

**PUBLIC PARTICIPATION IN ENVIRONMENTAL
GOVERNANCE: A CRITICAL ANALYSIS OF CURRENT
PRACTICES IN SOUTH AFRICA**

C. VAN DER MERWE M. EM.

**Mini-dissertation submitted in partial fulfilment of the
requirements for the degree Magister in Environmental
Management at the Potchefstroomse Universiteit vir
Christelike Hoër Onderwys**

Supervisor : Dr IJ van der Walt

**2003
Potchefstroom**

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
ACKNOWLEDGEMENTS	v
ABSTRACT	vi
OPSOMMING	vii
KEY TERMS FOR COMPUTER DATABASIS AND RESEARCH	viii
SLEUTELTERME VIR REKENAARDATABASIS EN -NAVRAE	ix
Chapter 1: Introduction	1
1.1 Problem statement	2
1.2 Aims and objectives of the study	2
1.3 Methodology	3
1.4 Scope of the study	4
1.5 Definition of terms	5
Chapter 2: Constitutional and legal framework for public participation in South Africa	6
2.1 Introduction	6
2.2 The South African Model of democracy	6
2.3 The Constitution of the Republic of South Africa, 1996	8
2.4 Policy and legislative requirements for public participation in environmental governance	10
2.4.1 White Paper on Environmental Management Policy, 1998	10
2.4.2 National Environmental Management Act (Act 107 of 1998)	11
2.4.2.1 Principles	12
2.4.2.2 National Environmental Advisory Forum (NEAF)	14
2.4.2.3 Integrated Environmental Management (IEM)	16
2.4.2.4 Compliance, enforcement and protection in terms of NEMA, 1998	17
2.4.2.5 Environmental management co-operation agreements	17
2.5 Other legislation that requires public participation	18
2.6 Conclusion	19

TABLE OF CONTENTS (continued)

Chapter 3: Typologies and models of public participation: international perspectives	20
3.1 Introduction	20
3.2 Historical overview of the development of public awareness and participation in governance	21
3.2.1 The period 1940 to 1960	21
3.2.1.1 Arnstein's model	23
3.2.2 The period 1970 to 1980	24
3.2.3 The period 1980 to 1990	26
3.2.4 The period 1990 to the present	28
3.3 Constitutional and legal provisions for public participation internationally	32
3.4 Elements to take forward in the development of a framework for implementation	36
3.5 Overview of the development of public sector management to governance	38
3.6 Typologies of public participation used in this study	40
3.6.1 International Association of Public Participation (IAPP)	41
3.6.2 Environmental Management Systems Model	43
3.7 Conclusion	44
 Chapter 4: Typologies and models of public participation: national perspectives	 45
4.1 Introduction	45
4.2 Overview of the context within which environmental policy has developed since 1994	47
4.3 Overview and critical analysis of CONNEPP as a South African model of public participation in environmental policy-making	53
4.3.1 Overview of CONNEPP	53
4.3.2 Critical analysis of CONNEPP and lessons learnt	55
4.4 Water Resource Management Model	59
4.5 Conclusion	60

TABLE OF CONTENTS (continued)

Chapter 5: Critical analysis of current practices in environmental governance	62
5.1 Introduction	62
5.2 Analysis of policy, strategy and legislative processes in 2002	62
5.2.1 National Air Quality Management Bill	63
5.2.2 IEM regulations in terms of Chapter 5 of NEMA	65
5.2.3 National Biodiversity Strategy and Action Plan (NBSAP)	66
5.3 Results of survey on public participation in environmental governance	67
5.3.1 Development of public participation in South Africa since 1994	69
5.3.2 Application and implementation of public participation provisions as prescribed by the National Environmental Management Act	70
5.3.3 Current needs and requirements for public participation in environmental governance	72
5.3.4 General comments	76
5.4 Conclusion	77
Chapter 6: Towards a framework for the implementation of public participation in environmental governance in South Africa	78
6.1 Introduction	78
6.2 Elements of a framework for the implementation of public participation in environmental governance at the national level	79
6.2.1 Overarching strategy for environmental governance and management	79
6.2.2 Proper environmental management systems and tools	81
6.2.3 Capacity building, information and communication	81
6.3 A new national forum for public participation	82
6.3.1 Composition of forum	83
6.3.2 Functions of National Environmental Participatory Forum	83
6.3.3 Linkages with Committee for Environmental Coordination and Mintech	85
6.3.4 Benefits of the new framework versus the current one prescribed by NEMA, 1998	85
6.3.5 Shortcomings of the model	86
6.4 Conclusion	87

TABLE OF CONTENTS (continued)

Chapter 7: Conclusion	88	
Bibliography	89	
List of figures		
Figure 3.2.1.1	Amstein's ladder of citizen participation	23
Figure 3.6.1.1	Public participation in the sustainability model	42
Figure 3.6.1.2	Public participation spectrum of the International Association for Public Participation	42
Figure 3.6.2.1	Policy instruments used in environmental management	44
Figure 4.4.1	Public participation model for catchment management agencies	60
Figure 5.3.1.1	Opinion of respondents on whether government's emphasis on public participation in 2002 is still the same as in 1994	68
Figure 5.3.1.2	Opinion of respondents on level of integration of environmental Issues in government policy and legislation	69
Figure 5.3.2.1	Opinion of respondents on status of public participation in environmental policy and legislative processes	69
Figure 5.3.2.2	Opinion of respondents on the application of principles for public participation in national environmental policy processes	70
Figure 5.3.2.3	Opinion of respondents on the reasons why the National Environmental Advisory Forum has not been established	70
Figure 5.3.3.1	Opinion of respondents on the main purpose of public participation in environmental policy-making at national level	71
Figure 5.3.3.2	Opinion of respondents on whether the National Environmental Advisory Forum should be established	72
Figure 5.3.3.3	Opinion of respondents on whether mechanisms for public participation at national level should be temporary and issue-based	72
Figure 5.3.3.4	Opinion of respondents on the current mechanisms for raising public issues	73
Figure 5.3.3.5	Opinion of respondents on the importance of capacity building and education as components of public participation	73

TABLE OF CONTENTS (continued)

Figure 6.3.1.1 Proposed model for National Environmental Consultative Forum 83

List of Annexures

Annexure A: Questionnaire 97

ACKNOWLEDGEMENTS

I would like to acknowledge the following people for their support during the completion of my Masters' degree in Environmental Management:

- My husband, Jacques van der Merwe, for his constant encouragement during a very difficult time in my life.
- My supervisor, Dr IJ van der Walt, for his patience and support.
- My parents, for their thoughts and prayers, which got me through this.
- My fellow students, Danie Smit and Coenrad Agenbach, for all the laughter and encouragement over the last few years.
- All the people who shared their wisdom and ideas with me to make this study possible.
- Prof Johan Nel, for his inspiration during the first two years of study for this Masters' degree.
- Janine Smit and Karin Prinsloo for the technical editing of this dissertation.
- Joey Reinhardt for providing me with a home from home during the time of my studies.

I dedicate this study to my father and mother, Bus and Stienie du Plessis, who have inspired me throughout my life to be the best that I can be.

ABSTRACT

PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE: A CRITICAL ANALYSIS OF CURRENT PRACTICES IN SOUTH AFRICA

Elements of a framework for public participation in environmental governance at the national level were identified from a literature review of international and national typologies and models for public participation.

Current practices were analysed in terms of the legal framework in the National Environmental Management Act (no 107 of 1998) and the views of a range of stakeholders on the purpose and requirements for public participation were obtained.

A framework for public participation in environmental governance at national level, with specific recommendations on the National Environmental Advisory Forum (NEAF), was developed. The review of international and national typologies and models for public participation was utilised to analyse public opinion on the current status of public participation.

This study only focused on environmental policy, strategy and legislative processes at national level. In order to provide a comprehensive framework for public participation in environmental governance in South Africa, all processes at the national, provincial and local government levels should be reviewed.

OPSOMMING

OPENBARE DEELNAME IN OMGEWINGSTAATSBESTUUR: 'N KRITIESE ONTLEDING VAN HUIDIGE PRAKTYKE IN SUID-AFRIKA

Elemente van 'n raamwerk vir openbare deelname in omgewingstaatsbestuur op nasionale vlak is geïdentifiseer uit 'n literêre oorsig van internasionale en nasionale tipologieë en modelle vir openbare deelname.

Heersende praktyke met betrekking tot die wetlike raamwerk in die Wet op Nasionale Omgewingsbestuur (Wet 107 van 1998) is ontleed. Die standpunte van verskeie belanghebbendes oor die doel en vereistes vir openbare deelname is verkry.

'n Raamwerk vir openbare deelname in omgewingstaatsbestuur op nasionale vlak, met spesifieke aanbevelings oor die Nasionale Omgewingsadviesforum (NEAF), is ontwikkel. Die oorsig van internasionale en nasionale tipologieë en modelle vir openbare deelname is gebruik om openbare mening oor die huidige status van openbare deelname te ontleed.

Die studie is slegs op omgewingsbeleid, -strategie en -wetgewende prosesse op nasionale vlak toegespits. Ten einde 'n omvattende raamwerk vir openbare deelname in omgewingstaatsbestuur in Suid-Afrika daar te stel, moet alle prosesse op nasionale, provinsiale en plaaslike regeringsvlak oorweeg word.

KEY TERMS FOR COMPUTER DATABASE AND SEARCH

public participation

environmental governance

National Environmental Advisory Forum

framework for implementation of public participation

stakeholder engagement

citizen participation

civil society

National Environmental Management Act

White Paper on Environmental Management Policy

Integrated Environmental Management

SLEUTELTERME VIR REKENAARDATABASIS EN -NAVRAE

openbare deelname

omgewingstaatsbestuur

Nasionale Omgewingsadviesforum

raamwerk vir implementering van openbare deelname

betrokkenheid van belanghebbendes

deelname van inwoners

siviele gemeenskap

Wet op Nasionale Omgewingsbestuur

Witskrif op Nasionale Omgewingsbestuurbeleid

Geïntegreerde Omgewingsbestuur

CHAPTER 1

INTRODUCTION


A very liberal and innovative National Environmental Management Act (no 107 of 1998) – hereinafter referred to as NEMA, 1998 – was promulgated on 27 November 1998 and came into effect on 29 January 1999. At the time of its promulgation, many proclaimed NEMA, 1998 as an international benchmark for environmental framework legislation.

One of the key building blocks of NEMA, 1998 is reflected in the Preamble to the Act: “the law should establish procedures and institutions to facilitate and promote public participation in environmental governance” (SA, 1998:2).

The environmental sector is known for its vigilant role players, such as civil society and business. Concerns have been raised from these sectors that, five years after the promulgation of NEMA, 1998, Government is still not in full compliance of its own policy and legislation. NEMA, 1998 specifically established the National Environmental Advisory Forum – hereinafter referred to as NEAF – as the main institutional mechanism to facilitate public participation by all sectors in national environmental governance. This forum has not been operationalised since 1999.

Government has not developed a clear framework or procedures for the implementation of the various public participation principles contained in NEMA, 1998 either. Government’s commitment to the implementation of its own legislation, especially provisions for public participation, can therefore be questioned. This creates a situation of mistrust in Government, and also prevents the effective involvement of all role players in the development and implementation of national policies and legislation.

In the absence of both procedures and an institutional mechanism established by Government, various consultants, as well as members of the business sector, have attempted to develop specific guidelines and frameworks for public participation over the last few years. The SASOL Public Participation Guidelines (Makara, 2001) is one such example. These can only serve as guidelines as they do not have any formal status.



1.1 PROBLEM STATEMENT

As stated above, no national framework has yet been developed for the implementation of the public participation principles and provisions contained in NEMA, 1998. The Department of Environmental Affairs and Tourism – hereinafter referred to as DEAT – and by implication the Minister of Environmental Affairs and Tourism, is also in breach of Section 3(1) of NEMA, 1998. This section of NEMA, 1998 establishes the NEAF, which has not been operationalised since 1999. Various stakeholders, including non-governmental organisations, business, labour and community-based organisations, therefore do not have a formal mechanism to effectively participate in national environmental governance, as provided for in NEMA, 1998.

1.2 AIMS AND OBJECTIVES OF THE STUDY

This study aims to provide elements of a framework for public participation in environmental governance and to make proposals on possible amendments to the current model for the NEAF. The study, therefore, has the following aims and objectives:

- **To provide an overview of the current constitutional and legal framework for public participation in South Africa:** The legal and constitutional framework and requirements for public participation form the basis of this study and were briefly explored through a literature review.
- **To review international and national typologies and models and identify elements of a framework for the implementation of public participation in environmental governance at the national level in South Africa:** The author is of the opinion that democracies and societies are constantly changing, and that this has a direct impact on the relationship between government and the citizens of a country. It is further argued that the socio-political context has an important influence on the approach to public participation, especially in environmental governance. A framework for public participation that is relevant in the current socio-political context will have to take cognisance of these trends, models and opinions.

- **To review the extent of public participation in current policy and legislative processes and to obtain the views of a range of stakeholders on the purpose and requirements for public participation:** The opinions of a range of stakeholders were obtained on the current application of the provisions for public participation in NEMA, 1998. Their opinions and requirements for public participation in environmental governance in the future were also solicited.
- **To propose elements of a framework for the implementation of public participation in environmental governance at the national level, with specific recommendations on the NEAF:** In view of the fact that the NEAF has not been operationalised, the international trends and models were utilised to review the current NEAF model and to make proposals for its amendment.

1.3 METHODOLOGY

The constitutional and legal framework for public participation was reviewed as the basis for the implementation of public participation principles and mechanisms established by NEMA, 1998. This was done through a literature review as set out in Chapter 2 of this study.

A literature review of international typologies and models of public participation were used to identify trends and elements to inform a framework for the implementation of public participation in environmental governance at national level (Chapter 3).

National typologies and models of public participation in environmental governance were also reviewed for possible elements that could be used to inform a new framework for implementation with regard to public participation (Chapter 4).

A questionnaire (Annexure A) was developed on the basis of current international and national models for public participation in environmental governance in an attempt to determine the extent to which the provisions of NEMA, 1998 are implemented, as well as to determine the future requirements for public participation in South Africa.

The elements of a framework for public participation were identified through the literature review and were tested against the opinion of a range of South African respondents involved in the field of public participation via the questionnaire, so as to determine the extent to which it can be applied in the South African context. The questionnaire was e-mailed to all respondents (Chapter 5).

Policy and legislative processes currently underway were reviewed through personal interviews to determine the extent of public participation taking place during these processes.

Once the legal framework and the international and national models had been examined and compared with current requirements and opinions, proposals for a framework for the implementation of the public participation provisions in NEMA were developed. Input from stakeholders, as well as the review of international trends, was used to make recommendations for the amendment of the current model of the NEAF, as prescribed in NEMA, 1998 (Chapter 6).

1.4 SCOPE OF STUDY

Environmental governance encompasses a wide range of processes, programmes, plans and projects within environmental management and decision-making, and is applied in the three spheres of government. It includes processes and plans, such as Environmental Implementation and Management Plans (EIPs and EMPs), Strategic Environmental Assessments (SEAs), Environmental Impact Assessments (EIAs), Integrated Development Plans (IDPs) and Environmental Co-operation Agreements (EMCAs), to name but a few. These lie beyond the scope of this study and could be included in future research.

This study will focus on public participation in environmental governance at the national level (development and implementation of policies, strategies and legislation) as provided for in NEMA, 1998, with specific reference to the NEAF as the main institutional mechanism for public participation at this level.

The water resource management model will however be reviewed as a new, innovative model for public participation, although this model is applied at regional level. A direct comparison with a national framework for public participation in environmental governance is not possible, but certain principles and elements of this model will be utilised in the development of a new framework.

1.5 DEFINITION OF TERMS

“Public participation” in this context refers to the various national processes and/or mechanisms that the public can access to indicate their needs and opinions; receive information; and provide input to and actively participate in environmental decision-making. It is acknowledged here that the “public” is made up of different groups with different needs and opinions and that this has to be taken into account in this study.

“Stakeholder engagement” refers to the process whereby various role players such as authorities, interested and affected parties, developers, communities, etc, interact during the planning, assessment and implementation of proposals for policies, plans, programmes or projects (adapted from DEAT, 2002:10).

“Citizen involvement” and **“citizen participation”** are terms mainly used in countries such as Canada and the United States of America for what in South Africa is called public participation.

CHAPTER 2

CONSTITUTIONAL AND LEGAL FRAMEWORK FOR PUBLIC PARTICIPATION IN SOUTH AFRICA

2.1 INTRODUCTION

The interpretation and extent of provision for public participation in governance are closely linked to the type of democracy in place in a specific society. The South African model of democracy is, therefore, briefly explored as the introduction to the discussion on the constitutional and legal requirements for public participation in national environmental governance.

The legal framework for public participation in environmental governance, as described in the National Environmental Management Act (no 107 of 1998) (NEMA, 1998), is then examined with specific reference to principles and the institution established for participation at national level, namely the National Environmental Advisory Forum (NEAF).

2.2 THE SOUTH AFRICAN MODEL OF DEMOCRACY

Since 1652, the majority of people in South Africa were oppressed and discriminated against. Under apartheid, the majority of people were deprived of basic human rights and the right to representation. This all changed in 1994. The South African democracy is, therefore, still younger than 10 years and the development of public participation in this new democracy already has some interesting trends to explore.

The democratisation of South Africa has brought about a number of challenges, least of which was transforming the way Government, and specifically Cabinet and Parliament, as the elected representatives of the people, implemented the mandates on the basis of which they were elected in the first place (De Villiers, 2001:115).

According to Dr Frene Ginwala, Speaker of the National Assembly, the marginalisation and exclusion of the people from democratic processes, prior to 1994, will continue to exist if the elected representatives do not engage the citizens on an ongoing basis. She argued that because the majority of the people are living in poverty, and do not have the same means to influence Government as those with more adequate resources do, the channels for them to express their views and needs have to be kept open. The alternative is further marginalisation and exclusion, which can ultimately lead to distrust in the democratic process itself (De Villiers, 2001:9).

✓ The South African Constitution provides a framework for a democratic system that is both representative and participatory, according to De Villiers (2001:19).

The Constitution provides for a broad representative constitutional democracy, based on universal adult suffrage, but it also emphasises public participation, which distinguishes it from the longer-established democracies. This implies a move from the crude representative model towards a more participatory form of political engagement (De Villiers, 2001:19-22).

The South African model was not only influenced by the contemporary thinking around the transformation of the State, but also by the fact that during times of oppression people organised themselves into specific groupings such as civic organisations, the labour movements, youth movements, etc. This created a tradition of both direct and participatory democracy that spilled over into the post-1994 era.

✓ Democracy is defined in De Villiers (2001:23) as "ongoing and regular interaction between citizens and their popularly elected institutions. This includes mechanisms for public participation as well as the constitutionally entrenched responsibility of certain institutions to facilitate public participation in their processes".

This so-called participatory democracy is part of an international trend to create mechanisms for dialogue between governments and the people. There is growing support for the belief that where people are not involved in the policies which affect their lives, these policies are likely to fail. Public participation processes also strengthen the representative democracy and its institutions.

