

The legal framework for environmental auditing in the public sector in South Africa

**SA VAN ROOYEN
20801114**

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Supervisor/Promoter: PROF AA DU PLESSIS

Co-supervisor: MR RC ALBERTS

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ABSTRACT

Environmental auditing allows an entity to demonstrate concern for environmental matters and principles and to improve its compliance with environmental laws, regulations, policies *etcetera*. Environmental auditing may also lead to substantial cost savings and permit the entity to determine its environmental progress. These benefits are particularly attractive in South Africa in reaction to the situation described in recent reports documenting environmental performance and related environmental challenges.

As the custodian or trustee of South Africa's environmental resources, the government must execute the sustainable use and protection thereof for the benefit of all the people of South Africa and in accordance with its constitutional mandate. As a regulator, the government may conduct environmental auditing to govern other entities' environmental performance. Likewise, environmental auditing may be conducted in organs of state as regulated entities. In both instances environmental auditing, as an environmental governance instrument, may typically foster public sector compliance with environmental law, improved environmental practice, and operational environmental efficiency.

In this context, this study aims to interrogate the legal framework for environmental auditing in and by the public sector in South Africa. Through an analysis of South Africa's suite of environmental framework and sector legislation, the study explores and assesses the extent to which South African law provides for and regulates environmental auditing in and by the public sector.

Key words:

Environmental auditing; environmental governance instrument; environmental legislation; public sector

OPSOMMING

Omgewingsouditering laat 'n entiteit toe om erns te maak met omgewingsake en beginsels; en om 'n entiteit se nakoming van die omgewingswette, regulasies, beleid ensovoorts te verbeter. Dit kan verder lei tot aansienlike kostebesparings en kan 'n entiteit in staat stel om sy omgewingsvordering te bepaal. Hierdie voordele van omgewingsouditering is aantreklik vanuit 'n Suid-Afrikaanse oogpunt wanneer 'n mens kyk na die uitkoms van onlangse verslae wat kommerwekkende omgewingsprestasie in die land dokumenteer.

As die bewaarder of trustee van Suid-Afrika se omgewingshulpbronne, moet die regering die volhoubare gebruik en beskerming daarvan uitvoer tot voordeel van almal in die land en in ooreenstemming met 'n grondwetlike mandaat. As 'n reguleerder, kan die regering omgewingsoudits uitvoer om ander entiteite se omgewingsprestasie te beheer. Net so, kan omgewingsoudits uitgevoer word in onder andere staatsinstellings as geregleerde entiteite. In beide gevalle kan omgewingsoudits, as 'n omgewingsbestuurinstrument, gebruik word om die openbare sektor se nakoming met die omgewingsreg te bevorder; en om omgewingspraktyke en operasionele omgewingsdoeltreffendheid te verbeter.

In die lig van die bogenoemde is hierdie studie spesifiek daarop gemik om die wetlike raamwerk vir omgewingsouditering in en deur die openbare sektor in Suid-Afrika te ondersoek. Deur 'n ontleding van Suid Afrika se omgewingsraamwerk- en sektorwetgewing, ondersoek en beoordeel hierdie studie die mate waarin die Suid-Afrikaanse reg voorsiening maak vir en 'n regulerende raamwerk daarstel vir omgewingsouditering in en deur die openbare sektor.

Sleutelwoorde:

Omgewingsouditering; omgewingsbestuursinstrument; omgewingswetgewing; openbare sektor

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AGSA	Auditor-General of South Africa
AICPA	American Institute of Certified Public Accountants
APPA	Atmospheric Pollution Prevention Act 45 of 1965
CA	Competent authority
Constitution	Constitution of the Republic of South Africa, 1996
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
EA(s)	Environmental authorisation(s)
EIA Regulations, 2014	GN R98 in GG 38282 of 4 December 2014
EIA(s)	Environmental impact assessment(s)
EMP	Environmental management plan
EMPr	Environmental management programme
EPA	Environmental Protection Agency
IIA	Institute of Internal Auditors
IISD	International Institute for Sustainable Development
INTOSAI	International Organisation of Supreme Audit Institutions
IRBA	Independent Regulatory Board for Auditors
ISAs	Internal Standards on Auditing
ISO	International Organisation for Standardisation

