health education exacerbate the diseases of poverty. Moreover, a household that is affected by AIDS contributes to depleting the financial resources available to the family, thereby increasing the level of poverty.

government developed legislative and other measures to comply with its constitutional obligations in terms of section 7(2) of the Constitution. However, despite national policies and programmes, which, in the main comply with international standards and targets, the health care system has not been able to successfully deliver quality health care on an equitable basis in all the provinces. Provinces do not spend the same amount per capita on health care delivery, and there is a serious lack of managerial capacity in

the health system. The biggest challenge facing the efficient running of the health system is training managers to operationalise efficient systems especially for running clinics and hospitals where many problems have been identified. Efficient management systems in conjunction with effective engagement with labour should be operationalised with immediate effect in the public health sector so as to ensure that hospitals and clinics run well.

The report also recommends that there is a need to increase efforts in promoting preventative health measures by the State as well as by non-state actors. Programmes and policies should also be put in place to address the needs of the poor and vulnerable members of society, including a National Health Insurance System. Inequities in the health system such as intra- and inter-provincial health expenditures, access to clinics and hospitals, number of doctors, specialists, and nursing staff need to be addressed so as to give meaning to the constitutional right to universal and equal access to everyone. Finally, Departments of Health are strongly advised to improve their monitoring, evaluating, and reporting systems

The Right to Social Security

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The number of social assistance beneficiaries increased dramatically by 966 311 people from April 2002 to the end of March 2003, mostly as a result of increased registration for Child Support Grants for children up to the age of seven. By the end of March 2003, 5,6 million people were beneficiaries of social assistance, which mostly comprised of child support grants (2,5 million people), old age pensions (2 million people), disability grants (897 050 people) and foster care grants (133 309 people). The most rapid increases in uptake of social grants took place in Gauteng, Free State, KwaZulu-Natal, Mpumalanga and Limpopo. Take up rates were considerably lower in the Northern Cape, North-West, Eastern Cape and Western Cape.

Most provincial departments indicated that the allocated budget was not enough and that numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. However, the delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration.

As a result of rapid inflation in the cost of basic goods bought by the poor, in 2002/2003, the State moved swiftly to implement above inflation related increases in social grants. The old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640.

The National and Provincial Departments of Social Development spent 90% of the R49 million allocated to the HIV/AIDS (home based/community based care) programme. The Home/Community Based Care programmes, through the collaborative work of government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by

the end of March 2003. The programme reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.

The State also instituted new measures to further the right to social security, including disability assessment panels, a social relief of distress policy and the implementation of the National Food Emergency Scheme/Programme. Figures of the number of households that were assisted with food parcels in the pilot phase of the National Food Emergency Programme from December 2002 to the end of March 2003 range from 60 089 to 149 779.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This is especially so for children in child headed households and children who live in the streets who sometimes engage in exploitative forms of labour. Some parents also fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

The report recommends that the Department of Labour should take the International Labour Organisation's Decent Work for All Strategy forward in South Africa. It is also recommended that the relevant organs of State achieve better regulation of the insurance, health and maintenance systems. Particular attention should be paid to the coverage of old age pensions for workers in non-formal employment. The Department of Social Development is encouraged to continue fostering collaboration with all stakeholders, such as other government departments, Faith Based Organisations and Non-Governmental Organisations. The Basic Income Grant should continue to be considered as a viable option for addressing poverty in the country, especially amongst people of working age. The proposal to extend social assistance to all children in need (up to the age of 18), should also be kept alive.

The Right to Food

The report concludes that many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the Commission to state how many children died of malnutrition. However, it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%.

The report finds the National Department of Health's targets for reducing malnutrition to be unreasonable in their conception because the targets for 2000 and 2005 were virtually identical. The report also finds two elements of the Primary School Nutrition Programme to be unreasonable in their conception.

The first issue concerns the reduced allocation of resources to the programme in 2002/2003 as compared to 2001/2002. In 2001/2002 the total cost of the school food "meal" ranged from approximately 99 cents to R2.10. In 2002/2003, the maximum budgeted resource available per targeted learner per day was less than 67 cents. This is clearly an unreasonable set of parameters for the programme to be improved to meet the higher standards set by Cabinet.

The second element of the programme that was unreasonable was the reduction in the targeted number of children who should benefit from the programme. In the context of increasing numbers of children enrolled in schools, the Primary School Nutrition Programme did reach 4,5 million children in grades R to 7, however this was 151 615 children less than the year before. The drop in the number of learners who were reached is connected with government reducing its target from 5,4 million learners in 2001/2002 to 4,9 million learners in 2002/2003 as well as rapid increases in the cost of food procured for the programme. A three month gap in the implementation of the programme in the Eastern Cape also reduced access to the programme.

Non-State actors appear to have fallen short in their observance of their positive obligations to fulfil the right to food. As one example, the Yiyo Lena sifted maize relief programme introduced by a group of companies is alleged to have sold relief maize packs at a 20% discount, despite that fact that the companies announced that the programme would entail a 50% discount.

High basic food prices during the reporting period, were partly attributable to inadequate safeguards on the South African Futures Exchange, where maize prices are formed. High prices for maize were passed on to low-income consumers, who could ill afford such dramatic basic food price increases for such a sustained period of time. The potential for market manipulation should have been prevented by the Johannesburg Securities Exchange when allegations of abuse were first signalled in 2002. The report identifies that there are weaknesses in the State's observance of its obligation to protect against fraud, unethical behaviour in trade and contractual relations.

There were some signs of improvement in the State's delivery of production support to emerging farmers and people who grow their own food. For example, the Comprehensive Farmer Support Package was instituted during the reporting period to assist land reform beneficiaries. However, it was implemented in some provinces only.

The LandCare programme, which is one of the major production support programmes from the National Department of Agriculture, was heavily underspent at 65% of the total conditional grant to provinces. There is also a significant gap in production support for rural restitution beneficiaries.

It was found that very few Provincial Department's of Agriculture were operating well funded programmes designed specifically to provide grants or revolving loans to support increased access by small scale and emergent farmers to production and/or marketing related infrastructure. Production support materials and learning support materials that are relevant to resource to poor farmers in water scarce areas were also not readily available.

On the whole, the report determines that the State absorbed the heavy burden of duty to achieve the progressive realisation of the right to food as expeditiously as possible, within its available resources. However, there was a crucial weakness in the measures to protect the right to food from being violated by non-State actors or third parties that need not be repeated in future.

The report suggests that there is a need for greater care in the preparation of strategic and financial planning targets so that they inspire civil society to marshal their resources

in support of the progressive realisation of the right. The report recommends: public education to raise awareness of malnutrition, rolling out the Integrated Food Security Strategy at a provincial level, improving food safety, achieving better regulation of the food industry through State procurement, accelerating agrarian reform, and communication policy and legislative developments more effectively. Finally, the report supports the call for government, labour, community and business representatives to negotiate an agreement at the National Economic Development and Labour Council (NEDLAC) to ensure the right to food and quality job creation in the food industry.

The Right of Access to Adequate Housing

In order to fill some gaps in the housing policy framework, the State identified medium density housing, rental housing, social housing and emergency housing as the key policy priorities for 2002/2003. Emergency, medium density, rental and social housing are part and parcel of addressing inequalities in access to transport and the legacy of racial segregation. The Emergency Housing Policy Framework was conceptualised as a result of the *Grootboom* judgment and aims to assist groups of people that are deemed to have urgent housing problems, owing to circumstances beyond their control (e.g. disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety). The report highlights that it was not clear whether the Emergency Housing Policy should also cover people living in informal settlements, because they are living in intolerable circumstances. Social Housing projects demonstrate that socially, environmentally and sunshine conscious design principles can make a difference to the quality of State subsidised housing.

The State reported on measures to protect the right to housing in the form of the Prevention of Illegal Eviction from Occupation of Land Amendment Bill and the commencement of the Home Loan and Mortgage Disclosure Act 63 of 2000. With a view towards curbing discriminatory practices, the Act compels financial institutions to disclose information in their financial statements on home loan patterns according to categories of persons and geographic areas (both of which may be prescribed). The Community Reinvestment Bill confirmed the State's intention to increase private sector investment in the lower end of the housing market. The report highlights that the State was also attending to some aspects of the Housing Act 107 of 1997, as amended, in order to ensure that the Act, and its implementation, did not violate an individual's right to property in terms of the Constitution.

In terms of on-going policies and programmes, in 2002/2003, the State reported 203 288 houses completed or under construction, whilst the State approved 519 498 subsidies to households with a joint monthly income less than or equal to R3 500, or R1 500 if the house was built under the apartheid system. By the end of 2002/2003, the State reported that over 1,4 million houses had been delivered since 1994, whilst the number of families without houses (i.e. dwellings in backyards, informal dwellings, backyard dwellings in shared properties and caravans/tents) was reflected as 2 399 825- from the 2001 Census. The State also increased the subsidy amounts for the housing programme to keep pace with inflation and maintain the well-known quality and size of housing. Sixty-three projects were also completed as part of the Human Settlement Redevelopment Programme in order to correct imbalances and dysfunctionalities in existing settlements that cannot be funded through the housing subsidy scheme (e.g.

sports facilities, business hives, labour exchanges, cemeteries, parks and ablution blocks).

There was under expenditure on housing delivery amongst many provincial departments responsible for housing. Reporting on the constraints associated with underspending was not complete, but included the following in some cases: failure to secure suitably located land, delays in tender adjudication, municipalities failing to submit business plans, delays in the National Department approving projects, weaknesses and staff shortages at municipal level, incompetence, corruption, political intervention and nepotism, slow delivery associated with the People's Housing Process and delays at the Deeds Office.

Comparing performance in relation to targets was a problem in that provincial information was reported in the format of the number of units completed *or* under construction. Nevertheless, Gauteng and Limpopo provinces stand out as the only provinces to show a reduction in units, whether complete or under construction, from 2001/02 to 2002/03. The Gauteng Department of Housing reported delivering 59% of the target in the incremental housing programme and 39% of the target in the Social Housing programme. A Customer Support Service in the province acknowledged 83 714 queries and responded to a further 11 774 by letter.

According to the National Department of Housing, in 2002/2003, 6 469 houses did not conform to the Department's construction and safety standards. The National Home Builders Registration Council's (NHBRC) Warranty Scheme was instituted to provide assurance to beneficiaries that houses built and financed through the housing subsidy scheme are of an adequate quality. After trying to resolve disputes about the quality of construction, a housing subsidy beneficiary can forward complaints to the NHBRC. However, the report highlights that public education is required to empower consumers to identify quality problems and make use of the complaint procedures of the NHBRC. The Mpumalanga Department of Housing also reported that building works inspectors from provincial government and local government monitored the work of contractors.

The report makes one urgent recommendation, namely: to establish the dedicated fund for acquiring well-located land for low-cost housing. Other recommendations include reducing policy incoherence and institutional fragmentation, improving monitoring and evaluation, interpreting the Peoples' Housing Process as a route for strengthening culturally adequate housing, creating an informed and supportive environment for whistleblowing, and ensuring effective participation in the delivery of housing. Specific attention is drawn to the plight of farmworkers and vulnerable groups, especially HIV/AIDS orphans and People with Special Needs.

The Right to a Healthy Environment

Section 24 of the Constitution establishes the right to environment in order to ensure the health and well-being of present and future generations. At its core, the right to environment aims to grant this benefit to everyone in South Africa, not just to the few. Although, translating this vision of the benefit of environmental health into reality has become increasingly complicated, ensuring that there are no violations of this right is as urgent as any violation of other rights in the Bill of Rights.

Analysts of data from South Africa's Global Atmosphere Watch station at Cape Point contend that continued emissions of greenhouse gases are cause for concern. Like many countries, South Africa is sensitive to global climate change and there are also occasions, especially in major urban areas, when more localised air pollution becomes a health threat.

By way of illustration, the Johannesburg *State of the Environment Report 2003* indicates that “while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing.” The report goes further to state that “levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter.”

Progress in the realisation of the right to environment could not be very well monitored and observed by the Commission during the year under review because annual progress reports in terms of section 11 of the National Environmental Management Act 107 of 1998, were inaccessible at the time of writing. These progress reports should contain detailed information on the implementation of measures instituted to ensure the right to environment.

Nevertheless, the Commission did observe the growing influence of the Committee for Environmental Co-ordination through an interpretation of its review, and subsequent consolidation, of Environmental Implementation Plans and Environmental Management Plans submitted by relevant organs of State. These reports contain the planned and *aligned* outputs of national and provincial departments with an impact on, or management function over, aspects of the right to environment. The Commission also recognises that some Environmental Co-ordinating Committees were established at the provincial sphere, also for the purposes of alignment and co-operative governance.

Progress has been made, through the courts and other avenues, towards realising the procedural aspects of the right to environment (access to information, participation in decision-making processes, redress and remedy). The report includes several examples of objections and court applications lodged by Non-Governmental Organisations, with a view towards safeguarding environmental health in low-income areas. Despite these opportunities to access information and participate in decision making, some remedies for old violations could not be realised without concerted action on the part of the State. One example, is the case of workers with mercury poisoning, which first occurred many years ago. In March 2003, Thor Chemicals was served with a R60 million toxic chemical clean-up directive by the State.

On the substantive issue of waste management and pollution control, what was reported by government to the Commission fell short of what was expected in terms of the strategic objectives of the policy and strategy for pollution and waste management. The report highlights that there is still no clear understanding among the different mandate holders for this function of what they are required to do and as a result, implementation was not as effective as it could be. Having said this, there were positive developments during the period under review, including the introduction of waste buy-back centres

which address brown issues and could assist in strengthening the bargaining power of the very low income people who do the hard work of collection.

On the issue of Air Quality, the report acknowledges that progress was made in the Southern Industrial Basin through the focused action of the State and Community Based Organisations (CBOs) in linking asthma in school children to emissions, however there is an urgent need for national legislation to institute mechanisms and standards to effectively protect against pollution that threatens health and well-being, possibly including pollutant release and transfer registers.

Several new control measures were introduced to manage water pollution, including the second draft of the National Water Quality Management Framework Policy and the Waste Discharge Charge System. The Working for Water programme succeeded in protecting and preventing against water loss due to alien invasive plant species, however it was not clear how much of this work focused unfairly on commercial farmlands and not on areas inhabited by vulnerable sections of the population.

Most of the work by the State on inland as well as marine and coastal biodiversity and conservation was reasonable in as far as it related to tourism and the economic development of the country.

The report highlights that the challenges facing South Africa in terms of the right to a healthy environment include: allocating sufficient resources for progressive realisation of the right for the benefit of vulnerable groups; educating and training communities; ensuring that proper implementation systems are in place; ensuring effective co-operative governance; operating proper monitoring and evaluation systems.

The report recommends that while most policies and laws are in place or about to be instituted, there should be a quantum shift in focus towards implementation of measures to further the right to environment for vulnerable groups in a more decentralised way. Provincial government and local government should be resourced to concentrate their energies on implementation, in association with community based organisations that have already developed innovations to further the right, sometimes in the face of extreme resource scarcity.

The State has made valuable contributions to promoting the right to environment through for example, the “Bontle ke Batho” or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment. For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely

communicated so as to avoid conflict and encourage effective participation. The Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

D) Protocols and the Report Production Process

The production process for this report began with the SAHRC sending questionnaires, which are called protocols, to various organs of State for their comment in May 2003. The Commission then took some time to revise the protocols, which were resent to all relevant organs of State for comment and suggestions in June 2003. The response from relevant organs of State was not satisfactory; with the Department of Housing (Gauteng Province), the Department of Land Affairs and the Department of Water Affairs and Forestry being the only organs of State to respond. However, the Commission acknowledges that further work is required, in the next reporting cycle, to ensure that the protocols are improved for all spheres of government and parastatals.

The final protocols were sent to various organs of state (national and provincial government, parastatals, metropolitan and local councils) in July 2003, as mandated by section 184(3) of the Constitution. In future, the Commission will pay more attention to smaller municipalities by focusing field research on the implementation of programmes and projects at a local level.

The first deadline for the release of this Report was in December 2003. However, the Commission had major problems in getting timeous responses from organs of State and as a result, the Commission took a decision to subpoena several departments and postpone the release of the Report until sufficient information had been received (see summarised list overleaf).

SPHERE	INSTITUTION	DATE RESPONSE RECEIVED
2 - Provinces	GAU Social Services and Population Development	August 21, 2003
1 - National	NATIONAL Labour	August 29, 2003
2 - Provinces	EC Health	August 29, 2003
2 - Provinces	WC Agriculture	August 29, 2003
2 - Provinces	LIMPOPO Agriculture and Environmental Affairs	August 31, 2003
2 - Provinces	FS Health	September 1, 2003
2 - Provinces	NW Health	September 1, 2003
2 - Provinces	WC Social Services	September 1, 2003
2 - Provinces	EC Education and Training	September 5, 2003
2 - Provinces	GAU Health	September 5, 2003
2 - Provinces	KZN Agriculture and Environmental Affairs	September 9, 2003
4 -Parastatals	PARASTATAL Rand Water	September 9, 2003
2 - Provinces	KZN Traditional and Local Government	September 10, 2003
2 - Provinces	MP Local Govt and Traffic	September 10, 2003
2 - Provinces	NW Education	September 10, 2003
1 - National	NATIONAL Land Affairs	September 12, 2003
2 - Provinces	FS Social Welfare	September 12, 2003
2 - Provinces	GAU Housing	September 12, 2003
2 - Provinces	NC Health	September 12, 2003
2 - Provinces	NC Social Services and Population Development	September 12, 2003
1 - National	NATIONAL Agriculture	September 15, 2003
2 - Provinces	NATIONAL Water Affairs and Forestry	September 15, 2003
2 - Provinces	EC Agriculture and Land Affairs	September 15, 2003
2 - Provinces	FS Education	September 15, 2003
2 - Provinces	GAU Education	September 15, 2003
2 - Provinces	MP Housing and Land Administration	September 15, 2003
2 - Provinces	WC Education	September 15, 2003
2 - Provinces	WC Environmental Affairs and Development Planning	September 15, 2003
2 - Provinces	WC Health	September 15, 2003
2 - Provinces	WC Housing	September 15, 2003
2 - Provinces	NC Agriculture Conservation and Environment	September 15, 2003
2 - Provinces	KZN Health	September 16, 2003
1 - National	NATIONAL Education	September 18, 2003
2 - Provinces	MP Health	September 18, 2003
2 - Provinces	NW Agriculture, Conservation and Environment	September 23, 2003
2 - Provinces	MP Social Services and Population Development	September 25, 2003
3 -Metropolitan Councils	METRO Greater Tswane Metropolitan Council	October 2, 2003
3 -Metropolitan Councils	METRO Nelson Mandela Metro Council	October 2, 2003
1 - National	NATIONAL Correctional Services	October 3, 2003
1 - National	NATIONAL Social Development	October 3, 2003
2 - Provinces	LIMPOPO Health and Welfare	October 3, 2003
2 - Provinces	EC Social Development	October 3, 2003
1 - National	NATIONAL Health	October 10, 2003
2 - Provinces	GAU Agriculture, Conservation, Environment and Land Affairs	October 10, 2003
4 -Parastatals	PARASTATAL Medicines Controls Council	October 10, 2003
2 - Provinces	FS Local Govt and Housing	October 29, 2003
1 - National	NATIONAL Housing	October 30, 2003
1 - National	NATIONAL Provincial and Local Government	October 30, 2003
1 - National	NATIONAL Environmental Affairs and Tourism	October 31, 2003
4 -Parastatals	PARASTATAL Agriculture Research Council	October 31, 2003
1 - National	NATIONAL Minerals and Energy Affairs	November 3, 2003
2 - Provinces	KZN Education and Culture	November 3, 2003
2 - Provinces	EC Housing, Local Government and Traditional Affairs	November 4, 2003
2 - Provinces	GAU Development Planning and Local Government	November 4, 2003
2 - Provinces	LIMPOPO Education	November 4, 2003
2 - Provinces	MP Agriculture, Conservation and the Environment	November 4, 2003
2 - Provinces	NC Local Govt and Housing	November 4, 2003
2 - Provinces	WC Planning and Local Govt	November 4, 2003
4 -Parastatals	PARASTATAL National Education Financial Aid Scheme	November 4, 2003
2 - Provinces	NW Developmental Local Government and Housing	November 5, 2003
3 -Metropolitan Councils	METRO Eastrand Metropolitan Council	November 5, 2003
4 -Parastatals	PARASTATAL Umngeni Water	November 5, 2003
3 -Metropolitan Councils	METRO Cape Town Metro Council	November 6, 2003
4 -Parastatals	PARASTATAL Medical Research Council	November 6, 2003
2 - Provinces	FS Agriculture	November 7, 2003
2 - Provinces	KZN Welfare and Pensions	November 7, 2003
2 - Provinces	LIMPOPO Local Govt and Housing	November 7, 2003
2 - Provinces	MP Education	November 7, 2003
2 - Provinces	NC Education	November 7, 2003
4 -Parastatals	PARASTATAL National Housing Finance Corporation	November 7, 2003
2 - Provinces	KZN Housing	November 14, 2003
3 -Metropolitan Councils	METRO eThekweni Metropolitan Council	November 17, 2003
4 -Parastatals	PARASTATAL Landbank*	November 17, 2003
4 -Parastatals	PARASTATAL Council for Scientific and Industrial Council*	November 18, 2003
2 - Provinces	FS Environmental, Tourism and Economic Affairs	November 19, 2003
3 -Metropolitan Councils	METRO Greater Johannesburg Metropolitan Council	December 17, 2003
2 - Provinces	NW Social Services**	

First deadline

Extended deadline

Subpoena hearings begin

Subpoena hearings end

* Extension granted as a result of communication problems

** No subpoena served, a letter explains the breakdown in communication

Most organs of State submitted their reports before they were meant to appear at a subpoena hearing. However, the North West Department of Social Services, Arts, Culture and Sport did not provide a response to the Commission as a result of problems with network cabling and the resignation of the personal assistant to the Acting HoD. The Department submits that it was not out of irresponsibility and deliberate disregard of the law that the Commission did not receive a report from the Department.