According to De Villiers (2001:23), this has created the opportunity to redefine the boundaries between the State and civil society. This new trend should be explored within the South African context of governance, and specifically environmental governance. This is done in Chapter 4 of this study.

2.3 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Constitution of the Republic of South Africa, adopted in 1996, has many sections that deal either directly or indirectly with public participation. The Constitution has, as one of its founding provisions in Section 3, the right for all South Africans "to common citizenship" (SA, 1996:3).

The following sections in the Bill of Rights support the ideal of common citizenship:

- Section 15: freedom of religion, belief and opinion;
- Section 16: freedom of expression;
- Section 17: freedom of assembly, demonstration, picket and petition;
- Section 30: freedom of language and culture; and
- Section 32: freedom of access to information.

(SA, 1996:8-15)

The Bill of Rights in Chapter 2 of the Constitution guarantees people a range of rights, including the following:

- Section 24 (a): "Everyone has the right to an environment that is not harmful to their health and well being";
- Section 26 (1): "Everyone has the right to have access to adequate housing"; and
- Section 27: "Everyone has the right to health care, food, water and social security".

(SA, 1996:11-13)

De Villiers (2001:41) is of the opinion that Section 1 (d), "to ensure accountability, responsiveness and openness", established the principle of open and accountable government that responds to its citizens. This does not imply that voting in formal elections, for example, suffices, but it places a further requirement on the national and provincial legislatures in Sections 59, 72 and 118 to facilitate public involvement in legislative and other processes of the legislature.

Chapter 10 of the Constitution deals with Public Administration. In Section 195 (1) it sets out the values and principles that should govern public administration. Two of these principles refer specifically to the public. These are Section 195 (1) (e): "people's needs must be responded to, and the public must be encouraged to participate in policy-making"; Section 195 (1) (g): "transparency must be fostered by providing the public with timely, accessible and accurate information"; and Section 195 (1) (i): "public administration must be broadly representative of the South African people...etc" (SA, 1996:107).

Not only Parliament (the legislature), but also the Executive (The President and Cabinet) and the administration (government departments), has a responsibility to involve the public in the various processes resulting in legislation and policies.

Bray (1999:5) supports this by indicating that co-operative governance in the context of Section 195 (1) means to govern with the people (civil society), rather than to govern for the people. This implies that people participate in decision-making, with the resultant responsibilities and accountability that accompany that right.

This also supports the earlier opinion of De Villiers (2001:23) that participatory democracy allows for the redefinition of the relationship between the State and civil society. This is further explored in Chapter 4 where the South African models for environmental governance are reviewed, as well as in Chapter 6, where a new framework for the implementation of public participation mechanisms is discussed.

The Constitution does not indicate how these and other principles and basic human rights should be implemented. This should be done through mechanisms such as legislation (Bray, 1999:6).

The Constitution does, however, require Parliament (Section 59) to hold its proceedings in public, providing access to Parliamentary Committee meetings in particular (SA, 1996:35). At this level the public can engage the legislature directly in terms of any policy or legislative issues being dealt with by the Committee.

The three spheres of government further make provision for opportunities for public participation in policy and legislative processes. Provincial and local government are closer to the people and, therefore, better positioned to engage more directly with the citizens. Their actions also have a more direct impact on the lives of people. This, however, falls outside the scope of this study.

The *White Paper on Environmental Management Policy*, 1998 and NEMA, 1998 are explored in the next section in terms of how they give effect to the constitutional rights of the people and in terms of the principles for public participation.

2.4 POLICY AND LEGISLATIVE REQUIREMENTS FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

2.4.1 White Paper on Environmental Management Policy, 1998

The *White Paper on Environmental Management Policy* provides the policy framework for environmental governance. The policy indicates that 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 (SA, 1998).

It further states that to fulfil its commitment to environmental governance, the Department of Environmental Affairs and Tourism (DEAT) will involve interested and affected parties in:

- developing and implementing environmental policy;
- developing legislations and regulations;
- setting norms and standards; and
- monitoring and assessing environmental impacts.

It also states that DEAT will respond to the needs of the public and provide ways for the public to participate in environmental governance (SA, 1998).

Several other white papers, such as the *White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity* (1997) and the *White Paper on Integrated Pollution and Waste Management* (2000), also include provisions for public participation, but will not be dealt with as part of this study.

The principles and policy in the *White Paper on Environmental Management Policy*, lead to the drafting of the National Environmental Management Act (NEMA), 1998 and is explored in the next section.

2.4.2 National Environmental Management Act (no 107 of 1998)

NEMA, 1998 is a framework act in that it provides the policy framework and principles, within which other sectoral legislation such as biodiversity, pollution and waste management, and coastal management will be developed.

South Africa is one of a few countries in the world to have legislated public participation for the broader rights, as set out in the Constitution. NEMA, 1998 reflects this in the Preamble where it states that "the law should establish procedures and institutions to facilitate and promote public participation in environmental governance and that the law should facilitate the enforcement of environmental laws by civil society" (SA, 1998:2).

Internationally, environmental legislation leads the field in terms of the right of the public to contribute to and participate in the implementation of laws and regulations (De Villiers, 2001:74). In an evaluation of NEMA, 1998, based on a generic framework for environmental framework legislation by Nel and Du Plessis (2001:31), this is supported through the following statement: "NEMA revolutionised previous environmental legislation by entrenching the principle of environmental management or governance by outsiders" (civil society).

It is also within this context that many proclaimed NEMA, 1998 as an international benchmark for framework legislation.

2.4.2.1 Principles

NEMA, 1998 establishes a range of principles that apply to all organs of state (as defined in the Constitution) in Chapter 1 of the Act.

The following principles are of particular importance to public participation:

- Section 2 (2): Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably.
- Section 2 (4) (c): 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 people.
- Section 2 (4) (f): 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.
- Section 2 (4) (g): Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
- Section 2 (4) (h): 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.
- Section 2 (4) (j): 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.

- Section 2 (4) (k): Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- Section 2 (4) (o): The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
- Section 2 (4) (q): The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.

(SA, 1998:10-14)

Of particular interest for this study are Section 2 (4) (f) and Section 2 (4) (g).

These principles in NEMA, 1998 give effect to Principle 10 of the Rio Declaration, which addresses issues of participation in decision-making, access to justice and access to information. Access to information and access to justice are, according to Kidd (1999:26), key to the provision for public participation in environmental governance.

The list of principles as above, gives an indication of the emphasis placed on public participation within NEMA, 1998. Since all organs of state have to apply these principles to their actions that may significantly affect the environment, there is a need to develop a framework for implementation to give effect to these principles. Principles in themselves only establish the policy or approach that has to be taken. They do not automatically translate into the practical way they should be implemented.

Another important aspect in developing a framework for participation in environmental governance is to take into consideration the different responsibilities contained within these principles. The use of the term 'must' in all of the above indicates that the State has an obligation to ensure that these principles are implemented.

2.4.2.2 National Environmental Advisory Forum (NEAF)

According to Nel and Du Plessis (2001:8), one of the characteristics of framework legislation is to create mechanisms for co-operative governance. Apart from co-operation between the spheres of government, it also refers to processes for empowering civil society to engage in environmental governance.

The main institutional mechanism created by NEMA, 1998 for this purpose is the National Environmental Advisory Forum (NEAF) in Section 3 of the Act. The Minister of Environmental Affairs and Tourism – hereinafter referred to as the Minister – is not given a discretionary power to decide whether he wants to set this up, but as in the case of the Committee for Environmental Co-ordination, it is established by the Act. It has, however, been five years since NEMA, 1998 was promulgated in 1998, and this forum has not yet been set up by Government.

The aim or object of the forum [Section 3 (2)] is to:

- (a) inform the Minister of the views of stakeholders regarding the application of the principles in Section 2 of NEMA, 1998; and
- (b) advise the Minister on:
 - any matter concerning environmental management and governance and specifically the setting and achievements of objectives and priorities for environmental governance; and
 - appropriate methods of monitoring compliance with the principles in Section 2. (SA, 1998:14)

The NEAF can, on its own initiative and after consultation with the Director-General, draw the Minister's attention to any matter concerning environmental management requiring attention [Section 3 (3)].

Setting objectives and priorities for environmental governance is one of the central roles for government itself.

This could be a potential point of conflict between the advisory forum and the DEAT. This will be further explored in Chapter 6.

The NEAF will comprise between 12 and 15 people who represent stakeholders and persons with the experience, expertise or skills necessary to enable the forum to carry out its functions [Section 4 (1)]. The stakeholders will be selected from organised labour, business, non-governmental organisations and community-based organisations. The procedure for the appointment of the forum members by the Minister is described in Section 4 (3). The functioning of the forum is described in Section 6.

The Director-General may designate as many officials and employees as he/she deems necessary to assist the forum in the performance of its work [Section 6 (2)].

NEMA further stipulates that the meetings of the forum will be open to the public and all documents considered or produced by the forum must be available for inspection by the public [Section 6 (4)].

The Minister must present an annual report to Parliament on the work of the forum [Section 6 (3)]. Given the fact that the forum has not been established, the Minister is in contravention of the Act in terms of this section.

The *White Paper on Integrated Pollution and Waste Management* also refers to the NEAF in Section 6.4, where it is again stated that the Minister will establish the NEAF with sub-committees to advise him on environmental issues, which in this case would be related to pollution and waste.

Although NEMA, 1998 makes provision for the NEAF, it does not clearly indicate how public participation in policy and legislative processes should be dealt with and implemented.

2.4.2.3 Integrated Environmental Management (IEM)

Chapter 5 of NEMA, 1998 on Integrated Environmental Management not only promotes the integration of the principles as set out in Chapter 1 of the Act, but also states [Section 23 (2) (d)] that its objective is to “ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment”, amongst others (SA, 1998:34).

The procedures for the investigation, assessment and communication of the potential impact of activities must ensure “public information and participation ... in all phases of the investigation and assessment of impacts” [Section 24 (7) (d)].

The current Environmental Impact Assessment (EIA) regulations in terms of the Environment Conservation Act, no 73 of 1989, makes provision for public participation, but no official guidelines have been developed since it was implemented in 1995. The *Integrated Environmental Management Information Series 3 – Stakeholder Engagement*, published in 2002, indicates that it is not a guideline document, but serves as a reference and support text (DEAT, 2002:1).

New regulations in terms of Chapter 5 of NEMA, 1998, which replace the current EIA regulations, are in the process of finalisation. These regulations will have to comply with Section 24 (7) (d), as mentioned above.

Public participation in environmental assessment *per se*, is beyond the scope of this study. However, the involvement of the public in the development of new regulations is reviewed in Chapter 5 of this study.

2.4.2.4 Compliance, enforcement and protection in terms of NEMA, 1998

Section 31 (1) of NEMA, 1998 provides for access to environmental information held by the State that relates to the implementation of NEMA, 1998 and any other law affecting the environment. It further provides for any organ of state to obtain such information from an individual who might be in possession of such information.

The concept of *locus standi* has for the first time been taken beyond its previous application in environmental legislation, where NEMA, 1998 provides, in Section 32 (1), for any person or group to seek relief in respect of any breach or threatened breach of any provision of NEMA, 1998 and to do so on behalf of any other person, the public and the environment itself.

Section 33 of NEMA, 1998 also makes provision for private prosecution, allowing members of the public to act in the interest of the environment and initiate prosecution against environmental offences.

2.4.2.5 Environmental management co-operation agreements

Public participation has also been legislated in Section 35 of NEMA, 1998 (Chapter 8), which deals with environmental management co-operation agreements. Here provision is made for a formal agreement between the Minister or any Member of the Executive Council (MEC) of the provinces with any person or community for the purpose of promoting compliance with the principles laid down in NEMA, 1998.

2.5 OTHER LEGISLATION THAT REQUIRES PUBLIC PARTICIPATION

Environmental governance, by its very nature and definition, goes beyond the scope of NEMA, 1998, because it applies to and includes other areas of responsibility such as planning, the water sector and several others.

It is not the intention to provide a complete list of all legislation that refers to or requires public participation. A few acts are, however, mentioned.

The Promotion of Administrative Justice Act (no 3 of 2000) is an important piece of legislation that provides for public participation in general. The Act came into effect on 30 November 2000 and the regulations were enforced on 31 July 2002.

Administrative justice in this context is understood to refer to the actions and decisions of government, including the way these decisions affect the public. The public has a right to administrative processes that are lawful, reasonable and procedurally fair.

Section 4 deals with actions that affect the public. It provides for minimum requirements for public participation in the form of public enquiries or notices and comments (written or oral) (Reyburn, 2002).

The Development Facilitation Act (no 67 of 1995) – hereinafter referred to as DFA, 1995 – was one of the first pieces of legislation in the new dispensation in South Africa, which introduced a more normatively-based planning system and placed a greater emphasis on good local decision-making.

The principles as set out in Chapter 1 of the DFA, 1995 are a set of interrelated intentions or desirable directions that should guide planning and development in South Africa. Because development and environmental management are closely linked, a closer look at some of the principles related to public participation as contained in the DFA, 1995, is warranted.

The *Resource Document* on the Chapter 1 Principles in the DFA (National Development Planning Commission, 1999:5-6) states that one of the values that

should underpin development is that it should be people-centred. In other words, it should create a positive environment for human development and improve the quality of life of all people. One of the intentions of the principles is, therefore, to accommodate the needs of all people, not only those of the wealthier minority.

According to the National Development & Planning Commission (1999:18), the principles should promote a high level of public participation in all areas of planning, i.e. analysis, consultation, proposal formulation, decision-making and implementation.

The DFA, 1995 does not prescribe or define the form that participation should take, because of the potential conflict with other principles, such as one calling for faster development. It does, however, require public authorities to define the appropriate level and form of participation, given the specific circumstances.

The National Water Act (no 36 of 1998) recognises the role of the public in achieving sustainability and creating mechanisms such as the catchment management authorities where the public assumes joint responsibilities with government for the development and implementation of strategies to manage water as a resource.

2.6 CONCLUSION

Now that the Constitutional and legal requirements for public participation for national environmental governance have been outlined, it is necessary to review international and national literature to identify possible models and elements that could assist in the development of a framework for the implementation of the public participation provisions as contained in NEMA, 1998.

CHAPTER 3

TYOLOGIES AND MODELS OF PUBLIC PARTICIPATION:

INTERNATIONAL PERSPECTIVES

3.1 INTRODUCTION

Public participation in environmental governance is a relatively new discipline or phenomena that has developed alongside the sustainable development debate over the last 25 years. The issue of public participation in environmental decision-making was specifically highlighted within the context of the debates around development and the environment in the 1970s. The report by Gro Harlem Brundtland, *Our Common Future*, focussed specifically on the relationship between environment and development, as well as the role that both governments and civil society have to play in this respect.

In 1992, public participation was recognised as an important tool for the achievement of sustainable development and was incorporated as one of the Rio principles and included in Agenda 21. Agenda 21 is the global programme for sustainable development, adopted at the Earth Summit (officially known as the United Nations Conference on Environment and Development or UNCED) in Rio de Janeiro in 1992.

The World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa in September 2002, confirmed the importance of public involvement in achieving sustainability, and identified the issue of partnerships between government, civil society and business as a crucial aspect for the implementation of sustainable development programmes worldwide. Without the participation and contributions of all these role players, the current trends of increased poverty, environmental degradation and unequal trade and economic systems will prevail and even get worse (United Nations, 2002).

Internationally there seems to be a fundamental shift towards more participatory forms of decision-making as well as a movement towards new definitions of democratic governance and its relation to society.

The author is of the opinion that there is a common recognition that, in order for the world to address the fundamental and underlying issue of poverty, a new deal is needed not only between governments of the north and south, but also between government, civil society and business. It is, therefore, very important to address the practical implications of how governments will interact with the public.

Despite this emphasis on the importance of public participation, Bell *et al* (2002:44) agree that there is still little understanding of how it should be practically implemented.

The focus of this study is to develop a framework for the implementation of public participation in environmental governance at national level that is relevant and workable in our current democracy. It is, therefore, important to briefly review how public participation developed over the last 50 years so as to utilise lessons learnt and models used for the development of this framework.

It is not the intent of this study to provide a comprehensive overview of public participation theory as it relates to environmental governance, but rather to look at how it developed broadly over time and what lessons can be learnt from this development.

3.2 HISTORIAL OVERVIEW OF THE DEVELOPMENT OF PUBLIC AWARENESS AND PARTICIPATION IN GOVERNANCE

3.2.1 The period 1940 to 1960

✓ Public participation in decision-making originates from the urban planning sector. Claassen (2002:6) highlights the fact that environmental management systems and processes evolved from earlier planning theories.

Between the 1940s and the 1960s, the public in America received information from government on what it was doing, but was seldom involved in any of the processes or decisions that affected their lives (Creighton, 1999:1).

The publication in 1962 of *Silent Spring*, in which Rachel Carson raised an alarm about threats to the environment and human health from the increasing use of pesticides and other synthetic chemicals, is often cited as one of the key catalysts for raising public awareness on environmental issues.

In America there was a tremendous surge of public participation during the 1960s due to the civil uprisings and political turbulence of the time. This was the result of racial discrimination and segregation, particularly in cities (Creighton, 1999:1). Middle-class whites moved to the suburbs and black people moved into the ghettos where there were problems such as unemployment, poor health care and substandard housing, to name but a few. Planners were requested to speak on behalf of the people or to represent the people. This was called advocacy planning.

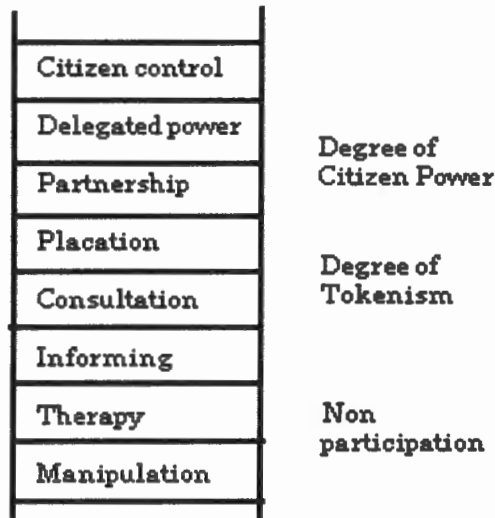
One of the lessons learnt from advocacy planning, according to Mangia (2001:23-24), is that the planner or facilitator converts the ideas of the client (mostly the poor and disadvantaged) into technical language that can be understood in the planning process. It is one way to address the lack of understanding of the concepts and language of environmental governance; take account of all arguments; and expand representation of the poor.

Modernism was characterised by a technocratic, top-down approach to planning and environmental management, with the assumption that the effect or impacts of actions could be accurately determined (Claassen, 2002:6). With the advent of the post-modernist era, the approach shifted to a focus on processes, the role of politicians in decision-making and the involvement of the public in these processes.

3.2.1.1 Arnstein's model

Sherry Arnstein developed a typology of citizen involvement in planning processes in the United States and published this in 1969 (Arnstein, 1969). Arnstein's model is based on the decision-making role of the participants in the participatory process. Citizen participation is therefore seen by Arnstein as citizen power.