ISO 14001: 2015	ISO 14001: 2015 Environmental Management Systems – Requirements with Guidance for Use
ISSAIs	International Standards of Supreme Audit Institutions
JMAA	Journal of Modern Accounting and Auditing
MEC	Member of the Executive Council
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
MSA	Local Government: Municipal Systems Act 32 of 2000
National Norms and Standards for the Storage of Waste	GN R926 in GG 37088 of 29 November 2013
NEM: AQa	National Environmental Management: Air Quality Act 39 of 2004
NEM: BA	National Environmental Management: Biodiversity Act 10 of 2004
NEM: ICMA	National Environmental Management: Integrated Coastal Management Act 24 of 2008
NEM: PAA	National Environmental Management: Protected Areas Act 57 of 2003
NEM: WA	National Environmental Management: Waste Act 59 of 2008
NEMA	National Environmental Management Act 107 of 1998

NHRA	National Heritage Resources Act 25 of 1999
NWA	National Water Act 36 of 1998
OECD	Organisation for Economic Co-operation and Development
PAA	Public Audit Act 25 of 2004
PDCA	Plan-Do-Check-Act
PDCAR	Plan-Do-Check-Act-Report
PELJ	Potchefstroom Electronic Law Journal
PFMA	Public Finance Management Act 1 of 1999
PSACF	Public Sector Audit Committee Forum
SA	South Africa/South African
SAI	Supreme Audit Institution
SAJELP	South African Journal of Environmental Law and Policy
SANS	South African National Standards
SEA	Strategic environmental assessment
SEMA	Specific environmental management acts
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WGEA	Working Group on Environmental Auditing

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CHAPTER 1 INTRODUCTION

According to the Independent Regulatory Board for Auditors (IRBA) and the Auditor-General of South Africa (AGSA), public sector auditing forms part of a government's regulatory system.¹ Such auditing typically aspires to disclose divergences from accepted standards and infringements of the principles of the effectiveness, efficiency, economy and legality of financial management soon enough to implement corrective action.² It further seeks to hold accountable those responsible, and to acquire compensation or to implement the actions necessary to prevent divergences and infringements.³

As the supreme audit institution (SAI) of the country, it is the constitutionally entrenched duty of the AGSA to use auditing to reinforce constitutional democracy in South Africa by advancing accountability, governance and oversight of government.⁴ Section 181 of the *Constitution of the Republic of South Africa*, 1996 (hereafter the Constitution) establishes the AGSA as a government institution,⁵ whilst section 188 prescribes its functions.⁶ These functions include, among others, auditing and reporting on the accounts, financial management and financial statements of all national and provincial government administrations and departments; all municipalities; and all other accounting entities or institutions as required by national or provincial law.⁷ The functions of the AGSA are further prescribed in the *Public Audit Act*⁸ (hereafter the PAA),⁹ the *Public Finance Management Act*¹⁰ (hereafter the

1 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

2 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

3 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

4 Ch 9 of the Constitution.

5 S 181(1)(e) of the Constitution.

6 S 188(1)-(4) of the Constitution.

7 S 188(1)(a)-(c) of the Constitution.

8 25 of 2004.

9 Ss 4(1)(a)-(f) and 4(2)(a)-(c) of the PAA.

10 1 of 1999.

PFMA);¹¹ and the *Local Government: Municipal Finance Management Act*¹² (hereafter the MFMA).¹³

In addition to the enabling domestic legal framework, auditing in the public sector is conducted in accordance with the International Organisation of Supreme Audit Institutions' (INTOSAI) Internal Standards on Auditing (ISAs).¹⁴ The INTOSAI has incorporated three audit guideline packages, which may be found in the International Standards of Supreme Audit Institutions (ISSAIs) into the ISAs, namely the *ISSAI 1000-2999: Financial Audit Guidelines*; *ISSAI 3000-3100: Performance Audit Guidelines*; and the *ISSAI 4000-4200: Compliance Audit Guidelines*.¹⁵

Public sector audits are classified into three key types, namely compliance, financial and performance audits.¹⁶ Compliance audits, which are conducted as part of financial audits, concentrate on whether or not a specific audit object, e.g. an action, facility or information, complies with the recognised audit criteria which rule the audited object.¹⁷ Financial audits concentrate on verifying whether or not an entity's financial information is reported according to the appropriate financial regulatory and reporting structures.¹⁸ Financial audits focus among other issues on financial accountability, statements, systems and transactions.¹⁹ Audits of predetermined

11 Ss 8(2) and 19(2) of the PFMA.

12 56 of 2003.