In order to improve the quality of the information, analysis and recommendations in the reports and to forge closer and better working relationships with government and non-governmental entities, a set of draft reports were released for comment to government and civil society before a National Input Workshop on 27-28 January 2004. Comments made at the workshop, and in writing, have been considered by each report writer.

A set of second draft reports were then made available to the Director General of the relevant national department in February 2003 to correct any remaining problems with factual information. Responses were received from the following departments: Water Affairs and Forestry, Minerals and Energy, Provincial and Local Government, Health, Social Development, Education, Land Affairs, and Housing. The final reports were also reviewed intensively within the Commission before being published.

E) Conclusion

One of the concerns acknowledged by the Commission about the monitoring process so far is that it still relies heavily on reports from government.

Furthermore, even though the Bill of Rights applies vertically and horizontally and binds State entities and non-State entities, the Commission has some capacity problems in extending its mandate to non-State entities, especially big corporations.

In the next reporting cycle, the Commission will place more emphasis on conducting its own primary research in addition to improving on the existing protocols for each right and making better use of annual report information as soon as it becomes available.

1 INTRODUCTION

This report provides an assessment of the key measures undertaken by government towards the progressive realisation of the right to environment as enshrined in section 24 of the Constitution.

Section 24 of the Constitution states:

Everyone has the right-

*(a) to an environment that is not harmful to their health or well-being;
and*

(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that -

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development

Section 24 of the Constitution therefore establishes the right to environment in order to ensure the health and well-being of present and future generations. However, as the preamble to the National Environmental Management Act 107 of 1998 (NEMA) acknowledges, many people in South Africa live in an environment that is harmful to their health and well-being.¹ Furthermore, NEMA highlights that inequality in the distribution of wealth and resources, and the resultant poverty, are an important cause of environmentally harmful practices.

Section 7(2) of the Constitution requires the State to respect, protect, promote and fulfil the right to environment and the other rights in the Bill of Rights. When section 24 is read with section 8, the Constitution also provides for the horizontal application of the Bill of Rights, thereby allowing for claims against third parties for violations of the right to environment.

1.1 The Meaning and Content of the Right to Environment

1.1.1 International instruments

The meaning and content of right to environment as a human right has not been fully defined by the United Nations. Internationally, the right has mostly been given a *procedural character*² in response to Principle 10 of the 1992 Rio Declaration, which states:

*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate **access to information** concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to **participate in decision-making processes**. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including **redress and remedy**, shall be provided.*³

However, it is also significant that the United Nations Economic Commission for Europe has created a link between human rights and the environment through the Aarhus Convention of 1998. At an extraordinary meeting in May 2003, 36 parties to the Convention and the European Community adopted a Protocol on Pollutant Release and Transfer Registers. The Protocol “makes provision for pollutant release and transfer registers [that] have proven to be a highly effective and relatively low cost means of gathering environmental information from the private sector and putting it into the public domain”.⁴ Signing the protocol was open to all States until 31 December 2003.

With respect to South American countries, reference has also been made to the Convention concerning Indigenous and Tribal Peoples in Independent Countries for its provisions to protect the collective scientific, cultural and natural heritage rights of indigenous peoples, outside of existing intellectual property rights systems.⁵

Article 24(2)(c) of the Convention on the Rights of the Child makes reference to combating disease and malnutrition, whilst taking into consideration the dangers and risks of environmental pollution. Article 24(2)(e) of the Convention refers to informing children and parents, and providing access to education, about environmental sanitation. States that have ratified the Convention also agree that the education of the child shall be directed to ‘... the development of respect for the natural environment’.

During the year under review South Africa ratified or acceded to the following international agreements:

- Ratification of The Convention for the Protection, Management and Development of the Marine and Coastal Environment of the East African Region and related protocols (Nairobi).
- Ratification of the South African Developing Countries Protocol on Fisheries.
- Ratification of South African Developing Countries (SADC) protocol on tourism.
- Ratification of the Convention for Cooperation in the Protection and Development of Marine and Coastal Environment of the East African Region and Protocols (Abidjan Convention).
- Ratification of the Rotterdam Convention on the Prior Informed Consent (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade. This convention aims to protect countries that do not have the requisite infrastructure against the unknown importation of dangerous chemicals.
- The Stockholm Convention on Persistent Organic Pollutants was ratified in September 2002.
- South Africa acceded to the Agreement on the Implementation of the Provision of the United Nations Convention on the Law of the Sea of 1982 (The Straddling Fish Agreement) which relates to the conservation and management of straddling fish stocks and highly migratory fish stocks. Arrangements are under way to have the agreement ratified.
- Acceded to the Agreement on the Conservation of Albatrosses and Petrels (ACAP).

The *procedural* and *relational* character of the right to environment in South Africa is discussed further below.

1.1.2 The Procedural Character of the Right

In South Africa, the right of access to environmental information is being championed via section 32 of the Constitution and the Promotion of Access to Information Act 2 of 2000 (PAIA), which entitles everyone to information held by the State, or information held by another person, that is required for the exercise or protection of any rights.

The right of access to information was one of the matters at the heart of the application to the Pretoria High Court by Earthlife Africa⁶ to block the Department of Environmental Affairs and Tourism (DEAT) from permitting Eskom⁷ to build a pebble-bed modular reactor (PMBR) at Koeberg.⁸ The application was, however, denied on grounds that the court did not find the matter to be urgent and that Earthlife had known for more than six months that the matter had reached decision-making stage, but did not do anything.

Earthlife only acted a few weeks before the dates when the decision would be made. The court's decision was also motivated by the fact that Earthlife did not provide convincing reasons for failing to take the necessary steps in good time.⁹

However, in the earlier case of *The Director: Mineral Development, Gauteng and Sasol Mining (Pty) Ltd v Save the Vaal Environment and Others*¹⁰ in which the Director refused the residents a hearing in an application by Sasol Mining for a mining licence for open cast mining of coal in the Sasolburg District, the Supreme Court of Appeal held that the residents were entitled to be heard under the *audi altarem partem* (hear from the other side) rule. The court's decision that the rule be applied was based on the "enormous damage" to the environment and ecological systems that mining posed and thus the need to give affected parties notification about the application and an opportunity for them to raise their objections.¹¹

Another important case with a bearing on the right to access environmental information and participate in decision-making was filed by Biowatch on 23 August 2002. The case concerns public access to information about Genetically Modified Organisms (GMOs) released into South Africa's environment for the purposes of field trials, crop production as well as animal and human consumption.¹²

There are also some South African precedents for remedies when peoples right to a healthy environment has been violated. For example, the Department of Minerals and Energy cites cases where the polluter pays principle was applied, as follows:

*With regard to coal mining operations it should be noted that in the Vryheid region, KwaZulu-Natal, an applicant's financial guarantee was called up, because he failed to meet his rehabilitation obligations in terms of the Minerals Act, 1991. The funds were then utilised to conduct the necessary rehabilitation work. In another instance in Mpumalanga Province a company was placed in liquidation. The Department had a financial guarantee, which could be called up to perform the necessary rehabilitation of the mining area.*¹³

However, remedies for other serious violations of the right to a healthy environment appear to be more complicated. For example, in the case of workers with mercury poisoning, Thor Chemicals was served with a R60 million toxic chemical clean-up directive in March 2003¹⁴, six years after the Davis Commission completed its first phase report in 1997.¹⁵ Mercury contamination affected workers, communities, livestock and groundwater in the Cato Ridge area of KwaZulu-Natal.

1.1.3 The Relational Character of the Right

The right to environment has also been given a *relational character*. Environmental rights extend to the **right to food and clean water** because processes that cause land and water-source pollution can negatively affect plant and animal life. In addition, these processes could change the nutritional and safety composition of food so as to violate the right of people to have safe food.¹⁶

The **right to water** as an aspect of the environment is clearly seen through the aspect of safe drinking water which has a lot to do with how water resources are managed and used and how other activities of human nature impact on the sustainability of water resources.

The right to environment also has a close link with the **right to health** because of the health impact of violations of the right to environment. Case scenarios would include the increasing risk of respiratory problems, eye irritation, cancers and other diseases due to the existence of noxious gases like sulphide, carbon dioxide and others which affect ambient air quality. Health is one of the component areas of the right as stipulated in section 24 of the Constitution where it refers to the right to an environment that is not harmful to health. The right to health as contained in Article 12(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) brings the link closer, where in the realisation of the right to health, States are obliged to take necessary steps for improvement of all aspects of environmental and industrial hygiene.

Environmental hygiene would cover all environmental factors that may affect human health like pollution of water sources that limit access to clean water, unsafe disposal of human excreta, sewage (please refer to the Right to Water report in this series) and other refuse, global warming and its effects on human health causing skin disorders and eye damage. Industrial hygiene deals with the measures to control worker exposure to harmful physical or chemical agents or conditions in their work environment. It relates to the control of “occupational environmental health hazards”.

The link between the right to environment and the right to health is now much more critical and has been a major underlying factor in many conventions and laws. According to the World Health Organisation (WHO), “sustained good health of any population over time requires a stable and productive natural environment that: (i) yields assured supplies of food and fresh water; (ii) has a relatively constant climate in which climate sensitive physical and biological systems do not change for the worse; and (iii) retains biodiversity...”¹⁷

The right to environment is also closely related to the **right to an adequate standard of living**, particularly so where issues of poverty, environment and development come together. According to Fabra, “poverty is the other side of the coin of development, but also sustainability... Poverty and environmental

degradation are often bound together in a mutually reinforcing vicious circle, and thus human rights abuses related to poverty can be both cause and effect of environmental problems”.¹⁸ Substandard residential environments in many areas are the cause of environmental degradation.

One example is the use of environmentally unsustainable sources of energy for domestic use. Coal and wood burning for domestic heating and cooking is a major contributor to air pollution hazards in densely populated urban settlements. This is both a cause and effect of inadequate standard of living. It is mostly the poor that do not have electricity and thus have to resort to the use of fossil fuel sources with negative impacts on their health and livelihood. In some areas, the poor do not have access to safe and clean water or reside in polluted and dangerous environments near mines and factories. Sometimes people are forced to survive through scavenging on land fill sites and other waste dumps.

The right to environment encompasses the **right to development** with the component of protecting the environment for the benefit of current and future generations. This link is very prominent as a result of Agenda 21 and the following international agenda on environment and development. In this, the government of South Africa has taken up the position of custodian over the country's resources with a commitment to facilitate access by everyone to the resources for social and economic development. Most importantly the government takes responsibility to ensure that resources are used in a sustainable manner in line with the World Summit on Sustainable Development.

1.2 The International Context of State Obligations

Important developments in the international arena during the 2002/2003 period included the World Summit on Sustainable Development Declaration¹⁹ and the related Johannesburg Plan of Implementation.²⁰ The Johannesburg Plan of Implementation has three major objectives, which are relevant to the right to environment as contained in section 24 of the Constitution, namely:

- i) poverty eradication;
- ii) changing unsustainable patterns of production and consumption; and
- iii) protecting and managing the natural resource base of economic and social development.

The Johannesburg Plan of Implementation, among others, prioritises the provision of **clean drinking water and adequate sanitation** in order to protect human health and the environment (para 8). Another focus is on improving access of the people to ‘reliable, affordable, economically viable, socially acceptable and **environmentally sound energy services and**

resources' (para 9) through various means, including 'enhanced rural electrification and decentralised energy systems, increased use of renewables, cleaner liquid and gaseous fuels and enhanced energy efficiency'. These commitments are linked to a poverty eradication component.

1.3 The National Context of State Obligations

In this report, specific guidance with regard to realising the right to environment will be drawn from sections 24 and 7(2) of the Constitution and the interpretation of closely similar rights that has been given in the *Grootboom*²¹ and *Treatment Action Campaign*²² cases.

The reasonableness test as expounded on in the *Grootboom* case entails the following:

- The programme must be comprehensive and coordinated with clear allocation of responsibilities and tasks to the different spheres of government: national, provincial and local government as contained in the Constitution. The programme must also ensure that appropriate financial and human resources are available. These spheres of government are allocated specific powers and functions, but they are under duty to cooperate with each other in carrying out their different tasks;
- The legislation must be supported with "appropriate, well-directed policies and programmes" for acting upon and achieving the legislative objectives. The policies must be reasonable in conception and implementation and programmes must be reasonably implemented;
- The social, historical and economic context and the capacity of the institutions responsible for implementing should be considered as well as the short, medium and long-term needs of the targeted population. The programme cannot be reasonable if it excludes "a significant segment of society";
- The programme must have provision for crisis or emergency situations and specifically must be able to respond to the needs of those in desperate situations. The state must "plan, budget and monitor the fulfilment of immediate needs and the management of crises";
- The measures should be assessed in view of the overall national objectives;
- The programme "must be capable of facilitating the realisation of the right" progressively and within the State's available resources.

2 PROGRESS IN THE REALISATION OF ENVIRONMENTAL RIGHTS

There is no single government department that has the responsibility for the right to environment, and in the same way, there is no single law that outlines the roles of the different government departments or spheres in that respect.²³

The concerted intervention of different government departments is being promoted via the principle of co-operative governance that is embedded in NEMA. Section 11 of NEMA requires relevant national departments and provincial government to furnish Environmental Implementation Plans (EIPs) and Environmental Management Plans (EMPs) within one year of promulgating the Act and at least every four years thereafter.²⁴ The Committee for Environmental Coordination (CEC), which was established by section 7 of NEMA, takes responsibility for aligning EIPs and EMPs and promoting their implementation. In terms of section 16(4)(a) and (b) of NEMA, each provincial department must ensure that municipalities adhere to the relevant environmental implementation and management plans in the preparation of any policy, programme or plan, including the establishment of Integrated Development Plans (IDPs) and Land Development Objectives (LDOs).

Annual progress reports on EIPs and EMPs may contain useful and accurate information on whether planned targets and outputs were achieved by relevant organs of State during the period under review. However, since none of these reports were available to the Commission at the time of writing, this report relies on the responses to the SAHRC's protocol, annual reports and information from organisations of civil society.

2.1 National Policies and Programmes

2.1.1 Department of Environmental Affairs and Tourism

2.1.1.1 Environmental Planning and Coordination

The purpose of this programme is to provide information to support effective environmental management and public participation in environmental governance, assess follow-up on the World Summit for Sustainable Development and help build capacity in the sector and manage the reform of environmental law.

2.1.1.1.1 Environmental Law Programme

The Environmental Law Programme of the DEAT aims at building on the legislative regime introduced by the National Environment Management Act (NEMA) of 1998 by developing a comprehensive regulatory framework for all sectors of the environment. Under this programme several initiatives have been taken to introduce laws that relate to several areas of NEMA including

biological diversity, protected areas, coastal resources management, and waste and air quality management.²⁵ All the foregoing is directed towards protecting South Africa's natural environment, promoting sustainable development and realising the right to a clean and healthy environment.

The Committee for Environmental Coordination (CEC) also reviewed several bills and made recommendations. These include the Sustainable Utilisation of Agricultural Resources Bill; the Land Use and Management Bill; Draft regulations to the Minerals and Petroleum Resources Development Act; Draft Regulations to the Forest Act; Limpopo Environmental Management Bill and the Eastern Cape Environmental Conservation Bill.

Submissions were made to the CEC on possible approaches to phasing out asbestos.

2.1.1.1.2 The Vehicle Emissions Strategy

The vehicle emissions strategy is a project that combines the efforts of DEAT and Department of Minerals and Energy (DME). The strategy is aimed at reducing harmful emissions by raising vehicle emission standards and legislating reductions in chemical additives to automobile petrol (sulphur, benzene, aromatics, ethers, and heavy metal additives). The strategy is a follow-up to DME's plan to phase out the use of leaded petrol by 2006.²⁶ The department reported that the strategy is in advanced stages of implementation.²⁷ The strategy is aimed at ensuring the reduction of air pollutants, which if present in high concentrations, pose health and environmental challenges.²⁸

2.1.1.1.3 State of the Environment Reports Initiative

The department was engaged in a project to capacitate provinces and local authorities to undertake the compilation of provincial state of the environment reports. This was done pursuant to section 31 of NEMA which entitles everyone to information relating to the implementation of the Act or on any other environment related law. Assistance was given to eight provinces.²⁹ A total of R7 996 000 was spent in 2002/2003 by DEAT under the environmental monitoring and reporting programme.

2.1.1.1.4 Environmental Indicator Initiative

The department set out to develop a core set of environmental indicators for the state of the environment reporting for provincial and local levels. The environment indicator initiative was intended to address the gap that has existed over the years in monitoring the realisation of the right to environment. Specifically the indicators aim to:

- Provide a summary of environmental trends at a national level (as well as at provincial and local levels where appropriate);

- Facilitate the integration of environmental information management across resource issues, as well as administrative, policy and scientific boundaries;
- Promote the effective sharing of information between actors on existing approaches, technologies, data and knowledge on environmental management and related matters;
- Improve access to and availability of environmental information for various information users including resource managers, and the public;
- Provide an avenue for comparing notes from local to national level and compatibility with regional and global indicators; and
- Last but by all means the most important to promote informed decision-making among policy-makers, implementers among others.

The indicators cover the following eight broad issues: Atmosphere and climate; waste management, human well-being; environmental management; inland water; marine, coastal and estuarine environments; biodiversity and natural heritage, and land use.³⁰ The indicators were developed through a participatory process and were posted on the Indicators web site. They have since been accessed and used by a number of provinces to develop their State of the Environment Reports.

2.1.1.1.5 Programme for Environmental Potential Atlas (ENPAT) Series

The department embarked on a programme to collect geo-referenced environmental information to support environmental decision-making. In 2002/2003 data were collected for several Transfrontier Conservation and Protected Areas.

2.1.1.1.6 Conflict Management Programme

In line with s. 17 of NEMA³¹, a Draft Conciliation Manual was compiled, which gives detailed procedures on alternative dispute resolution mechanisms for conflicts within the government functions in the environmental sector. The Manual is intended to benefit national and provincial environmental departments and civil society. It is another achievement in the strengthening of structures for co-operative governance within the environmental sector.

2.1.1.1.7 Promotion of Co-operative Governance

This programme was geared towards the promotion of co-operative decision-making within the environmental sector through the compilation of Environmental Implementation Plans (EIPs) and Environmental Management Plans (EMPs) by scheduled national departments and provinces. This was in

consonance with section 11 of NEMA.³² The DEAT reported that all departments had fulfilled the first round of EIPs/EMPs. The First Edition plans focused on the promotion of the protection of the environment through co-operative environmental governance, the minimization of the duplication of procedures and functions, and the promotion of consistency in the exercise of functions that may affect the environment.

The Committee on Environmental Coordination considered the Plans and a Cooperative Governance Alignment Report was issued in May 2002. The Report was attempt by the CEC to fill the void regarding understanding of the roles, responsibilities, processes, structures and mechanisms that would facilitate co-operative governance within impacting and managing sectors across the three spheres of government, which information was not overtly accessible from the submitted plans. The CEC issued a Consolidated Action Plan for 2001 to 2004, during 2002, in order the CEC to have a tool to monitor the implementation of Departmental commitments.³³

The second round of EIP/EMP reports should be complete by 27 November 2004.

2.1.1.1.8 The World Summit on Sustainable Development (WSSD)

The WSSD took up a considerable amount of the department's resources in terms of time and money. The department coordinated Local Agenda 21 activities aimed at capacitating local authorities to develop sustainable strategies for environmental management in preparation for the WSSD. Local Agenda 21 multi-sectoral workshops were held in all provinces and the WSSD was successfully hosted in Johannesburg in September 2002. This reflected positively on the country's readiness to take up the challenge of integrating social and economic development with environmental protection. Some of the outcomes of the WSSD include the adoption of the Johannesburg Plan of Implementation which sets out programmes to deliver water, energy and a better environment for the world's poor. Partnerships were entered into in several areas as a way of forging a way forward for the realisation of the stated goals.³⁴

2.1.1.1.9 National Environmental Education Programme

The national environmental education programme is a collaborative venture between the DEAT and the Department of Education and it is under the coordination of the latter. It aims at supporting teachers in implementing environmental education in schools and to integrate it with the outcome-based curriculum. DEAT's direct contribution to the programme was in the development of resource materials. Another related activity was the celebration of wetlands and World environmental day as a way of raising awareness on environmental issues. These activities particularly targeted women and youth.

2.1.1.1.10 Poverty Relief Programme

DEAT's poverty relief programme sets three interdependent goals:- growing tourism market share and investment; protecting and conserving South Africa's Environment; and building the nation. At macro level, projects that can benefit from the relief funds are in the areas of providing critical infrastructure for tourism to promote investment; promoting of learnerships in tourism; protecting the coastline; protecting biodiversity; facilitating Trans Frontier Conservation Areas; and cleaning up towns and cities through proper waste management systems.³⁵ In addition, projects should be in targeted development areas, which include protected areas. Alternatively the other targeted development areas fall under the Integrated Sustainable Rural Development Programme Nodes. At the micro level, poverty relief projects target community-based organisations (and not individuals) for the purpose of training and capacity building, job creation for local populations with specific reservations for women, youth and disabled persons.

Some of the projects that benefited from DEAT's poverty relief funds in 2002/2003 are Working for Wetlands – which by the beginning of 2003 had employed 2000 previously unemployed people, injected money in the rural communities and developed skills in rehabilitation of 40 wetlands in various parts of the country. The Immanuel Centre for the Disabled in the town of Steinkopf also benefited from the relief funds in a nursery project for indigenous plants in the Northern Cape. DEAT's poverty relief funds also benefited the setting up of a kelp (sea bamboo) collection and processing project with a low-tech industry that employs unskilled people, mostly women, to collect, dry, mill and bag the kelp as a fertiliser or fish farm feed.

The Ivory Park Ecocity in Johannesburg also received funds from DEAT's poverty relief programme to develop a sustainable village within the city.

2.1.1.1.11 SADC Regional Environment Education Programme

In line with Agenda 21 and NEMA the department implemented the SADC education programme for environmental practitioners in the region. The programme was aimed at strengthening environmental processes for equitable and sustainable environmental management choices. Workshops were held for provinces to develop an environmental education strategy.