FIGURE 3.2.1.1: ARNSTEIN'S LADDER OF CITIZEN PARTICIPATION



(Arnstein, 1969: 217)

The following is Arnstein's explanation of each of the levels of participation, as indicated in the above model.

Manipulation and therapy. Both are non-participative. The aim is to cure or educate the participants. The proposed plan is seen as the best option and the job of participation is to achieve public support for this through public relations.

Informing. This is a most important first step to legitimate participation. Too frequently the emphasis is on a one-way flow of information. There is no channel for feedback.

Consultation. This includes attitude surveys, neighbourhood meetings and public enquiries. Arnstein still feels that this is just a window dressing ritual.

Placation. For example, co-opting hand-picked people onto committees. It allows citizens to advise or plan *ad infinitum* but retains for power holders the right to judge the legitimacy or feasibility of the advice.

Partnership. Power is, in fact, redistributed through negotiation between citizens and power holders. Planning and decision-making responsibilities are shared, for example, through joint committees.

Delegated power. Citizens holding a clear majority of seats on committees with delegated powers make the decisions. The public now has the power to assure accountability of the programme to them.

Citizen control. The have-nots handle the entire job of planning, policy-making and managing a programme, for example, neighbourhood corporation, with no intermediaries between them and the source of funds.

Several researchers have used this model to determine the extent of public participation in any given situation.

This model has been developed further by the International Association for Public Participation (<<http://www.iap2.org/practitionertools/spectrum.html>> accessed on 15/09/2002), and is reviewed later in this chapter.

3.2.2 The period 1970 to 1980

Environmental legislation has always been at the forefront in making provision for public participation. In the 1970s environmental legislation in America contained requirements for public participation. The National Environmental Policy Act of 1969 of the United States of America (NEPA) was one of the first examples of such legislation.

People worldwide became more conscious of environmental issues during the 1960s and the 1970s and this led to a more vocal public. Particularly on controversial issues, the prescribed public participation process for environmental assessment, for example in NEPA, would not result in an acceptance by communities of the decisions of government because it seemed that people felt disconnected with the decisions taken by people such as planners.

According to Creighton (1999:2), the Environmental Protection Agency (EPA) in America used negotiated rulemaking to develop certain standards or regulations. Public participation was first initiated by the Carter administration and later revived under the Clinton administration in the 1990s.

The neo-Marxist perspective was introduced by David Harvey in the 1970s. The premise of this approach was that planning was a function of the capitalist state and that planners served the interests of capitalists (Mangia, 2001:25).

It focussed on the conflicting relationship between competing parties of the capitalist society and argued that the solution would be to achieve a balance. This influenced South African planners in the 1980s (Mangia, 2001:26). A number of locally-based urban social movements with political objectives emerged, which challenged the participation of the poor and disadvantaged in planning processes generally.

In America, Friedman became aware that communities actually had a lot of knowledge of the social and political dynamics in their community – far more than the planners who had represented them before. He highlighted the important concept of dialogue as an integral part of the public participation process (Mangia, 2001:27).

Research done by the United Nations Research Institute between 1970 and 1980 confirmed that the central issue of people's participation is the distribution of power, especially to those who had previously been without power.

3.2.3 The period 1980 to 1990

During this period there was a shift from government to governance (Barnard, 1999:114). In other words, governments started to involve other role players and the public in the processes of government. This is further explored in Section 3.5 of this chapter.

In the 1980s Jurgen Habermas started to place more emphasis on the procedure that is followed in planning and the participation of the public in planning. He believed that knowledge was contained in communication and that by sharing experiences, as well as striving to understand the other viewpoint (mutual understanding), this knowledge would be unleashed. Collaborative planning was the result of this new approach (Mangia, 2001:28).

Planning was seen as a social process allowing different avenues of thinking, valuing and acting to be socially understood by its participants. Through communication, the consensus reached would constitute a socially just process (Mangia, 2001:29).

Patsy Healey (1992:143) argued that planning, as a democratic enterprise, aims to promote social justice and environmental sustainability, but that the mechanisms and tools to pursue these goals have not been developed. She indicated that participation in planning aimed to ensure that people were "making sense together while living differently/live together but differently".

According to Healey (1992:147) there are certain directions that planning and participation could take. These are briefly discussed below.

- People allocate their resources according to their subjectively perceived wants and needs and their material opportunities. Public policy is, therefore, a process that allocates resources on the basis of their market value. Environmental planning is used to conserve the assets that cannot easily be traded in the open market, for example, national parks, historical buildings and so forth (also called public goods) and to ensure that the actions of individuals do not impose excessive costs on other people or the environment.

This implies a model that can internalise the external costs of the environment.

- Planning was seen as a means to re-design societies so that they become less oppressive and so that conditions of material existence are adequate for all.
- What was needed is a communicative approach to the production of knowledge, including knowledge of conditions, cause and effect, moral values and aesthetic worlds. Healey maintains that knowledge is not pre-formulated, but is specifically created anew in our communication through exchanging perceptions and understanding, as well as through drawing on the life experiences and knowledge of the participants in that process (Healey, 1992:153). One cannot, therefore, predefine a set of tasks to be addressed by planning, since these tasks and issues must be specifically discovered, learnt about and understood through inter-communicative processes.

Healey supports the idea of mutual understanding and consensus which is achieved by divergent groups of people coming together in order to achieve shared consensus through dialogue and debate, in other words leading towards a negotiated settlement (Healey, 1992:154).

Planning is an interactive and interpretive process. It should be enriched by a discussion of moral dilemmas and aesthetic experience. Communicative action should focus on searching for achievable levels of mutual understanding amongst people. Recognising, valuing, listening and searching for translative possibilities between different discourse communities or opinions. Interaction involves mutually reconstructing what constitute the interests of the various participants - a process of mutual learning through mutually searching to understand (Healey, 1992:154).

People with experience of different societal conditions and cultural backgrounds are encouraged to recognise each other's presence and negotiate their shared concerns. It encourages openness and transparency (Healey, 1992:155).

3.2.4 The period 1990 to the present

This period is characterised by the adoption of several international principles, agreements and commitments on public participation, supporting the statement that public participation has become an important aspect in governance generally, and specifically in environmental governance.

Environmental activists and organisations such as Green Peace have been instrumental in changing the way governments take decisions in terms of international agreements and conventions. Through awareness-raising, these non-governmental organisations have managed to popularise the notion that people must have a say in the decisions that affect their lives (De Villiers, 2001:122).

In 1992 at the Earth Summit, or the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, the international community recognised the importance and role that civil society plays in protecting and managing the environment.

Agenda 21 is the programme of action for sustainable development that was adopted by more than 178 governments at the Earth Summit in 1992. Section 3 of Agenda 21 addresses the issue of the role of major groups in implementing the sustainable development agenda in the 21st century.

According to the Preamble in Chapter 23 of Agenda 21, a need for new forms of participation has emerged, especially as it relates to the needs of individuals, groups and organisations. The following groups of people are singled out in Agenda 21 to receive special attention: women, youth, non-governmental organisations, local authorities, workers and trade unions, business and industry, scientific and technological communities, and farmers.

Chapter 36 then specifically deals with education, raising public awareness and training – all elements necessary to ensure that a vibrant and active civil society is empowered to participate meaningfully in development and environmental management.

Principle 10 of the Rio Declaration on Environment and Development, adopted at the Earth Summit in 1992, states that "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 (UN, 1992:10)."

Kidd (1999:22) is of the opinion that this principle highlights three elements of public participation, namely access to information, participation in decision-making and access to justice.

Principle 20 of the Rio Declaration on Environment and Development further states that women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development (UN, 1992:11).

Principle 22 looks at the role of indigenous people and their communities. States should recognise their identity, culture and interests and enable effective participation in the achievement of sustainable development (UN, 1992:11).

After the Earth Summit in Rio, there was a renewed interest in the creation of partnerships, and several other international initiatives and agreements were signed, giving effect to public participation principles, procedures or mechanisms.

The Barbados Declaration of the Global Conference on the Sustainable Development of Small Island Developing States, held in May 1994, called for the establishment of partnerships between governments, intergovernmental organisations and agencies, non-governmental organisations and other groups to implement Agenda 21 and its Plan of Action (Bolivia Summit, 1996:2).

In 1996, the Summit of the Americas for Sustainable Development held in Santa Cruz, produced the Bolivian Summit Declaration. This declaration was signed at the level of Heads of State. It indicated their commitment for the broad public participation of civil society in decision-making processes, including the formulation, implementation and evaluation of policies and programmes. The Declaration proclaims that the signatories “will support and encourage, as a basic requirement for sustainable development, broad participation by civil society in the decision-making process, including policies and programs and their design, implementation and evaluation (Bolivia Summit, 1996:2-4).”

The outcome of the Summit was a decision to develop an Inter-American Strategy for Public Participation in Environment and Sustainable Development Decision-making (hereinafter referred to as ISP) in the Americas. The Inter-American Council approved the ISP for Integral Development (CIDI) of the Organization of America States (hereinafter referred to as OAS) in April 2000. The OAS General Secretariat formulated this strategy in response to a mandate from the Heads of State. Governments of the southern hemisphere gathered at the 1996 Summit of the Americas held in Santa Cruz de la Sierra, Bolivia. The ISP is the first concrete result stemming from the Santa Cruz Summit (Bolivia Summit, 1996).

The Strategy states basic principles, goals and policy recommendations aiming to promote and strengthen public participation in sustainable development decision-making. Access to information, in particular, is a main issue throughout the strategy. Even though, the ISP is not a binding legal instrument, it clearly represents a step forward in the advancement of public participation issues in the political agenda of the Americas

Two types of consultative fora were selected at the national level to develop the objectives component: (1) the National Councils for Sustainable Development in the Meso-American Region; and (2) the case of the Honduras National Convergence Forum. It was further proposed that public participation in the representative institutions such as the legislative and executive components of government be strengthened.

Five years after the Earth Summit, it was acknowledged that the global environment has continued to deteriorate since 1992; that poverty has increased; and that the gap between the rich and the poor has grown. At the special session of the United Nations General Assembly, held from 23 to 28 June 1997, the major group representatives were, for the first time, allowed to participate in the meetings of the Commission on Sustainable Development and to make statements in the plenary discussions (UN, 1997).

All present recommitted themselves to work together in the spirit of global partnership; and to reinforce their joint efforts to meet the equitable needs of present and future generations. From the review of the implementation of Agenda 21, however, it became clear that the involvement of major groups has led to improved implementation of several sustainable development programmes. But participation by all in decision-making for sustainable development at the global level has not yet been sufficiently formalised to ensure that the partnerships between government and civil society take place effectively (UN, 1997).

On 25 June 1998, in the Danish city of Aarhus, the members of the United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. This Convention represents a landmark in the development of international law on the public participation issue. It contains innovative provisions on the rights and obligations of governments regarding civil society's access to timely environmental information, as well as requirements for the collection and dissemination of this data to the general public. It was signed by 29 countries at the time, as well as the European Union (Economic Commission for Europe, 1998).

The Convention was signed on 30 October 2001, when it was ratified by the required minimum of 16 countries. Since then, another six countries have ratified the Convention (Economic Commission for Europe, 1998).

It establishes minimum legal and institutional requirements to ensure that citizens have the opportunity to obtain environmental information, participate in decision-making processes and have access to judicial and administrative justice.

When countries ratify the Convention, they promise to share government information and documentation with civil society, so as to empower ordinary citizens and non-governmental organisations to effectively participate in policy development.

Article 14 of the Malmö Ministerial Declaration (2000) states that civil society plays a critically important role in addressing environmental issues. The Malmö Ministerial Declaration was adopted at the first Global Ministerial Environment Forum held in Malmö, Sweden, from 29 to 31 May 2000.

Several international conventions such as the UN Convention on Climate Change, the Convention on Biological Diversity, the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Cartagena Protocol on Biosafety, all make provision for public participation (<http://unep.org/documents.htm> accessed on 15/09/2002).

In 1988 the United Nations Environment Programme (UNEP) and the World Meteorological Organization established the Intergovernmental Panel on Climate Change (IPCC). The Panel has the mandate to assess the state of existing knowledge about the climate system and climate change; the environmental, economic and social impacts of climate change; and the possible response strategies (participation (UNEP, 2002).

3.3 CONSTITUTIONAL AND LEGAL PROVISIONS FOR PUBLIC PARTICIPATION INTERNATIONALLY

The various models and mechanisms for public participation utilised in a few countries are explored here for possible elements that can be applied within the South African context.

The German constitution places no obligation on the legislature to facilitate public involvement, although in practice the German legislature takes the interests of various groups into account (De Villiers, 2001:116).

The German public participation process begins before the executive commences with its drafting of policy, but the purpose of the participatory process is mainly to involve experts.

The important aspect here is the fact that ministries in Germany have dedicated components that monitor the media and public debate for issues that could be taken further in policy and legislation (De Villiers, 2001:119). They then invite interest groups to discuss these issues with Government. In other words, the people are involved before policy or legislation is tabled in draft form in the legislature. This ensures support and an understanding of the policy and legislation before it is officially tabled in Parliament for discussion.

The inclusion of experts in the NEAF, as described in Chapter 2, borrowed from the German example of including experts on committees that advise government. South Africa's model, however, includes both experts and sectoral representatives.

The Ugandan constitution, however, guarantees citizen participation in the planning processes, stating that Government shall take the necessary steps to involve people in the formulation and implementation of development plans and programmes that affect them (De Villiers, 2001:117).

South Africa and Uganda thus have a constitutional obligation to facilitate public participation, whilst it seems that some of the older democracies, such as Denmark and the United Kingdom, enjoy greater sovereignty.

In Uganda the experience has been that different approaches to public participation had to be used in different stages of development. Initially, there was resistance from civil servants to the participatory approach, but once the Ministry for Public Service had the necessary power and resources to manage the public participation properly, the situation improved (Kiggundu, 1998:163).

Liberia's constitution requires government and private enterprises to manage the natural resources and economy in a manner that ensures maximum feasible participation of the Liberian citizens under conditions of equality (Bruch, 2000:71). This provides an entry point for advancing public participation in environmental matters.

Although there is no overriding federal policy on this, many states in the United States of America have constitutional provisions that enable citizens to prepare draft legislation that the general public adopts or rejects through a referendum.

According to Bruch (2000:72), the courts in the Netherlands have held that a substantive constitutional right to a healthy environment necessarily includes the rights of access to information and to participate in decisions that could affect the environment.

In Canada today, decisions taken by government without public consultation are the exception rather than the rule, according to De Villiers (2001:117). Again, as in South Africa, it is within the environmental sector that public participation has been provided for in the Environmental Protection Act, 1988.

Key principles in this legislation include:

- the right to a healthy environment;
- increased public participation in government-decision making; and
- increased government responsibility and accountability for the environment.

The Canadian government recognised that its citizens often have a greater understanding and expertise in the environmental field. This should, therefore, be utilised for the benefit of the country.

Dorcey and McDaniels (1999:19) critically reviewed the Canadian model for public participation and indicated that the creation of community resource boards was "a vehicle for supporting direct, democratic and intensive public participation in land use and resource and environmental management" in 1993. These were, however, disbanded in 1996.

The use of negotiation-based approaches has expanded enormously in Canada over the last ten years, although consensus-based approaches to public participation have also received a lot of support. Negotiation-based approaches include facilitation and mediation (Dorcey and McDaniels, 1999:21).

Canada has arguably been ahead in experimenting with their practical application in the context of sustainability governance. Negotiation, facilitation and mediation have come to be seen as approaches in their own right, as well as techniques that can be employed within the breadth of approaches to citizen involvement in environmental and sustainability governance from the bottom to the top of Arnstein's ladder.

The Joint Public Advisory Committee of the North American Commission for Environmental Co-operation (JPAC) is a formal non-governmental advisory committee that has been established to provide technical and scientific advice or other information to the governing bodies of the North American Agreement for Environmental Co-operation. The Committee consists of members from each country, including NGOs, business and academia. The members of the JPAC are appointed by the State parties. They are independent and do not receive instructions from governments.

Another advisory committee that was established is the NGO-World Bank Committee. The Committee provides a formal arena for policy dialogues on specific issues raised either by the Bank or the NGOs. It is composed of managers of the Bank and 15 representatives of civil society. The latter are selected by the NGO Working Group on the World Bank – a global forum of NGOs engaged in policy dialogue with the World Bank.

These two examples provide opportunities for regular consultations with NGOs as well as possibilities for NGOs to make contributions and to influence specific issues.

Nevertheless, establishing this type of advisory committee has its challenges; particularly in relation to which NGOs should be included, and issues of legitimacy and representativeness of the institution's members (Ryan, 2001:15).

These issues have also been raised in the South African context and specifically in relation to the establishment of the NEAF.

In Latin America, public participation in sustainable development issues has also greatly increased over the last two decades, together with the restoration of democracy and a higher citizen acknowledgement of environmental problems. Nevertheless, environmental concerns in Latin America have distinguishing characteristics that respond to the specific political, social, economic and ecological context of the region. Undoubtedly, these contexts impact on the Latin American NGOs' agenda. One particular feature of the environmentalist concerns in the region has been the emphasis placed on the importance of democratic values and institutions (Ryan, 2001:10).

Together with poverty and the unequal distribution of wealth, the weakness of democratic institutions is perceived as one of the principal obstacles for sustainable development of the region. Accordingly, environmental NGOs have pressed for different mechanisms of citizen participation and control that encompass not only the field of environmental policy, but public policy as a whole. Nevertheless, there are several political, social, economic and cultural obstacles limiting public participation in the region. Weak institutional capacities of governmental and non-governmental actors engaged in sustainable development issues and fragile public participation legal frameworks are among the most important (Ryan, 2001:10).

The United States Department of Energy is amongst the leaders in terms of public participation in the American government. It uses the model of advisory committees when it has to clean up contaminated sites (Creighton, 1999:4).

Programmes for participation included those for environmental clean-ups, natural resource management, water, land use, energy and transportation. It seems that participation is more structured and organised at the provincial (state) and local levels than at the national level, where it still seems to be problematic.

3.4 ELEMENTS TO TAKE FORWARD IN THE DEVELOPMENT OF A FRAMEWORK FOR IMPLEMENTATION

The growth in the number of interest groups or civil society organisations has been phenomenal over the last 10 to 15 years. In the environmental sector, these organisations consist of people from church groups, trade unions, community groups, professional

organisations, academic institutions, research institutions and other international networks. The international networks such as Green Peace focus specifically on issues that are transboundary in nature, such as climate change, deforestation, the debt issue or any other issues of global concern. They can, therefore, be described as a 'global civil society' (De Villiers, 2001:124).

In this respect they manage to raise global awareness, make pronouncements on global needs and aspirations, but also form a pool of expertise that can contribute to global capacity to address the problems of the world. The role of civil society in fostering linkages between economic, social and environmental development should not be underestimated either.

It is for the above two reasons that the new partnerships fostered during the World Summit on Sustainable Development held in Johannesburg in 2002 strongly focussed on the role of governments, as well as business and civil society.