13 S 122(2) of the MFMA. The functions of the AGSA mentioned here are discussed in detail in ch 4 of this study.

14 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

15 ISSAI date unknown <http://www.issai.org/4-auditing-guidelines/general-auditing-guidelines/>; INTOSAI 2010 http://www.issai.org/media/13509/financial_audit_guidelines_e.pdf; ISSAI date unknown <http://www.issai.org/classification-principles/>. The three audit guideline packages form the fourth level of the ISSAI Framework. The hierarchical levels of the ISSAI Framework are as follows. The INTOSAI Founding Principles, i.e. the Lima Declaration, form the first level of the ISSAI Framework. The INTOSAI Principles and Guidelines for SAIs comprise the second level. On this level the fundamentals for the proper operation and specialised behaviour of SAIs are described. The INTOSAI Auditing Standards constitute the third level of the ISSAI Framework. This level explains the important values in conducting audits of public sector entities. The INTOSAI Audit Guidelines packages make up the fourth level. This level converts the important auditing values into exact, thorough and operative guidelines that can be utilised daily for auditing. The three audit guideline packages mentioned here are discussed in detail in ch 4 of this study.

16 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

17 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

18 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

19 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

objectives, which form an important component of financial audits, are conducted to acquire confidence in the reliability and practicality of the stated performance against predetermined objectives. They are also concerned with the planning, implementation, monitoring and reporting of performance information.²⁰

Sections 20(2)(c) and 28(1)(c) of the PAA make provision for audits of predetermined objectives, also known as mandatory audits, whilst section 20(3) of the PAA provides for performance audits, otherwise known as discretionary audits. Performance audits, as independent auditing processes, focus on whether entities, involvements and plans are functioning according to the principles of economy, effectiveness and efficiency and whether there are opportunities for development.²¹ They also assess the measures implemented by the management of an entity to certify that resources have been obtained economically and are employed effectively and efficiently.²² However, compliance, financial, and performance audits are not necessarily limited to the auditing of finance-related matters.²³

According to the INTOSAI, a SAI (such as the AGSA) may for example conduct “environmental” audits as part of its mandate to carry out compliance and financial or performance audits as defined in the INTOSAI’s ISAs. Governments are progressively acknowledging that the costs resulting from executing environmental responsibilities and strategies as well as from failure to execute or fully execute these responsibilities and strategies may be considerable.²⁴ These responsibilities and strategies may present contingent and material liabilities,²⁵ such as the costs associated with the clean-up or remediation of contaminated sites; environmental fines, penalties and taxes; and the purchase of pollution prevention technologies.²⁶ Environmental impacts can also considerably influence the valuation of equipment, factories, properties and structures.²⁷ The said environmental impacts, liabilities and

20 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

21 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

22 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

23 Conducting audits with an environmental perspective is further discussed in para 6 of this chapter.

24 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

25 Contingent liabilities, i.e. the costs are subject to a possible upcoming event.

26 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

27 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

costs influence the planning and audit of financial accounts.²⁸ A performance audit might, where appropriate,²⁹ be affected with: the economy of administrative procedures; the effectiveness of the plan or action in realising its objects and its planned effect; and the efficiency of the use of financial, human and other resources towards the plan or action.³⁰ An environmentally focussed performance audit can typically be categorised into one of five categories, i.e. audits of environmental management systems; audits of government checking of compliance with environmental legislation; audits of the environmental effect of additional government plans; audits of the execution of government environmental plans; and assessments of suggested environmental plans and strategies.³¹

Environmental auditing is regarded as an environmental governance instrument in terms of which government periodically employs procedures *inter alia* to objectively measure its own environmental performance or the environmental performance of another entity, and that identifies and reports the actions necessary to improve the existing level of environmental performance.³² The practice of environmental auditing is also internationally recognised, with environmental audits conducted in regions such as Africa, the Caribbean, Europe, the Middle East and in countries such as the United States.³³