2.1.1.1.12 Integrated Sustainable Rural Development Programme (ISRDP)³⁶

With a view to developing a coordinated strategy for the DEAT's implementation of the ISRDP, a strategy was drafted and projects for nodes were identified. The initial nodes identified by DEAT are as follows:

- in the Eastern Cape: O.R Tambo, North East, Ukhahlamba, EG Kei district municipalities;

- in KwaZulu Natal: Umzinyathi, Umkhanyakude, Ugu and Zululand district municipalities;
- The Northern Cape and North West Provinces: the Kgalagadi Cross Boundary district municipality;
- Western Cape: the Central Karoo district municipality;
- Mpumalanga and Limpopo: the Sekhukhune Cross Boundary district municipality;
- Limpopo Province: the Eastern district municipality;
- Free State: the Maluti a Phofung municipality.³⁷

A proposal for deploying environmental managers in nodes to assist local governments in their planning was submitted during the reporting period.

2.1.1.2 Biodiversity and Conservation

The biodiversity and conservation programme of the DEAT is aimed at ensuring conservation and sustainable use of South Africa's biological diversity and cultural heritage for the benefit of all.

Three programmes were initiated in order to fulfil the departmental mandate under the above sub-programme, namely: Working for Wetlands, Establishment of Transfrontier Conservation Areas and the Protected Areas Programme.

2.1.1.2.1 Working for Wetlands

Working for Wetlands is an on-going programme run under a partnership arrangement between DEAT, DWAF and an NGO – the Mondi Wetlands Project. Working for Wetlands finds support for its existence in the *National Policy on the Conservation and Sustainable Use of Wetlands in South Africa*, the National Water Policy, the National Water Act No. 36 of 1998 and the Conservation of Agricultural Resources Act No. 43 of 1983. The programme aims at the rehabilitation of wetlands and alleviation of poverty through the provision of jobs, skills and economic opportunities. Some of the achievements of the Working for Wetlands programme are noted above under the DEAT's poverty alleviation programme.

2.1.1.2.2 Establishment of Transfrontier Conservation Areas (TCAs)³⁸

Three TFCAs were established and developed by DEAT namely:

- **Great Limpopo Transfrontier Park** (*Formerly Gaza-Kruger-Gonarezhou Transfrontier Park*) regarding 35,000km² in extent of

which 10,000 km² is in Mozambique, 20,000 km² in South Africa and 5,000 km² in Zimbabwe;

- **Ais-Ais/Richtersveld Transfrontier Conservation Park in relation to** 6,222 km² in extent with 1,902 km² (31%) in South Africa, and the remainder (69%) in Namibia and
- **Maloti-Drakensberg Transfrontier Conservation and Development Area covering** 8,113km² in extent of which 5,170 km² (64%) is in Lesotho and 2,943 km² (36%) is in South Africa.

This was in accordance with the *New Partnership for Africa's Development (NEPAD)*; the *White Paper on the Conservation and Sustainable use of South Africa's Biodiversity and the Convention on Biodiversity*. The TFCAs will facilitate regional peace, cooperation and economic development in the area of conservation and sustainable use of biological and cultural resources. As a result of the TFCAs 1045 animals were transferred to the parks as a consequence of agreements entered into, and R40 000 000 was secured for various tourism related infrastructure projects. The department reported that the implementation plan had been reviewed by March 2003 and was being implemented.

2.1.1.2.3 Protected Areas Programme

The department set out to expand and consolidate protected areas with the ultimate objective of creating conservation areas with greater ecological sustainability that widened economic and social opportunities for the rural communities living near the conservation areas and the general South African public. As a result of the initiative 4 500 hectares of land were added to the South African National Parks (SANParks), particularly at the Addo National park. Work was also done at the Golden Gate National Park.

2.1.1.3 Marine and Coastal Management Programme

2.1.1.3.1 Coast Care Programme

DEAT has a Coast Care programme which guides the department in the conservation and development of the marine and coastal environment and ensures the sustainable utilisation of marine and coastal resources. The Coast Care programme is made up of projects and products that contribute to the implementation of the coastal policy objectives as enumerated in the *White Paper for Sustainable Coastal Development in South Africa of 2000*.

Coast Care also provides jobs and training for unemployed coastal communities as a way of getting them to participate in the maintenance of a cleaner and safer coastal environment. In 2002/2003 the department had targeted to employ at least 60% women. On the whole 60% of the poorer

coastal communities were covered. Adult Basic Training was also provided to the communities.

The Working for the Coast programme was another of DEAT's preoccupations under marine and coastal management. This one targets the previously disadvantaged communities, particularly the long-term unemployed and women. Approximately 2 000 people were employed in teams of 30 at 70 different sites.

With regard to coastal management, the department reported the award of the Blue Flag of international recognition of excellence in Beach management to eight of South Africa's beaches.³⁹

2.1.1.3.2 Transformation and Stabilisation of the Fishing Industry

Transforming and stabilising the fishing industry involved restructuring of the fishing rights allocation process in order to ensure sustainability of the fishing industry by protecting the country's natural marine resources. Policy was put in place for restructuring the fishing rights allocation process. A new allocation policy was introduced which provides for longer-term rights and a fee structure. Longer term fishing rights allocations were started in 2002. This introduced stability, transparency and fairness in the fishing industry.

In its 2002/2003 Annual Report⁴⁰ the department reported that the new allocation policy has benefited many communities and will ensure the regulation of fishing to avoid over-fishing and thus ensure sustainable use of marine resources for the good of the South African peoples. This policy is being used to reach previously segregated communities. 73% of the rights holders in the hake trawl sector are mostly owned by blacks. The restructuring also anticipates the opening up of new fisheries in order to widen opportunities. Specific attention for the future will be on cracking down illegal activities in the fishing industry, which reflect negatively on the environmental resources. In relation thereto the department kick-started the process of improving infrastructure, including acquiring patrol vessels and expanding existing fisheries to target undeveloped and unexploited fish species.

The regulatory mechanism for the fishing industry was fairly utilised during the period under review, resulting in the processing of up to 1 500 appeals and undertaking of several operations with law enforcement agencies to curb illegal fishing and corruption. This led to a number of high profile prosecutions⁴¹ and the recovery of up to R45 000 000.

DEAT also reported that its decisions were upheld in courts of law, leading to the conclusion that the fisheries section has gained a degree of sustainability which is good for the realisation of the rights envisaged under section 24 of the Constitution.

2.1.1.4 Environmental Quality and Protection Programme

The DEAT's programme for environmental quality and protection directly targets the fulfilment of South Africa's constitutional right to a clean and healthy environment. It covers air quality management, chemicals and hazardous waste management, climate change and ozone layer protection, environmental resource economics and the SA Weather Service. Although the programme mainly looks at legislative and other measures, DEAT sought to transform policies and legislation into visible integrated waste management programmes that centred on the people.

The following programmes were carried out as part of the implementation process for the *National Waste management Strategy (NWMS)*.

2.1.1.4.1 Cleanest Town Competition

This competition was hosted by DEAT in line with the NWMS. The competition targeted changing the attitudes of the poor through awareness raising and education on good waste management practices. The competition targeted local authorities and their inhabitants. In total, 100 municipalities entered the competition and the 3 national winners were announced in June 2002. As a result of the event publicity, greater awareness was realised on waste management.

2.1.1.4.2 Medical Waste Management

Towards finding better solutions to the handling of medical waste, DEAT held a health care waste seminar. In addition pilot projects were launched at the Leratong (West Rand) and Itireling clinics in January 2003 under the Medical Waste/Sustainable Health Care Waste Management Pilot Project. The project will develop an integrated Health Care Waste Management (HCWM) Strategy and Action Plan; HCWM Guidelines and Technical Specifications and Tender Materials; and institutional arrangements for sustainable HCWM.

2.1.1.4.3 Pollution Control

DEAT's pollution control programmes covered the proper management of water resources to guard against water pollution as well as air quality management.

DEAT coordinated a project for countering the effects of persistent organic pollutants pursuant to the Stockholm Convention of Persistent Organic Pollutants. This intervention targeted civil society. A grant of USD 500 000 was secured by DEAT from the Global Environment Facility to eliminate obsolete pesticides that contaminate ground water systems and negatively impact on health.

DEAT focused on instituting an effective system of air quality management and countrywide compliance with national air quality standards. In this regard, the Department worked on the establishment of an air quality management plan for the South Durban Basin to benefit the residents and industrial establishments in the area. According to DEAT, Durban South has the second largest industrial conglomeration in South Africa. Due to improper planning in the past, residential dwellings were also established in amongst heavy industry with residents and school children suffering the consequences of air pollution. Progress has been made in implementing the Durban South air quality management plan, as follows:

- Existing monitoring systems were assessed;
- Air screening studies were done;
- A monitoring network was designed to support the modelling activity;
- Background and stress indicators were identified;
- Possible pollution sites were surveyed for measurement allocation;
- A quality control assessment of procurement procedures was done and existing Quality Assessment / Quality Control procedures were audited.

The Durban South Project is projected to benefit people living close to industries and waste disposal sites. This project can only be advanced as an interim administrative measure that is aimed at proactively addressing the pollution problems of the area while the Air Quality Management Bill is being considered by the legislature.

Regulations relating to plastic bags are discussed under legislative developments.

2.1.2 Department of Water Affairs and Forestry (DWAF)

DWAF draws its mandate for protection of environmental rights from a number of legal instruments including the National Water Act 36 of 1998⁴²; The National Forests Act 84 of 1998⁴³; and the National Veld and Forest Fire Act 101 of 1998⁴⁴ among others (e.g. NEMA).

2.1.2.1 Policy Developments

In the period under review the department did not develop any policies. However, the following developments were recorded which could contribute to policy development in the future. Some of these were instituted under specific programmes of the department that will be handled in this section:

- A second draft of the National Water Quality Management Framework Policy was released in June 2002
- The department contributed to developing the SADC Forests Protocol, which was signed by South Africa. The protocol focuses on promoting sustainable management of forest resources in order to alleviate poverty and effectively protect the environment, generate economic opportunities for the SADC region and safeguard the interests of future generations.
- The Department of Water Affairs and Forestry (DWAF) indicated that it had begun to extend the existing Minimum Requirements for waste disposal site operation⁴⁵ to include staff training and to add more detail on the operation and auditing of landfills.⁴⁶ The Department undertakes to publish a new set of Minimum Requirements on Training, Operating and Auditing, but it was not clear when this would take place.
- Completed part of the Waste Discharge Charge System initiative
- In August 2002 an interim agreement was signed between Mozambique, South Africa and Swaziland for cooperation on the protection and sustainable utilisation of the Inkomati and Maputo watercourses.
- A formal partnership on the issue of the Congo Basin Forests was launched at the WSSD in September 2002. This was a result of DWAF's intensified international participation in forestry issues.

2.1.2.2 New Policies and Programmes

2.1.2.2.1 Development of the National Water Resource Strategy

Safe water is as much a component of environmental management as it is a core component of the right to water. In relation to the right to environment as contained in section 24 of the Constitution, a safe water resource is important for the health and well being of the people as well as protection and sustainable use of these resources for current and future generations.

DWAF developed the National Water Resource Strategy (NWRS), which was published in August 2002 for public comment. This project was undertaken under the auspices of the National Water Act with the objective of laying down the policies, procedures according to which the nation's water resource would be managed and protected. Section 1(1)(xxvii) of the National Water Act defines “water resource” to mean surface water found in water courses (rivers and streams), impoundments (dams), wetlands and estuaries, and groundwater found in underground aquifers.⁴⁷

2.1.2.2.2 Revision of the National Water Act Implementation Plan

DWAF engaged in the revision of the NWA Implementation Plan with the objective of improving the alignment between the National Water Act and the Strategic Plan. The second version of the plan was completed in October 2002 and facilitates monitoring and reporting on progress in implementing the National Water Act's provisions, including amongst others:

- determination of the Reserve;
- establishing representative and participatory water management institutions; and
- broadening access to water resources for previously disadvantaged and resource poor farmers.

The Components of the National Water Act are listed as a key area/challenge for DWAF in the *DWAF Multi-Year Strategic Plan 2003/2004 – 2005/6* under the water resource management objective. DWAF commits itself in the Plan⁴⁸ to implement the provisions of the National Water Act by:

- Establishing the National Water Resource Strategy;
- Developing and implementing a pricing strategy for waste discharge charges;
- Establishing, empowering and capacitating water management institutions;
- Continuing the development and implementation of water resource protection measures;
- Developing and implementing a strategy for compulsory water use licensing;
- Developing and implementing water conservation and demand management strategies.

Other areas of the DWAF water resource management objective include:

- implementing new organisational structure that is aligned to the mandate given under the National Water Act;
- continuing with efforts to develop, establish and maintain national water resource monitoring and implementation;

- continuing with the national programme for clearing invading alien vegetation under the working for water programme
- positioning the department as the national water resource management policy development, regulatory, monitoring and support institution;
- continuing with the development and implementation of solutions for reconciling water availability with water demand
- ensuring safe dams;
- continuing with the operation and maintenance of water resource infrastructure where the function has not devolved to water management institutions;
- managing droughts and floods.

2.1.2.2.3 Integrated Water Resources Management

The objective of this programme was to promote sustainable use of water resources for social, environmental and economic needs having regard to principles of equity and efficiency. In line with this, DWAF developed minimum requirements for waste disposal site operation, auditing and training of operators and managers of waste management facilities; the National Water Quality Management Framework Policy; and finalised phase 2 of the Waste Discharge Charge System.

DWAF also ran a Communication and Awareness Creation Programme to raise awareness on water quality management. A Water Quality Management Booklet titled "*Managing Water Quality in South Africa and How Water Users Can Participate*" was developed by DWAF; water quality management communication strategies and sub-strategies were developed for different sectors; DWAF completed an initial review report for ISO 14001 Based Management for Water Quality Management. It is not clear whether the booklet was developed for particular user groups or for the general public. The on-line copy of the booklet is in English.

In the area of waste management regulation, DWAF issued 17 waste disposal permits and 29 directions in line with section 20(1) of the Environmental Conservation Act No. 73 of 1989. DWAF reported that currently all commercial hazardous waste disposal sites in South Africa are being controlled via the permit issuing process.

A specific project of the department related to the clean up of the Hammersdale Waste Water Treatment Site. The clean up was done in line with section 19 of the National Water Act in order to reduce the risk of the site to the human

health of all the people entering the site and the environment (ground water and sewers). As a result, all hazardous waste, waste that posed a fire hazard and contaminated soil were removed from the site and properly disposed of at appropriate waste facilities. This removed the risk of noxious gases and bacterial contamination for the people living near the site.

2.1.2.2.4 Working for Water Programme

The working for water programme is a collaborative initiative between DWAF, DEAT, the Department of Agriculture and other partners that aims at the eradication of invasive alien vegetation species as a way of optimising the use and conservation of natural resources, particularly water. According to Working for Water Programme, invasive alien species are the single biggest threat to biological diversity and the ecological integrity of natural systems.⁴⁹ Terrestrial weeds interfere with agricultural production while aquatic weeds destroy aquatic creatures and water sources in addition to being hazardous to human health.

By 2003 the programme involved a total of 304 projects and 466 279 initial hectares were cleared of alien vegetation by February 2003 and 523 618 follow up hectares were cleared by February 2003. This is more than 200% performance over the set target of 200,000 hectares. Table 1 below gives the programmes coverage across the different provinces and National Parks area.

Table 1: Coverage of Working for Water across provinces in 2002/2003

	<i>Area of the province</i>	<i>Estimate of invasion of 1996</i>	<i>Total initial hectares cleared since 1995</i>	<i>Total initial hectares cleared in 2002/3</i>	<i>Total follow-up hectares cleared in 2002/3</i>
SANParks	-	-	188 186	107 086	112 530
Free State	12 993 575	166 129	5 485	1 749	116
Northern Cape	36 198 060	1 178 373	119 127	4 195	28 683
Eastern Cape	16 739 817	671 958	85 357	13 116	21 039
North West / Gauteng	13 252 911	427 414	76 719	18 445	83 856
KwaZulu Natal	9 459 590	922 012	105 044	19 506	66 573
Limpopo	12 114 307	1 702 816	170 078	38 326	49 652
Western Cape	12 931 413	3 727 392	283 619	41 739	83 299
Mpumalanga	7 957 056	1 277 814	191 692	22 325	77 870

Source: Working for Water Annual Report 2002/2003

A lot of the Working for Water project hours and resources have gone into the clearing of invasive plants in the South Africa National Parks. A cumulative total of initial hectares and follow up hectares cleared (219 616 hectares) far surpass the extent of work done in any of the provinces covered. From the 1996 estimates, Western Cape had the biggest alien invasion problem, while Free

State had the lowest. Western Cape represented the highest intervention by Working for Water at 125 038 hectares. Free State as the area with the lowest incidence also had the lowest intervention in relation to the rest of the provinces.

2.1.2.2.5 Water Conservation: 2020

Efficient use of water is a major facet of water conservation. However, how well people use water and water sources depends on how much they can appreciate their role and the need to conserve water. In a bid to increase awareness among school children and the general public about water conservation and efficiency DWAF coordinated a school-based water education programme. A pilot public education programme was introduced in Buffalo City, Eastern Cape and Mbombela, Mpumalanga. The department also coordinated the National Water Week, the Women in Water Awards and the Baswa le Meetse Awards.

DWAF also developed the first version of Water Management Plans which were successfully implemented by three water user associations in three provinces. Case studies on water use were carried out in Ugu and Mhlathuze (KwaZulu-Natal) under the Integrated Resource Management programme. Phase I of the Umtata (Eastern Cape) study was completed and the western Highveld Region (Mpumalanga) study was initiated.

2.1.2.2.6 Sustainable Management of South Africa's Forests

DWAF has the national mandate to oversee, regulate, protect and manage indigenous and commercial forests of South Africa and to support rural communities in managing forest resources. In 2002/3 the department implemented a restructuring of category B forests in Eastern Cape, KwaZulu Natal and Limpopo provinces.⁵⁰ The department also considered the effects of this restructuring process on the forest workers and was engaged in developing options to mitigate the negative effects. Communities and land claimants were involved in the restructuring process and a programme for further consultations with communities was being worked out in order to increase community participation.

At the time of reporting, the department was working on a national forest programme. The programme gives particular attention to communities with regard to sustainable use of forest resources.

DWAF also embarked on the process of conversion of Lowveld plantation into natural vegetation and the process is projected to end in 2006. As a result of the conversion, some saw millers saw the cancellation of their contracts. The matter went before arbitration to determine compensation and was not concluded by the time of reporting.

Assistance was extended to some NGOs to assist in the development of community forest management. Some of these NGOs include: Food and Trees for Africa, Eduplant, Trees for Homes Project for work in all the provinces and the Mineworkers Development Agency for the Marula Co-operative Project in Mpumalanga.

Other developments within the department included the signing of two forest leases; developing criteria and indicators of sustainable forest management; amendment of the national Forests Act 84 of 1998 to provide for creation of a trust fund to hold rental income for land reform beneficiaries. Regulations were also published under the Forests Act and the National Veld and Forest Act 101 of 1998. An inventory was developed of all forests and participatory forest management forums were established to roll out the Participatory Forest Management Strategy.

Through the National Veld and Forest Fire Act, the first inclusive Forest Protection Association (FPA) has been registered. DWAF received several applications for registration of FPAs and is in the process of making sure that they are legal as per the requirements of the Act before registering them. The Fire Danger Rating System has been finalised and approved.

2.1.3 Department of Minerals and Energy

The DME is scheduled under NEMA as one of the departments with functions that involve the management of the environment.⁵¹ The Constitution obliges the government to put in place a national energy policy that would ensure the optimal use of national energy resources and delivery of the same to cater for the needs of South Africa. The government is also required to ensure that the production and distribution of energy is sustainable and results in the improvement of the standard of living of citizens.

2.1.3.1 New Policies

2.1.3.1.1 Draft Radioactive Waste Management Policy

This draft policy was developed during the period under review and published for public comment in July 2003. The draft was translated in two local languages for easy access by the local communities - Xhosa, and Sepedi. The other languages were English and Afrikaans. This policy development will be discussed in the next reporting cycle.

2.1.3.1.2 White Paper on the Promotion of Renewable Energy and Clean Energy Development (Part One), August 2002

This white paper was designed against the background of air pollution resulting from South Africa heavy use of fossil fuel, including wood fuel, which has which has occasioned negative effects like acute respiratory illnesses. All this

points to the need for the adoption of efficient and safe technologies to address the adverse effects on the population, particularly women and children who are mostly exposed to this pollution.

The policy is aimed at ensuring the optimal use of renewable energy resources like wind, biomass, bagasse, solar, wave energy and ocean currents as a way towards sustainable energy utilisation. In relation to the environment it is hoped that large scale utilisation of renewable energy sources will benefit the communities in terms of accessible and sustainable energy sources as well as by bringing about an improved environment as a result of a reduction in the emission of carbon dioxide and other pollutants.

2.1.3.1.3 Integrated Energy Plan (IEP)

Some time during 1999/2000, the government commissioned the Integrated Energy Policy (IEP) process, the objective of which was to determine the appropriate energy mix to meet South Africa's future needs. The draft report was released on 23 January 2004 for public comment and will therefore not be discussed in this report.

2.1.3.1.4 The Energy Efficiency Strategy

Although still in draft, the EES sets the target for energy efficiency implementation. It was released on 10 May 2004 and falls outside of the reporting period.

2.1.3.2 Ongoing Programmes

During the 2002/3 reporting period DME was involved in the implementation of the following programmes:

2.1.3.2.1 Implementation of the White Paper for a Mineral and Mining Policy for South Africa

DME spearheaded the implementation of the above mentioned white paper in which emphasis was placed on the need for government to ensure that the essential development of the country's mineral resources happens within a framework of sustainable development and within the guidance of the national environmental policy, norms and standards. In this regard, work in the mining sector was aligned to the vision for co-operative governance in compliance with a single national environmental policy which defined the hierarchy of governance.

The "polluter pays principle" was applied in the regulation and enforcement of environmental management. DME also affirmed its commitment to carry out equitable and effective consultation with interested and affected parties in its work towards the attainment of meaningful public participation.