The civil society networks, whether national or international, are very important mechanisms for gathering information as well as for monitoring the implementation of policies, agreements, etc. They are not without their own problems and government should be clear on the framework within which it wants to engage civil society.

The author is of the opinion that communication and information-sharing have been identified as crucial elements in effective public participation. Information and knowledge management are crucial for the enhancement of decision-making. This is of particular importance in terms of traditional knowledge systems, often found in developing countries. These systems should be fully utilised to ensure proper decision-making in environmental governance.

The author is further of the opinion that governments will have to involve civil society more and more in governance issues, which could significantly change the current methods of governance. These are the kind of trends that have to be taken into consideration as well when developing a new framework for public participation in environmental governance.

The objectives and purpose of public participation should be clear from the outset. A clear strategy/framework for environmental management and governance should be in place and should be supported by government and civil society. Once the goals and objectives are clear

and each stakeholder (including government) knows exactly what its role and responsibilities entail, then the public participation process becomes a means to an end, and not an end in itself.

This is supported by Creighton (1999:4), who is of the opinion that the approach to be followed with public participation is not whether the legal requirements are to be complied with, but rather what level of public participation we need in order to achieve our objectives.

The purpose of public participation should be to achieve the goal of a specific project or programme and not only to comply with the legal requirements of the law *per se*.

This implies that there should be a certain flexibility of interpretation in how the law should be applied. The law should probably be seen as the minimum requirement for public participation.

If an important issue needs to be addressed, public participation should take place early in the process and on an ongoing basis (Creighton, 1999:5). Networking is also essential for creating a situation of mutual trust. According to Creighton (1999:6), advisory committees as a mechanism also faded over time due to the resources required to sustain them. Furthermore, it is difficult to get rid of them. He suggests that task teams should rather be established with clear terms of reference and a date by when they will be disbanded.

There is no "one size fits all" public participation process, but Government should rather decide, through an analytical process, what kind of public participation is appropriate in a specific circumstance (Creighton, 1999:7).

The international debate is now about achieving sustainability and the different roles of government and society in this process.

3.5 OVERVIEW OF THE DEVELOPMENT OF PUBLIC SECTOR MANAGEMENT TO GOVERNANCE

The public sector itself has undergone a major revolution since the 1980s and it is necessary to briefly look at some of the implications of these changes for the purpose of this study.

The radical public sector reform started in the United Kingdom, the United States of America and New Zealand during the 1980s and spilled over into some of the developing economies of the world as well (Minogue *et al*, 1998:xv).

Neo-liberal thinking and principles have also influenced the reform of the public sector to the extent that the distinctions between the concepts 'public' and 'private' have become unclear. The size and activities of the State were reduced, placing a bigger responsibility on other role players outside government to assist with implementation and monitoring. Private sector approaches to management were introduced in government.

The concept of 'good governance' emerged at the same time and was specifically applied by the donor community in its support to developing countries (Minogue *et al*, 1998:2). This concept is still used today by developed countries and donor agencies as economic conditionalities in assisting developing economies.

Another aspect that emerged as a result of this reform is the relationship between government and the people. People obtained certain constitutional rights. Therefore the relationship between the people and their government changed. People want their rights protected, their voices heard and their values and opinions respected and reflected in government policies (Minogue *et al*, 1998:5). In return for this, they might be willing to assist government to implement certain policies and programmes, given the reduced size of government as described above.

According to De Villiers (2001:112), the recognition that much of the specialist knowledge required to draft and implement environmental policy resides in civil society helped create the space for a new and more participatory form of governance in the national, regional and international spheres.

This raises several questions, including:

- how to structure and manage the relationship between government and the public or citizens;
- who is accountable for what;
- what level of transparency is required by both parties; and

- how public participation should be structured and managed.

These questions are all relevant to this study and the focus here will be on how public participation in environmental governance at the national level should be structured.

According to White and Robinson (Minogue *et al*, 1998:94), the efficacy of public-civic collaboration in any given society depends on the extent of structural inequality, the nature of the political regime and the legal framework governing the voluntary sector and the institutional character and capacity of the civic and public sectors.

Although there is no clear definition for governance, Minogue *et al* (1998:5) indicates that good governance should consist of four components:

- legitimacy – the system of government must have the consent of the public;
- accountability – politicians and officials should be answerable for their actions and use of resources;
- competence – to develop policies and deliver on these policies; and
- respect for the law and the protection of human rights – this is integral to the governance system.

It is argued in this study that public participation is an essential component of good governance. The international recognition that governments cannot implement policies and programmes on their own opens up new partnerships between government and the people. It is these new opportunities and partnerships that should be explored to provide new elements of a framework for public participation in environmental governance.

3.6 TYPOLOGIES OF PUBLIC PARTICIPATION USED IN THIS STUDY

The international focus on sustainable development and the emphasis on partnerships between government and civil society to achieve this, have highlighted the need for new models to describe the relationship between the various role players in these processes.

The following typologies and models were used in this study to determine the extent of public participation in environmental governance currently, as well as to determine the needs and requirements for public participation in future.

3.6.1 International Association for Public Participation (IAP2)

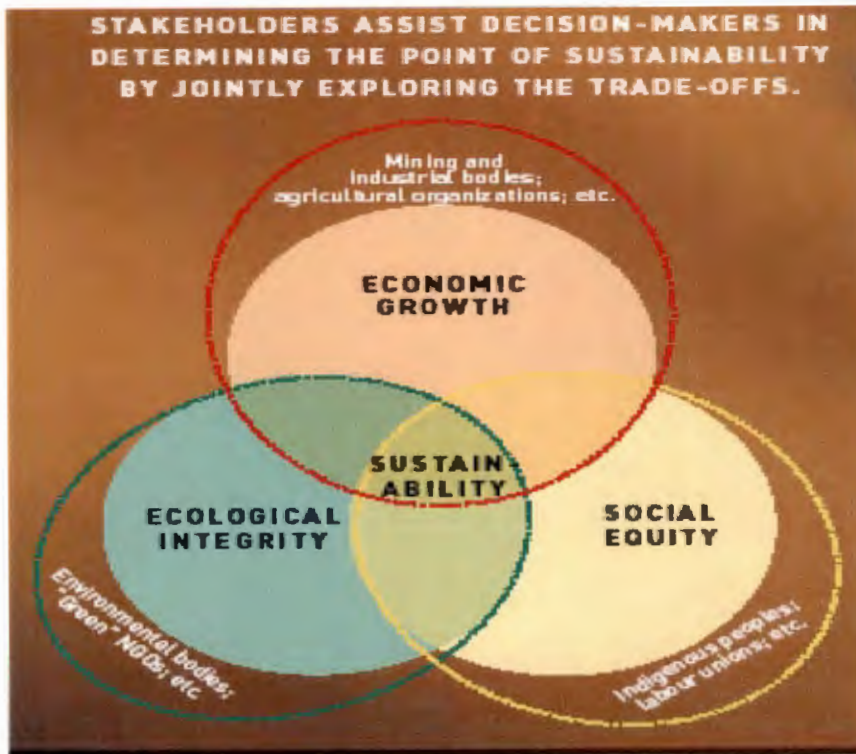
The International Association for Public Participation produced a leaflet for the World Summit on Sustainable Development held in Johannesburg in 2002 that explains the role of public participation in the quest for sustainability (IAP2, 2002).

According to the IAP2 leaflet, the greatest benefit of public participation is its contribution to achieving sustainability (IAP2, 2002:2).

It is argued that for a policy, programme, plan or project, economic growth, ecological integrity and social equity have to be taken into consideration in order to determine the point of sustainability. This is illustrated in Figure 3.6.1.1 below.

The IAP2's leaflet argues that public participation assists decision-makers in establishing the point of sustainability, as well as making informed decisions (IAP2, 2002:2). This notion is strongly supported. Therefore, a framework for the implementation of public participation in environmental governance should take cognisance of this approach and these elements, as reflected here.

FIGURE 3.6.1.1: PUBLIC PARTICIPATION IN THE SUSTAINABILITY MODEL

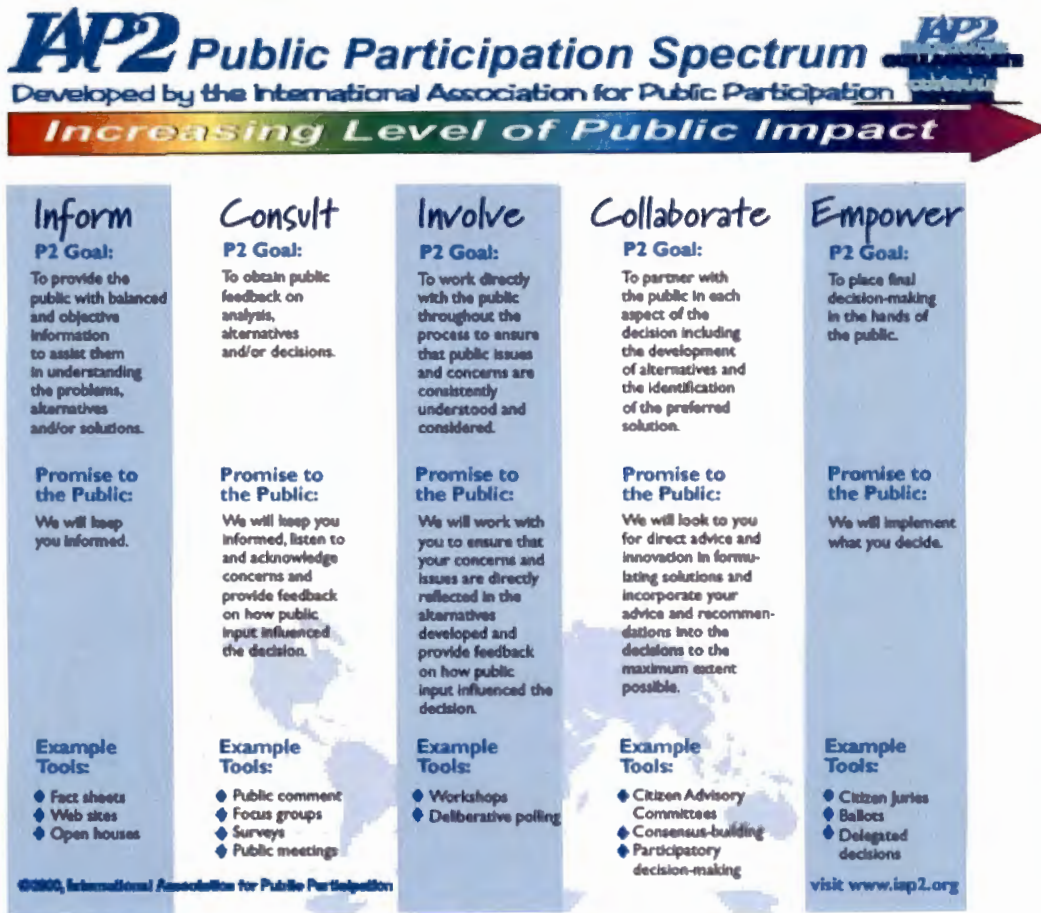


(IAP2 leaflet: *Public Participation – Critical for Sustainable Development*, 2002:2)

IAP2 developed several tools for the various public participation processes. They built on the typology of Arnstein and developed a new model for analysing current public participation processes. The model, indicated below in Figure 3.6.1.2, is self-explanatory and suggests an increased level of public impact on decision-making as one moves towards the empowerment phase.

This model was used in this study to determine the current status of public participation in environmental governance, as well as the preferred status that the public should have in environmental governance and decision-making. This analysis will be utilised in proposing a framework for the implementation of the public participation provisions in the NEMA, 1998.

FIGURE 3.6.1.2: PUBLIC PARTICIPATION SPECTRUM OF THE INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION



(<<http://www.iap2.org/practitionertools/spectrum.html>> accessed on 15/09/2002)

3.6.2 Environmental Management Systems Model

Governments use various mechanisms and tools to give effect to the particular environmental management system that is in place at any given point in time. The following policy instruments are used:

- regulation (command) and control;
- market-based instruments;
- civil instruments; and
- co-regulatory instruments.

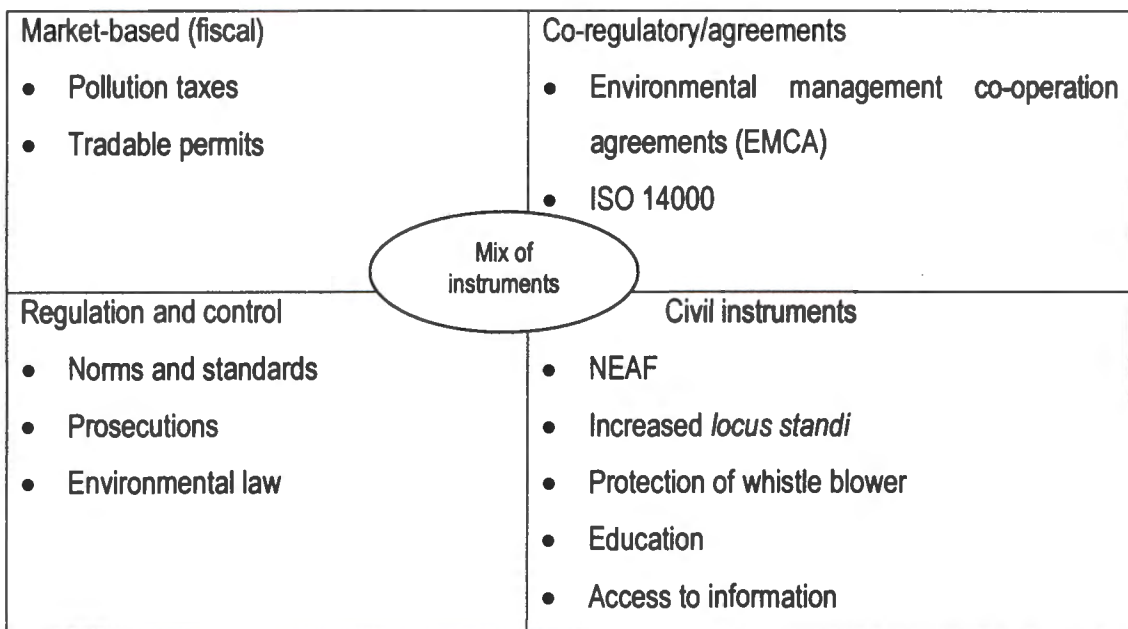
(Hanks, 1998:307-309)

In South Africa, NEMA, 1998 provides for several civil instruments such as the principles for public participation, the NEAF and extended *locus standi*.

The various instruments used are linked to each other in the sense that they support the achievement of a bigger strategy for environmental management in that society. In an ideal situation, a mix of instruments should be used for environmental governance and management.

It is argued that in view of the lack of several of the other components (instruments) in this model, there could be an imbalance in the application of the provisions for public participation. This will be further explored in Chapter 6.

FIGURE 3.6.2.1: POLICY INSTRUMENTS USED IN ENVIRONMENTAL MANAGEMENT



[adapted from Nel and Du Plessis (2001:13)]

3.7 CONCLUSION

The international perspectives provide several elements for the review of the current practices of public participation in environmental governance in South Africa. In the following chapter, various South African models for public participation are reviewed to search for new elements to inform a framework for the implementation of public participation provisions for environmental governance at national level.

CHAPTER 4

TYPOLOGIES AND MODELS OF PUBLIC PARTICIPATION:

NATIONAL PERSPECTIVES

4.1 INTRODUCTION

"The person we must all have in mind when we think of public participation is a black African, rural, illiterate woman. We must aspire to reach her" (Dr Frene Ginwala in Parliament in 1995)

(De Villiers, 2001:95)

This statement by Frene Ginwala, Speaker of the South African Parliament, summarises the challenge for public participation in South Africa today.

The struggle for freedom in South Africa has led to the development of several models of public participation in various sectors. The South African Constitution and Bill of Rights has many provisions, as indicated in Chapter 2, which make us a leader internationally in this respect.

As indicated in Chapter 3, the historical and socio-political context within which these models developed, have a direct influence on the actual model itself. It is therefore necessary to revisit some of the South African trends and models in order to inform a framework for the implementation of public participation provisions for environmental governance.

In order to determine how public participation should be implemented in South Africa, it is necessary to briefly explore the concept of public participation.

In South Africa we have a complicating factor because we have two worlds in one country. President Mbeki described this as "the two South Africa's" (De Villiers, 2001:27).

In other words, we have to take into account the difference between the well-resourced part of our society and those who are still poor and marginalised. This gap might prove to be the biggest obstacle to be overcome in developing a framework/model for public participation in environmental governance. Poverty and inequality remain a problem in South Africa, despite a change in the political landscape. South Africa has a Gini coefficient¹ of 0.58 (De Villiers, 2001:30). This ranks South Africa as the third most unequal society in the world.

Public participation, according to De Villiers (2001:27), is about access to power and decision-makers. Patterns of access tend to reflect the socio-economic landscape and inequalities in society. The poor and unorganised do not have access to the centres of power.

South African civil society has also been weakened since 1994 by the fact that international financial support given during the pre-1994 era has been withdrawn and personnel have been lost to government and the private sector. Organised labour, however, remains strong as it is represented in the National Economic Development and Labour Council (NEDLAC).

It is not the organised groupings in society that have a lack of access to the centres of power, but the country's poor.

The challenge for developing a model for public participation is therefore to ensure that the voice of the poor is heard and that the people are given an opportunity to participate in environmental governance. De Villiers (2001:33) has, however, identified four main constraints that need to be taken into account in designing a framework. These include time, communication, transport and education.

The right of the poor, as well as other South Africans, to participation has to be backed up by dedicated strategies and programmes aimed at involving the broadest possible spectrum of society.

¹ The Gini coefficient is a number between 0 and 1 indicating the level of income inequality within a population. A value of 1 indicates perfect inequality. De Villiers (2001:30).

4.2 OVERVIEW OF THE CONTEXT WITHIN WHICH ENVIRONMENTAL POLICY HAS DEVELOPED SINCE 1994

The political context within which environmental policy and legislation have developed in South Africa pre and post-1994, had a significant influence on the resulting policies, the processes followed to develop these policies, as well as the institutional mechanisms established as a result of these policies.

In order to review the current practices in terms of the legislative framework established between 1994 and 1999, a brief overview of this context is provided.

Before 1994 a protectionist approach to the conservation of the natural environment (fauna and flora) was prevalent in South Africa. Protectionist policies often lead to the removal of black people to create game reserves, which were mainly utilised by either a white minority or by international tourists.

The so-called brown environmental issues, as well as socio-economic issues, did not feature in the pre-1994 era. South Africa was also isolated from the broader international arena and debate. Internationally, civil society increasingly became aware of and involved in environmental issues.

The Department of Environment Affairs in South Africa, was only established in the 1980s (Peart and Wilson, 1998:238). The first piece of environmental legislation in South Africa, was the Environment Conservation Act (ECA), no 73 of 1989.

The only aspect of environmental governance that was included in the ECA, 1989, was the regulation of environmental impacts that might have a detrimental effect on the environment. Although this was enacted in the ECA in 1989, it was not until 1995, under the new government, that regulations to control these impacts were promulgated. These regulations made provision for public participation during the environmental impact assessment (EIA) process.