The INTOSAI Working Group on Environmental Auditing (WGEA) identifies three types of environmentally relevant audits: compliance audits; audits of financial statements; and performance audits.³⁴ South Africa's Department of Environmental Affairs and Tourism (now the Department of Environmental Affairs) has identified five additional environmental audit types: environmental assessment audits;

28 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

29 In the setting of an audited entity's execution in completing government environmental plans and actions.

30 The principles of economy, effectiveness and efficiency mentioned here are discussed in detail in ch 2 of this study.

31 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf. The mandate to conduct "environmental" audits is discussed in detail in ch 4 of this study.

32 Wade 1995 *Eco-Management and Auditing Journal* 26. The various definitions of environmental auditing are referred to and discussed in detail in ch 3 of this study.

33 INTOSAI WGEA 2012 <http://www.environmental-auditing.org/tabid/126/RegionId/226/Default.aspx>.

34 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf. The three types of environmentally relevant audits mentioned here are discussed in detail in ch 3 of this study.

environmental due diligence audits; environmental management audits; supplier audits; and waste audits.³⁵

The other types of audits in which environmental issues can be addressed include environmental liability accrual; pollution prevention; product; site assessment; and transactional audits.³⁶ The environmental relevance of these audits lies therein that the issues being audited are interrelated. For example, an entity may decrease its monetary liability in terms of penalties for non-compliance with legal and other requirements and remediation by putting in place pollution abatement and remediation measures.³⁷ Thus, a comprehensive audit may address several issues, including environmental issues, simultaneously.³⁸

Frisch is of the view that environmental auditing allows an entity: a) to demonstrate concern for environmental matters and principles; and b) to improve an entity's compliance with environmental laws, regulations, policies *etcetera*; while it may further lead to c) substantial cost savings in an entity; and d) permit an entity to determine its environmental progress.³⁹ These benefits of environmental auditing are attractive from a South African point of view when one considers the outcome captured in recent reports documenting environmental performance in the country.⁴⁰ These reports allude to several environment-related challenges regarding the present state of the environment; stresses on the environment and the reactions to these stresses; the future condition of the environment if the present trends persist; and the nature of the recommended interventions that must be considered.⁴¹ The

35 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14* 5. The five environmental audit types mentioned here are discussed in detail in ch 3 of this study.

36 Stanwick and Stanwick 2001 *Journal of Corporate Accounting and Finance* 11-12.

37 IISD 2013 https://www.iisd.org/business/sd_journey.aspx.

38 Karagiorgos *et al* "Environmental auditing; conceptual framework and contribution to the business environment".

39 Frisch *The Application of Environmental Auditing Techniques to Cities and Regions* 12.

40 See, among others, DEA 2013-2014 https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf; DEAT 2006 http://soer.deat.gov.za/dm_documents/Executive_summary_5hHwD.pdf; and OECD 2013 [http://www.oecd.org/env/country-reviews/South%20Africa%20EPR%20\[f\]%20\[lr\].pdf](http://www.oecd.org/env/country-reviews/South%20Africa%20EPR%20[f]%20[lr].pdf).

41 DEAT 2006 http://soer.deat.gov.za/dm_documents/Executive_summary_5hHwD.pdf. Some of the environment-related challenges include, *inter alia*, an over-dependence on natural resources (SA's is ranked amongst the greatest carbon and energy-demanding economies); the escalating destruction caused by invasive species; inadequately regulated mining bringing about severe environmental harm; increased stresses on restricted water resources; reduced access to

report findings suggest that the government has been able to generate opportunities in the general environmental portfolio.⁴² These opportunities include protecting environmental resources by addressing environmental management challenges and the associated infrastructure development, while simultaneously growing the economy.⁴³ As the custodian or trustee of South Africa's environmental resources,⁴⁴ the government must execute the sustainable use and protection thereof for the benefit of all the people of South Africa and in accordance with its constitutional mandate.⁴⁵ As a regulator, the government may conduct environmental auditing to govern public sector entities' environmental performance. Likewise, environmental auditing may be conducted in organs of state as regulated entities.⁴⁶ In other words, environmental auditing may be conducted *in* and *by* the public sector. In both instances environmental auditing, as an environmental governance instrument, may be conducted to foster public sector compliance with environmental law;⁴⁷ improved environmental practice; and operational environmental efficiency.⁴⁸