The other components of the White paper for Minerals and Mining Policy for South Africa that were piloted include: the promotion of healthy and safe working conditions at all mines in line with national health policies; and ensuring that mines deal humanely with the health consequences of their work.⁵²

2.1.3.2.2 Rehabilitation of Derelict and Ownerless Mines

This is an on-going programme which was launched in 1986. It targets asbestos, coal and gold mines and is undertaken in compliance with a host of legislation and agreements.⁵³ The programme involves the assumption of responsibility by the government to address pollution resulting from abandoned mines that are detrimental to the safety and health of communities that reside near the mines.

During the period under review, work was done in the Northern Cape and Limpopo Region on the most critical asbestos pollution sources. The department still has an uphill task in respect of the many asbestos mines and dumps that exist. DME reported a total of 111 asbestos mines and 578 asbestos dumps to be rehabilitated, 62% were rehabilitated at a cost of R145 000 000. The department has committed itself to budget for the rehabilitation of the remaining mines and hopes to complete the process in 3 or 4 years.

In the case of coalmines, limited work was done on the Transvaal Delagoa Bay Colliery in Mpumalanga. This was largely because of limited financial resources.⁵⁴ Rehabilitation of gold mines was also limited owing to the fact that eight out of the twelve Government Mining Engineers (GME) Gold Dumps in Gauteng, were re-mined and removed by East Rand Gold and Uranium Company Limited (ERGO).

2.1.3.2.3 Excellence in Mining Environmental Management (EMEM) Award

This program focused on motivating the mining industry to excel and continually improve in their environmental management, to raise public awareness on mining environmental management, to promote responsibility and self-regulation within the mining industry and to promote *Mining Environmental Management Best Practices Guidelines*. It was implemented under the *1998 White Paper for Minerals and Mining for South Africa*.

In total, 64 mines competed for the award and 25 received the awards of excellence. Out of the 25, 12 first place winners from the regional competition were expected to compete in the national awards. As a result of this initiative there was increased mining environmental management awareness among government departments that are part of the mining regulatory framework in South Africa, the affected communities and landowners, and the entire mining industry.

2.1.3.2.4 Mining Legacy Programme

This programme was launched in 2002 and will continue for some years. It focuses on development of a holistic national strategy to address pollution problems and rehabilitation of abandoned existing and operational mines. The programme targets government departments in the mining regulatory mechanism, affected communities, landowners and the industry. Specific action was taken towards development the Phepafaso Strategy (cleaning up strategy). The strategy was being finalised and would be distributed to role players for comment.

The strategy has three sub programmes on strengthening enforcement of environmental legislation: a) identifying mine pollution hotspot areas, b) assessing the extent of the pollution and the development and implementation of regional mine closure strategies, c) managing and monitoring measures to improve the situation and rehabilitation of derelict and ownerless mines.

2.1.3.2.5 Comprehensive Review of the Mine Health and Safety Inspectorate

This was concluded in March 2003. It involved benchmarking and comparing the local situation with international best practise. The inspectorate is undertaking measures to address the shortcomings identified in the review. The project components include causing a quantum shift in health and safety performance in goldmines and small and medium scale mines: increasing efforts to prevent mine fires and explosions; reducing impact of mining activities on the public at the source and ensuring that occupational health issues are addressed.

2.1.3.2.6 Implementation of the Energy Policy White Paper, 1998

Two projects were carried out under this policy document:

a) Energy Efficiency in the Public Sector: This is an initiative directed at the reduction of energy consumption and emissions in government buildings. As part of this an energy audit and implementation of energy efficiency were done at the DME head office. Another audit was done on the parliamentary building and upgrades were carried out. In relation thereto DME was also engaged in the Darling Farm project aimed at increasing the use of renewable energy sources and to provide wind generation on a pilot level. Technical and environmental studies were carried out on the viability of wind as an energy source.

b) Basa Njengo Magogo Initiative and the Low Smoke Policy: This was a programme under the Low Smoke Policy aimed at reducing pollution associated with coal use. It targeted coal consumers at the household level. A reduction in indoor air pollution from coal was recorded.

2.1.3.2.7 Free Basic Electricity (FBE) Programme

In line with government's commitment to delivering free basic services to the poor and needy people⁵⁵, DME is helping to put in place mechanisms for ensuring the supply of free electricity to poor households. DME's role here is to develop policies upon which municipalities are to implement FBE while actual implementation of the programme is overseen by the Department of Provincial and Local Government. Eleven locations were identified and in total 8 884 households were targeted for FBE.

The electrification of households and provision of free basic electricity are hailed as one of the greatest achievements of government. A total of 3 500 000 homes have received electricity since 1994 (about 435 000 annual connections). However, there is still a daunting backlog as 34% of households are estimated to be without electricity.⁵⁶ Rural areas take a big share of this backlog with 51% of households without electricity. According to DME, the backlog is expected to increase with the increase in informal settlements.

Although FBE is a service-based program that may have no direct correlation with protecting the right to environment, it carries indirect positive benefits for the realisation of an environment that is good for the health and well being of the people. FBE will give poor households access to safer and cleaner means of energy and reduce the burden on the environment from the use of unsustainable fuels like wood and coal. It is forecasted that 50 kWh of electricity will be delivered each month to cater for basic energy requirements like lighting, ironing and use of a black and white TV.⁵⁷

During the reporting period, DME was pre-occupied with preliminary issues for setting up the program, which was scheduled to start in July 2003. The department commenced a 2-year pilot study to inform the FBE policy and to determine the most effective and viable process of delivering FBE.

2.2 Provincial Policies and Programmes

The Commission provides two examples of provincial level implementation of policies and programmes below.

2.2.1 Gauteng

The Gauteng Department of Agriculture, Conservation, Environment and Land Affairs (DACEL) instituted the following measures during the reporting period.

2.2.1.1 Integrated Environmental Management for Rural Development

Under this programme, the Bronberg Strategic Environmental Assessment was implemented and 78 Environmental Impact Assessments were reviewed.⁵⁸ The programme was aimed at promoting environmentally sustainable rural

development, integrating environmental issues in spatial planning and promoting participative and coordinated environmental management within the province. It mainly targeted the public in rural areas and local authorities.

2.2.1.2 Spatial Development Projects

Several strategies were implemented under these projects with a view to ensuring environmental best practice in the Blue IQ projects and promoting participative and co-ordinated environmental management for the benefit of local authorities, the public and specifically the Blue IQ projects.

2.2.1.3 Integrated Environmental Management for Urban Development

Under this programme DACEL completed phase 2 the strategic environmental assessment for Bronberg. Phase 2 of the strategic environmental assessment for Klipriviersberg, involving a legal review and identification of management models, was also completed. Development of Phase 1 and 2 of the Sensitivity Buffer Zones for Residential Developments project was completed. Gauteng Open Space Project (GOSP) projects for sewage and noxious industries was finalised. DACEL also administered the Magaliesburg Protected Natural Environment and reviewed 52 Environmental Impact Assessments.

2.2.1.4 Integrated Environmental Management: Transport and Communication

This programme was also implemented in line with the legislative requirements of NEMA and other laws mentioned above. The broad objectives of the programme were to develop systems/policies/legislation that promote integrated environmental management; to develop and update the Environmental Information Management Systems; to review and update the provincial state of the environment report and to develop provincial guidelines for advertising and signage structures in Gauteng. In line thereto, DACEL implemented the recommendations and guidelines on the Gauteng Communications Network Strategy and 115 EIAs were reviewed in that regard. The initiatives generally targeted the public, local authorities and businesses.

2.2.1.5 Industrial Impact Management

This programme was aimed at facilitating the development and implementation of pollution control strategies for air and pollution in the province. This was intended to benefit the general public, local authorities and businesses in different ways. One of the achievements of the programme was the development of the Gauteng Air Quality Management Strategy. The strategy focuses on the fact that the burden of pollution is heavily borne by the poor, the disadvantaged and those living in close proximity to polluting hotspots and therefore prioritises intervention to areas with high vulnerability categories. Another achievement related to the commissioning of the feasibility study for

Gauteng Cleaner Technology Fund. 299 EIAs were reviewed in connection with the cleaner technology objective of the fund.

2.2.1.6 Integrated Waste Management

The province's focus in this programme was on ensuring waste management that prioritises waste avoidance. It targets the general public in Gauteng, local authorities in their capacity as providers of waste management services, businesses as major sources of waste and government institutions. The Health Care Risk Waste Project is one of the initiatives being carried out with sustained progress. It gives special attention to workers and people living close to health care facilities. In relation thereto a Health Care Risk Waste Information System is being developed.

2.2.1.7 Environmental Education and Awareness

DACEL conducted several awareness activities with the aim of raising awareness about and rallying support for environmental issues. Among these was the "Bontle ke Batho" clean schools, clean wards and towns competition. It aimed at raising awareness about sustainable development best practices and the practical importance of the practices. The competition attracted 601 schools, 270 wards and 13 local authorities. DACEL also organised and convened the Gauteng Summit on Sustainable development and the Joburg Climate Legacy was set up to offset the greenhouse gases generated by the Summit.

2.2.1.8 Greening the World Summit on Sustainable Development

In partnership with DEAT, IUCN, GEF, and UNDP, DACEL undertook this programme with a view to promote best environmental practice in the planning and implementation of the WSSD. It was also used to raise awareness about sustainable development and how it can be implemented in practice.⁵⁹ Activities as part of the programme targeted the general public, the local authorities, communities, school children and delegates at the WSSD.

The Bontle ke Batho competition was one the activities. Other activities included: the Imvelo Hospitality Industry Awards for Sustainable Development and actual implementation of best environmental practices during the course of the WSSD. Some of the best practices related to environmental responsibility and practices for conserving the natural environment for companies that were awarded contracts for supplying goods and services to the WSSD, as well as encouraging hotels, restaurants and other hospitality service providers to adopt measures for reducing waste and promoting efficient use of water and energy. A Sustainable Development Barometer was displayed at the strategic sites around Gauteng.

2.2.1.9 Resource Management

This was a programme under the Conservation directorate of DACEL. It was generally aimed at ensuring sound management of biodiversity, communities, landscape processes and systems through the establishment and maintenance of protected areas; to advise resource users on resource management issues; to provide and expand visitor services and to provide ecologically viable advice to resource users within the 2 Blue IQ project areas.

As a result, 5 000 ha of land was added to the Suikerbosrand Nature Reserve and the Kareekloof Aventura resort was purchased. Facilities at several nature reserves (Suikerbosrand, Roodeplaat, Arievale and Alice Glockner Nature Reserves) were upgraded. A multi-stakeholder Operational Management Committee was set up for the community project at Abe Nature Reserve near Khutsong Township outside Carletonville. DACEL also injected R2 000 000 into job creation projects on nature reserves. In addition to the direct conservation benefits, the programmes have benefited various vulnerable groups through creating work opportunities.

2.2.1.10 Working for Water

DACEL initiated clearance of alien vegetation in the riparian zone of strategic river catchments in the province. A total of 646 ha of alien trees and 25 477ha of Queen of the Night alien plants were cleared.

2.2.1.11 Resource protection

DACEL carried out several activities aimed at promoting the wise use of natural resources by ensuring enforcement and compliance with the Nature Conservation Act and the CITES. As a result, 5 833 permits for animal movement/products were issued. 94 court cases were filed and investigations done. 22 of the cases were pending at the time of reporting. DACEL introduced a cost recovery scheme for permits on 1 May 2002. Investigations were done into the illegal sale, import and export of wild animals and animal products.

2.2.2 Free State

2.2.2.1 New Policies

In the area of policy development, the Free State Department of Tourism, Environmental and Economic Affairs (DTEEA) reported that it was in the process of developing a new policy on the importation, exportation and keeping of wild animals.

2.2.2.2 Ongoing Programmes

2.2.2.2.1 Conservation

Under the conservation directorate of the Department, which is the lead agency on environmental and conservation matters in the province, the following programmes were implemented:

- Nature reserves were fenced-off in compliance with the requirements of Ordinance 8 of 1969 in order to protect biodiversity in protected areas. As a result 40 jobs were created for the neighbouring communities to work in the reserves.
- As part of the poverty alleviation programme, the process for establishing a community owned tourist rest camp was started. The rest camp would have a public protected area and was intended to benefit the community of Zamani – Memel. By the time of reporting the project awaited EIA approval.
- With funds from the Poverty Alleviation Programme, an Environment Adventure Centre for children on the street and disadvantaged children was under construction where training would be given by an NGO.

2.2.2.2.2 Environment Protection

DTEEA carried out the following activities in line with environmental management and protection:

- DTEEA also carried out a programme for establishing Urban Conservancies in townships, which aimed at building the capacity of community members (urban rangers) who can train the broader community on environmental management. A total of 30 community members were trained in order for their knowledge to benefit their communities.
- 45 rural rangers were trained in biodiversity management as part of the programme to establish Rural Conservancies with a view to enhancing the management of natural resources in a conservancy.
- 120 members of Enviro clubs were trained as urban rangers in line with a project to capacitate youth in environmental management resulting in the grooming of environmentally literate youth and communities.
- In line with NEMA *Guidelines on Waste Recycling and the Strategy on the Implementation of the Polokwane Declaration*, DTEEA facilitated the establishment of 2 Buy-back centres for recyclable materials. The project aimed at relieving the

community of poverty and cleaning the communities. A sustainable business was started which benefited five people from Bohlokong and five others from Mangaung.

2.3 Legislative Measures

2.3.1 Department of Environmental Affairs and Tourism

In the previous monitoring cycles ineffective implementation and enforcement of laws for environmental protection and management was cited as one of the problems that was still dogging the department. In the current reporting cycle, the department made commendable strides towards diversifying the National Environmental Management Act and other norms and standards uploaded from the international commitments of South Africa. Among the legislative developments in this respect were the following:

2.3.1.1 The National Environment Management: Protected Areas Bill 2003

Currently, the National Parks Act No. 57 of 1976 (NPA) governs sustainable management of national protected areas. This Act has been found to be deficient with regard to current national environment management discourse, particularly in light of the National Environment Management Act of 1998. The Protected Areas Bill is aimed at addressing some of the shortcomings in the NPA. The Bill provides for the declaration and management of protected areas and for cooperative management of protected areas.⁶⁰ The Bill is likely to have an impact on better management of natural resources in the protected areas for the benefit of present and future generations.

2.3.1.2 National Environment Management: Biodiversity Bill 2003

Cabinet approved the Biodiversity Bill in 2003 and the department was due to submit the same to Parliament for debate. The Bill aims at providing a regulatory framework for ensuring the effective implementation of the *White Paper on Conservation and Sustainable Use of South Africa's Biological Diversity of May 1997*⁶¹. The Bill enumerates norms and standards for conservation, sustainable use and equitable benefit sharing of South Africa's biological resources. It provides a foundation upon which South Africa will work towards fulfilling its commitments under the Convention on Biological Diversity of 1993. The Biodiversity Bill contains requirements for Biodiversity Management Plans to be incorporated into the Integrated Development Plans of local government.

2.3.1.3 National Environmental Management Act Amendment Bill (No. 1)

This Bill proposed amendments to NEMA by adding chapter 9A, which provides for administration and enforcement of certain national legislations and also provides for the designation of Environmental Management Inspectors. It

lays the ground for administration and enforcement of the Biodiversity Bill, the Protected Areas Bill, the Air Quality Bill, Waste Management Bill and Coastal Zone Bill. It covers the gap that existed with effective enforcement and implementation of environmental laws.

2.3.1.4 Coastal Zone Draft Bill

DEAT reported that this Bill is in the making but no further information was provided on its objectives and how it will contribute to environmental rights realisation.

2.3.1.5 National Environment Management: Air Quality Draft Bill

The department reported that the process for setting standards for important air pollutants in line with World Health Organisation guidelines was started in 2002 in collaboration with the South African Bureau of Standards. Work on the Draft Bill on Air Quality was done by the department during the reporting period and culminated in the approval of the Bill in April of 2003. The Bill will repeal the Atmospheric Pollution Prevention Act (APPA) of 1965. It is aimed at enabling authorities to control the levels of pollution in the country by providing for a framework for governance of air quality management through national norms and standards and a framework for air management planning.

2.3.1.6 National Environment Management: Second Amendment Bill

New Regulations were made under the second amendment to NEMA, which had the objective of improving the quality of environmental impact assessments. These regulations replace the Environmental Impact Assessment Regulations of 1997 that were made under the Environmental Conservation Act.

2.3.1.7 Plastic Bag Regulations

In line with the country's waste management policy, regulations for the use of plastic bags⁶² were published in order to address the growing pollution problem. The regulations prohibit the manufacture, trade and commercial distributed of certain plastic bags that do not comply with paragraphs 4 and 5 of the Compulsory Specification.⁶³ Contravention of regulation is an offence for which the offender is liable to a fine or imprisonment of not more than 10 years or both. The department reported that pollution was mostly acute in areas that were poorly serviced with waste collection.

The regulations are aimed at regulating the use of non-reusable plastic bags and the excessive use of disposable plastic film for processing. It is hoped that the regulations will give the consumer a choice whether to use the plastic bag or not since the customer will know that he or she bears the cost as opposed to the situation earlier when the customer unknowingly covered the cost. In May 2003

DEAT set up a hotline on plastic bags to assist members of the public who need further information on the regulations and to serve as a central point for reporting on compliance. In June 2003 DEAT met with social partners to review and take stock of the implementation of the plastic bags regulations. One of the concerns that had earlier been raised was that the regulations were going to cause unemployment and increase costs for businesses. However this was settled in a Memorandum of Understanding between DEAT and Organised Labour and Business in which both sides agreed in a cooperative spirit that there was a need to address the environmental issues of dispersed waste, that there was a growing problem of collection and disposal of plastic bags, which particularly impacts on low income areas where refuse collection services are inadequate. However, no programme has been announced yet for effective implementation of the regulations.

2.3.1.8 Other legislative developments

DEAT also referred to several other legislative developments, including:

- a. Development of new regulations under the National Environmental Management: Second Amendment Bill (Chapter 5 of NEMA) is underway. These regulations are aimed at improving the quality of environmental impact assessments. This will replace the 1997 Environmental Impact Regulations that were published under the Environmental Conservation Act.
- b. Amendment of the Regulations to the Marine Living Resources Act was underway by the time of reporting. According to DEAT, the amendment will give increased protection to certain line fish and other species.

2.3.2 *DWAF*

The Department reported no new legislative developments.

2.3.3 *DME*

2.3.3.1 *The Minerals and Petroleum Resources Development Act No 28 of 2002*

The Minerals and Petroleum Resources Development Act No 28 of 2002 was passed by the Parliament. Amongst other things, it provides for state sovereignty and custodianship over the country's mineral resources, equitable access to mineral resources and opportunities for historically disadvantaged citizens.

DME reported that the process for developing and reviewing supporting legislation for the Act were in final stages. Among the legislation that was

being worked on were: Regulations in terms of the Minerals and Petroleum Resources Development Act, 2002; Mining Titles Amendment Act; Beneficiation Bill; Broad-based socio-economic development charter under section 100 of the Act; Royalties Bill; Energy Bill (as part of the energy development legal framework).

2.3.4 Gauteng (DACEL)

No provincial legislation was passed in Gauteng, but the Province followed the processes for the on-going national environmental law reform.

2.3.5 Free State (DTEEA)

The Free State Province is in the process of drafting an updated ordinance on Conservation to replace the Conservation Ordinance of 1969 which is now outdated.

Regulations were due to be issued regarding the new hunting seasons and the types of animals to be hunted in 2003.

2.4 Budgetary Measures

This section will assess the appropriateness and reasonableness of the budgetary measures that were reported on by DEAT, DME, DWAF, DACEL and DTEEA towards the realisation of the right to an environment that is not harmful to the health and well-being of the people.

2.4.1 DEAT

The expenditure trends of the department indicate a substantial short-term increase up to R1 500 000 000 in 2003/2004. This increase is mainly attributed to earmarked allocations for poverty relief, acquisition of fisheries patrol vessels, transfers to public entities like South African Tourism for international tourism marketing and the Johannesburg World Summit Company, which hosted the World Summit on Sustainable Development.⁶⁴ However there was a fall in percentage allocation for 2002/2003 as compared to the percentage allocation for the department in 2001/2002. Actual expenditure in 2002/2003 was R1 366 586 000 representing a variance of R34 000 000 from the projected expenditure of R1 400 586 000. The variance according DEAT was a result of commitments on capital expenditure which ran over several financial years and contributed to the department's roll-over request.

Donor funds and poverty relief funds were also instrumental in offsetting DEAT's projected budget. Donors contributed a total of R53 882 000 in 2002/2003 of which R53 683 000 was spent. Donor funds went to priority projects as indicated in the table below. The budget allocation for DEAT's Poverty Relief Programme was increased in 2002/2003 to R 240 000 000 and

R300 000 000 in 2003/2004.⁶⁵ From 1999 to the beginning of 2003, DEAT's Poverty Relief Programme had funded 400 community projects. Payments of up to R236 638 262 had been made by March 2003.⁶⁶ These funds were utilised according to poverty relief criteria. DEAT also relied on reprioritisation where the budget for a given programme or project was inadequate.

DEAT reported that the budgets for different programmes, with differing degrees, catered for the interests of women, female-headed households, child-headed households, and persons living in rural areas, poor communities and persons living in informal settlements. It is difficult to isolate the extent of the vulnerable group targeting because of the manner in which the information was provided in the financial statements of DEAT for 2002/2003. However, according to DEAT some of the programmes which address specific interests of vulnerable groups in their budgeting and implementation include the poverty alleviation programme, working for water, coastcare, working for wetlands, Transfrontier Conservation Areas and the expansion of protected areas.

Although not specifically considered in some programmes, women and historically disadvantaged people are attended to in the procurement of services and goods for the department. On the whole, this is reflected in the Department's procurement statistics, with the exception of procurement between R30 000 and R100 000 in the environmental planning and co-ordination programme and procurement above R100 000 for the Antarctica and Islands programme.

2.4.2 DME

The departmental allocation for 2002/2003 was R100 000 000 representing a percentage increase from the 2001/2002 budgetary allocation of R90 000 000

DME did not provide information on the allocation as a percentage of the total budget as well as the other sources of funding. DME however pointed out that the budget was not sufficient for realising the department's projected benchmarks. Particularly funding for the rehabilitation of derelict and ownerless mines/dumps was limited and thus slowed down the process of rehabilitation.