According to Peart and Wilson (1998:239), public participation was restricted to a small group of technical experts. A few white-dominated non-governmental organisations were sometimes included in environmental governance issues, but the majority of the population was excluded.

The inheritance of the new government in 1994 was an almost non-existent environmental management regime with no support from the broader public. The different groups in society had totally opposing views or perceptions of the environmental issues and problems of the time, and how to address them.

The African National Congress (ANC) recognised the desperate situation and included environmental issues in their publication *Ready to Govern* in 1992 (Peart and Wilson, 1998:240). An International Mission on Environmental Policy was launched in 1993 to facilitate the integration of environmental sustainability in the Reconstruction and Development Programme (RDP). The RDP base document, released before the elections, included several principles and sections on environmental sustainability. The RDP base document clearly indicated the linkages between poverty and environmental degradation, as well as the importance of including environmental issues in decision-making and planning (RDP, 1994).

The following sections of the RDP base document refer specifically to the environment and public participation:

- Trade unions and other mass organisations must be actively involved in democratic public policy-making (Section 5.13.3).
- Multipartite policy forums (like the present National Economic Forum) representing the major role players in different sectors should be established and existing forums restructured to promote efficient and effective participation of civil society in decision-making. Such forums must exist at the national, provincial and local levels (Section 5.13.7).
- Forums such as the National Economic Forum constitute important opportunities for organs of civil society to participate in and influence policy-making. Similarly they provide the democratic government with an important mechanism for broad consultation on policy matters. They need to be assisted (and sometimes

restructured) to improve their effectiveness, representivity and accountability (Section 5.13.8).

- Environmental management must be transformed to promote the active participation of civil society (Section 2.10.11).

(RDP, 1994)

The mission released its recommendations in August 1994, although the final document was only published in 1995, but when the RDP White Paper was released in September 1994, according to the author, there was hardly any mention of environmental issues.

According to the author, environmental activism in South Africa was at the height of its existence during the 1980s and 1990s and played an important role in ensuring the inclusion of environmental issues in the political mandate of the ANC in 1994. Several of the environmental activists were part of the international mission or made contributions to the process and were disillusioned by the sudden exclusion of environmental issues in the new ANC policy papers. This was very prevalent in the new macro-economic policy on Growth, Employment and Redistribution (GEAR) released in 1996.

Whilst a new environmental policy was being drafted at the time, the macro-economic policy was silent on environmental issues, illustrating that despite the focus on environment in the RDP prior to the 1994 elections, environmental issues were still misunderstood as a separate 'green' agenda or such issues were no longer an important policy consideration for the new government. Le Quesne describes this as a divorce between environmental and economic policy (2000:1).

Sustainability became central to the Consultative National Environmental Policy Process (CONNEPP) and immediate environmental issues such as water and environmental degradation as well as environmental policy and natural resources management – which were highlighted by the international mission – were not seen as being central to the economic and development debate at the time. It seems that policy makers in Government did not necessarily support the Mission's recommendations.

Rabie (1999:123) is of the opinion that GEAR does not fundamentally address development and growth and might have disregarded the environment. However, it does include aspects such as health, education, housing and land reform.

In contrast to this, the Constitution adopted in 1996 incorporated several key environmental issues including the so-called environmental right in Section 24 of the Constitution.

In the period 1995 to 1999, the Government released several white papers in sectors such as water, waste management, forestry, agriculture, land, marine fisheries, energy, minerals and mining, biodiversity and coastal management. This could be interpreted as an attempt to refocus or reprioritise environmental issues, but still these policy documents did not engage the economic and social debates and policy papers. The consequence is that environmental policy, in its broadest sense, was still seen as either a luxury or an add-on to the core development issues and policies of the country (Peart and Wilson, 1998:242).

The author is of the opinion that because the environmental portfolio was given to a National Party minister in the Government of National Unity, it could indicate that environmental issues were not a high priority for the ANC lead government at the time. As an official in the Department of Environmental Affairs and Tourism, the author witnessed in 1995 how environmental activists and other sectors such as business and industry, requested the then Deputy Minister for Environmental Affairs and Tourism to urgently draft a new environmental policy. These sectors felt that the majority of South Africans needed to understand the importance of the environment and be involved in the development of the first environmental policy in the new democracy.

The representatives of the various stakeholder groups agreed to assist Government with the development of this policy, which was hence institutionalised through a Management and Advisory Team (MAT) that jointly took decisions and managed the process with Government (SA, 1998).

It is from this model that the National Environmental Advisory Forum (NEAF) was derived, albeit less powerful, in the sense that the NEAF plays an advisory role to the

Minister. It is not the joint decision-making body, as was envisaged during the public participation process.

The author was part of the organising committee in the Department of Environmental Affairs and Tourism (DEAT) that hosted a workshop on Civil Society Participation in Environmental Governance in 1997 to discuss issues of public participation. Input from this workshop was utilised in the drafting of the National Environmental Management Act (NEMA), 1998. No consensus was reached, but there was agreement that government should lead the process of civil society participation. However, it lacked the capacity at the time. Communication methods were inadequate. The NEAF as model was proposed by this workshop and fed into the NEMA drafting process (Lukey, 2001:1).

The Council for the Environment, established in 1982, had seven sub-committees and had to advise the Minister on environmental issues, mainly due to the lack of expertise in the DEAT. It was not representative and was disbanded in 1994. It was recommended that a Commission for the Environment be established that could advise any minister or department on environmental issues. The NEAF met this requirement in part in the sense that it is both a representative and an advisory body, but it only advises the Minister of Environmental Affairs and Tourism (Peart and Wilson, 1998:246) and not any other minister or department.

Rabie (1999:148) is of the opinion that the NEAF is an important body to monitor the implementation of environmental policy and advise the Minister on any matter related to environmental governance.

The policy documents produced during the Consultative National Environmental Policy Process (CONNEPP) proposed extensive powers to the DEAT, echoing some of the policy directives in the RDP base document.

The author who acted as National Coordinator of CONNEPP, is of the opinion that stakeholders who participated in the policy development were satisfied that environmental issues and the enforcement of compliance with environmental policies

by a strong department with sufficient powers, would finally ensure environmental sustainability.

When the National Environmental Management Bill was released for comment in 1998, the powers of the DEAT were weakened to such an extent, that the status quo in effect prevailed.

The NEMA Bill, 1998 only made provision for two institutions, the National Environmental Advisory Forum (NEAF) and the Committee for Environmental Coordination (CEC), neither with real authority to enforce environmental policy across all spheres of government.

The comment of the Group for Environmental Monitoring (GEM) on the National Environmental Management Bill in 1998 indicated that it deemed the NEAF to be virtually meaningless due to its limited scope and roles (Le Quesne, 2000:11).

The RDP base document even refers to such a commission in Section 2.10.13. "A Commission on the Environment must be established as an independent body to ensure transparency and accountability on the part of agencies dealing with the environment. Such a body must facilitate the gathering, collation and publication of data on the environment. It must also provide an interface between civil society and public agencies responsible for the environment and natural resources" (RDP, 1994).

Section 6.3.4 of the RDP base document states that democratic government and parastatal programmes must be based on publicly determined priorities in line with the RDP. Appropriate priority-setting mechanisms must be established (RDP, 1994). Each institution of government should establish a public priority-setting exercise, the objectives of which should be measurable, achievable, have a defined time frame and be accompanied by a plan and budget by means of which they can be accomplished. A performance audit of government programmes and agencies must be carried out within six months of the inauguration of the Interim Government of National Unity and regularly thereafter (RDP, 1994).

CONNEPP is briefly described and analysed in the following section.

4.3 OVERVIEW AND CRITICAL ANALYSIS OF CONNEPP AS A SOUTH AFRICAN MODEL OF PUBLIC PARTICIPATION IN ENVIRONMENTAL POLICY-MAKING

4.3.1 Overview of CONNEPP

CONNEPP is an acronym for the Consultative National Environmental Policy Process. CONNEPP (1995 to 1997) resulted in the *White Paper on Environmental Management Policy* in 1998, which was enacted in legislation through the National Environmental Management Act (NEMA) in 1998.

NEMA (Act 107 of 1998), which was assented to on 19 November 1998 and which commenced on 29 January 1999 is the result of a ground-breaking participatory policy development process. This process was initiated in mid-1995, as described above.

According to Van der Merwe (2001:3), one of the broader development objectives of CONNEPP was to establish a participatory decision-making process around environmental issues. The new policy and legislation had to be developed "by the people for the people of South Africa."

The process was jointly managed by government and civil society through a committee called the Management and Advisory Team (MAT). This committee comprised representatives of civil society, selected by the first Consultative Conference on a National Environmental Policy. This conference was attended by 600 representatives from all sectors of society in August 1995. A secretariat with a national co-ordinator and a deputy co-ordinator was appointed to manage and co-ordinate the whole process (Wiechers and Coulson, 2001:5).

MINMEC Environment (a forum consisting of the Minister for Environmental Affairs and Tourism [chair] and the nine provincial Members of the Executive Committees for Environment) appointed the multi-stakeholder MAT in November 1995. The following sectors were represented:

- business and industry;
- community-based organisations;
- environmental non-governmental organisations;
- organised labour;
- national government; and
- provincial government.

The Deputy Minister of Environmental Affairs and Tourism chaired the MAT.

Multi-stakeholder committees were elected in each province to manage the provincial participatory processes. Thousands of people were involved through these structures in developing the new environmental policy. Some provinces such as Gauteng had Provincial Environmental Advisory Forums (PEAFs) that were responsible for the participatory process in the province.

According to the author, this model worked well because local people managed the provincial processes.

The process will not be discussed in detail here, but for the purpose of this study it is important to note that both experts and representatives of stakeholder groups participated in the drafting of the policy. A total of 60 000 discussion documents were distributed as the first step in the process and after comments had been received, a Green Paper was drafted. A total of 40 000 copies of this document was again distributed and discussed at a second national conference. A White Paper followed and was finally published in May 1998 (Wiechers and Coulson, 2001:19).

The policy process was hailed by all sectors as having achieved one of its major objectives, namely to be developed and accepted by the people as their own environmental policy.

4.3.2 Critical analysis of CONNEPP and lessons learnt

It is important to recognise that this policy process was the first of its kind in the new democracy of South Africa. Given the history and mistrust of the then Department of Environmental Affairs and Tourism, there was an urgent need to involve the broader society in the development of the new policy for the first time in the history of this country.

The use of key democratic concepts provided the foundation on which CONNEPP was based. These concepts were identified as follows:

- open and transparent approach;
- participative and consultative process;
- accountability;
- informed decision-making; and
- pro-active planning.

(Lerotholi and Wilson, 2000:1)

It established cross-sector relationships that had never been there before. It was also quite a thorough process, as it was not rushed. All in all, CONNEPP was unique in its nature mainly because such a process had never before taken place in South Africa. CONNEPP was able to achieve accountability, transparency, informed decision-making and participation.

In a discussion paper prepared by representatives of the Environmental Monitoring Group in 2000, the following assessment was made of CONNEPP.

What made CONNEPP work

- The multi-stakeholder forums and the local, provincial and national workshops held were important vehicles for facilitating public participation.
- Decisions were made after extensive consultation with environmental experts and the different stakeholders.
- It provided the opportunity for various stakeholders to identify and prioritise their environmental issues.
- It provided an opportunity for the multiple sectors to listen to and challenge each other.
- It provided an opportunity for communities to meet directly with government representatives.
- The process was thorough and not rushed.
- Funds were provided for participation.

(Lerotholi and Wilson, 2000:2)

What did not work

- The process of consultation began to dwindle as CONNEPP progressed. The second half of the process is seen to have been non-participatory.
- Insufficient information was received from the ultimate decision-makers in the final stage of decision-making.
- There was poor communication from Government and from the various stakeholder representatives.
- There were unequal levels of commitment from the various stakeholder groups and between the different government departments.
- More attention should have been paid to capacity building, especially after the Bill was gazetted.
- NEMA has not been adequately implemented nor has it been sufficiently tested.
- NEMA and its implications are yet to be fully understood by the general public.
- A regulatory body responsible for ensuring environmental protection and compliance was not included in NEMA.
- Capacity building was limited and not everyone was able to participate effectively.

(Lerotholi and Wilson, 2000:3)

The author is of the opinion that other shortcomings can also be identified:

- Local government was not formally represented.
- The public was not provided with any feedback or information when the White Paper was finalised and the legislation drafted. This resulted in a broad feeling that the Act did not reflect the discussions of the policy process.
- There was a lack of information to the public regarding the NEMA review process and law reform will result in the same situation.

Civil society itself has an important role to play in facilitating better public participation in environmental governance. The following directives were given by the Environmental Monitoring Group, as to what non-governmental organisations and civil society generally should be doing in this respect.

What should NGOs be doing?

- Providing education and awareness campaigns aimed at informing the public of what is in NEMA and what the implications are.
- Providing technical assistance, whether it be tools or legal means, which will enable people to campaign or act against injustices.
- Playing an advisory role to Government.
- Forming partnerships with community-based organisations and assisting them to identify their own issues and helping them contextualise them to broader issues such as sustainable development and globalisation.
- Liaising with Government and local communities (acting as a go-between).
- Working in collaboration with other institutions and Government to ensure progress and avoid repetitiveness, thereby providing solidarity and networking.
- Having a parallel process to keep up to date with what is going on with issues that affect us and to discuss these.
- Pushing for the establishment of the NEAF
- Addressing the issues indicated in NEMA that are yet to be fulfilled.
- Lobbying Government to put monitoring structures in place.

(Lerotholi and Wilson, 2000:4-5)

The author is of the opinion that the CONNEPP model relied more on public participation and less on technical input, which resulted in a policy that had generic principles and consensus on most issues, but lacked the detail for it to be implemented effectively. The Water Law review process on the other hand, had substantial input from technical teams whilst the public participation process agreed on the principles. Technicians converted principles into proposals that could be implemented.

This goes to the heart of an ongoing debate on how to design a targeted and efficient consultation process for a law-making programme. It also raises the question of the difference between appropriate levels of consultation during a policy-making exercise (about values and objectives) as compared to the drafting of legislation (a technical exercise of converting policy into law).

A few lessons learnt from CONNEPP can be summarised as follows:

- Provide adequate consultation time frames.
- Appoint properly mandated representatives.
- Clarify mandates up-front.
- Establish clear ground rules from the outset.
- Have a conflict management plan in place.
- Clarify and agree on the process.
- Clearly separate process issues from substantive or content issues, in resolving conflict.

(Van der Merwe, 2001:14)

According to the author, CONNEPP was very participative, but the drafting of the legislation was done without the same mechanisms and level of involvement. People complained about this and said that the law produced between May and August 1998 was influenced by considerations other than those proposed by the policy processes. Government was also more active in the drafting of the legislation than in the policy process.

Currently this seems to be changing in the sense that Government first develops the law as far as possible before consulting with the public. This is briefly discussed in Chapter 5.

4.4 WATER RESOURCE MANAGEMENT MODEL

The National Water Act, no 36 of 1998, as described in Chapter 2, provides for a new and innovative model for public participation in catchment management. This model is applied at the regional level and not the national level that is the focus of this study, and can therefore not directly be utilised to inform the national framework for participation. This model does however provide important principles and elements that can be utilised in the development of a national framework for public participation.

A guide series has been published to assist in the implementation of the National Water Act and *Guide 4* describes in detail the requirements for the public participation process in the establishment and management of catchment management agencies (CMAs).

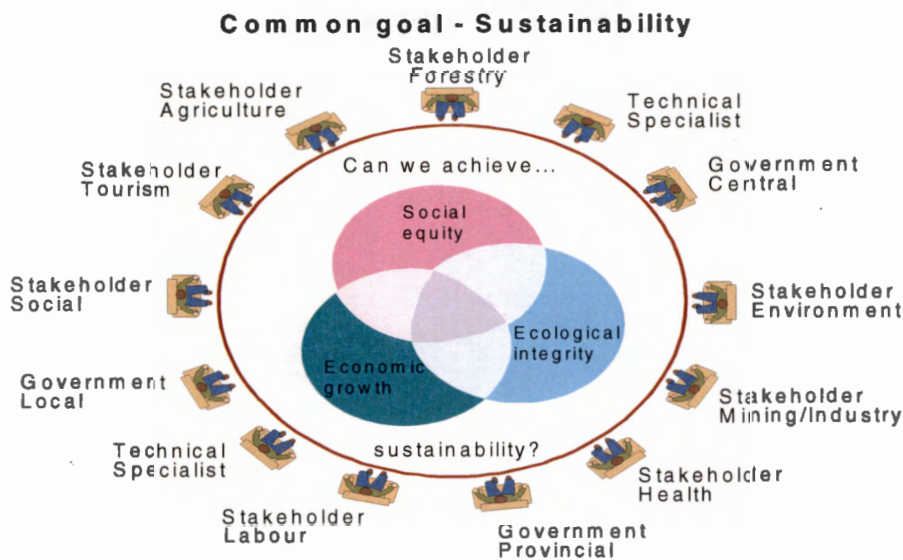
CMAs are statutory bodies established under Section 77 of the National Water Act. One CMA will be established for each water management area. These CMAs are governed by a board, which represents a broad stakeholder grouping together with experts. The CMA must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons.

A CMA manages water resources within a defined water management area. Such management is carried out in accordance with a catchment management strategy prepared by each CMA. The CMA must give effect to the catchment management strategy, which is underpinned by the principles of equity, efficiency, sustainability and representivity.

There are 19 CMAs in South Africa. Although this is not a national mechanism for environmental management, it is a new generation model for public participation in governance in that it brings Government and all other role players together around one table (see Figure 3.4.1 below) to achieve the common goal of sustainability.

One of the principles to which the CMA has to give effect, is pursuing a common end goal – although the process starts with a range of views (diversity). Through the public participation process, consensus is reached and the common purpose of sustainability is jointly achieved. The strategy for the management of the water resource, as well as the ongoing management thereof, is owned by all involved. This enables each stakeholder to have a clear idea of the roles and responsibilities within which they have to operate.

FIGURE 4.4.1: PUBLIC PARTICIPATION MODEL FOR CATCHMENT MANAGEMENT AGENCIES



(DWAF, 2001:6)

4.5 CONCLUSION

The overview of South African models for public participation highlighted several elements of importance in the development of a framework for the implementation of public participation in environmental governance at the national level.

These include:

- That joint decision-making bodies are better positioned to aspire to achieve the goal of sustainability together.

- That Government and all other relevant stakeholders, should jointly be members of decision-making bodies.
- That a clear and common goal and purpose are essential to guide the engagement between Government and the public.
- That information sharing is crucial.
- That capacity building of stakeholders is essential to facilitate equal participation in the engagement processes.

The DEAT has published a series of information documents on Integrated Environmental Management. The document dealing with public participation is the one called *Integrated Environmental Management Information Series 3 – Stakeholder engagement* (DEAT, 2002). It provides a useful overview of the purpose and objectives of stakeholder engagement, as well as appropriate approaches and techniques.

