3.2.9 South Africa

a) Governance

South Africa's history is marked by the apartheid legacy of colonialism, racism, sexism, violence and repressive laws. As a result, poverty and degradation stand side by side with modern cities, developed mining, and commercial infrastructure. Indians, Africans and 'Coloureds' were prevented from free involvement in the political, social and economic life of the country even before the apartheid era. After pressure from mass democratic movements led by political parties, trade unions, students, religious, international and other civic bodies, a negotiated political settlement was arrived at in 1988/89. Despite almost a decade of democracy, the situation of extreme disparity in socio-economic status of different groups still exists in the majority of the communities.

The history of South Africa’s governance was termed “white-ruled” from as early as the 16th century during the early colonial era by the Europeans (predominantly Dutch). This was followed by the British colonial era in 1795 and the subsequent mineral revolution when minerals such as diamonds were discovered. The major result of this era was conquest, land dispossession, taxation and pass laws which were designed to force black people from the land and channel them into pockets of labour markets to meet the needs of the mines by the white people. Black people, during this period, were denied basic rights and were regarded as not belong to the “white South Africa” but to the tribal societies. They were confined to segregated locations. These policies facilitated the development of segregationist ideology and later apartheid. The mineral revolution was followed by the Anglo-Boer war that resulted in the British creating a white-ruled dominion whose most important priority was to establish white supremacy over South Africa and force the blacks into wage labour. “In virtually every sphere, from housing to education to healthcare, central government took control over black people’s lives with view to reinforcing their allotted role as “temporary sojourners” welcome in ‘white South Africa’ solely to serve the needs of the employers of labour.

South Africa’s first democratic election under an interim Constitution in April 1994 marked the birth of a democratic dispensation. This was a major turning point after decades of segregation policies and white domination, and culminated in South Africa being divided into nine new provinces in the place of the four provinces and 10 ‘homelands’ that existed previously under the apartheid regime. The new ANC-led government embarked on a programme to promote the reconstruction and development of the country and its institutions. This called for the simultaneous pursuit of democratisation and socio-economic change, as well as reconciliation and the building of a consensus founded on the commitment to improve the lives of all South Africans, in particular the poor. Converting democratic ideals into practice required, among other things, initiating a radical overhaul of the previous government machinery of oppression to that of openness, and a culture of caring for human rights. A significant milestone of democratisation was the exemplary constitution-making process, which delivered a document that is the envy of the democratic world. So, too were the local government elections that gave the country its first democratically elected municipal authorities?
Truth and Reconciliation Commission, helped to inculcate a commitment to accountability and transparency in South Africa’s public life, at the same time helping to heal wounds inflicted by inhumanity of the apartheid era.

The present administration is committed to the African Renaissance based on democracy and economic development, and a co-operative approach to resolving the emerging political challenges across the continent. The African Renaissance ideal found manifestation in the New Partnership for Africa’s Development (NEPAD).

b) Legal Framework

In accordance with the Constitution, the Government of South Africa has separate national, provincial and local levels that are mutually dependent and interconnected. All the three areas of government have legislative and administrative functions and thus have responsibility the management of the environment.

Bill of Rights (Chapter 2 of the Constitution of South Africa Act (No. 108 of 1996)) makes provisions for environmental issues and declares that:

“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”.

Furthermore, the Bill of Rights also make provisions on issues such as the right to information; the right to freedom of expression; the right to participate in political activity; the right to administrative justice, the right to engage in public initiatives and processes on an ongoing basis; and fundamental science, cultural, legal, economic and environmental rights. The Constitution is also explicit in that it requires that all governing bodies to promote public involvement in the lawmaking and other policy development procedures.

EIA Legislation

1. Environmental Conservation Act (No.73 of 1989)

Identification of activities necessitating an environmental impact assessment (EIA) process is provided in section 21 (1) of the Environmental Conservation Act No.73 of 1989. The same Act provides for the dissemination of regulations which give measures to be adhered to when conducting an EIA in sections 26 and 28).
1. **National Environment Management Act (No.107 of 1998)**

The National Environment Management Act (No.107 of 1998) repealed a large part of the Environment Conservation Act (No. 73 of 1989). The National Environment Management Act also makes provisions for EIA, however, the sections on the subject of EIA within the Environment Conservation Act have not been repealed. The Act is very clear on citizen engagement in environmental decision-making as provided in the box below.

<table>
<thead>
<tr>
<th>Some of the principles within the National Environment Management Act on citizens and their participation</th>
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<tbody>
<tr>
<td>1. Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interest equitably.</td>
</tr>
<tr>
<td>2. Development must be socially, environmentally and economically sustainable.</td>
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<tr>
<td>3. Sustainable development requires the consideration of all relevant factors including the following:</td>
</tr>
<tr>
<td>(a) Environmental management must be integrated, acknowledged that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the pursuing the selection of the best practicable environment option.</td>
</tr>
<tr>
<td>(b) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.</td>
</tr>
<tr>
<td>(c) Equitable access to environmental resources, benefits and services to meet basis human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.</td>
</tr>
<tr>
<td>(f) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, services or activity exists throughout its life cycle.</td>
</tr>
<tr>
<td>(e) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.</td>
</tr>
<tr>
<td>(f) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge and experience and ordinary knowledge.</td>
</tr>
<tr>
<td>(g) Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.</td>
</tr>
</tbody>
</table>
(h) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.

(i) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.

(j) Decisions must be taken in an open and transparent manner, and access to information must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

(k) There must be inter-governmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.

(l) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.