Funding at DME Regional Offices was also limited to an extent that interfered with the monitoring and inspection of mining sites.

Even with the inadequate budget, the DME recorded under spending of R 23 000 000 that was appropriated to address the ingress of water problems in the Gauteng province. This was due to the stalled appointment of consultants and undertaking of necessary research. According to DME this did not affect the realisation of the right but it had a cost-effect on gold mining companies that had to spend additional resources to address the ingress of water underground.

The under spending was temporary as consultants were eventually appointed and the project was implemented.

2.4.3 DWAF

DWAF budgetary allocation of 2002/2003 was R 3 100 800 000 compared to R 3 081 385 000 in 2001/2002 representing 82% and 87% respectively as a percentage of the allocation against the department's budget. No conditional grants were received. R 289 113 000 was received from donors representing a decline in amount as compared to the 2001/2002 donor contribution of R296 121 000. Actual expenditure was R 3 680 625 000 in 2002/2003 as compared to R 3 477 798 in 2001/2002. The budget was largely adequate. Request for increased budget was made to the Treasury for the development of appropriate information systems for monitoring and auditing the state of water resources with regard to quality, quantity and ecological sustainability. This information was derived from the DWAF response to the 5th protocol. The information as provided does not tally with the DWAF cash flow statement for the same period, particularly with reference to the total allocation for 2002/2003 and 2001/2002).

According to the DWAF Cash Flow Statement⁶⁷, total appropriation for DWAF in 2002/2003 was R3 762 691 000. Actual expenditure was R3 680 625 000 with a variance of R82 066 000 representing an under expenditure. There was an increase in total appropriation for 2002/2003 as compared to the total appropriation for 2001/2002 of R3 518 441 000. Table 2 provides a breakdown of resource allocation across the DWAF's programme areas and Table 3 gives a picture of resource allocation across programmes that relate to environmental protection.

Table 2: DWAF Budgetary allocations towards programmes

	2002/2003		2001/2002	
	<i>Allocation for Programme</i>	<i>Actual expenditure</i>	<i>Allocation for Programme</i>	<i>Actual expenditure</i>
Administration	229 390 000	229 187 000	211 418 000	196 552 000
Water Assessment	86 292 000	81 911 000	84 183 000	83 930 000
Integrated Water Resource Planning	48 291 000	42 412 000	57 360 000	50 234 000
Water Resource Development	248 517 000	247 941 000	363 201 000	359 157 000
Regional Implementation	2 591 008 000	2 534 082 000	2 225 663 000	2 195 585 000
Integrated Water resource management	87 237 000	79 060 000	81 127 000	74 639 000
Water Services	64 808 000	59 063 000	73 366 000	67 500 000
Forestry	403 461 000	403 291 000	422 123 000	434 467 000
Miscellaneous	3 687 000	3 687 000	-	
Total	3 762 691 000	3 680 625 000	3 518 441 000	3 483 055 000

Source: DWAF Appropriation statement for the year ended March 31 2003 in DWAF Annual Report 2002/2003, pp 90 - 107

One of the shortcomings of the information above is that it is inclusive of personnel costs, infrastructure and other miscellaneous costs which do not

relate to direct programme/project outcomes. It is therefore not possible to tell how much of the budget was used for actual programme outputs.

On the whole, actual expenditure on all the programmes/projects was below the appropriated amount. A total variance of R82 066 000 was recorded. The reasons for this ranged from late receipt of invoices from suppliers (in the case of water resource assessment, integrated water resource planning, integrated water resource management and water services); late appointment of consultants (as in the case of water resource assessment) and more revenue collection as compared the projection (as in the case of regional implementation). In the rest of the programmes the variance was discounted as insignificant.

Table 3: Positioning of specific programmes/projects related to the right to environment in view of total budget

<i>Programme / Project</i>	<i>Type of expenditure</i>	<i>Adjusted appropriation</i>	<i>Virement</i>	<i>Revised Appropriation</i>	<i>Actual expenditure</i>	<i>Expenditure as a % of revised allocation</i>
Water Quality Management	Current Capital	18 811 000 4 400 000	(3 085 000)	15 726 000 4 400 000	12 353 000 9 194 000	79% 209%
	Subtotal	23 211 000		20 126 000	21 547 000	
Working for Water	Current Capital	11 401 000 249 000	(500 000)	10 901 000 249 000	11 177 000 477 000	103% 192%
	Subtotal	11 650 000		11 150 000	11 654 000	
Water Conservation	Current Capital	13 558 000 77 000	(1 350 000)	12 208 000 77 000	13 218 000 69 000	108% 90%
	Subtotal	13 635 000		12 285 000	13 287 000	
Forestry Policy development	Current Capital	9 735 000 232 000	-	9 735 000 232 000	13 073 000 133 000	134% 57%
	Subtotal	9 967 000		9 967 000	13 206 000	
Indigenous Forestry Management	Current Capital	59 990 000 3 225 000	3 495 000	63 485 000 3 225 000	56 861 000 1 903 000	90% 50%
	Subtotal	63 215 000		66 710 000	58 764 000	
Community Forestry	Current Capital	75 192 000 675 000	805 000	75 997 000 675 000	90 254 000 723 000	119% 107%
	Subtotal	75 867 000		76 672 000	90 977 000	
Forestry Regulations	Current Capital	4 588 000 416 000	-	4 588 000 416 000	2 865 000 130 000	62% 31%
	Subtotal	5 004 000		5 004 000	2 995 000	
Grand Total		202 549 000		201 914 000	212 430 000	

Source: Extracted from the DWAF Appropriation Statement for the year ended March 2003, DWAF Annual Report 2003

The table above gives information on how resources were distributed in the various programme and project areas that have a link to the realisation of the right to an environment that is healthy and good for people's well being as well as the right to have the environment protected. It is worth noting here that

DWAF was unable to provide the information in the form required, which would provide the basis for an informed analysis of the budgetary allocation per programme /project.

The Working for Water programme is supposedly one of DWAF's progressive initiatives, which recorded commendable progress in 2002/2003. Working for Water used up the full budget of R416 000 000; it employed a total of 21,754 people, 55% of which were women, 24% were youth and 1% disabled persons. A total of 266,497 hectares of invasive alien plants were cleared and 523,618 hectares of invasive alien plants followed up. Table 4 below shows the progress with the budgetary allocations for the programme.

Table 4: Working for Water funding Sources

<i>Funding Sources</i>	<i>Amount received in 2002/2003</i>	<i>Amount received in 2001/2002</i>
Poverty Relief	330 000 000	290 000 000
Department of Water Affairs and Forestry	83 650 000	81 510 000
Local Authorities	50 000	400 000
Foreign/donors	2 300 000	-
Rand Water	-	500 000
Private Sector	-	300 000
Roll over	-	24 000
Grant total	416 000 000	372 734 000

2.4.4 Gauteng

DACEL allocation for 2002/2003 was R226 536 000 plus R60 000 000 that was received from conditional grants. No funds were received from donors. Actual expenditure was R208 343 000. In comparison with the 2001/2002 allocation of R149 618 000 there was an increase. Under-expenditure was experienced in 2002/2003 to the tune of R18 193 000. When analysed from the point of each of the programme areas of the department the reasons for the variance according to an explanation by DACEL were: - in the case of management and administration, under expenditure was due to the effect of resolution 7 which left several posts in the department vacant. Together with this was the fact that a planned and budgeted reorganisation of the department did not take place as projected. In the conservation programme savings here were a result of the delayed purchase of land and maintenance of some buildings that did not take place. Savings under the environment programme were in the area of employee compensation for the vacant positions as well as transfer payments due to the moving of staff to do work at the World Summit on Sustainable development.

DACEL reported that the noted under-spending did not have any impact on the realisation of the right in the province since planned objectives were substantially realised. In response to the problem of under-spending DACEL plans to address the issue of allocative inefficiencies in future budgets. In

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addition improvements will be made to DACEL's expenditure and tracking systems to ensure that they are implemented on an on-going basis.

The table below provides a summary of the allocations towards DACEL's environment protection mandate.

Table 5: Budgetary Allocation towards programmes and projects

<i>Year</i>	<i>Allocation for programme / project</i>	<i>Allocation as a % of the department's budget</i>	<i>Actual Expenditure</i>
Environment 2001/2002	16 630 000	11%	13 522 000
Conservation 2001/2002	52 580 000	35%	29 927 000
Environment 2002/2003	40 932 000	18%	34 776 000
Conservation 2002/2003	56 324 000	24%	49 731 000

Source: DACEL Response to 5th Environmental Rights protocol

2.4.5 Free State -Department of Tourism, Environmental and Economic Affairs (DTEEA)

The DTEEA budget information could not be used in the form that it was provided and attempts to have workable information re-submitted were not successful.

3 CHALLENGES

This section focuses on the factors that were hindrances to the realisation of the right to an environment that is not harmful to the health and well being of people and the protection of the environment. The factors listed below are from the point of view of institutions, which have the obligations to ensure realisation of the right.

3.1 Inadequate information reporting and monitoring systems:

There is no coherent reporting framework that would enable implementing and responsible organs to respond to their stated environmental management and protection duties as contained in legal and policy documents. One of the reasons for this gap is the absence of generally accepted indicators that apply to the mandates of the various departments and institutions involved.

In response to the section of the protocol requesting for information on "general indicators", DEAT pointed out that the information requested could not be provided in the form prescribed because it was not being collected in that format and that there were no methodologies at the time for the indicators given. DEAT reported that monitoring and enforcing compliance with environmental legislation within the sector was still very weak. For DEAT the

problem was partly due to the absence of environmental indicators which were being worked on at the time of reporting.

In the meantime, the department uses the reporting mechanisms of its various components to monitor. In the case of vulnerable groups, monitoring is done under DEAT's various projects. So far statistics are collected under the Poverty Relief programme and on a small scale under the environmental indicators initiative. It is hoped that the Environmental Indicators Initiative will provide a consistent and comprehensive means through which the provinces and local authorities can track implementation of the right to environment in their areas of operation, particularly with a view to ensuring a clean and healthy environment and sustainable management of South Africa's natural resources.

In the same way, DWAF, could not provide the number of people affected by water pollution because pollution alone does not prevent people from accessing safe water.⁶⁸ DACEL indicated that information with respect to the indicators as requested by the Commission was not available because the department was in the process of implementing a project to incrementally monitor strategic indicators with the establishment of the Management Information Systems Branch. DME could also not provide information on indicators but reported that environmental and sustainable development indicators were being developed and would measure DME's performance regarding the regulations of the mining industry and compliance by the industry with legislative requirements. As a result DME faced difficulties with regard to the conduct of regional inspections, which should be supported by a GIS (Geographical Information Systems). Ordinarily DME uses the following mechanisms for monitoring and assessing the right within the department's mandate: - the internal administration control system under the Mining Act (this is currently being replaced by a GIS based National Mining Promotion System); establishment of the compliance auditing function which enables the DME head office to audit compliance within the regional office; the Rehabilitation Priority Index Database is used for monitoring the rehabilitation of derelict and ownerless asbestos mines and dumps. These provided the necessary stopgaps under the circumstances.

In the meantime, investigations are being done on the prospects and viability of having a harmonised reporting system for environmental protection and management. Through a consultative process coordinated by DWAF a set of environmental indicators were developed while work on developing an environmental sustainability index and local level environmental indicators was on going.

3.2 Making cooperative governance work

Responsibility for realising the right to a clean and healthy environment as well as environmental management is an area of concurrent national and provincial competence. In addition to this it draws on the mandate of several spheres of

government and organs of the state. Specifically a number of national departments are recorded in Schedule 1 and 2 of the NEMA as exercising functions, which may affect the environment, or functions which involve management of the environment.⁶⁹ However, it has not been that easy to actually attain the envisaged cooperative governance in the management and protection of the environment rights. This was a major issue of concern with regard to implementing policies and legislations across intersectional departmental and governmental mandates. A case in point was the working for water programme, which although it met its performance targets for the year was constrained because of the failure by DEAT and DWAF to coordinate the use of their various mandates. DWAF also reported that although it was supposed to oversee the devolution of State natural forests to other agencies, this was not done due to the lack of clarity about the national and provincial powers and functions in that respect.

Another area that is subsumed in cooperative governance relates to application of legislation. A number of cases have been litigated which raise issues of conflict of laws relating to exercise of mandates of one or more departments. In the case of *South African Shore Angling Association and Another v Minister of Environmental Affairs and Tourism*⁷⁰ the applicants brought an urgent application seeking an order to declare the regulations that made a general prohibition on the recreational use of vehicles in coastal zone null and void because they were *ultra vires* and unconstitutional. The regulations had been issued by the Minister of Environmental Affairs and Tourism under s.44 of NEMA with the purpose of protecting the environment of the coastal zones, human safety and enjoyment of coastal recreation. The applicants contended that in passing the regulations the Minister of Environmental Affairs and Tourism had usurped the powers of the Minister of Transport to make regulations concerning the use of the seashore under the Sea-shore Act of 1935. The court however found that even though NEMA and the Sea-shore Act authorised different ministers in respect of the same subject matter in the same area, this did not render the regulations made under either of the laws invalid. The court stated that “conservation issues affect many aspects of human activity. It is therefore to be expected that legislation dealing with the environment will overlap even conflict with a number of other Acts of Parliament”.⁷¹

Another case⁷² in point related to the application of Problem Animals Control Ordinance 27 of 1957 (Cape) and the Nature and Environmental Conservation Ordinance 19 of 1974 on one hand and the NEMA on the other hand. The Appellants in this case had been convicted for contravening the provisions of the 1957 ordinance by wrongfully and intentionally transporting three caracals without a valid permit or necessary authority as well as keeping the caracals which are classified as problem animals under the 1974 Ordinance. On appeal the appellants contended that they had a right under s. 24 of the Constitution to care for wildlife and that this right superseded the permit restrictions under the Ordinances. The court held that the provisions were not unconstitutional “but

simply require that people who transport or keep in captivity certain specified species of animals and birds acquire certificate or permit or license to do so”.⁷³

In the CEC Alignment Report, a conflict of interpretation of provisions was noted with regard to the sections 109 and 110 of the National Water Act of 1998 on one hand and the Environment Conservation Act of 1989 and the NEMA on the other hand.⁷⁴ The National Water Act requires the Minister of DWAF in his role of protection, use, development, conservation, management and control of the nations water resources to prepare an EIA that complies with the Environment Conservation Act. Under the NWA the Minister is exempted from this requirement where the waterworks are constructed in an emergency situation or they are considered to be minor. ECA and NEMA do not have provisions that exclude the preparation of an EIA and this could be a source of conflict as to which law is superior and can easily cause a stand-off between DEAT and DWAF to the detriment of the environment and the health of the people.

Several policy and strategic measures attempted to address the gap of cooperative governance but it remains to be seen how these will be implemented in actual terms. At the head of the measures was the function of the Committee on Environmental Coordination. The CEC undertook to provide a framework for identifying and clarifying the roles, responsibilities, structures and mechanisms for facilitating environmental cooperative governance. CEC identified gaps with regard to various functional environmental impacting and management areas namely: local economic development, energy provision, delivery of low income housing, land use planning, transport infrastructure development, provision of bulk-water infrastructure and water services, general waste management, biodiversity management, general and hazardous waste management, allocation of mining rights and water resource protection and conservation. Specific recommendations were made under each of the functional areas upon which responsible departments are required to report in their annual compliance reports. In the absence of information on compliance reports, it is not possible to comment on the effectiveness of this route for promoting cooperative governance among all the structures of environmental protection and management.

The National Department of Land Affairs (DLA) 2002 in its Annual Consolidated Environmental Implementation and Management Report⁷⁵ reported on the progress made with the cooperative governance structures in the land reform programme. In respect of the objective of assessing the land reform project for sustainability and environmental impact among other factors, DLA established district level project committees which were already functional, however there were challenges integrating these structure with municipal Integrated Development Plans (IDP). DLA also set up Provincial Grants Approval Committees in all provinces and the land reform project was approved for implementation at the provincial level, but problems were faced in trying to align and integrate the land reform programme plans with

provincial departments' plans and budgets. In relation to the vesting/disposal of state/public land for development to provincial departments for development, DLA reported that although Provincial Land Disposal Committees have been in existence since 1997, the custodian departments at the provincial level lack the capacity to administer the vast land parcels to be vested in them.

In the meantime creative measures are being established to address urgent environmental matters as the bigger implementation picture is being streamlined. Examples include the Rapid Response Unit that was established in the DEAT as well as Pollution Case studies.

3.3 Inadequate human resource and financial capacity:

The policy and legal framework for environmental protection and management is almost finalised. However, there is a looming implementation challenge. One of the concerns here relates to the inadequate human resource and financial capacity⁷⁶ to implement the vast policy and legal commitments made. It was noted that the increasing responsibilities in the management of the environmental and natural resource sectors was outweighing the departments' capacity to effectively contribute to economic growth and development which is their other area of responsibility. Monitoring and enforcing compliance with legislation are some of those areas that have suffered weaknesses. According to DACEL the indicators upon which the departments are required to report are numerous and national, provincial and local systems for the frequent updating and capturing of data are expensive and resource intensive. This results in a break of connection between the measures taken and the actual realisation of the right by the rights holders. This disconnect is to some extent related to the weak institutional relationships/partnerships noted above, which do not provide a conducive framework in which to progressively operate.

Funding and human resource constraints underlined most of the challenges faced by DLA in implementing its EIP/EMP targets.

3.4 Integrating environmental management into the planning process

Section 21 (1) (a) of the Local Government Municipal Systems Act, 2000 requires municipal planning to be developmentally oriented and carried out in a sustainable manner in line with section 152 of the Constitution. Under the Act local authorities are required to come up with Integrated Development Plans, which should incorporate environmental management considerations.

Integrating biodiversity and environmental management in the planning and delivery of services at all levels of governance remained a challenge. Of particular concern was the need to strengthen the capacity of local governments to integrate environmental issues in their planning processes. This is especially important in the face of the segregated duties between national, provincial and local authorities with respect to legislation and implementation. Urgent

attention is required at the implementation level, which makes it an urgent prerogative that local governments are adequately capacitated to plan for environmental management and conservation.

DEAT initiated several programmes to address this gap. Guideline documents were prepared for local authorities on how to strengthen environmental sustainability within the Integrated Development Planning process. Documents were also prepared on waste collection, waste recycling, and environmental impact assessments. A local authorities state of the environment initiative was introduced to complement the existing provincial initiative and a tool kit on environmental matters was developed for local authorities.

3.5 Implementing the Polluter Pays Principle

The DME faced difficulties with the implementation of the “Polluter pays” principle. The principle was introduced under the White Paper for Minerals and Mining Policy in South Africa as a way of shifting liability for costs arising from the mining activities of a mining entrepreneur on the particular mining company. Difficulties with the principle related to the determination of the quantum of financial provision to be provided by mining companies. It was also hard to monitor the adequacy of the financial provision annually in relation to the impact of damage caused to the environment. Moreover it was also not easy to quantify the economic and social benefits of the policies and projects adopted by the mining companies as part of their compliance with the polluter pays principle.

In a bid to address this problem DME was working on guidelines for the determination of the quantum of financial provision. At the regional level a financial provision strategy was implemented to strengthen management and control and a compliance audit system was also implemented.

The ‘polluter pays principle’ underlies the entire environmental management regime of South Africa. It is therefore likely that the problem with applying the principle will pervade other areas of environmental management such as air pollution, water pollution and land as well as the entire waste management system. DWAF was working on the Waste Discharge Charge System. It therefore calls for the adoption of a national standard/position on the systems or instruments for applying the principle across the different areas.⁷⁷

3.6 Implementing the outcomes of the WSSD

The WSSD presented a host of prospects for integrating social development, economic prosperity and environmental protection. It illuminated the central role of the environment as a contributor to sustainable social and economic development. But with this opportunity came a host of responsibilities upon the different spheres of government to turn the aspirations of WSSD into reality. There is a challenge of strengthening the institutional framework for the

integrated delivery of sustainable development as part of the national implementation of the outcomes of the World Summit on Sustainable Development (WSSD). In response to this challenge, DEAT has established a directorate to set up and coordinate the monitoring mechanism for implementing the WSSD outcomes as well as facilitate, monitor and strengthen partnerships for implementing the Johannesburg Programme of Implementation. The Directorate will also facilitate the engagement mechanism for maximising stakeholder participation.

3.7 Lengthy EIA Processes

Development projects will always impact on the environment in one-way or the other and EIAs have become the most accepted method for mitigating the negative impact of development projects on the environment. The EIA process is supposed to provide an equilibrium between the interests of development and the environment. However the EIA process has tended to be unduly tilted to either one of these objectives to the detriment of the other. DEAT uses the Environmental Impact Assessment process to identify probable negative impacts of development plans on the environment in order to recommend or direct appropriate mitigating measures. Shortcomings were realised with the EIA process in so far as it some times tended to be time-consuming and thus it stood the danger of being looked at as a hindrance to economic development. It was therefore necessary that DEAT removes the limiting factors of the EIA process in order to ensure that environmental protection and management does not become a burden to economic development, but that the three work in tandem for the common good.

It is anticipated that this will be addressed through the Second Amendment Bill to NEMA relating to Chapter 5 which will facilitate the fast-tracking of EIA applications. In addition, following an investigation that was commissioned by DEAT to compare available options for development and implementation of an Environmental Decision Support System (EDSS) for environmental impact management, an appropriate system was selected and will be developed in 2003/2004. According to DEAT, this system will assist in fast tracking EIA applications and facilitate improved decision-making.

3.8 Maladministration and corruption

Maladministration and corruption are still vices to contend with in public offices and it definitely has an impact on the realisation of the right to environmental rights. DWAF reported that the Implementation Manager of the Working for Water Programme was charged with misconduct for violating the Disciplinary Code and Procedure for Public Service, leading to the Manager's resignation before the completion of the disciplinary process. This interfered with the progress of the programme. DEAT reported failure by some officials to enforce compliance with laws and regulations. This was witnessed following complaints lodged against inspectors of the Marine and Coastal Management

Branch for facilitating the over-harvesting of marine resources, which they were supposed to control. DEAT followed up the matter; and the officials were prosecuted, found guilty and dismissed by the department. Several other tip-offs were recorded by DEAT on allegations of maladministration and corruption through its reporting hotline. Most of them related to the allocation of fishing quotas. DEAT investigated them as well.