CHAPTER 5

CRITICAL ANALYSIS OF CURRENT PRACTICES IN ENVIRONMENTAL GOVERNANCE

5.1 INTRODUCTION

It has already been pointed out in Chapter 1 that all the provisions for public participation in the National Environmental Management Act, no 107 of 1998 (NEMA, 1998), specifically those on the establishment of the National Environmental Advisory Forum (NEAF), are not currently being complied with.

Current practices in environmental governance at the national level will be reviewed in terms of the NEMA, 1998. The opinions of stakeholders such as national and provincial government officials, practitioners in public participation, researchers and academics, civil society, business and labour, were obtained on the current application of the provisions for public participation in NEMA, 1998. Their opinions and requirements for public participation in environmental governance in the future were also solicited and will be used to develop a framework for implementation in Chapter 6.

5.2 ANALYSIS OF POLICY, STRATEGY AND LEGISLATIVE PROCESSES IN 2002

A brief analysis of current (2002) policy, strategy and legislative processes in the environment sector will be done to determine to what extent, if any, public participation provisions in NEMA, 1998 are being complied with. This is by no means intended to be a comprehensive exercise.

Specific emphasis will be placed on whether provisions have been made for public participation during the development of these policies, strategies and legislation and to what extent.

5.2.1 National Air Quality Management Bill

The Atmospheric Pollution Prevention Act (no 45 of 1965) (APPA) is both outdated and unconstitutional. *The White Paper on Integrated Pollution and Waste Management Policy* (2000), produced after a fairly comprehensive public participation process between 1996 and 1998, required a paradigm shift in air quality management in South Africa.

The Department of Environmental Affairs and Tourism (DEAT) developed a National Air Quality Management Programme (NAQMP) 2000-2010, in which Government spelt out the various elements required to bring about this new approach (Mabalane, 2002).

According to Mr I Mabalane from DEAT, three projects were identified as vehicles for the roll out of the NAQMP. A pilot study in the South Durban Industrial Basin was identified as an important component in the development of new legislation in this respect. At this level, there has been a lot of public participation, mainly due to very active and vocal communities in that area.

Several stakeholder committees have been established over time to engage government (all three spheres) in the development of a Ministerial Multi-point Plan to address the air quality management issues in that area. Politicians from the three spheres of government became directly involved in this pilot project.

To the extent that this is used as input in the development of the legislation, it could be argued that some level of participation has taken place. This is, however, a national bill and the pilot study only involves people within the local area.

Other interested and affected parties (I&APs) nationally could argue that they have not been involved in something that could also impact on them.

According to the author, no formal public participation has, however, taken place to date with the development of the actual National Air Quality Management Bill. No mechanisms have been established whereby the public can actually participate in the development of the new legislation.

The author is of the opinion that very thorough consultation has taken place within government during the drafting of eight versions of the Bill. National departments and provinces have workshopped the Bill. The understanding is that provinces will in turn consult local government within their jurisdictions. This has not necessarily happened, except in the Durban South area.

In addition to this, presentations were made to industry on the potential implications of the Bill for them, although the Bill itself was not presented. According to Mr Mabalane of the DEAT, these presentations happened as a result of requests by industry to the DEAT for information and briefings. The initiative is taken by industry and the participation of the public is not because of pro-active measures by Government to involve the public.

This legislation is part of the DEAT's law reform process. The author is of the opinion that apart from the regular updates by Contact, an NGO that keeps stakeholders informed of the work of the Portfolio Committee for Environmental Affairs and Tourism in Parliament on the law reform process, the DEAT is doing very little to comply with the principles of NEMA and the provisions for public participation.

The formal public consultation process will only commence once the Bill has been approved by Cabinet and published for public comment. The normal participatory process of written comments and possible hearings by Parliament will be the only process for participation in the drafting of the legislation.

5.2.2 Integrated Environmental Management (IEM) regulations in terms of Chapter 5 of NEMA

Concerns have been raised regarding the lack of regulation of the public participation process for Environmental Impact Assessment (EIA) in terms of the Environment Conservation Act, 73 of 1989 (Lazarus, 2000:8). Now it seems that even the drafting of new regulations in terms of Chapter 5 of NEMA, which will replace the EIA regulations, does not provide for adequate public participation, although various stakeholders were consulted during the initial phase of the drafting process.

The drafting of new regulations started in October 2000. Stakeholders, including the Government, the International Association for Impact Assessment (IAIA) and certain academics, were consulted (Lazarus, 2000).

The purpose of these consultations were to provide information on the law reform process generally and to obtain input into the drafting process from those who have been responsible for or involved in the implementation of the 1997 EIA regulations. The approach taken was that new regulations must build on the experience gained and address the problems that have emerged in the implementation of the existing regulations. In preparation for these consultations, a briefing document was prepared to provide a starting point for the process (Lazarus, 2000).

Some provinces such as Gauteng expressed dissatisfaction with the manner in which the DEAT was undertaking law reform. Given the fact that 'environment' is a concurrent competency (Schedule 4), the view was that new regulations should be concurrently drafted as a partnership between national and provincial government. The point was made that provinces make policy decisions every time an EIA approval is granted or refused (Lazarus, 2000).

According to Lazarus (2000:10), the view expressed was that the law reform process adopted by the DEAT is not sufficiently consultative and provinces are

not being afforded the opportunity to meaningfully participate in the redrafting process.

The concern was further raised that local government, which may also be responsible for the implementation of the regulations, was not involved in the review or drafting process at all.

According to the author, the view of DEAT is in essence that the drafting of new legislation is primarily a technical process, giving effect to policy over which there has been extensive public consultation (such in CONNEPP). It recognises, however, that new regulations must be based on the experience gained in the implementation of the 1997 regulations, and thus embarked on 'consultations' to gather this experience for incorporation into the drafting process.

From the above it seems that although consultation with various stakeholders has taken place, no formal mechanism was established whereby public participation could have taken place. It is now two years since the start of the process and most of the consultation in 2002 has been with provinces and other government departments.

5.2.3 National Biodiversity Strategy and Action Plan (NBSAP)

The White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity, published in 1997, was also the result of a fairly extensive public participation process.

However, an NBSAP as the strategy required to implement the policy, has been outstanding since 1997. A process is now underway to draft the strategy. A steering committee was established to oversee the process. Although this committee mainly consists of representatives of national and provincial government, other stakeholder bodies are also involved (Lutsch, 2002).

According to Ms Lutsch from DEAT, it is envisaged that one national workshop and nine provincial workshops will be held to develop the strategy. There will also be sessions around certain technical discussions.

It seems that this process will, therefore, make better provision for public participation in the sense that it has a formal structure that will oversee the process and consultation will be allowed through various mechanisms such as workshops and written and oral comment.

5.3 RESULTS OF SURVEY ON PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

Empirical research was done to test the elements identified in the literature study, as well as to verify the analysis of current processes, as described in Section 5.2 of this chapter. A small sample was selected to test the opinion of a range of groups involved in public participation in national environmental governance. This research was not intended to be comprehensive.

The following sectors were identified and respondents were selected on the basis of their experience or knowledge on the issue of public participation:

- Government – National
- Government – Provincial
- Government – Local
- Business and industry
- Labour organisations
- Non-governmental organisations
- Consultants
- UN / AID agencies
- Youth/disabled/Gender Commission
- Academia/researchers

The ten categories or sectors that were identified for the completion of the questionnaire, were based mainly on the five sectors identified in NEMA, 1998, Section

4(3)(a) (SA, 1998:14). Other sectors such as consultants, academia and the youth were included due to the important role that they play in various public participation processes.

The author compiled a list of people working in each of these 10 categories, utilising the names of people who have been involved in previous national environmental participatory processes such as CONNEPP and the drafting of the Integrated Pollution and Waste Management Strategy. These names are reflected in the *White Paper on National Environmental Management Policy, 1998* and were obtained from DEAT. Most of the selected respondents represented their sector in the Management and Advisory Team (MAT) of CONNEPP and therefore had the knowledge and experience of a national environmental policy process.

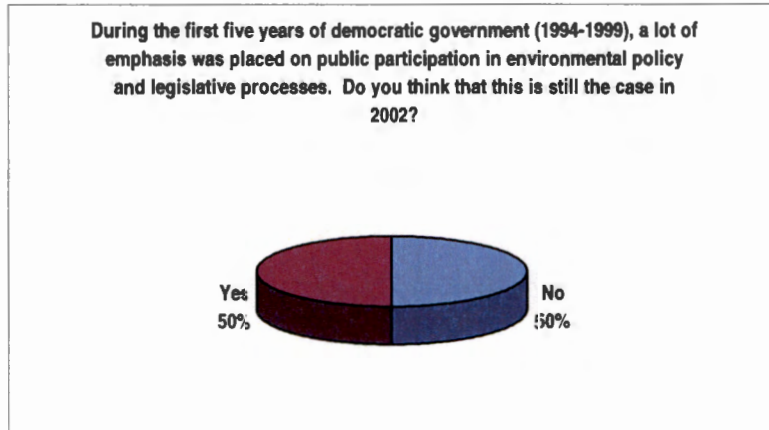
The questionnaire was developed on the typologies identified in the literature study. The model of the International Association for Public Participation was specifically tested in the current South African context, and was also used to look at the future role of public participation in environmental governance.

The questionnaire was e-mailed to all the respondents during October 2002. The response rate was only 55% (22 out of 40 respondents replied). Although this makes it difficult to make definite conclusions about each of the research aspects, it does indicate certain trends. These trends are correlated with the elements identified in the literature review, and are used to develop a framework for implementation in Chapter 6.

The results of the survey are reflected below as per the relevant question. The outcomes are fairly obvious and specific interpretations will only be provided where necessary. The bottom row in each graph indicates the number of responses to that particular question.

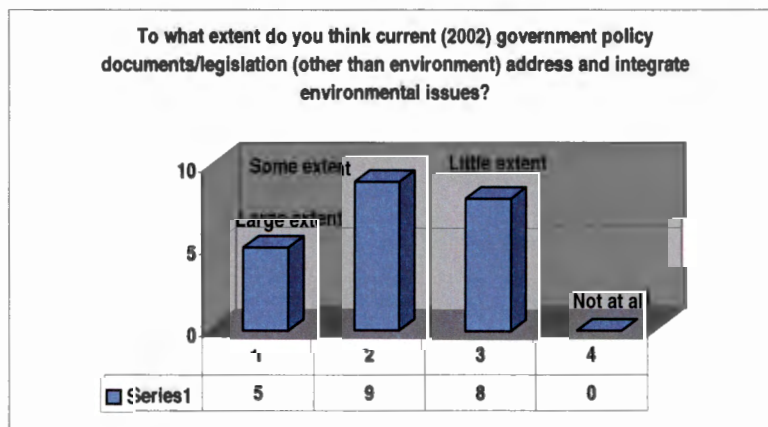
5.3.1 DEVELOPMENT OF PUBLIC PARTICIPATION IN SOUTH AFRICA SINCE 1994

FIGURE 5.3.1.1 OPINION OF RESPONDENTS ON WHETHER GOVERNMENT'S EMPHASIS ON PUBLIC PARTICIPATION IN 2002 IS STILL THE SAME AS IN 1994



It is interesting to note that the above graph shows an equal split of opinions, even though most of the respondents are of the opinion that the DEAT has done very little to establish mechanisms for participation as prescribed by NEMA. [Response to question B (1)].

FIGURE 5.3.1.2 OPINION OF RESPONDENTS ON LEVEL OF INTEGRATION OF ENVIRONMENTAL ISSUES IN GOVERNMENT POLICY AND LEGISLATION

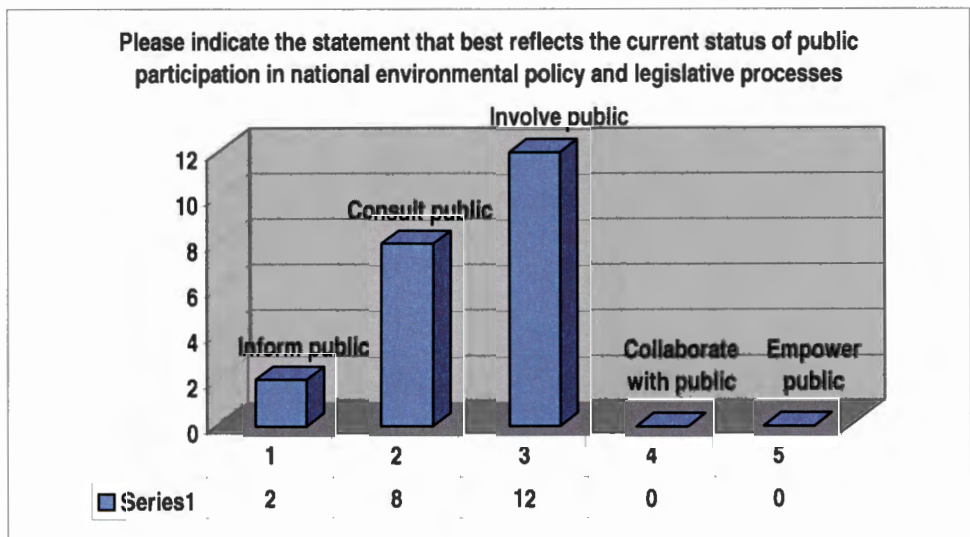


Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

The above graph seems to indicate that the awareness and importance of environmental issues in Government is fairly high. [Response to question B(4)].

5.3.2 APPLICATION AND IMPLEMENTATION OF PUBLIC PARTICIPATION PROVISIONS AS PRESCRIBED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT

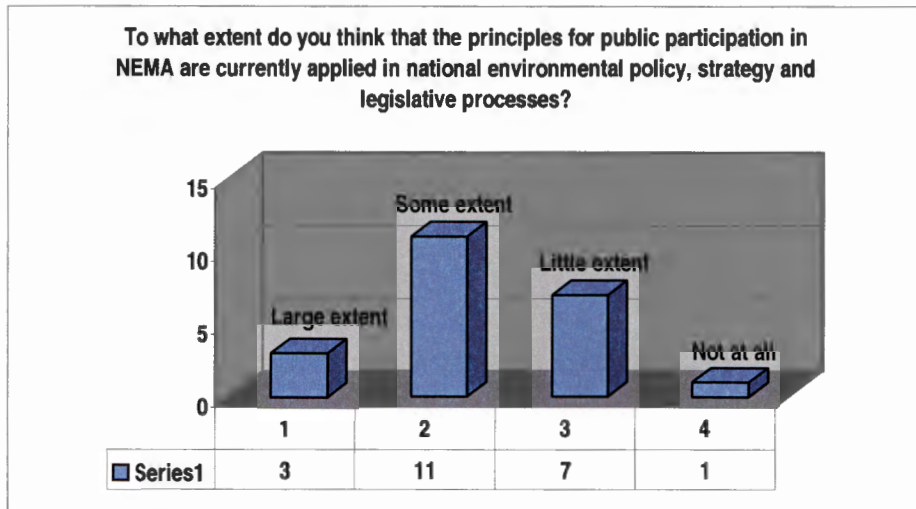
FIGURE 5.3.2.1 OPINION OF RESPONDENTS ON STATUS OF PUBLIC PARTICIPATION IN ENVIRONMENTAL POLICY AND LEGISLATIVE PROCESSES



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

The above graph indicates that currently participation is mainly to obtain feedback from the public and to involve them through workshops, etc. Government takes the final decisions [Response to question C(1)].

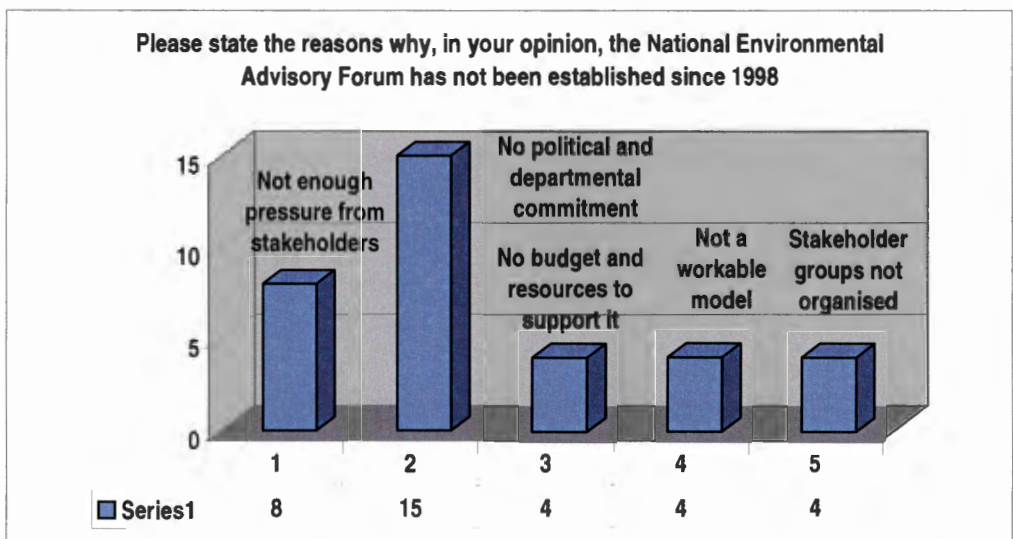
FIGURE 5.3.2.2 OPINION OF RESPONDENTS ON THE APPLICATION OF PRINCIPLES FOR PUBLIC PARTICIPATION IN NATIONAL ENVIRONMENTAL POLICY PROCESSES



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

Again, although most respondents indicated that the DEAT does not comply with NEMA, 1998 in terms of the establishment of mechanisms for participation, the principles themselves are applied to some extent [Response to question C(2)].

FIGURE 5.3.2.3 OPINION OF RESPONDENTS OF THE REASONS WHY THE NATIONAL ENVIRONMENTAL ADVISORY FORUM HAS NOT BEEN ESTABLISHED

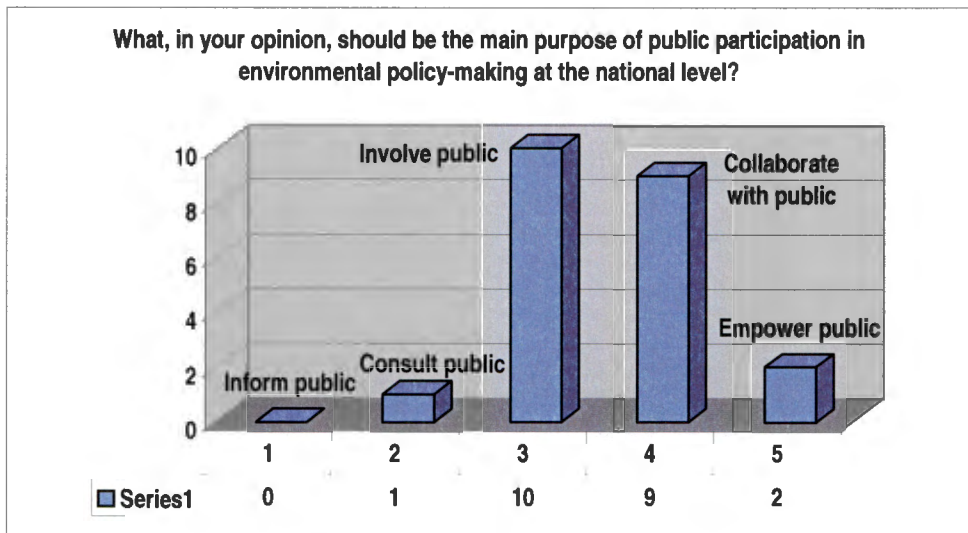


Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

There is clearly a perception that there is no political or departmental commitment to establish the NEAF [Response to question C(3)].