Canvassed against the above, it seems both necessary and useful to explore and assess the extent to which South African law provide for and regulate environmental auditing in and by the public sector.⁴⁹ The departure point is that environmental auditing in this context may: a) contribute towards environmental accountability and integrity; b) improve environmental operations; and c) instil confidence amongst the public (civil society) and stakeholders that environmental resources are being managed effectively and responsibly.⁵⁰

environmental services, e.g. waste collection, and environmental quality; unlawful poaching and the unlawful wildlife trade.

42 DEA 2013-2014
https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf.

43 DEA 2013-2014
https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf.

44 E.g. heritage; mineral and petroleum; and water resources. The concept of "public trusteeship" is entrenched in the following South African legislation: s 3(1) of the MPRDA, NEMA, NEM: BA, NHRA and NWA. Also see van der Schyff *PELJ* 121-159.

45 Ss 7(2) and 24 of the Constitution.

46 As a regulated entity, the government's environmental performance is governed by public sector auditors.

47 By, e.g., conditions contained in licences.

48 AGSA 2013 <http://www.agsa.co.za/Documents/AGSAreports/AGSAsannualreports.aspx>.

49 Both by the government as a regulator and the government as a regulated entity.

50 IIA *Supplemental Guidance* 5.

The aim of this study is specifically to question the legal framework for public sector environmental auditing in South Africa. This question is contemplated from a legal viewpoint, while the study is founded in part on the basis of the constitutional mandate of the AGSA.⁵¹ As will be argued, this mandate may be interpreted to extend also to environmental auditing. Audits of this kind would typically focus on compliance with South Africa's suite of environmental framework⁵² and sector legislation.⁵³

The study is based on a literature review comprising an exploration of national and international literature on environmental auditing, which includes case law; government reports (including audit reports); internet sources; journal articles; relevant legislation; and textbooks. This material is analysed and incorporated in a set of findings, recommendations and the conclusion to the study.

The scope of and rationale behind public sector auditing, and environmental auditing as an environmental governance instrument, are discussed in chapters 2 and 3 respectively. Chapter 4 outlines the South African law framework on public sector environmental auditing, while Chapter 5 concludes the study with a discussion of the extent to which South African law regulate public sector environmental auditing. The discussion includes a summary of the findings and the formulation of recommendations.

51 Ch 9 of the Constitution.

52 NEMA.

53 Such as the NEM: PAA, NEM: ICMA and NEM: WA.

CHAPTER 2 THE SCOPE OF AND RATIONALE BEHIND PUBLIC SECTOR AUDITING

2.1 Introduction

This chapter discusses the scope of and rationale behind public sector auditing. Firstly, an overview of auditing in general and public sector auditing specifically is provided. This is followed by an exploration of the types of public sector audits in existence, the functions of public sector auditing and the guidelines steering public sector auditing. The essential characteristics of effective public sector auditors and audit committees in the public sector are then reviewed. Lastly, the reporting line of public sector auditors is discussed. The main aim of this chapter is to introduce auditing as an activity which is of increasing importance in the public sector.

2.2 An overview of auditing

2.2.1 Defining auditing

Various authors on the subject of auditing have defined different aspects of auditing.⁵⁴ As the extent of auditing continued to grow, the definition of auditing also broadened in its scope. Some of the documented definitions of auditing/an audit state as follows:

An audit is an examination of accounting records undertaken with a view to establishing whether they correctly and completely reflect the transactions to which they purport to relate. In some instances it may be necessary to ascertain whether the transactions themselves are supported by proper authority.⁵⁵

This definition emphasises the method of auditing and of verifying the authority behind deals.

Spicer and Pegler⁵⁶ define an audit as:

an examination of the books, accounts and vouchers of a business, as shall enable the Auditor to satisfy himself whether or not the Balance Sheet is properly drawn

54 Some of the authors include, among others, Dicksee, Spicer and Pegler, and Kohler.

55 Dicksee *Auditing* 1.

56 Spicer and Pegler *Practical Auditing* 3.

up, so as to exhibit a true and correct view of the state of the affairs of the business, according to the best of his information and the explanations given to him and as shown by the book; and if not, in what respects it is untrue or incorrect.