Towards putting its house in order, DEAT used various measures, some of which were part of the administrative set up. These included the internal audit unit which reports to the Director-General and the Audit Committee; the Internal Control Component;⁷⁸ the Labour Relations Department;⁷⁹ the Tip-Offs Reporting Hotline Facility;⁸⁰ DEAT's Human Resource Management Directorate also provides an on-going training programme for orientation of staff, which includes a module on the Public Service Code of Conduct

The DEAT's response to the maladministration/corruption issues above is commended for being comprehensive, operational, effective and with measurable efficiency. It has a regular reporting component which keeps top management informed. It also involves reporting to other departments like the National Treasury, Auditor General, the Department of Public Service and Administration (where required by law or regulation). In addition the Tip Off facility has attracted many users resulting into continuous anonymous complaints being made, leading to investigations and appropriate corrective measures.

Poor administrative control on the royalties that were made by mining companies as well as illegal mining were cited as some of the hindrances to the progressive realisation of the environmental rights in the case of DME. The department's Audit Committee revealed these concerns. This is a legitimate concern given the likelihood of flouting environmental management regulations for the self-interest of officials concerned or the danger of non-compliant companies wanting to abuse or manipulate the enforcement system for their business interests.

Attempts to address this problem were carried out in line with the on-going Fraud Prevention Plan (2001) of the DME. At the time of reporting, DME had finalised investigations into the allegations and necessary action would follow.

4 CRITIQUE OF THE MEASURES INSTITUTED

A lot has been registered in the preceding pages regarding what has been done towards realising the right to environment. The legislations, policies and programmes discussed above do not by themselves deliver the right in question. This section serves to assess the adequacy of the instituted measures as measured against the constitutional standards and international standards and the interpretations that have been given of the same by South African courts of law, particularly the constitutional court. Specific guidance with regard to

realising the right to environment will be drawn from sections 24 and 7(2) of the Constitution and the interpretation of closely similar rights that has been given in the *Grootboom Case*⁸¹ and *Treatment Action Campaign Case*⁸²

The analysis in this section will be structured so as to take into regard the specific concerns identified in s. 24(2) (i), (ii), and (iii). Under the prevention of pollution, attention will be given to measures towards, air quality management, waste management and water resource management (with particular focus on the prevention of water pollution and conservation). In respect to preventing ecological degradation and promoting conservation focus will be placed on biodiversity conservation, forest conservation, marine and coastal management. And finally in respect of securing ecologically sustainable development and use of natural resources focus will be on energy development and use, management of the fishing industry, water resource management and mining and management of South Africa's mineral resources.

Among the crosscutting issues will be an assessment of how the measures deliver actual realisation of the right for those whose need is most urgent - the vulnerable; the effectiveness of measures for monitoring the realisation of the right for all people; issues of co-operative governance; compliance and enforcement; and budgetary allocation for environmental protection and management.

4.1 Cooperative Governance

Co-operative governance remained a problem as indicated in the challenges. One example is drawn from the response of the Free State Province to a question about the number and/or percentage of communities affected by toxic waste imported in the country, it stated that: "National DEAT normally keeps this information and is not usually communicated to provinces".

It is also clear that many of the functions for environmental management have not devolved to the provincial and local levels, which makes it difficult to actually implement nationally set targets downwards.

Although section 152 (1) of the Constitution defines the role of Local governments with regard to the environment to include both an impacting and managing function there is currently reluctance on the part of local authorities to take up responsibilities apart from those that are specifically listed in schedules 4 and 5 of the Constitution. As a result there is an across-the-board non-prioritisation of environmental protection and management issues in the plans and budgets of local authorities. Local authorities are reluctant to take on non-funded responsibilities and it is difficult to pin them down on this.

IDPs are the core-planning instrument for local authorities as stipulated in the Municipal Systems Act, 2000 and they are targeted as conduits for integrating environmental matters into the local government planning systems. The

priorities of local governments under the provincial EIPs should therefore be drawn from municipal IDPs. In the first EIP/EMP cycle this was not possible since municipalities did not have IDPs at the time. The provincial reports were therefore inadequate as to the compliance standards for local authorities. The CEC Alignment Report recommended that in order to address this gap, provinces should be required to report on the compliance by municipalities with provincial EIPs in their annual progress reports.

4.2 Monitoring Realisation of the Right - Compliance Enforcement and Protection Issues

4.2.1 Inadequate Environmental Indicators and Measurement Systems

Monitoring the actual realisation of the right by responsible government organs and agencies still remains an overwhelming task. The crux of the matter, as noted by DWAF, is the absence of systems for monitoring some of the indicators and clear allocation of responsibilities. Some departments do not have departmental indicators; others are archaic and need overhauling, while others are specifically made for monitoring performance indicators for financial purposes that they do not tell anything about the progressive realisation of the right to environment. In the provinces, the scenario was closely similar. DACEL (Gauteng) could not provide the information on indicators and could hardly assess the outcome of the measures that it had taken because the departmental indicator systems were “presently being reviewed based on the National State of Environment Indicators and other inputs”.⁸³ Free State Province attempted to provide information on the indicators but they are generalised observations or conclusions that are not empirically verifiable or even up-to-date.⁸⁴

The problem as noted by Free State is that there is inadequate human resource capacity with only one official in the Environmental section responsible for pollution control and waste management. It is this official who singly undertakes inspections on municipal compliance with waste management legislation. Apart from that, the other methods of monitoring which are equally inadequate are – receiving and responding to complaints reported; and issuance of directives which unfortunately suffer from non-enforcement. The Environmental Affairs section of DTEEA does not have an enforcement section, only the Conservation Section has law enforcement which seems to be overwhelmed by enforcement on conservation issues.

There is a gap between the policies, programmes and legislation that were developed and the actual realisation of the right as a result of the lack of a comprehensive monitoring and evaluation system which focuses on the impact of measures on the health and well-being of the people and on protection of the environment. The problem relates to inadequate capacity and preparedness on the part of the national and provincial departments.

Fulfilment of the State's obligations is not only about passing laws, policies and programmes. According to the *Grootboom Case*, there is an obligation on the State to put in place a national framework for realising the right to environment which enables the obligations imposed to be met. In other words this plan must be workable. It must be able to deliver the right to everyone. It is impossible for the state to ensure that everyone enjoys the right without having baseline information upon which to build and collect data on a continuous basis since circumstances will always change according to different stimuli.

The Economic Social and Cultural Rights Committee of the UN noted in General Comment No. 3 that even where resources are not enough, the State should at least be able to monitor how the right in question is being realised or not being realised in order to facilitate planning. A bigger burden of this obligation falls on the national sphere of government. According to the *Grootboom case* the national sphere has the overarching responsibility to ensure that the measures taken are adequate to meet the state's constitutional obligation.

There are signals that indicators are being worked out. DEAT reported that indicators were developed and posted on an accessible web-site for all users. There is need to prioritise the institutionalisation of the indicators so that they are not for occasional use, but form part of the continual monitoring of the realisation of the right to environment in each of the spheres of government and the different departments. Indicators are important for government to determine the progress being made over time. Although DEAT reported that the indicators were developed through a broad-based consultative process, it is not clear whether all concerned departments have accepted the indicators and whether they are actually applicable to the specific mandates of each of the departments. This could be the reason for the likely problems with sampling and collecting usable data and the proposals to develop mining industry specific indicators.

4.2.2 Enforcement of environmental laws and regulations

Another area that is importantly linked to monitoring is the enforcement of environmental regulations and laws. This is an area of weakness as noted by DEAT. In its Alignment Report (2002) the CEC noted that a large percentage of landfill sites are operating illegally due to the limited cooperation and coordination in implementing the authorisation system. The role of permitting waste disposal sites under ECA is for DWAF. The provincial authorities have the responsibilities for monitoring compliance with landfill sites to the conditions of authorisation. The local authorities have the role of establishing waste disposal sites and complying with national regulations on waste disposal management. There is obvious laxity in the regulatory system as attested to by reported scenarios. The fact that a defective and old incinerator the (Ixopo incinerator) can continue being used without a permit and in the face of objections by DEAT is illustrative.

The sloppiness in the regulatory system has been the main reason given by environmental activists in their objections to the use of incinerators. In 2003 the Environment Network Justice Forum submitted objections to an application for government to approve a state-of-the-art incinerator at the Swartklip Products site between Mitchell's Plain and Khayelitsha. According to the Forum, the incinerators emitted some of the most health-damaging substances including dioxins and heavy metals like mercury. Their objection was based on the fact that "South African regulatory system was inadequate to properly monitor and control emissions from the incinerators and the fact that the technology could not guarantee that emissions would not constitute unreasonable risk to public health".⁸⁵

In the case of the Pelt Products semi-processing tannery⁸⁶ which produced gaseous emissions including ammonia and hydrogen sulphide gives credence to the existence of a lax regulatory system. Pelt Products started business without a permit and yet it used hydrogen sulphide in its industrial processes which required a registration certificate under the Atmospheric Pollution Prevention Act of 1965. On intervention by a lobby group the chief officer in terms of APPA took up the issue and required Pelt Products to apply for a permit which had certain conditions. Pelt Products was also ordered to appoint a consultant who would assess its operations and draw up an abatement plan. The consultant proposed a treatment process which required Pelt Products to carry out some modifications. In the meantime a provisional certificate for 3 months was issued in 1998 within which Pelt Products would effect the changes. At the end of 3 months the conditions of the provisional certificate had not been met and the certificate continued to be extended several times until a case was filed by Hichange Investments in 2001. It took the intervention of the court to order DEAT to force Pelt Investments to undertake an EIA and to take steps to prevent further pollution.⁸⁷

There has been an attempt to fill the gap in the regulatory system through the use of voluntary/ self-regulation by industries and the private sector. However, this cannot replace the role of the State in putting up an effective regulatory system. Most industries in South Africa follow the ISO 14001⁸⁸ and other international standards because of their incentives for access to the world market. An example of good practice by industrial establishments was the "Hazardous Waste Management and Medical Surveillance programme" of the Council for Scientific and Industrial Research (CSIR) under which policies and procedures were instituted for the proper handling and disposal of hazardous waste. The programme was carried out in line with the ISO 14001 and the OHSAS 18001 and aimed at safeguarding pregnant women from the effects of x-rays and workers who are exposed to toxic and hazardous substances.

Management had to comply with regulations and thus realise the right to environment as a result of the monitoring and assessment requirements for the ISO 14001 and OHSAS certification. As a result CSIR correctly disposed of 1517kg of hazardous waste and 67 438kg of general waste.⁸⁹ The advantage

with this international certification system is that it covers compliance with national legislation as one of the components for assessment. This international certification system can be effective for industries that are targeting the international market. They have more to gain by being accredited. For industries that have a local focus, the system does not provide much incentive. It therefore means that these industry-led self-regulation mechanisms can only have limited environmental impact.

4.3 Waste Management and Pollution Control

The White Paper on Integrated Pollution and Waste Management for South Africa (IP&WM)⁹⁰ and the National Waste Management Strategy (NWMS)⁹¹ form the core instruments for waste management and pollution control in South Africa.⁹² All measures adopted by the different national, provincial and local spheres of government during 2002/2003 were supposedly inspired and carried out in line with the goals of these documents.

It is however worth noting at the onset that what was reported upon by the various departments fell far short of what was expected of them in line with the strategic objectives of the Policy and Strategy for pollution and waste management. An analysis of how the measures taken fall short of reasonable standards follows below.

4.3.1 Assessment of the allocation of responsibilities for pollution control and management

The IP&WM policy lists water pollution, air pollution and land pollution as the key issues with regard to pollution management. In addition, waste was identified as a major source of pollution.⁹³

At the national level DEAT has overall responsibility for integrated pollution and waste management in South Africa. DWAF is responsible for water quantity and quality aspects of pollution and waste management (in terms of the National Water Act) and also holds responsibility for permitting landfill sites pursuant to section 20 of the Environment Conservation Act. DME in consultation with DEAT has the responsibility for regulating mining, radioactive and coal combustion waste and doing general regulation of the mining and nuclear industries. The department of Health in consultation with DEAT has the mandate with regard to regulating and guiding medical waste and treatment facilities. The Department of Agriculture takes charge of all agriculture waste.

The provincial and local government's are expected to work within the national framework to ensure that national strategies for waste and pollution management are implemented. Specifically the provincial government is responsible for monitoring and enforcing pollution and waste management issues within their provinces while municipalities take responsibility for providing waste management services and managing waste disposal facilities.

The IP & WM as seen above anticipates a well-coordinated system in which every sphere will handle its responsibilities in step to address the problem of pollution and waste as the major source of pollution. However, it is true that 3 - 4 years down the road, there are major issues that have hindered progress with integrated pollution and waste management. There is still no clear understanding among the different mandate holders of what they are required to do; as a result there is an overlap in implementation. Waste management seems not to be prioritised by most of the responsible organs this reflect on its financing and implementation progress in most of the provinces and municipalities. This fact came true during the Cleanest Town Campaign. Whereas the winning town (Port Elizabeth) maintained that waste management was weighted like a basic service and thus took innovative steps to provide the needed services, other towns did not prioritise it and this resulted in their dismal performances during the competitions.

There is also lack of infrastructure and capacity to implement existing laws and policies. This could be a result again of the failure to prioritise pollution prevention and waste management but it is largely due to underperformance with regard to goal 1 of the strategy - "to create, develop, implement, maintain and continuously improve an effective, adequately resourced and harmonised institutional framework and integrated legislative system and to build institutional capacity". The law reform process which would culminate in integrating the legislative framework has been slow and the benefit that will accrue from it can only be anticipated. Little has been done to consolidate the administrative system for authorisation and assessment reporting and capacity institutions to fulfil the tasks expected of them.

4.3.2 Pollution Prevention, Waste Minimisation, Impact Management and Remediation

4.3.2.1 Air Quality Management

South Africa's approach to meeting its obligations in terms of the Kyoto Protocol to the United Nations Framework Convention on Climate Change⁹⁴ illustrates the importance of taking environmental indicators and risks seriously. South Africa acceded to the protocol on 31 July 2002 and is required to present monitoring information on the following: the abatement of increases in greenhouse gas emissions, enhancement of sinks (e.g. forests), removals of greenhouse gases by sinks, capacity building and adaptation measures. Greenhouse gases are defined as:

- Carbon dioxide
- Methane
- Nitrous oxide
- Hydrofluorocarbons
- Perfluorocarbons
- Sulphur hexafluoride

The South African Weather Service is a contributing member of the Global Atmosphere Watch (GAW). The concentrations of carbon dioxide, methane, nitrous oxide, surface ozone, and carbon monoxide are measured at 30m above the ground at Cape Point on a daily basis and submitted to the World Data Centre for Greenhouse Gases (WDCGG) based in Japan. Owing to its location, the Cape Point monitoring station may give a better indication of regional / global greenhouse gas concentrations than the conditions that prevail in many inland areas of South Africa. Some of the patterns reported on by the South African Weather Service correspond closely to patterns prevailing at a global and regional level.

For example, in the case of methane, the rate of growth in gas concentrations increased in the northern and southern hemispheres from 1983-1991, then grew less rapidly from 1992-1999 and then decreased to almost zero growth from 2000 onwards.⁹⁵ Concentrations of carbon dioxide and nitrous oxide at Cape Point showed steady increases from 1993/4 to December 2002. The trend in nitrous oxide concentration at Cape Point matches closely with the data from Cape Grim in Australia. The average concentration of surface ozone (which is defined as a greenhouse gas when it is present in the lower atmosphere) showed a slight increase from 1992 to 2002. There was no statistically significant trend in carbon monoxide concentrations at Cape Point. Analysts of the data from Cape Point conclude that continued emissions of greenhouse gases are a cause for concern.⁹⁶

As it is now, the legislative framework for air quality management is not up to standard. The Air Pollution Prevention Act of 1965 is the substantial law governing air quality management but its shortcomings go without saying. The Air Quality Bill of 2000 is intended to address these shortcomings. In the meantime however, any intervention should be inspired and conducted under the ambit of the IP&WM. The strategic objective for air pollution under the IP&WM requires that action be taken to “*manage, prevent, reduce and control* all identified forms of air pollution from various sources and to maintain human health and ecological functions, as they relate to air pollution at acceptable levels.”⁹⁷

Some of the major sources that are compromising the quality of air are industrial pollution, waste, use of wood and coal fuels for lighting and heating, among others. South Africa does not have ambient air quality standards. But

there are guidelines developed by DEAT that identify the maximum allowable concentrations of air pollutants in the air for sulphur dioxide, nitrogen oxides, carbon monoxide, particulate matter, volatile organic compounds, ozone and lead. In the absence of enforceable standards, the quality of air has been subjected to voluntary compliance measures by pollutant sources, particularly industry. The results of this are far below optimal. The scenario is characterised by poor management of pollutant sources, very minimal preventative measures where a leakage happens, deliberate actions involving the burning of chemical wastes as a way of ridding industrial plants of gases that can't be safely managed within, and the absence of appropriate control or remedial measures where there is escape into the air. This has resulted in ill-health as evidenced by respiratory diseases such as asthma, eye irritation, skin rashes, cancer among others.

Problem areas that have been identified in literature (National State of the Environment Reports) include the South Durban Basin as a result of industrial processes, Mpumalanga due to the extent of energy sector activities, particularly ESKOM coal-fired power generation; North West Province indicated that only scanty information was available on the state of air quality and a general observation that atmospheric air quality was not a problem in most of the province except some indications of deterioration in Rustenberg, Brits and Potchefstroom as well as poor air quality in settlements and houses that use coal and wood. the Johannesburg *State of the Environment Report 2003* indicates that "while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing." The report goes further to state that "levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter."

Air quality management is obviously a major problem as indicated by various voluntary and community air monitoring activities.⁹⁸ The effects of air pollution on human and ecological organism are well known, including harm to health and environmental degradation. However, government action at the moment is not deliberate and comprehensive. This is true for legislation, policy and programmes. There is definitely no legally binding regulatory system, which accounts for the irresponsible actions by industrial actors.

The economic incentives for leaving polluting industrial processes un-bridled are tempting, however there are far-reaching impacts on the sustainable use of natural resources for present and future generations to warrant immediate action as well as the generational health costs of pollution. Government should take up the responsibility to consolidate community and voluntary actions for preventing air pollution in order to realise the right to environment as stipulated in section 24 of the Constitution. The establishment of the air quality

management plan for the South Durban Basin is a step in the right direction but more deliberate and focused action is needed and should be done expeditiously and effectively because the damage to health and the environment may not be easy to remedy over generations.

4.3.2.2 Waste management

All the components of the pollution and waste management system - waste minimisation and recycling, waste collection, waste treatment and waste disposal require the institutionalisation of mechanisms that can facilitate close monitoring and reporting on the operations under them in order to generate useful information for planning and further implementation.

The **Plastic Bag Regulations** were passed and are being implemented towards promotion of waste minimisation and recycling. This is a one-off intervention and does not take care of the host of problems that pertain to waste management as a source of pollution. A comprehensive system is required that will identify and periodically prioritise pollutants that require close prevention and monitoring from the source; promotion of cleaner production technologies and practices for effective handling of waste and pollution at source. Recycling is still a grey area. There is inadequate support and promotion of the same. This is a challenge to the plastic bags regulations and other areas. As the situation is now, there is no concrete plan for promoting recycling although concern has been raised about this as a component of the plastic bag regulations.

A major concern of the Plastic Bag Regulations is the negative impact that it has had on the plastics industry leading to the closure of industries as the volume of production dropped and the concomitant loss of jobs for many.⁹⁹ According to media reports, at least 500 people have lost jobs, and businesses have shut down for example Solidi Engineering and Plastics. Others are under threat of closure as the levy is due to be raised from 2 cents to 6 cents. The scenario raises questions relating to sustainable development requiring a balance between environment, social development and economic development. The government may need to rethink the pollution regulatory system in view of South Africa's position as a developing country under reconstruction from the ills of the past dispensation. The negative effects of the regulations should be carefully addressed since it is likely that more of the poor and historically vulnerable people will have to take the brunt of the plastic bags regulations. This brings to the fore the issue of the safety nets that the regulations have and how the polluter pays principles is being applied here. Probably the regulations should be subjected to a review to find out whether it is meeting its objectives and whether the regulations are being applied in a transparent manner. How are the financial resources collected being reaped back into the environment and those that are most affected by the pollution in question?¹⁰⁰

Waste collection is still very poor. By now there should be guidelines for appropriate waste collection services. Unfortunately these are non-existent. The

IP&WM targeted to provide waste collection services for 300 000 previously unserved households on a pilot programme. This was supposed to be done by local governments in the short term (1999-2002). It is not clear how much of this has been done since poor communities continue to be under serviced with regard to waste collection. Free State province reported that residents of previous homeland areas such as Thaba Nchu and Qwaqwa, totalling 338,233 did not have functional waste refuse removal facilities, while recycling facilities existed only in one town - in Botshabelo Town Centre.

Under waste treatment, a register of all waste treatment facilities should be in place by now, as well as a classification system for them. There should be regulations and standards for all these facilities, revised air emissions standards for waste incineration facilities under which all incineration facilities would be monitored and audited. With regard to medical waste there should be a plan for a system of medical waste treatment plants. It is clear that the measures taken in response to the foregoing fall short of expectation and do not address the need. It is not certain if there is a register of waste treatment facilities and it follows that no monitoring or auditing is being done.

DWAF reported that there were no appropriate system for monitoring the generation and final disposal of general and hazardous waste. This can be proved by the absence of usable information on amounts of waste treated and properly disposed of.