5.3.3 CURRENT NEEDS AND REQUIREMENTS FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

FIGURE 5.3.3.1 OPINION OF RESPONDENTS ON THE MAIN PURPOSE OF PUBLIC PARTICIPATION IN ENVIRONMENTAL POLICY-MAKING AT NATIONAL LEVEL

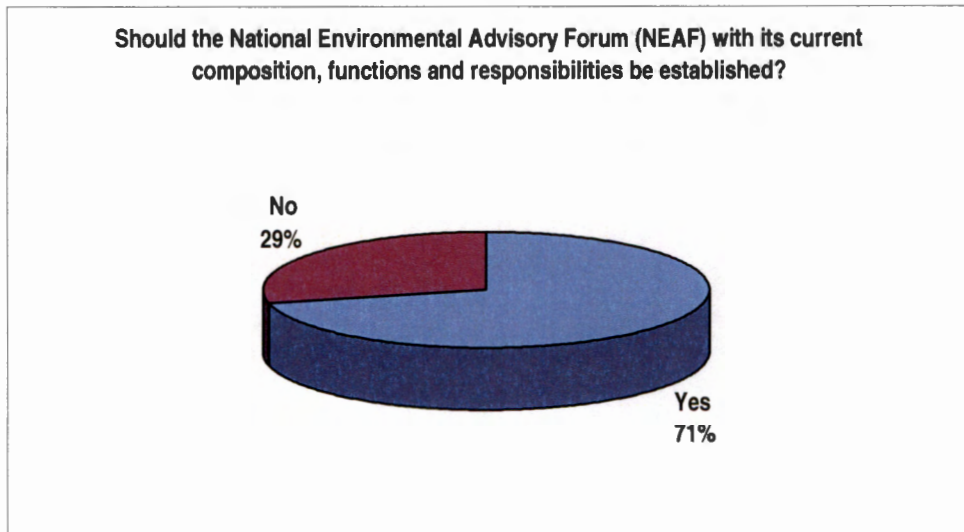


Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

The IAP2 spectrum for public participation was used to determine what the purpose of public participation should be at national level. This shows a clear shift from the responses to the current situation – see graph one page early - confirms the trends in the literature that the public should become more involved as partners with Government, especially in the sustainability debate [Response to question D(1)].

Mechanisms have to be created to accommodate this, since the current institutional model does not provide for participatory decision-making in the sense that Government is not represented on the NEAF.

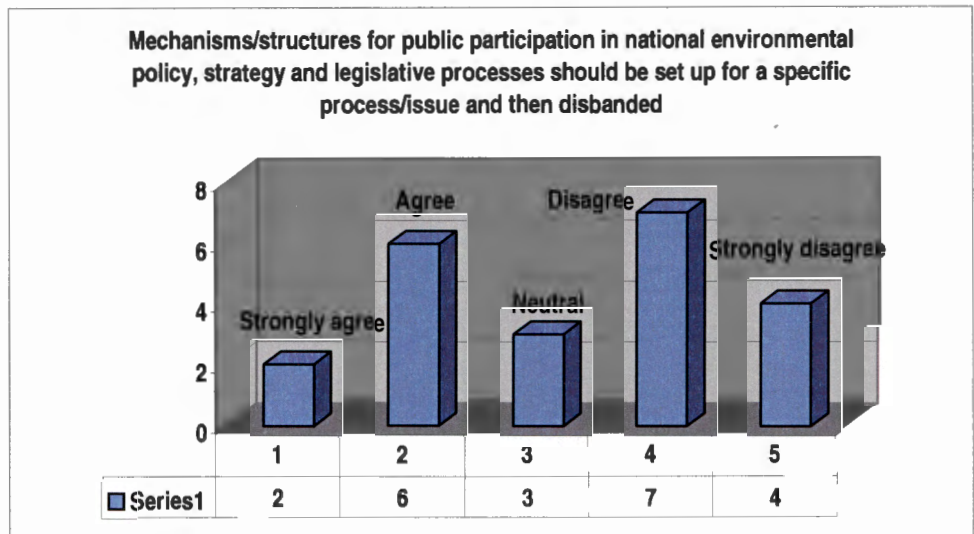
FIGURE 5.3.3.2 OPINION OF RESPONDENTS ON WHETHER THE NATIONAL ENVIRONMENTAL ADVISORY FORUM SHOULD BE ESTABLISHED



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

Those who said that the NEAF should not be established are of the opinion that it could be established, but in a different form or the functions revisited. These respondents mostly indicated that it should have stronger decision-making powers [Response to question D(2)].

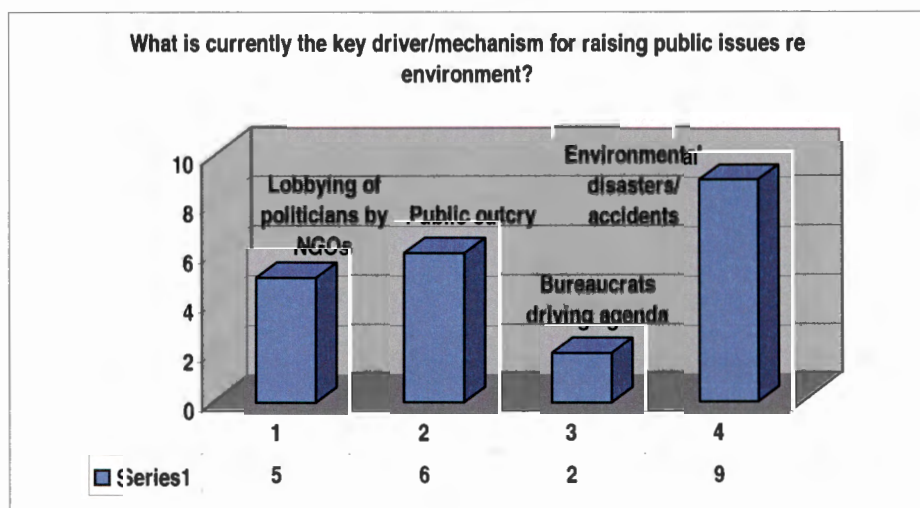
FIGURE 5.3.3.3 OPINION OF RESPONDENTS ON WHETHER MECHANISMS FOR PUBLIC PARTICIPATION AT NATIONAL LEVEL SHOULD BE TEMPORARY AND ISSUE-BASED



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

Respondents seem to be divided on the model of setting up structures for specific processes or projects. It was proposed that the sub-committees of the NEAF could be set up for specific purposes and then disbanded once the task has been performed [Response to question D(4)].

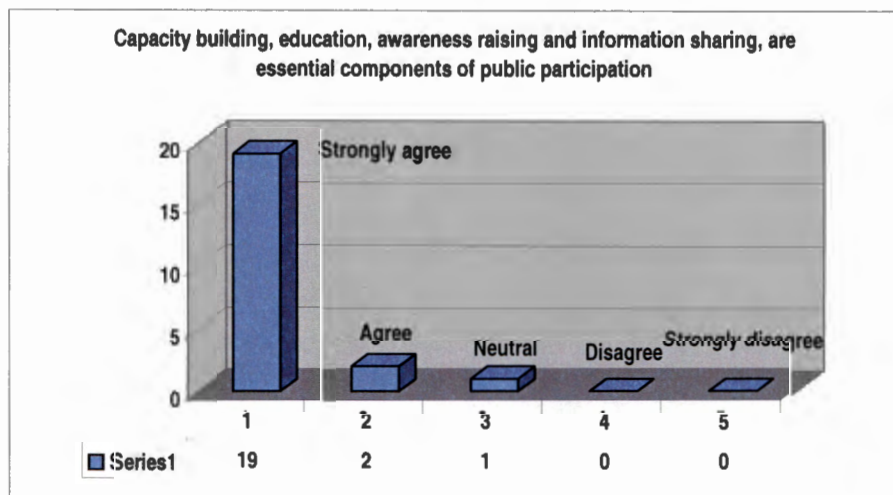
FIGURE 5.3.3.4 OPINION OF RESPONDENTS ON THE CURRENT MECHANISMS FOR RAISING PUBLIC ISSUES



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

According to Butler and Hallows (2002:58), civil society doubts Government's commitment to address issues of pollution control, as experienced in Durban South, and is resorting to the media to highlight its plight. The above graph seems to indicate that Government does not proactively engage the public on issues, and that the public has to resort to other mechanisms to have their voices heard [Response to question D(5)].

FIGURE 5.3.3.5 OPINION OF RESPONDENTS ON THE IMPORTANCE OF CAPACITY BUILDING AND EDUCATION AS COMPONENTS OF PUBLIC PARTICIPATION



Series 1: This refers to the number of respondents (n) that responded to that specific option under each question.

The above graph clearly indicates that capacity building, education, awareness raising and information sharing are crucial for a framework for the implementation of public participation [Response to question D(6)].

5.3.4 GENERAL COMMENTS

The following general comments were made by the various respondents in response to question E of the questionnaire:

- Value and organisation of proactive public participation processes are still poor in national environmental policy and legislative processes.
- Public participation should become an integral part of decision-making and implementation by Government.
- The NEAF should not be established in its current form since it is inappropriate to establish a body whose advice may or may not be observed, as is now prescribed by the NEMA, 1998.
- Multi-stakeholder forums established to hear the views of the public, receive their input and expose the different points of view, are invaluable.
- Public participation in environmental management is in a big way linked to political democratic processes.
- South Africa is actually a leader in the field of public participation.
- It is suggested that a suitable institutional mechanism be clarified through a consultative process with stakeholders.
- Officials do not understand public participation and the difference between that and capacity building.
- Parliament should always retain its role as the final decision-maker.
- The overriding aim for public participation should be to achieve sustainable development.
- An under-resourced NEAF with a low credibility (within Government) should rather not be established.
- Improved gathering of information via monitoring of impacts is essential for effective public participation.

5.4 CONCLUSION

The analysis of current practices has shown clearly that there is little compliance with the public participation provisions in NEMA. The survey indicates that there is a new role for the public in environmental decision-making and policy processes within the current political context. This will be explored further in Chapter 6.

CHAPTER 6

TOWARDS A FRAMEWORK FOR THE IMPLEMENTATION OF PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE IN SOUTH AFRICA

6.1 INTRODUCTION

A framework for the implementation of public participation in environmental governance at national level is hereby proposed, based on the review of international and national typologies and models for public participation, as well as the analysis of current practices and the opinions of various role players.

This chapter will mainly deal with two aspects: the elements of a framework for the implementation of public participation; and specific recommendations in respect of the national forum for public participation.

The underlying premise for the proposed framework is that the role of the public in environmental governance, and sustainable development for that matter, has shifted dramatically since 10 years ago. Partnerships between government and civil society are now sought to collectively address issues of sustainability.

This is far from the previous framework in the pre-1994 era in South African history, when public participation was viewed as a necessary evil. The various South African models explored in this study clearly show that when different role players act in a collective interest or to achieve a common goal, the value that is added in the process is what leads to sustainable solutions.

Resources are getting scarcer and with the trend of downscaling governments, it makes sense to enter into more formal partnerships with other role players in order to deliver on policies and strategies. The question is how these new partnerships or relationships should be structured. A proposal is made in this respect.

6.2 ELEMENTS OF A FRAMEWORK FOR THE IMPLEMENTATION OF PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE AT NATIONAL LEVEL

The various elements required for the effective implementation of the public participation principles and objectives as set out in NEMA, will be described below.

6.2.1 Overarching strategy for environmental governance and management

Public participation can only work when the respective role players, from their diverse backgrounds and interests, share a common vision and understanding of what needs to be achieved and what their role is in doing so.

One of the important reasons why the public has to be involved in environmental policy and legislative processes, is that it creates an environment of trust and confidence. When the people who have to obey the law have participated in its development, they have more respect for and confidence in that policy or legislation. Mistrust in Government often has its origins in unclear or hidden strategies and targets.

Although policies and legislation provide the framework within which the environment sector operates, it does not indicate clear objectives, targets, indicators, roles or responsibilities. These are the elements required to facilitate debate and co-operation between the various role players in the environment field.

The National Environmental Strategy and Action Plans (NESAP), as envisaged in the *White Paper on Environmental Management Policy*, have not been drafted since 1998 either. Although various other processes and documents such as the Environmental Implementation and Management Plans, etc, form part of this strategy, there is still no overarching implementation strategy which provides the framework for all role players, e.g. government, business, non-governmental organisations and labour, to work towards a common goal.

It can further be argued that environmental governance should now be seen within the broader scope of sustainable development. This is true, but as much as the economic and social components of the sustainability equation have their own objectives and targets, so should the environment sector have similar objectives and targets.

Butler and Hallows (2002:67) are also of the opinion that formal participation, such as in the case of the petrochemical industry and communities in Durban South, gives communities greater access to decision-makers, and also ensures mutual accountability.

It is acknowledged that inherent in the above statement is also a contradiction in the sense that the various role players will always pursue different objectives, positions and interests. But through the process of engagement, these differences can be minimised to a point where an overarching goal and objective could be set (this is the agreed strategy to implement the various policies). The different role players will each have a different responsibility within the implementation framework of the strategy, but the engagement process/participatory process will then focus more on the development and achievement of those common objectives.

This will also make it easier for the integration of environmental issues into the sustainability equation and linkages with economic and social issues will be facilitated.

Creighton (1999:4) supports this idea and is of the opinion that the approach to be followed with public participation is not whether or what the legal requirements are that need to be complied with, but rather what level of public participation we need in order to achieve our common objectives.

Government should be clear on its goals and objectives before entering into public participation processes. Common understanding of the process is crucial. The question could be asked: how this can be ensured?

The author is of the opinion that when all role players, i.e. government, business, industry, labour, civil society and non-governmental organisations, support the broader strategy of environmental management for the country, the issue of participation gets a whole new meaning. It then becomes a question of partnership between the role players/stakeholders to achieve a common goal.

It should be about making better and more informed decisions. The focus is shifted from the public participation process *per se* to the achievement of common objectives.

6.2.2 Proper environmental management systems and tools

Public participation is not a panacea. It is, however, one of the main instruments/tools/mechanisms used within the broader scope of an environmental management and governance system. As was stated in Chapter 3, civil instruments, such as those used in NEMA, 1998 have to be applied within the broader context of policy instruments used by Government.

The use of tools is again linked to the issue of a strategy for environmental management. When there is agreement on the objectives and targets to be met within a specific time frame, it will determine the kinds of tools or instruments required to achieve those targets. In the absence of a strategy and the lack of other policy instruments such as norms and standards, which could be used to benchmark performance by all role players, it becomes almost impossible for the public to monitor the implementation of the NEMA, 1998 principles, which is one of the roles given to the public.

6.2.3 Capacity-building, information and communication

It was clear from the survey that capacity-building, information and communication were seen as an essential component of public participation. When these aspects are put in place, the flow and sharing of information will also be facilitated because everybody is clear on what should be achieved.

Information-sharing as a two-way process between Government and the public is one of the critical elements for effective public participation. It implies that Government is willing to share its intentions and decision-making processes with the public, but the same is true of the public.

Information empowers civil society to lobby and to participate more effectively. Information, education and capacity-building are the basic building blocks for effective public participation.

NEMA, 1998 does not indicate how information should be collected, analysed and disseminated, except in the Agenda 21 report (Nel and Du Plessis, 2001:25). Procedures should be clarified through regulations or guidelines.

6.3 A NEW NATIONAL FORUM FOR PUBLIC PARTICIPATION

The survey resulted in support for the creation of an NEAF, as it is currently prescribed in NEMA, 1998 although some amendments were recommended. With the review of international trends, as well as national models, this study proposes that a participatory forum be established for national environmental governance, but that NEMA, 1998 be amended to make provisions for a structure that is relevant within the current socio-political context.

A new model for the NEAF is proposed, based on the premise that the elements, as set out in Section 6.2 above, are put in place. The proposed model is based on other examples in South Africa such as the catchment management authorities and boards and the National Economic Development and Labour Council (NEDLAC).

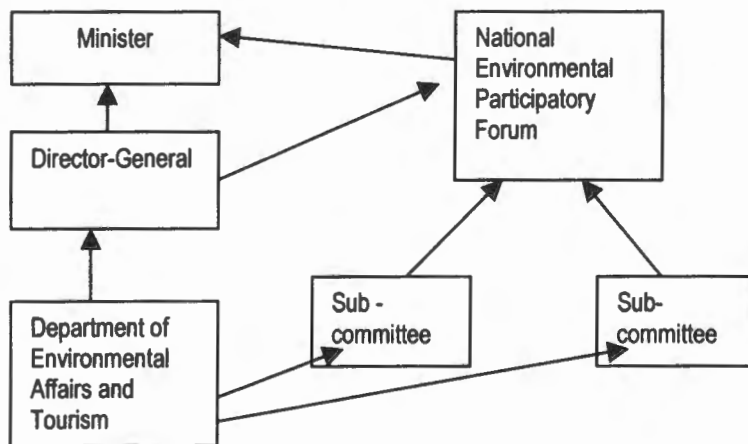
The model we need is one that provides a balance between technical input and stakeholder input (Claassen, 2002:11) in order to inform the proposals made to politicians.

6.3.1 Composition of the new forum

The NEAF should be amended to include Government, so that it becomes more than an advisory forum to the Minister, but rather a forum for engagement/interaction between the various role players (almost like the MAT of CONNEPP) in the national environmental governance arena, which can then jointly make proposals to the Minister.

Nel and Du Plessis are also of the opinion that because the NEAF is advisory in nature, it does not allow for participation in decision-making (2001:24).

FIGURE 6.3.1.1: PROPOSED MODEL FOR NATIONAL ENVIRONMENTAL PARTICIPATORY FORUM



The sectors as currently proposed by NEMA, 1998 should be revisited and criteria should be established for the selection of experts.

6.3.2 Functions of National Environmental Participatory Forum (NEPF)

It is proposed that the forum be called either the National Environmental Consultative Forum (NECF) or the National Environmental Participatory Forum (NEPF).

The purpose of this forum will be to seek consensus on issues of environmental governance. Government will still take the final decisions, but the forum should, as far

as possible, take joint responsibility for managing the environment, as set out in Section 4 of NEMA.

Sub-committees should become a working mechanism for the DEAT and its stakeholders, because the current composition and functioning of the NEAF implies that its sub-structures might duplicate or run parallel to departmental committees, as it does not include Government as a member.

Lukey (2001:5) indicates that the following benefits could be derived from setting up the NEAF:

- A legitimate body to engage with (which provides the opportunities to access skills, expertise, knowledge, buy-in and joint problem-solving).
- Cost-effectiveness (time, budget, avoiding duplication of effort).
- Balanced and effective interaction (Government should engage all stakeholders on an equal basis and the perceptions that those with the resources, i.e. business and industry always have a greater influence on the development of government policy than poor people with little resources can be rendered invalid). The NEAF, through its representative mechanism, could at least level the playing field.