This definition describes the key purpose of an audit, which is to determine the accuracy and objectivity of the situation of the entity involved.

According to Kohler⁵⁷ an audit is:

an exploratory, critical review by a public accountant of the underlying internal controls and accounting records of a business enterprise or other economic unit, precedent to the expression by him of an opinion of the propriety of its financial statements.

This definition incorporates the audit of financial components and not company ventures only; as well as the inspection of internal controls.

De Paula⁵⁸ is of the opinion that an audit:

denotes something much wider, namely, the examination of a balance sheet and profit and loss account prepared by others. As a result of his examination of the books, accounts, vouchers etc., and of his inquiries, the auditor must satisfy himself that such a balance sheet and profit and loss account are properly drawn up so as to exhibit a true and fair view of the state of the affairs and of the earnings of a particular concern.

This definition stresses that financial records must be drawn up by accountants and not auditors.

Schlosser⁵⁹ mirrors the current tendency of auditing by defining auditing as a:

systematic examination of financial statements, records and related operations to determine adherence to generally accepted accounting principles, management policies or stated requirements.

This definition emphasises that auditing includes the inspection of financial records and statements as well as associated processes. It demonstrates that auditing's scope has expanded significantly.

57 Kohler *Auditing* 10.

58 De Paula *The Principles of Auditing* 3.

59 Schlosser "The Field of Auditing" 4.

The aforementioned definitions show that auditing is understood and described to be conducted in a methodical and scientific way. It involves the analytical evaluation of all matters of an affair and is conducted frequently or occasionally, every six months or yearly.⁶⁰

It can be deduced from the descriptions above that the role of the auditor is to convince him/herself of the accuracy and objectivity of the accounts of the financial matters of the company. The auditor must also document an opinion concerning the capability of the accounts to express the sense of what they claim to represent. The auditor must conduct the audit as comprehensively as is doable.⁶¹ The aforementioned roles of the auditor correspond with the development of auditing.

2.2.2 Development of auditing

Auditing⁶² began almost concurrently with the development of systematised methods of accounting.⁶³ As it became essential to trust one person with the assets of another, the necessity for an examination of the trustworthiness of the former arose.⁶⁴ This form of auditing was conducted in Mesopotamia, ancient Egypt, Greece, Rome and ancient India.⁶⁵

The structures of accounting and auditing of government income and spending were advanced under the Mauryas and other Hindu kings; during the Gupta period; and under the Sultans in Delhi in medieval India.⁶⁶ Here the major and minor controllers of the accounts of governments were classified, and forty types of frauds and misappropriations and punishment for these were recorded.⁶⁷ It is obvious that

60 Kumar and Sharma *Auditing* 13.

61 Kumar and Sharma *Auditing* 13.

62 The word "audit" originated from the Latin word "*audire*", which means "to hear"; Teck-Heang and Ali 2008 *JMAA* 1.

63 Gupta *Contemporary Auditing* 1.

64 Gupta *Contemporary Auditing* 1.

65 Boyd "History of Auditing" 74; Gupta *Contemporary Auditing* 1-2; University of Mumbai *Section 1: Auditing* 3.

66 Gupta *Contemporary Auditing* 2.

67 Gupta *Contemporary Auditing* 2.

these accounting and auditing structures were developed mostly in relation to the income and spending of governments.⁶⁸

The industrial revolution⁶⁹ caused a steady growth in the size of companies.⁷⁰ With the development of joint stock companies⁷¹ and with the increasing governmental management of these companies, the demand for independent auditing ensued.⁷² Therefore, though accounting and the auditing of the transactions of the government date to ancient eras, mercantile accounting, that is double-entry book-keeping, and the occupation of being an independent auditor developed in relatively modern eras.⁷³

In the United Kingdom, for example, the occupation of accountants became significant in the 19th century with the development of legal requirements concerning the auditing of companies. The *Companies Clauses Consolidation Act* of 1845, the *Companies Act* of 1862 and the *Amendment Act* of 1900 mandated the auditing of railway companies, joint stock companies and limited companies respectively.⁷⁴