Medical waste is still a problem. It is claimed that most if the health care waste generated in most hospitals is not accounted for, raising the suspicion that this is waste that is illegally dumped or disposed of posing high risk to communities. Most hospitals use of incineration to dispose of waste and within responsible departments, incineration is advanced as the legal and best way (perception) to deal with medical waste. However, the use of incinerators is continuously becoming a health and environmental hazard, in addition to its huge cost-implications in comparison with other technology. Health facilities are currently using colour coding for plastic bags used for collection of waste in the hospitals. Red, yellow, blue and clear plastic bags are used. However, there is poor practice with the segregation of waste on the wards leading to the most of the waste being handled as if it was hazardous and thus automatically subject to incineration.¹⁰¹

Weak regulatory procedure has seen the continued illegal use of defective and un-permitted incinerators, for example the Ixopo incinerator referred to earlier. This incinerator, which is run by a municipal authority continued to be used even when a permit was denied and no action was taken to address that matter.

DWAF is responsible for regulating waste disposal facilities (section 20 ECA waste disposal facilities). In line with that, a register of all waste disposal facilities must be maintained, permitting of all medium and large landfill sites must be done and appropriate monitoring and auditing should follow. This is

partially being done as attested by the poor management of landfill sites. Although permits and directions were given under section 20 of ECA, there is little monitoring and auditing beyond permitting. Therefore it is half-truth for DWAF to maintain that all commercial hazardous waste sites are being controlled via permitting.

It is true that some of these sites are complying more with regulations via the ISO 14001 than as a result of DWAF's regulatory mechanisms. In fact DWAF was unable to provide information on the amount and type of hazardous waste correctly disposed of at permitted landfills because according to them "this is a great deal of very detailed information". This is indicative of the fact that this information is not being collected and collated in a manageable way which makes it had to be retrieved when the need arises. It therefore means that the information available (if at all it exists) cannot serve any useful planning purpose for other sectors and spheres beyond DWAF. DACEL (Gauteng Province) reported very dismal performance under its environment management programme in the area of compliance monitoring for industrial impact management. No performance compliance monitoring was done and no exemption auditing was done for authorised projects.¹⁰²

The developed Minimum Requirements for Waste Disposal Site Operation, auditing and training of Operators and Managers of Waste Management Facilities and the Waste Discharge charge system (Phase 2) are yet to be fully integrated in the implementation processes of DWAF. For now their contribution can only be speculated. DWAF/DME did not provide any information on whether a permitting system exists for mining and coal combustion wastes which pose a major environment and health risk for communities living adjacent to mining establishments. There are inadequate hazardous waste disposal facilities for the country, leading to the improper handling and disposal of waste by various sources.¹⁰³ Households would be a first category of potential improper disposal of hazardous waste because of inadequate awareness. In Free State there is only one hazardous waste site that is operated by Sasol. It should be a cause of concern where the other sources of hazardous waste dispose of their waste.

The Cleanest town Competition was carried out under the NWMS. It was aimed at raising awareness and educating people about waste management practices in line with goal of empowerment and education in IP&WM. Whereas the competition provided a way of rewarding the best, it should have identified the hot spots for poor pollution prevention and waste management practices for boosting in terms of education, capacity and financial contribution.

Waste management measures that were taken suffer almost the same shortcomings as the air pollution measures there is need for more concerted efforts on the part of national, provincial and local governments which prioritises waste management in line with the IP&WM policy and NWMS.

4.3.2.3 Water pollution management

The IP&WM identifies key water pollution issues to include:- salinisation of fresh waters resulting in low crop yields and increased corrosion of water conveyance systems; enrichment of fresh water bodies by nutrients which changes the composition and functioning of natural biota thus affecting the environment; deteriorating microbiological water quality due to human settlement which introduces disease-causing micro organisms into the water environment; sediment and silt migration which affect water and biotic communities; harmful inorganic and organic compounds as a result of industrialisation; diffuse water pollution from a variety of sources including industrial seepage, pit latrines, leaking sewerage pipes, human settlement and the effects of off-shore exploitation of marine resources on the marine environment.¹⁰⁴

The objectives for water pollution management component of IP&WM revolve around managing, preventing, reducing, control and remediating surface and ground water and marine pollution from all identified pollution sources. In addition to ensure that the quality of water needed to maintain ecological functions is protected from the effects of human use of water.

DWAF reported some developments related to these objectives. A second draft of the National Water Quality Management Framework Policy was published – this targets water quality management in line with the water resource management emphasis for conserving, managing and developing South Africa’s water resources in a scientific and environmentally sustainable manner to meet the country’s social and economic needs. Under the framework measures will be taken in 3 related areas: - source-directed, resource directed and remediation directed. This framework is still a work in making and cannot be relied upon now to determine government’s compliance with water pollution needs as they stand now. It is a work worth hailing but which awaits deeper analysing after being formally introduced.

In the same manner the Waste Discharge Charge System as one of the source-directed measures as a way of managing water pollution is just in the pipeline and will need to be given time before yielding benefits in line with the integrated pollution and waste management system.

The Clean Up of the Hammersdale Waste Water Treatment Site was a positive mark for DWAF to the extent that it resulted in the identification of a pollution “hot-spot”. Better results will be attained nationally if this forms part of a foreseeable annual or periodic identification plan under DWAF’s water service/water resource management activities.

The National Water Resources Strategy is also not a finished work, but like the others it is an indication of government’s commitment. All the above initiatives need to be hastened.

The Working for Water programme is one of DWAF's interventions for protecting and preventing loss of water due to alien plant species. It is not clear from the reports how much of the work on preventing and control invasive alien species has focused on areas pre-dominated by vulnerable sections of the population. How much of the land cleared is commercial farmland or communal areas. Considerable work has been done in the South African National Parks. A lot of public resources are injected into the interventions of the programme. It would be advisable that these resources are applied to the most needy and deserving areas. Possible suggestions for criteria here would be to focus on the vulnerable, poor and previously marginalized communities who require safeguarding of their environment as a way of ensuring basic livelihood. This would have to be properly balanced with the need to protect the public commons like the national parks.

This should be in agreement with the Working for Water position that everyone is responsible for clearing invading alien vegetation and in line with the principle that requires the polluter to pay for the environmental impact of his/her activities. Working for Water has entered into industrial partnerships with commercial forestry industry that has committed itself to clearing invading alien plants by 2008. There is also commitment together with the Department of Defence to clear alien plants on defence force land. A partnership with the South African Nurseries Association commits all nurseries not to sell invasive alien plants.

As stated by Working for Water in its 2002/2003 Annual Report, "While the prevention and control of invasive alien plants is a sufficient reason for its existence, what has made it extra-special is the way in which it has tried to embrace Government's reconstruction and development vision." Together with its visions for the environment the project targets the creation of jobs for poor unemployed people. There is scanty information on the wage rates and working conditions to enable an objective assessment of the impact of the jobs on the lives of the people. The Working for Water Annual Report provided some veiled admissions, as drawn from an external evaluation that was conducted that there are some problems affecting the workers including inadequate job descriptions, insufficient performance evaluations, timely payment of contractors and workers and the absence of an enabling environment for the exiting of contractors and workers. A look at the top management of the programme gives the first impression of a bias towards white managers.¹⁰⁵ Other concerns such as ensuring safe and healthy working conditions for field workers remain paramount.

One of the biggest challenges of the programme with regard to environmental management relate to the use of chemicals. The impact of these chemicals is yet to be evaluated. In addition there is a need to align the programme with the IP&WM with regard to waste minimisation, recycling and reuse. This is already being done with in the secondary industries for charcoal, woodchips, crafts, furniture and building materials.

4.3.3 Biodiversity and Conservation

Most of the work on biodiversity and conservation was reasonable in as far it related to tourism and the economic development of the country. Legislative developments are promising and they were handled quite expeditiously. Innovative Programmes were also recorded even while the legislation was still being worked out. This was possibly as a result of international and regional influences, which South Africa managed to take up in good step. These included, the Convention on International Trade in Endangered Species (CITES), the International Union for the Conservation of Nature targets, NEPAD and the Convention on Biodiversity among others. Again this emphasises the fact that tourism (and the related green issues) are prioritised and have attracted a lot of innovation and financial resources because of the economic benefit to the country. Another dimension was also introduced by the WSSD.

A point of concern however, arises with the formation of Transfrontier Parks in the Great Limpopo and Ais-Ais/Richtersveld. This may have required the moving of human barriers to allow the free movement of animals. DEAT did not provide information as to the impact of the agreements on human habitation/settlements in the designated parks and the remedial action that was taken. The right to protect the environment is intended to benefit current and future generations alike. This should be taken into consideration in conservation and biodiversity programmes.

The trend of the national departments was repeated by the provinces – there was a lot of focus on tourism as opposed to other environmental management issues. Most of the programmes reported on by Free State Province were in areas related to tourism and its related economic benefits – fencing nature reserves, establishing community owned rest camps, and creating environmental adventure centre for street children. The last one had a social development component that benefits the vulnerable. In addition the buy-back centres were an important step with regard to brown issues.

4.3.4 Promoting Ecologically Sustainable Development and use of Natural Resources

4.3.4.1 Environmental Impact Assessment

The EIA processes were major areas of success in most of the national and provincial reports, as a way of ensuring that proposed development processes were in line with principles of sustainable development and conservation. Existing EIA regulations were followed. DEAT processed 88 EIA applications out of a total of 134. DEAT estimated the value of the development projects at R43 000 000 000 when completed. The EIA provided the necessary checks and balances through which the right to environment was protected. However in the case of the provinces that reported, the EIA was a limiting factor for fulfilling

their objectives. Free State reported underexpenditure on their budget for capital development because of the lengthy EIA processes that resulted in the need for having funds rolled over. The EIA process should not be a burden to development but the way it was implemented raised such concerns, which would lead to the conclusion that the EIA as a measure for environmental impact monitoring was not reasonable.

The process needs to be streamlined in order to bear fruits from the environment, social development and economic development angles in order to contribute to sustainable development. In most cases EIA takes care of the interests of the most vulnerable in the face of impending development projects. On the other hand it seems to hamper the economic considerations of development projects which feel threatened by the outcome of the process. It is hoped that the remedial measures that have been proposed by DEAT in this regard will maximise both the environmental and economic development benefits for sustainability.

If EIAs are comprehensively and properly done, this will reduce on the cost-implications of monitoring compliance and enforcing regulations under the polluter pays principle. The direction with regard to the conduct of EIAs raises concern here. On the face of it, it appears that the responsible department is lax at the EIA end, leading to the requirement for more government input at the impact management side. Approvals are being made based on incomplete EIAs subjecting the public to enormous costs in terms of health, and depleted resources and public funds.

4.3.4.2 Energy Efficiency and Energy Development

Energy development is very crucial to environmental management and conservation. This can be from either a negative or a positive standpoint. In Mpumalanga¹⁰⁶ the power generation activities of ESKOM were a major reason for poor air quality in the province. ESKOM has 8 out of 11 of its countrywide operational power generation facilities in Mpumalanga most of which are coal-fired. The effect of power generation on the ambient air quality is projected to worsen as electricity distribution or the demand for electricity increases. On the flip side, domestic use of fossil fuels (firewood and coal) was also one of the sources of air pollution in Mpumalanga.

The Directorate of Energy Efficiency (DEE) in DME is not lost to the double dilemma with regard to environmental management. The mission of the Directorate is *“to develop energy efficiency measures and mechanisms which would promote energy saving, reduce negative impact of energy use on the environment, reduce energy cost to the economy, contribute towards sustainable development to achieve national energy policy and development goals”*

As a starting point, the new policies and legislations are sensitive to the requirements to recognise the right to environment as a right, and to put in place structures and mechanisms through which people can enjoy this right in light of the energy sector and avenues for redress where the right has been violated, including the implementation of the polluter pays principle. Where this is not possible the department as an organ of government has taken up the responsibility to take remedial measures in the name of government as the custodian for the environment.

The electrification programme is addressing the needs of the underprivileged and the previously marginalized populations by enabling them to access electricity as a better alternative to wood and coal fuel and as such reducing their exposure to health threatening pollution. Particular attention to the poor and most desperate is being realised through the provision of free basic electricity. As noted above, the increased demand for electricity is bearing down on the environment. This fact is being taken care of as alternative sources of electricity are proposed. The measures for promoting renewable and cleaner energy are therefore timely. Such renewable energy sources will protect communities, particularly poor communities that have been using smoke-heavy means of energy as emission's of carbon dioxide are reduced. The focus on women and children is very commendable since they are the most vulnerable to unsafe domestic energy sources. It remains however to be seen how the measure will deliver the right in practice.

The Energy Efficiency Strategy also contributes to environmental protection as pressure on natural sources of energy reduces.

In spite of the positive measures, energy development in relation to environment management is an area to watch in view of the backstage discussions about possible restructuring of the energy delivery systems, particularly at the local level. This could potentially compromise commitments to energy efficiency and have a negative impact on the effective servicing of the disadvantaged communities. Another issue that is of urgent import relates to provision of sustainable energy to the growing number of informal settlements.

4.3.4.3 Mining and Mineral Development

The measures taken by DME under this component were properly aligned with the government's commitment to sustainable use of natural resources, ensuring an environment that is good for health in respect to the people that live near mining areas through impact management as well as guaranteeing the health and safety of those most close to the danger of environmental hazards. The polluter pays principle is one such measure for ensuring that the negative effects of mining activities on the environment are not left in abeyance but that responsibility is taken up in good time and moreover expeditiously and effectively. Weaknesses were identified in implementation of the measure,

which raises questions about whether the environment and the people are actually benefiting from the enforcement of the principle. There is need for closer and better monitoring of the implementation of this principle and the efforts of DME to remedy the financial provision's gap are to be hailed.

In respect to the rehabilitation of derelict and ownerless mines, the measures taken by DME are comprehensive. DME is on top of the matter with all the information with regard to the mines and dumps that need attention and is also armed with a targeted programme within which all the work should be done. The situation with Asbestos is of urgency and warrants equally urgent attention. This is a very expensive venture but it produces value for money since ignoring the situation until later may be more expensive. Funds should be made available to complete this process in the shortest possible time. DME did not provide much information on the coalmines and not much work was reported there.

Even with inadequate funding, the magnitude of the problem with the coal and gold mines should be catered for in order to provide planning information at all levels of government. Provincial as well as local governments should be informed about interventions within their localities and work in co-operation with DME in that regard. If a province government does not have information on the working of mines in its area then there is a problem since integrated planning cannot progress effectively.

The Excellence in Mining Environmental Award was a good way of promoting the right to environment in the mining sector and more initiatives should be taken to draw the mining industry into centre place in environmental management.

DME did not provide much information on the enforcement of environmental regulations in the mining industry and specific data on individual complaints made and how these are being remedied. The effects of mining activities on the health of the neighbouring communities may not be documented or it may not be easy to allocate in reference to individuals. The effects may show in many generations to come. There is need for more deliberate action to ensure that communities that live in such environments are compensated in terms of effective services to mitigate the probable effects in their lifetime.

4.3.4.4 Marine and Coastal Management

A lot of good initiatives were reported under fisheries at national level with the restructuring of fishing rights allocation which gave priority to formerly segregated communities while at the same time regulating the use of the marine resources for current and future generations. The enforcement mechanism proved effective and was put to use. All the measures were reasonable and contributed significantly to realising the right to environment. In particular the enforcement mechanism brought financial benefits to the economy. These

should be thrown back into protecting the sources and managing the marine resources for posterity.

The policy measures were augmented by the Constitutional Court decision in *Bato Star Fishing (PTY) Ltd v The Minister of Environmental Affairs and Tourism*¹⁰⁷. The applicant was dissatisfied with the allocation of fishing quotas to it and sought a review of the allocation decision. The Constitutional Court upheld the allocation decision and gave deference to the objectives for fishing rights restructuring programme as advanced by the Marine Living Resources Act, 18 of 1998 (relating to the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry) and in view of other national objectives and constitutional values including those anticipated by s.24 of the Constitution.

The Coast Care and Working for the Coast programme are innovative measures for getting the environment in the public lime light while, raising awareness on environmental good practice in dealing with the coast and addressing the economic and social needs of poor coastal communities through job creation and literacy. Putting man-hours to more environmentally sustainable activities has a kickback as time is spent away from environmentally harmful activities like illegal fishing.

5 RECOMMENDATIONS

The new democratic government through its observance of the Constitutional obligations in section 24 of the Bill of Rights has created a development vision for the country which corrects the injustices of the past. Central to the right to a healthy environment is the concept of sustainable development. This means that the government should ensure that development is aimed at improving the quality of life especially those who were previously disadvantaged (vulnerable) groups/communities. These developments should affect the future generation in a positive way.

There has been a significant improvement in terms of laws, strategies and guidelines that have been implemented by government to fulfil the right to a healthy environment. Government should be commended in their efforts of implement these strategies and guidelines, but there is still a lot to be done by provincial government in terms of management and monitoring systems.

There are also few areas that National Departments need to address in their environmental policies and programmes, including:

- Improving Pollution and Waste Control;
- Focusing on affected people and their participation in environmental decision making;

- Developing an effective system of co-operative governance, possibly through focusing on the facilitation work of provincial Committees for Environmental Co-ordination; and
- Involving NGO's and CBO's in management, monitoring and implementation plans.

This will bring about a more effective effort towards realising the right to a healthy environment and will unload the burden that the government is experiencing presently. Progress in the implementation and monitoring of the environment needs to be a combined effort, which will reflect the inputs of the public and the interests of the affected parties. For example community organisations and NGO's, industries, trade unions, businesses and government have a role to play in the national efforts to achieve sustainable development and sound environmental management. Practically speaking, the Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

Civil society has spearheaded a lot of useful initiatives, sometimes out of frustration for the inadequate intervention by government and sometimes out of a genuine desire to be partners with government. A lot of positive fruit has been born of partnerships between government and civil society actors as representatives of the affected communities. A lot of information has already been generated by NGOs and other community initiatives which would serve well to complement the efforts of government, for example in the area of greening hospitals and in getting better technologies for handling waste. These initiatives are paying off and should be encouraged.

Environmental management is an area of concurrent jurisdiction for national, provincial and local governments either in legislation, policy making or direct service provision. There is a need to see more activity devolved to the local and provincial levels because that is the closest contact with real people with real problems requiring real solutions. The effort that has been put into developing legislative and policy systems is very commendable but it is now time to concentrate energies and resources at the local and provincial levels for implementation. Provincial and local level capacity constraints should be specifically targeted in order to maximise the involvement of these two levels. Capacitating municipalities in environmental management and conservation issues should be a priority of the national and provincial governments in line with section 154 (1) of the Constitution.

Developing effective and simple information systems should be prioritised, as well as the general environmental management and conservation function of different national and provincial departments in the planning and budgeting processes of the governments. Baseline information will facilitate measuring of progressive realisation for the years to follow. This will facilitate the

identification of hotspots for targeting in view of the vast pressure on limited financial resources. More resources should be voted into provinces with major environmental challenges to help offset the effects and to facilitate the local authorities in fulfilling the obligation to protect residents from a harmful environment.

Simple mechanisms should also be found for making available and sharing reliable and useful information across departments so that each department has adequate information to plan and respond within its mandate. The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely communicated so as to avoid conflict and encourage effective participation.

The State has made valuable contributions to promoting the right to environment through for example, the “Bontle ke Batho” or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment (e.g. their own water, electricity, and paper use). For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

Air pollution

Air pollution as a result of industrial processes is a matter that needs urgent attention. The situation is further aggravated by the absence of binding regulations. Guidelines do not help much. Government should prioritise developing regulations on emission standards. Self-regulation by industries although a positive aspect leaves a lot to be desired. There is a lot of information that business entities will not admit to in the interest of their existence and profit motives. The voluntary air testing by major industries does not give the entire picture of the pollution challenges in South Africa. The different spheres of government should come up and bolster the efforts that are being advanced out of community-based networks and initiatives.

Waste Management

Provincial governments should ensure that local municipalities are fully supported by providing them with guidelines on how to implement environmental strategies and also supporting them financially, as they deal with

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the real problems on the ground and people who are directly affected. The issue of waste management is the one that is seriously affecting all the provinces and there should be a solution to this.

There gap in waste disposal systems, especially in rural and informal settlements. Most of the existing waste sites are not registered and there is also little control from government over illegal waste dumping. Most of these wastes affect fresh running water used by community members. Recycling should also be encouraged. Some provincial governments are already adopting it in their community awareness and education programmes.

- 1 In the Act, unless the context requires otherwise, the term “environment” “means the surroundings within which humans exist and that are made up of-
 - (i) the land, water and atmosphere of the earth;
 - (ii) micro-organisms, plant and animal life;
 - (iii) any part or combination of (i) and (ii) and the interrelationship among and between them; and
 - (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well - being.”
- 2 The Universal Declaration of Human Rights recognises that procedural aspects of human rights are as important to full realisation of human rights as substantive protections such as the right to life and health. Denial of the fundamental rights of freedom of association, of opinion and expression and the right to take part in government, are denials of basic human rights without which protection of substantive human rights are called into question. Part III of the 1994 Draft Declaration of Principles on Human Rights and the Environment sets out the procedural aspects of human rights necessary for the full realisation of environmental rights. Procedural rights are enabling rights, as they make it possible for people to contribute actively to the protection of their environment. For more up-to-date details on the procedural aspects of the right please refer to the conclusion of the Meeting of Experts on Human Rights and the Environment, 14-15 January 2002 and the deliberations of the United Nations Commission on Human Rights at its 58th, 59th and 60th sessions.
- 3 United Nations General Assembly, *Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) Annex I, Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I) 12 August 1992
- 4 For more information on the envisaged role of the Convention refer to United Nations Economic Commission for Europe website www.unece.org and search for “human rights” or refer to <http://www.unece.org/env/pp/HUMAN%20RIGHTS/ECE%20input%20to%20OHCHR%20report.doc>
- 5 International Labour Organisation, *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, 1989 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>
- 6 Earthlife Africa (Cape Town) v Department of Environmental Affairs and Tourism, ESKOM, case 13542/03 High Court of South Africa Transvaal Provincial Division
- 7 Following restructuring, the Electricity Supply Commission (Escom) changed its name to Eskom in 1987. The Electricity Supply Commission was replaced by an Electricity Council appointed by government.
- 8 The application was brought as an urgent application to prevent the Director-General (DG) of DEAT from granting permission for the reactor to be built and to have the court order the DG to provide Earthlife with all the information on which the decision would be based. The argument by Earthlife was that it was only allowed to comment on the draft Environmental Impact Report and that no opportunity was given to comment on the final Environmental Impact Assessment (EIA) report, which had new information. The information that Earthlife alleged it had been denied access to included the safety and security impact assessment.
- 9 PBMR. (2003) Making Headlines: Nuclear Reactor Court Bid Fails. *SABC News* 4 June. https://www.pnbr.com/making_headlines/Nuclear%20Court%20Bid.htm
- 10 1999 (2) SA 709 (SCA) Case No. 133/98; 1999 (8) BCLR 845 (SCA)
- 11 Ibid para 20
- 12 *The Trustees for the Time Being of the BioWatch Trust v The Registrar: Genetic Resources and Others* in the High Court of South Africa, Transvaal Provincial Division Case No: 23005/2002
- 13 Pieter Alberts, Department of Minerals and Energy, Letter dated 12 March 2004 to the South African Human Rights Commission in response to the 2nd draft report provided to the Department on 3 March 2004.