(m) Global and international responsibilities relating to the environment must be discharged in the national interest.

(n) The environment is held in public trust for the people, the beneficial use of environment resources must serve the public interest and the environment must be protected as the people’s common heritage.

3. Environmental Management Policy

South Africa has developed its national environmental policy through a process of consultation called Consultative National Environmental Policy Process (CONEPP). CONEPP gave all stakeholders in South Africa an opportunity to contribute ideas in the development of the environmental policy. The White paper on the policy makes provisions for the public participation in throughout the document. The following are some of the extracts on public participation:

“The government must encourage the inclusion of all people and groups who are interested in environmental governance, or affected by it, so that it can make sure that participation is fair and effective.”

Goal 4 Participation and partnerships in Environmental Governance

To establish mechanisms and processes to ensure effective public participation in environmental governance.

Supporting Objectives

- Participation structures, mechanisms and processes
- To establish multi-sectoral advisory structures in all spheres of government so that all interested and affected parties can participate in environmental governance.
- To develop public participation mechanisms and processes that are fair,
transparent and effective, and that will promote the participation of marginalised sectors of society.

- To allocate government resources (financial and human) to build institutional capacity in national, provincial and local government, so that there will be effective participation in environmental governance.

**Goal 5  Empowerment and Environmental Education**

To promote the environmental education and empowerment of South Africa’s people. To increase their awareness of, and concern for, environmental issues and to assist them to develop the knowledge skills, values, and commitment that we need to achieve sustainable development.

**Communication and participation**

- To ensure that communication strategies in all spheres of government encourage effective public participation.

**Strategic alliances**

- To encourage alliances between government and interested and affected parties in implementing this policy.

**EIA practice: History**

South Africa’s EIA practice dates as far as the 1970s and operated through the integrated environmental management (IEM) procedure. IEM has six guideline documents that are still commonly used and were utilised to guide the implementation of some hundreds of EIAs that were voluntary.

The IEM decision-making process makes provisions for citizen engagement in decision-making also as evidenced by the table and diagram below.

<table>
<thead>
<tr>
<th>Examples of opportunities for stakeholder engagement in IEM (Adopted from DEAT 2002)</th>
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<tbody>
<tr>
<td>Planning and Assessment</td>
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<tr>
<td>International Governance</td>
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</tbody>
</table>
| National & Regional Governance | → Development of policy, legislation and regulations at national, provincial and local government level.  
→ Negotiation of voluntary agreements between government and industry.  
→ Allocation of natural resource extraction quotas and licences. | → Implementation and review of environmental management co-operation agreements (EMCAs).  
→ Water allocation and licensing through catchment management agencies. |
|-------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|
| Programmes                   | → Development of natural resource management strategies.  
→ Strategic environmental assessment.  
→ Sectoral multi-stakeholder reviews e.g. Mining, minerals and Sustainable Development (MMSD) project, World Commission on Dams (WCD). | → Implementation and review of the Reconstruction and Development Programme.  
→ Partnerships between government, business and civil society. |
| Plans                         | → Development planning (e.g. integrated development plans).  
→ Strategic environmental assessment.  
→ Sector planning (e.g. energy planning, integrated catchment management plans)  
→ Town and regional planning.  
→ Community-based planning. | → Implementation and review of strategic environmental management plans.  
→ Implementation and review of integrated catchment management plans. |
| Projects                      | → Environmental impact assessment.  
→ Risk assessment  
→ Development of project-level environmental management policies.  
→ Development of project-level resettlement action plans.  
→ Socially responsible investment (investment screening). | → Risk management  
→ Waste management  
→ Community-based natural resource management  
→ Implementation and review of environmental management plans/programmes/policies.  
→ Environmental monitoring committees.  
→ Socially responsible investment (shareholder activism)  
→ Partnership between government, business and civil society. |
Figure 6.1. South Africa Integrated Environmental Management procedure (Fuggle and Rabie 1999)
The EIA process

The current EIA process consists of the following tasks (in the box below and the diagram):

- Pre-application consultation with the applicant;
- Decision for either exemption or to conduct scoping procedure;
- Development a plan for a scoping study;
- Evaluation of the plan for a scoping study;
- Evaluation of the scoping report;
- Issuing a record of the decision as to whether applications are (1) approved with conditions (i.e. no EIA required), (2) not approved, or (3) accepted (i.e. as the basis for the EIA);
- Developing a plan for an EIA study;
- Evaluating the plan for an EIA study;
- Evaluating the EIA report;
- Issuing a record of the decision (based on the information in the EIA report) as to whether the development application is (1) authorized with or without conditions, or (2) rejected; and
- Handling appeals against the decision.

Figure 6.2 South African EIA Process (DEAT 1997)
The SEA process

There is no legislative requirement for the SEA as such, however several SEAs have been undertaken in South Africa and guidelines to guide the SEA process have been developed. Public participation is one of the seven procedural principles of the SEA process as stated thus:

“SEA is a participative process…participative processes are adapted to the specific socio-political context of the plan or programme. The public participation process should inform and enhance the entire SEA process, in particular the scope and objectives of the SEA.”

The main components of the South African SEA process are shown the box below and are also indicated in Figure 6.3 below.

- Identify broad plan and programme alternatives;
- Screening;
- Scoping;
- Situation Assessment;
- Formulation of sustainability parameters for the development of the plan or the programme;
- Development and assessment of alternative plans and programmes
- Decision-making;
- Development of a plan of implementation, monitoring and auditing;
- Implementation.
Figure 6.3 South African SEA process (DEAT 2000)