However, if the political thinking is that participation is no longer of any importance, then a structure such as the NEAF will not work. The leadership role in the NEAF is an important role to be played by the Minister and the Director- General.

It is, therefore, suggested that the forum be chaired by the Director-General or his/her designated representative.

Partnerships might be a dream, but when there is mutual trust and commitment, people can become partners in delivering a common goal, such as in the case of CONNEPP, irrespective of whether they share the same level of skills and resources.

Section 6(2) of NEMA should be amended. It is proposed that the Director-General does not designate officers to assist the forum with the performance of its work

(because the law is unclear as to whether “assisting with the performance” implies the actual work or the administration), but rather builds the capacity of the officials by making them members of the sub-committees. Administrative support can still be provided from the DEAT, but officials will be actively participating in the work of the forum.

6.3.3 Linkages with Committee for Environmental Coordination (CEC) and Mintech

The CEC is a statutory committee established by NEMA, 1998 to facilitate and ensure co-operative governance in the environmental field (SA, 1998). The CEC operates on the basis of sub-committees. The relationship between the sub-committee of the NEPF/ NECF should be clarified, because the CEC has already established sub-committees on Biodiversity for example, that brings together government and other role players in one committee.

6.3.4 Benefits of the new framework versus the current one prescribed by NEMA, 1998

The author is of the opinion that the proposed new model for the forum has several benefits. These include:

- The role of the Department will not be undermined, as the case will be if the current NEMA, 1998 provisions are implemented.
- The Minister gets one set of advice, which has already been discussed and integrated between the Department and stakeholders (given that they currently have to consult the Director-General [Section 3(3)] before bringing something to the Minister’s attention).
- It will increase the resource base for environmental management, apart from saving resources.
- The civil society of the south must be assisted to play a greater role in international governance (Ling and Khor, 2001:21). With appropriate capacity-building, strong alliances can be forged at the national, regional and international level to intensify

knowledge and strengthen research and policy-formulation to promote the perspectives and positions of the south.

This proposal should also be seen within the broader context of creating national mechanisms for sustainable development such as commissions or councils. This proposal is, however, meant to provide a platform for the environment sector/component of sustainable development. In the absence of a national sustainable development forum, this new framework could serve as a model for the other sectors.

Although the National Economic Development and Labour Council (NEDLAC) is already a model in use for the economic sector, the social sector perhaps lacks such a formal mechanism.

6.3.5 Shortcomings of the model

The author is of the opinion that the proposed model does have certain shortcoming. These include:

- The feedback from representatives to constituencies might be problematic (Government can assist with this in terms of information dissemination etc).
- Organised sectors do not always represent marginalised and rural communities specifically. Civil society is weakened by leadership taken up in Government structures.
- Funding (can and should be budgeted for by the DEAT as per NEMA, 1998).

There is, however, concern that civil society is never resourced enough to become an equal partner and this will have to be resolved (Butler and Hallows, 2002:63). It seems that Government is outsourcing its responsibilities with regard to industry and wants civil society to be the watchdog: but can they?

Governance in a democracy does not only require participation by stakeholders, but also accountability (if the rule of law applies, then there should be an entity for taking accountability for decisions – politically, financially and legally).

When people have been involved in the actual process of decision-making, even when they do not agree with the outcomes of a process, there will be more support from them towards the implementation of the decision, than when there has been no participation at all. The process aspect of public participation should therefore never be underestimated.

When people are part of the whole process, in other words, when they have contributed to the initial ideas, etc, they are more prone to commit to it, even if it does not result in exactly what they wanted. When they are just informed or have been asked to respond to Government's ideas, it becomes less their own thinking.

6.4 CONCLUSION

The role of Government will be to lead and facilitate the decision-making process, rather than making the decisions all by themselves. New decision-making structures and communication channels between those making decisions and those affected by them are, therefore, needed – hence the proposed amendments to the current NEAF model in which it is replaced by a forum that includes Government as a key player.

The longer-term trend towards the downsizing of governments and devolving responsibilities to local governments will also continue. This will be accompanied by increasing reliance on business and civil society in governance.

A joint statement by Minister Moosa (Minister of Environmental Affairs and Tourism) and Minister Dlamini Zuma (Minister of Foreign Affairs) after the World Summit on Sustainable Development indicates the importance of the role of civil society in environmental governance and sustainable development today: "Critical in managing Summit preparations and discussions, and in implementing its decisions, was the active participation of civil society. Partnerships between governments and civil society organisations, including NGOs, CBOs and business, will be strengthened" (press statements by Ministers Moosa and Dlamini-Zuma on 5 September 2002, after the World Summit on Sustainable Development).

CHAPTER 7

CONCLUSION

Upon conclusion of this study it became evident that:

- Elements of a framework for public participation in environmental governance at national level could be identified from the review of international and national typologies and models for public participation. This was done on the basis of a literature study of international and national typologies and models for public participation in environmental governance.
- Current practices could be partially tested against the legal framework in NEMA, 1998 and the views of a range of stakeholders on the purpose and requirements for public participation obtained. Due to a low response rate from respondents, the conclusions from the survey on public participation in environmental governance can only be used to a limited extent.
- A framework for the implementation of public participation in environmental governance at national level with specific recommendations on the National Environmental Advisory Forum (NEAF) could be developed.

The typologies and models from the international and national reviews could be utilised in the analysis of the public opinion on the current status of public participation, as well as the ideal model for public participation.

This study only focused on environmental policy, strategy and legislative processes at national level. In order to provide a comprehensive framework for public participation in environmental governance in South Africa, all processes at the national, provincial and local government levels should be reviewed.

BIBLIOGRAPHY

ARNSTEIN, S. 1969. A ladder of citizen participation. *Journal of the American Institute of Planners*, 35:216-224.

BARNARD, D. 1999. Environmental law for all: a practical guide for the business community, the planning professions, environmentalists and lawyers. Pretoria: Impact Books.

BELL, R., STEWART, J. & NAGY, M. Fostering a culture of environmental compliance through greater public involvement. *Environment*, 44(8):34-44.

BOLIVIA SUMMIT. 1996. Public participation for sustainable development, Summit Conference on Sustainable Development, Santa Cruz de la Sierra, Bolivia.

BRAY, E. 1999. Co-operative governance in the context of the National Environmental Management Act 107 of 1998. *South African Journal of Environmental Law and Policy*, 6(1):1-12.

BRUCH, C., COKER, W. & VAN ARSDALE, C. 2000. Breathing life into fundamental principles: implementing constitutional environmental protections in Africa. *South African Journal of Environmental Law and Policy*, 7(1):21-96.

BUTLER, M. & HALLOWES, D. Corporate accountability in South Africa: the petrochemical industry and air pollution. The Ground Work Report 2002. Pietermaritzburg: Groundwork.

CLAASSEN, P. 2002. The role of environmental management (spatial planning, development planning and conservation of the natural environment) in promoting sustainable development in South Africa. University of Stellenbosch: Unpublished.

CREIGHTON, J.L. 1999. Public participation in federal agencies' decision making in the 1990s. *National Civic Review*. 88(33):249.

DE VILLIERS, S. 2001. A People's Government. The People's Voice. Cape Town: The Parliamentary Support Programme.

DORCEY, A.H.J. & McDANIELS, T. 1999. Great expectations, mixed results: trends in citizen involvement in Canadian environmental governance. Unpublished.

ECONOMIC COMMISSION FOR EUROPE 1998. Aarhus 'Convention on Access to Information, Public Participation' in Decision-making and access to justice in environmental matters, submitted by the ECE Committee on Environmental Policy through the Ad Hoc Preparatory Working Group of Senior Officials.

HABERMAS, J. 1984. The theory of communicative action. Boston: Beacon Press.

HANKS, J. 1998. Achieving Industrial Sustainable Development in South Africa: what role for 'Self-regulatory' and 'co-regulatory' instruments ? *South African Journal of Environmental Law and Policy*, 5(2):298-354.

HEALEY, P. 1992. Planning through debate: the communicative turn in planning theory. *Town and Regional Planning Review*, 63(2):143-162.

INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION (IAP2), 2000. Public participation spectrum. <<http://www.iap2.org/practitionertools/spectrum.html>> accessed on 15/09/2002.

INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION (IAP2), 2002. Public participation – critical for sustainable development. Leaflet for World Summit on Sustainable Development, Johannesburg. <<http://www.iap2.org.html>> accessed on 15/09/2002.

KIDD, M. 1999. The National Environmental Management Act and Public Participation. *South African Journal of Environmental Law and Policy*, 6(1):21-31.

KIGGUNDU, M.N. 1998. Civil service reforms: limping into the twenty-first century in *Beyond the new public management: changing ideas and practices in governance*, edited by Minogue...[et al]. Cheltenham: Edward Elgar.

LAZARUS, P. 2000. Briefing document prepared for initial consultation with relevant authorities regarding law reform programme for environmental assessment. Unpublished.

LEROTHOLI, N. & WILSON, J. 2000. Public participation in the National Environmental Management Act (NEMA). Unpublished.

LE QUESNE, T. 2000. The divorce of environmental and economic policy under the first ANC government, 1994-1999. *South African Journal of Environmental Law and Policy*, 7(1):1-20.

LING, C.Y. & KHOR, M. 2001. International environmental governance. Some issues from a developing country perspective. Malaysia: Third World Network.

LUKEY, P. 2001. A motivation for the urgent formation of the National Environmental Advisory Forum. Internal discussion document for Department of Environmental Affairs and Tourism. Unpublished.

LUTSCH, W. 2002. Correspondence. 20 October, Pretoria.

MALMO MINISTERIAL DECLARATION, 2000. First Global Ministerial Environment Forum, Malmo, Sweden, 29-31 May 2000.

MABALANE, I. 2002. Correspondence. 15 October, Pretoria.

MAKARA, M. 2001. SASOL Public participation guidelines. Johannesburg: Sasol Safety, Health and Environmental Centre.

MANGIA, M.V.M. 2001. An evaluation of planning theory's ability to provide guidelines for "Effective Public Participation" with particular reference to the Cato Manor Development Project in the City of Durban. Dissertation submitted for BSC Town and Regional Planning, University of the Witwatersrand. Unpublished.

MINOGUE, M., POLIDANO, C. & HULME, D. 1998. Beyond the new public management. changing ideas and practices in governance. Cheltenham: Edward Elgar Publishing.

NATIONAL DEVELOPMENT & PLANNING COMMISSION, 1999. Resource document on the Chapter 1 Principles of the Development Facilitation Act 1995. Pretoria: National Development Planning Commission.

NEL, J. & DU PLESSIS, W. 2001. An evaluation of NEMA based on a generic framework for environmental framework legislation. *South African Journal of Environmental Law and Policy*, 8(1):1-37.

PEART, R. & WILSON, J. 1998. Environmental policy-making in the new South Africa. *South African Journal of Environmental Law and Policy*, 5(2):237-267.

RABIE, A. 1999. Governmental policy reviews and reforms relating to the environment. *South African Journal of Environmental Law and Policy*, 6(1):121-148.

REYBURN, P. 2002. Stand up for your rights as a group or an individual. *Business Day Law Review*, October 2002.

RYAN, D.E. 2001. Integrating development and public participation in international environmental governance. Paper delivered at World Conservation Union (IUCN) workshop on Global Environmental Governance, 20-22 June 2001, Switzerland.

SOUTH AFRICA. Department of Environment Affairs. 1992. Integrated environmental management guideline series. Pretoria: Department of Environmental Affairs.

RECONSTRUCTION AND DEVELOPMENT PROGRAMME (RDP), 1994. A policy framework. <<http://www.anc/polity.org.za>> accessed on 20/02/2002.

SOUTH AFRICA. 1995. The Development Facilitation Act, no 67, 1995. Pretoria: Government Printer.

SOUTH AFRICA. 1996. The Constitution of the Republic of South Africa, no 108, 1996. Pretoria: Government Printer.

SOUTH AFRICA. 1997. White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity. Pretoria: Government Printer.

SOUTH AFRICA. 1998. The National Water Act, no 36 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 1998. White paper on National Environmental Management Policy. Pretoria: Government Printer.

SOUTH AFRICA. 1998. National Environmental Management Act, no. 107 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. Department of Environmental Affairs and Tourism. 2000. Strategic environmental assessment in South Africa – guideline document. Pretoria: Department of Environmental Affairs.

SOUTH AFRICA. 2000. White Paper on Integrated Pollution and Waste Management. Pretoria: Government Printer.

SOUTH AFRICA. 2000. Promotion of Administrative Justice Act, no. 3, 2000. Pretoria: Government Printer.

SOUTH AFRICA. Department of Water Affairs and Forestry. 2000. Guide 4: Public participation for Catchment Management Agencies and Water User Agencies. Pretoria: Government Printer.

SOUTH AFRICA. Department of Water Affairs and Forestry. 2001. Public participation for Catchment Management Agencies and Water User Associations. Guide 4 in CMA and WUA series. Pretoria: Government Printer.

SOUTH AFRICA. Department of Environmental Affairs and Tourism. 2002. Stakeholder engagement. Pretoria: Department of Environmental Affairs and Tourism (DEAT)(Integrated environmental management series; no 3).

UNITED NATIONS, 1992. Earth Summit Agenda 21: The United Nations Programme of Action from Rio. United Nations Conference on Environment and Development (UNCED) 3-14 June 1992. New York: United Nations, Department of Public Information.

UNITED NATIONS, 1997. Earth Summit +5. Programme for the further implementation of Agenda 21. New York: United Nations, Department of Public Information.

UNITED NATIONS, 2002. Johannesburg Plan of Implementation 2002. World Summit on Sustainable Development 26 August – 4 September 2002. New York: United Nations, Department of Public Information.

UNITED NATIONS ENVIRONMENT PROGRAMME 2002. <<http://unep.org/documents.htm>> accessed on 15/09/2002.

VAN DER MERWE, C. 2001. Final report on the Consultative National Environmental Policy Process (CONNEPP). Unpublished.

WIECHERS, H. & COULSON, N. 2001. CONNEPP History – final report. Unpublished.

Annexure A

SURVEY ON PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

PLEASE MARK THE RELEVANT BLOCK OF YOUR CHOICE WITH AN 'X' FOR EACH OF THE QUESTIONS BELOW, EXCEPT IF OTHERWISE INDICATED.

**SECTION A :
BIOGRAPHICAL INFORMATION**

Please indicate the relevant sector in which you are currently employed					
1	Government – National		6	Labour organisation	
2	Government – Provincial		7	Academic or research institution	
3	Government – Local		8	Youth/disabled commission	
4	Business/industry		9	Consultant	
5	Civil society/NGO		10	UN/Aid agency	

**SECTION B :
DEVELOPMENT OF PUBLIC PARTICIPATION IN SOUTH AFRICA SINCE 1994**

1	During the first five years of democratic government (1994-1999), a lot of emphasis was placed on public participation in environmental policy and legislative processes. Do you think that this is still the case in 2002?	YES	
		NO	
2	If your answer to Question 1 was NO, please provide no more than three reasons to substantiate your answer.	2.1	
		2.2	
		2.3	
3	The RDP base document had a strong environmental focus, but the RDP White Paper, released in September 1994, as well as GEAR, hardly mentioned environmental issues – please provide no more than two reasons why, in your opinion, this was the case?	3.1	
		3.2	
4	To what extent do you think current (2002) government policy documents/legislation (other than environment) address and integrate environmental issues?	Large extent	
		Some extent	
		Little extent	
		Not at all	
5	If your answer to question 4 was NO (not at all), please provide no more than two reasons to substantiate your answer.	5.1	
		5.2	
6	The World Summit on Sustainable Development (WSSD) focused a lot on partnerships to facilitate sustainable development. What, in your opinion, if any,	6.1	

are some of the implications of the outcomes of WSSD for the future of public participation in environmental governance at national level? Please provide no more than two reasons.	6.2	
---	-----	--

**SECTION C :
APPLICATION AND IMPLEMENTATION OF PUBLIC PARTICIPATION PROVISIONS AS
PRESCRIBED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT**

1	Please indicate the statement that best reflects the current status of public participation in national environmental policy and legislative processes. Please select only one option and mark with an x.	1.1	Informing the public (provide public with information).	
		1.2	Consulting the public (get feedback from public on issues).	
		1.3	Involving the public (public is part of the process, but Government takes the final decisions)	
		1.4	Collaborating with the public (include public advice to maximum extent in decisions – joint decision-making).	
		1.5	Empowering the public (public takes final decisions on what is policy/legislation)	
2		To what extent do you think the principles for public participation in NEMA are currently applied in national environmental policy, strategy and legislative processes?	Large extent	
		Some extent		
		Little extent		
		Not at all		
3	Please indicate no more than two reasons why, in your opinion, the National Environmental Advisory Forum has not been established since 1998.	Not enough pressure from stakeholders.		
		No political and departmental commitment.		
		No budget and resources to support it.		
		Not a workable model/ structure to facilitate public participation.		
		Stakeholder groups not organised.		
4	To what extent has the Department of	Large extent		

Environmental Affairs and Tourism complied with NEMA in terms of the establishment of procedures, mechanisms and guidelines for public participation since 1998?	Some extent	
	Little extent	
	Not at all	

**SECTION D :
CURRENT NEEDS AND REQUIREMENTS FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE**

1	What, in your opinion, should be the main purpose of public participation in environmental policy-making at national level? Please select only one option and mark with a x.	1.1	To inform the public (provide public with information).	
		1.2	To consult the public (get feedback from public on issues).	
		1.3	To involve the public (public is part of the process, but government takes final decisions).	
		1.4	To collaborate with the public (include public advice to maximum extent in decisions – joint decision-making).	
		1.5	Empower the public (public takes final decisions on what is policy/legislation)	
2		Should the National Environmental Advisory Forum (NEAF) with its current composition, functions and responsibilities still be established?	YES	
		NO		
3	If your answer to Question 2 above was NO, please substantiate.			
4	Mechanisms/structures for public participation in national environmental policy, strategy and legislative processes should be set up for a specific process/issue and then disbanded afterwards.	Strongly agree		
		Agree		
		Neutral		
		Disagree		
		Strongly disagree		

5	What is currently the key driver/ mechanism for raising public issues regarding the environment. Please select one.	Lobbying of politicians by NGOs.	
		Public outcry on issues of collective concern/interest.	
		Bureaucrats driving the agenda.	
		Environmental disasters/ accidents, etc.	
6	Capacity building, education, awareness raising and information sharing are essential components of public participation.	Strongly agree	
		Agree	
		Neutral	
		Disagree	
		Strongly disagree	

SECTION E :

PLEASE INDICATE IF THERE IS ANYTHING ELSE THAT YOU WOULD LIKE TO SAY ABOUT PUBLIC PARTICIPATION IN NATIONAL ENVIRONMENTAL GOVERNANCE POLICY AND LEGISLATIVE PROCESSES

Thank you for taking the time to complete this questionnaire.