- 14 Natal Mercury, 14 March 2003, *Name and shame threat to industry Minister to clamp down on polluters*
- 15 Report to the President of the Republic of South Africa, *First Phase of the Commission of Inquiry into Thor Chemicals*, 12 March 1997.
- 16 The Food and Agriculture Organisation (FAO) makes the connection between environmental protection and the right to food by recognising that people need physical and economic access to food that is adequate in quantity and quality for a healthy life and that for food to be adequate it must be produced in an environmentally and socially sustainable manner. In order to ensure that food is adequate it must be safe i.e. without or with safe levels of contaminants, bacteria, naturally occurring toxins or any other substance that make food injurious to health.
- 17 United Nations, Human Rights and the Environment (2002) Background Paper No. 3: The Intersection of Human Rights and Environmental Issues: A review of Institutional developments at the international level presented by Dr. Adriana Fabra to the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 January 2002, Geneva p17 <http://www.unhchr.ch/environment/bp3.pdf>
- 18 Ibid., p13-14
- 19 United Nations Department for Economic and Social Affairs, Division for Sustainable Development, Commission on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, adopted at the 17th plenary meeting of the World Summit on Sustainable Development, 4 September 2002
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm
- 20 United Nations Department for Economic and Social Affairs, Division for Sustainable Development, Commission on Sustainable Development, *Plan of Implementation of the World Summit for Sustainable Development*, adopted at the 17th plenary meeting of the World Summit on Sustainable Development, 4 September 2002
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm
- 21 Government of the Republic of South Africa and Others v Grootboom and Others, 2000 (11) BCLR 1169 (CC)
- 22 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)
- 23 Schedules 4 and 5 of the Constitution list the functional areas of legislative competence for environmental rights. National parks, national botanical gardens and marine resources are the exclusive legislative competence of national government. Administration of indigenous forests, environment, nature conservation, pollution control and soil conservation are functional areas of concurrent national and provincial competence. Air pollution, refuse removal, refuse dumps and solid waste disposal are the competence of local government, albeit subject to monitoring and support by provincial government.
- 24 According to section 11, Schedule 1 and 2, of NEMA three national departments (Environmental Affairs and Tourism, Land Affairs and Water Affairs and Forestry) must adopt and publish Environmental Implementation Plans and Environmental Management Plans. These departments may also publish Consolidated Environmental Implementation and Management Plans. The national departments of Agriculture, Defence, Housing, Trade and Industry and Transport are required to adopt and publish Environmental Implementation Plans. The national departments of Health, Labour and Minerals and Energy are required to adopt and publish Environmental Management Plans.
- 25 The details of the legislation drafted and instituted are provided under section 2.2 on legislative measures.
- 26 Cabinet approved the phasing out of leaded petrol as a move towards promoting cleaner technologies with effect from the year 2006, that is, a 40% reduction from 0,5% to 0,3% of sulphur in diesel, which was implemented in January 2002 is expected to be followed by further reductions up to 0,05% by 2006.
- 27 See Department of Minerals and Energy and Department of Environmental Affairs and Tourism, *Joint Implementation Strategy for the Control of Exhaust Emissions from Road-Going Vehicles in the Republic of South Africa*, Final Draft - version 4 <http://www.dme.gov.za/publications/pdf/policydocs/the%20vehicle%20emissions%20strategy.pdf>
- 28 In Europe and other developed countries in the world it has been found that vehicle exhaust emissions containing lead and other pollutants pose a threat to human health and have long-term harmful effects on the environment and

that phasing out of leaded gasoline has proven to significantly increase the well-being of societies. The withdrawal of leaded petrol is part of a European Strategy to reduce pollution from road traffic and improve the air people breathe. It is reported that lead is a highly toxic metal and that it may cause a range of health effects from behavioural problems and learning disabilities, to seizure and finally death. Furthermore, scientific studies have shown that long-term exposure to even tiny amounts of lead can cause brain damage, kidney damage, hearing impairment and learning and behavioural problems in children. Those who are more at risk and more vulnerable are children, especially those in the range of six years old and below, this is owed to the fact that their bodies are growing very fast and therefore, their bodies tend to absorb more of the compound. It has also been reported in literature, that in adults, exposure to lead can result in increased blood pressures, kidney damage, nerve disorders, sleep problems, muscle and joint pain and mood swings. In addition to the above, sulphur in gasoline and diesel also contributes to the emissions of various pollutants, some of which play a role in the formation of secondary pollutants such as ground-level ozone. The existence of all these pollutants contributes to the severity of respiratory and cardiac ailments. It has been reported that most of the Canadian population have a high prevalence of the respiratory and cardiac ailments, episodes of bronchitis and asthma in children and that the prevalence of chronic bronchitis has been linked to poor air quality, high sulphur being one of the contributory factors. See www.nrtee.ca/eng/programs/Current_Programs/Health/SULPHUR_e.htm.

- 29 Please refer to the Department of Environmental Affairs and Tourism website <http://www.environment.gov.za/soe/> and the site maintained by the Centre for Scientific and Industrial Research http://spatial.csir.co.za/website/soe_index/Run.htm
- 30 Please refer to Department of Environment Affairs and Tourism website http://www.environment.gov.za/soer/indicator/docs/Summary_Table.pdf
- 31 Section 17 of NEMA prescribes several procedures for conciliation where a dispute arises concerning the exercise of functions by any minister, member of the executive council or municipal council.
- 32 Section 11 of NEMA requires departments listed under schedule 1 and schedule 2 to furnish EIPs and EMPs within one year of promulgating the Act and at least every four years thereafter, respectively.
- 33 Committee for Environmental Co-ordination, Consolidated EIP/EMP Action Plan, Summary of Commitments Made in Environmental Implementation Plans (EIP) and Environmental Management Plans (EMP). Emailed after a request to DEAT on 1 June 2004.
- 34 The World Summit on Sustainable Development and the Plan of Implementation build on the foundation of the United Nations Conference on Environment and Development (UNCED) of 1992 held in Rio de Janeiro and its outcomes in the Agenda 21. It also draws from several internationally agreed development goals such as the UN Millennium Declaration. The Plan among others focuses on enhancement of international cooperation towards the integration of the three components of sustainable development – economic development, social development and environmental protection. The specific objectives of the Plan are poverty eradication, changing unsustainable patterns of production and consumption and protecting and managing the natural resource base of economic development. The Plan commits itself to benefit all and to draw on the participation of all actors through partnership between governments of the north and south and governments and major groups – paras 1 –3 of the Plan of Implementation. United Nations, Article 18, Plan of Implementation, Report of the World Summit on Sustainable Development 2002, at http://www.johannesburgsummit.org/html/documents/summit_docs/131302_wssd_report_reissued.pdf
- 35 *DEAT's poverty Relief Programmes and how they Work* at [Http://www.environment.gov.za](http://www.environment.gov.za). Visited on 1st March 2004 at 2.45pm
- 36 The Integrated Sustainable Rural Development Programme is a government strategy that was launched in 2000 to ensure integrated sustainable development in rural areas across the entire country over a period of ten years. It is a multi-sectoral programme bringing together Government Departments, parastatals and other organisations in an effort to address rural development backlogs. The ISRDP vision according to the Department of Provincial and Local Government is to "Attain socially cohesive and stable rural communities with viable institutions, sustainable economies and universal access to social amenities, able to attract and retain skilled and knowledgeable people, who are equipped to contribute to growth and development."
- 37 Supra, footnote 7

- 38 A **Transfrontier Conservation Area** usually refers to “a cross-border region whose different component areas have different forms of conservation status such as national parks, private game reserves, communal natural resource management areas and even hunting concession areas. Although fences, major highways, railway lines or other forms of barriers may separate the various parts, these areas nevertheless border each other and are jointly managed for long-term sustainable use of natural resources” whereas a **Transfrontier Park** “is an area comprising two areas, which border each other across international boundaries and whose primary focus is wildlife conservation. Authorities responsible for the respective areas formally agree to manage the areas as one integrated unit according to a streamlined management plan. The authorities also undertake to remove all human barriers within the Transfrontier Park so that animals can roam freely”. – *Transfrontier Conservation Areas* at www.environment.gov.za visited 1st March 2004 at 3.53pm
- 39 The Blue Flag campaign is a European scheme that rewards Local Authorities for providing safe and clean beaches and marinas. A Blue Flag is awarded annually to beaches and marinas that meet environmental, amenity and safety criteria. See “National Report for the Intergovernmental review of the GPA 2001 at <http://www.gpa.unep.org/igr/Reports/SOUTH%20AFRICA.htm> visited on 1st March 2004 at 11.30am
- 40 DEAT Annual Report 2002/2003 at p.10
- 41 In April 2002, two directors of the Hout Bay Fishing Industries were convicted of 301 counts of over fishing and corruption. A fine of R 40 000 000 was imposed. In relation to this, SA Hake (Pty) and its directors were fined R 250 000 for catching and supplying hake to Hout Bay Industries. The department also seized a number of foreign vessels for illegal fishing in South Africa's waters and fines were imposed. Cobelo a fish-trawling vessel belonging to SA Hake (Pty) was seized and sold at a public auction for R 2 900 000. The enforcement of environmental regulations was also beefed up with the launching of the First Environmental Court in South Africa in early 2003 in Hermanus, Cape Town.
- 42 Act No. 36 of 1998 relates to the protection, use, development, conservation and control of water resources of the country in a sustainable and equitable manner for the benefit of all people of South Africa
- 43 This Act regulates the use, development, conservation, management and control of South Africa's forest resources - both indigenous and plantation - in a sustainable and equitable manner for the benefit of all people.
- 44 This Act gives the mandate to create a framework to prevent and combat veld, forest and mountain fires in the country and to counter the negative effects of these fires on life, property, crops, fauna and flora and veld in South Africa.
- 45 See Department of Water Affairs and Forestry, *Minimum requirements for the Handling, Classification and Disposal of Hazardous Waste : Second Edition 1998* and *Minimum requirements for Waste Disposal by Landfil : Second Edition 1998* on <http://www.dwaf.gov.za/Documents/Default.asp?Other> accessed 31 May 2004.
- 46 Department of Water Affairs and Forestry, *Water Quality Management in South Africa*, http://www.dwaf.gov.za/Dir_WQM/what_projDetail.htm accessed 31 May 2004.
- 47 An extensive consultative process was done. Thirty six sectoral and public meetings were convened countrywide between September 2002 and January 2003. Two thousand comments on the strategy were registered. This process affirmed the principle of people-centeredness and people participation as a prerequisite of environmental management and protection. Information on the composition of stakeholders that participated in the consultative process was not available to the SAHRC. However, in the Director-General's report on the progress of the consultative process it was indicated that submissions were received from “stakeholders from all over the country representing all the different water use sectors.”
- 48 DWAF Multi-Year Strategic Plan 2003/2004 – 2005/6 at pp 7-8 at <http://www.dwaf.gov.za/Communications/STRATEGIC%202003-4.pdf>
- 49 Working for Water Annual Report 2002/2003
- 50 Category B forests relate to state owned forests.
- 51 NEMA Schedule 2 and s.11

- 52 In June 2002, Regulations under the Mine Health and Safety Act No. 29 of 1996 (R.786 of 14th June 2002) were published requiring mining companies to establish and maintain a system of medical surveillance of all its employees working in a place where continuous A-weighted sound pressure level normalised to an 8 hour day or a forty hour working week is equal to or exceeds 85 dB(A) and to carry out baseline audiograms in respect of their employees in terms of reg.11.4 (4). The employer is also required to do a periodic (at least annual) audiogram and an exit audiogram.
- 53 These include the Minerals Act of 1991; the Mine and Safety Act of 1996; the Atmospheric Pollution Prevention Act of 1965; the Agreement between **DWAF** and Chamber of Mines (Fanie Botha Accord) regarding the implementation of pollution control measures at abandoned coal mines; S. 19 of the National Water act of 1998; the Standard Protocol for the rehabilitation of derelict and ownerless asbestos mines; Government private Sector partnership with Coaltech 2020 and the Chamber of Mines to rehabilitate derelict and ownerless mines
- 54 DME reported that only R 5 000 000 was spent of the Transvaal Delagoa Bay Colliery.
- 55 Free basic services are provided as part of the *White Paper on Reconstruction and Development of 1994* in which the government commits itself to the objective of meeting human needs.
- 56 *2003 Intergovernmental Fiscal Review 2003*, Electricity, pp 230-242
- 57 Supra, footnote 31 at pp 233-234
- 58 This was carried out in compliance with several national level legislations including the NEMA, the Atmospheric Pollution Prevention Act of 1989, the Hazardous Substance Act of 1973, the Environmental Impact Assessment Regulations of 1997 and the Noise Control Regulations of 1999.
- 59 The programme was legally founded in the provisions of the NEMA, the Air Pollution Prevention Act, the Hazardous Substances Act of 1973, the Environmental Impact Assessment regulations of 1997 and the Noise Control Regulations of 1999.
- 60 The Bill was published for public comment towards the end of 2002 and information seminars were held in a bid to consult with stakeholders. Formal Submissions were made, adjustments were made and the reworked draft was approved by parliament. By the time of reporting the bill was due to be debated by Parliament.
- 61 The White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity has six goals: - Conserve the diversity of landscapes, ecosystems, habitats, communities, populations, species and genes in South Africa; use biological resources sustainably and minimise adverse impacts on biological diversity; ensure that benefits derived from the use and development of South Africa's genetic resources serve national interests; expand the human capacity to conserve biodiversity to manage its use and to address factors threatening it; and create conditions and incentives that support the conservation and sustainable use of biodiversity; and promote the conservation and sustainable use of biodiversity at the international level.
- 62 Regulations under Section 24(d) of the Environment Conservation Act (Act No. 73 of 1989) – Plastic Bags and Plastic flat bags (GNR 625 GG 24839 of 9th May 2003)
- 63 Ibid, reg 2
- 64 2004 Estimates of National Expenditure, Vote 28 Environmental Affairs and Tourism, at p.765
- 65 For 2003/2004 poverty relief funds will increase to R305 600 000 according to the 2004 Estimates of National Expenditure
- 66 Output Indicators: Poverty Relief Projects - Environmental Affairs and Tourism Financial Cashflow Budget Payments Report for April 2002 – March 2003, Annexure 2 to the 5th Protocol on the right to environment.
- 67 DWAF Annual Report for 2002/2003 at p. 112
- 68 DWAF response to 5th Economic and Social Rights Protocol on the right to environment, p.8. DEAT response to 5th Economic and Social Rights Protocol on the right to environment, p. 21

- 69 See note 1.
- 70 2002 (6) BCLR (SE), pp 609 – 624. Case No: 63/02 in the High Court, Eastern Cape Local Division
- 71 See p. 613 -615
- 72 S v Mercer and Another, Case No. CA&R46/2002, 2003 (6) BCLR 616 (NC)
- 73 para 10 p. 621.
- 74 Page 44-45 of the CEC Alignment Report, see note ...
- 75 National Department of Land Affairs, 2002 Annual Compliance Report First Edition Consolidated Environmental Implementation and Management Plan (Gazette 21562, Notice 920, 15 September 2000.
- 76 Department of Environmental Affairs and Tourism, Response to 5th Economic and Social Rights Protocol at page 21.
- 77 Systems that have been advanced in minimising the costs of pollution control to the public include pollution taxes, effluent charges or emissions trading. Most of the experiences with applying the polluter pays systems are found in developed countries. They may therefore not serve as good reference points for developing countries like South Africa. The particularities of South Africa will need to be considered to adjust the developed country experiences to workable levels.
- 78 This Component is responsible for implementing the Fraud Prevention Plan. It was instrumental in establishing the “Tip-offs” reporting hotline.
- 79 The Labour Relations Department organised arbitration, conciliation and disciplinary hearings
- 80 This was set up to facilitate reporting of unacceptable/unethical behaviour, fraud, corruption and theft by anonymous callers. DEAT has a toll free number, a free post mail and a fax facility.
- 81 Government of the Republic of South Africa and Others v Grootboom and Others, 2000 (11) BCLR 1169 (CC)
- 82 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)
- 83 DACEL reported that a project was underway to incrementally monitor strategic indicators following the establishment of the Management Information Systems Branch early 2003. The project has six strategic indicators which are aligned to the 2014 development vision of the national and provincial governments. The indicators are – land use patterns, including change in land use and performance; soil productivity; water quality; air quality; waste quantity and job creation. – Refer to DACEL 5th protocol on environmental rights at pp 9 &15-16
- 84 DACEL actually confessed that the protocol was completed with information from the National Report on Community based Air Pollution Monitoring in South Africa 2000 - 2002
- 85 IOL Environment, Concern Mounts Over Toxic Cape incinerator by Myolisi Gophe (article cited to The Cape Argus of May 28, 2003 at p. 7) at <http://www.iol.co.za> (accessed 2004/03/23)
- 86 Case No. 1050/2001
- 87 Willemien du Plessis, “South Africa Responding to Pollution from a Tannery” at www.eli.org (accessed 2004/04/01)
- 88 This is a voluntary environmental management system which advances compliance with legislation, continuous improvement and prevention of pollution.
- 89 Even with the registered successes, there were challenges for CSIR but which have also been addressed in good step. Among the challenges – build up of spent chemicals and potentially hazardous samples in labs and workshops as a result of several factors like reluctance of business areas to incur costs of disposal, laziness of staff, it is time

consuming to organise collection and disposal and lack of clarity on how to dispose particular waste. This stockpiling posed a risk to staff and property. There was poor separation of recyclables; minimal use of alternatives to waste disposal e.g. reuse; poor allocation of waste bins. Even then dumping on site was a common occurrence. – CSIR Integrated Waste Management Plan – Status Quo Assessment (Scientia Campus, March 2003).

90 GN 227 GG of 17 March 2000

91 Version D of 15th October 1999

92 They are informed by the White Paper on Environmental Management Policy, which provides the first shot at consolidating the country's environmental management framework and is the overarching environmental policy in South Africa. In addition the NEMA informs the IP&WM and the NWMS. The focus of IP&WM is prevention of pollution and waste and avoiding environment degradation. This would be done through source-based controls, management of receiving media (impact management) and as a last resort, remediation.

93 National and provincial governments hold concurrent legislative competence in respect of integrated pollution and waste management as well as regulation of related activities of local government matters such as air pollution and water and sanitation services. Provincial governments further have exclusive legislative competence with regard to provincial planning and regulation of local government activities including among others refuse removal, refuse dumps and solid waste disposal, control of public nuisances and noise pollution.

94 United Nations Framework Convention on Climate Change, Kyoto Protocol to the United Nations Convention on Climate Change, Final Version <http://unfccc.int/resource/docs/cop3/07a01.pdf> visited on 17 May 2004

95 Labuschagne, Brunke, Scheel, Global Trends and Long-Term Observations of Environmentally Significant Trace Gases, University of Witwatersrand Climatology Research Group Seminar/Workshop file created March 2004

96 Ibid.

97 p. 35 of IP&WM

98 groundWork under its Air Sampling Project which took samples from Sasolburg, Secunda and Cape Town using the Bucket Brigade Sampling Methodology found high levels of toxic chemicals in air. – groundWork Annual Report 2003 at p. 8

Another air monitoring initiative by the Sasolburg Air Quality Monitoring Committee which was done through public sampling in Sasolburg and Zamdela identified 20 different chemicals in the air including benzene, hydrogen sulphide, vinyl chloride, carbon disulphide, methyl chloride, toluene and various xylenes. – *Sasolburg Air Quality Monitoring Committee* in South African Voices for Sustainable Energy and Climate Action, vol 8 November 2003 at p. 3

A study was also conducted in 2001 on “Air Contaminant Exposures, Acute Symptom and Disease Aggravation Among Students and teachers at the Settlers School in South Durban – Thomas G. Robins & others in The Settlers Primary School Health Study, Draft Final Report 9th November 2002

99 Edwin Naidu (2004) Plastic bags imported while locals lose jobs. The Sunday Independent, 21 March at p. 1-2

100 According to the Edwin Naidu, (ibid) “the department of environmental affairs and tourism referred questions about the levy to the national treasury, which did not respond to inquiries. In terms of the law, Valli Moosa, the minister of environmental affairs and tourism, does not set the levy. This is done by the national treasury, an aspect that critics say prevents the minister from implementing the law swiftly”.

101 Llewellyn Leonard, (not dated) Health Care Waste in Southern Africa: A Civil Society Perspective at p. 4. <http://www.groundwork.org.za/HCWandIncinerator/Healthcareconferencepaper>

102 DACEL Budget Estimate Statement 2 Outputs for 2002/2003, Addendum 1 to protocol at p. 24

103 This could be the reason for the case of illegal disposal of hazardous waste involving the burying of large quantities of liquid waste beneath the farm surface by Mandara Trust in Gonubie, East London. This case was only unearthed

by the Enforcement Directorate of DEAT in September 2003 when the directorate was established. See <http://www.environment.gov.za> accessed 26/3/2004

104IP&WM at p. 20

105Working for Water Annual Report 2002/2003 at p.5

106Mpumalanga State of the Environment Report 2003 at p. 35

107Case No. CCT 27/03 (judgement delivered on 12 March 2004). This was an application for special leave to appeal against the Supreme Court of South Africa judgement in Minister of Environmental Affairs and Tourism and others v Phambili Fisheries (Pty) Ltd and another [2003] 2 All SA 616 (SCA)