The *Indian Companies Act* of 1913 (hereafter the Act) caused the development of the accountancy occupation in India. This Act mandated all companies registered in terms of it to have their financial statements audited yearly.⁷⁵ The Act also stipulated the qualifications of an auditor.⁷⁶ Following the Act, the Indian Central Government created an Accountancy Board under which Registered Accountants could act as competent auditors.⁷⁷ With these changes and the development of the accountancy occupation, there was an increasing need for independent auditors in India.⁷⁸ Amendments to the *Indian Companies Act* (now the *Companies (Amendment) Act* of 1965) caused modifications in the functions of an auditor. The Central Government

68 Gupta *Contemporary Auditing* 2.

69 The industrial revolution took place during the 18th century.

70 Gupta *Contemporary Auditing* 2; University of Mumbai *Section 1: Auditing* 3.

71 E.g. banks, insurance, railways, etc.

72 Gupta *Contemporary Auditing* 2; HubPages 2013 <http://hubpages.com/business/origin-of-auditing>; University of Mumbai *Section 1: Auditing* 3.

73 Gupta *Contemporary Auditing* 2.

74 Gupta *Contemporary Auditing* 3.

75 Kumar and Sharma *Auditing* 2; University of Mumbai *Section 1: Auditing* 4.

76 Kumar and Sharma *Auditing* 2; University of Mumbai *Section 1: Auditing* 4.

77 Kumar and Sharma *Auditing* 2; University of Mumbai *Section 1: Auditing* 4.

78 Kumar and Sharma *Auditing* 2.

was authorised to command audits of financial statements in some instances by competent auditors.⁷⁹ Further amendments (the *Amendment Act* of 1974) stated the instances where an auditor may be employed only by a special motion.⁸⁰ The *Companies (Amendment) Act* of 1988 made extensive changes regarding the employment of a company auditor.⁸¹ The development of auditing in India resulted in numerous modifications in the functions of auditors; the method, process and scope of auditing; and the reports to be presented by auditors.⁸²

It follows that auditing in different jurisdictions originated from the demand to have a few reasonably trustworthy ways of independent confirmation to lessen asset misuse, bookkeeping mistakes and fraud in companies.⁸³ This is in agreement with the accounting historian Brown's⁸⁴ definition of the origin of auditing:

Whenever the advance of civilization brought about the necessity of one man being entrusted to some extent with the property of another, the advisability of some kind of check upon the fidelity of the former would become apparent.

2.2.2.1 Influences on auditing

Numerous economic, technological and social happenings have affected the development of auditing in general.⁸⁵ A few of the developments that have triggered extensive changes in the ethical and professional responsibilities and legal status of auditors and the reporting standards and techniques of auditing are discussed in this section.⁸⁶ The discussion is based primarily on research situated in the Indian context that has been conducted by Kamal Gupta, who argues that to obtain an understanding of the present position of auditing, knowledge of its development is crucial.⁸⁷

79 Kumar and Sharma *Auditing* 3.

80 Ibid.

81 Kumar and Sharma *Auditing* 4.

82 Ibid.

83 Ramamoorti "Chapter 1: Internal Auditing" 1-24.

84 Brown *A History of Accounting and Accountants* 74.

85 Gupta *Contemporary Auditing* 5.

86 Ibid.

87 Gupta *Contemporary Auditing* 1.

2.2.2.1.1 Industrial revolution

The industrial revolution and the resulting development of technology *inter alia* caused an increase in the size of companies.⁸⁸ This growth had extensive influences on auditing.⁸⁹ The methods of auditing have gone through a process of change, for example.⁹⁰

Auditing has since turned into an analytical practice which includes obtaining knowledge of the business, the economic and legal setting of the company, assessing the efficiency of the company's procedures and internal control techniques, discovering audit risks, inspecting chosen examples of transactions, and using analytical techniques.⁹¹

The expansion of the size of companies and their transactions with external groups has also rendered it necessary that the auditor be independent of a company's management.⁹² Ethical conduct and independence have further developed as the foundation of the auditing profession.⁹³

2.2.2.1.2 Managers and public ownership

Modern companies are simultaneously owned by several people all at once.⁹⁴ Many individuals pool in their capital by buying shares in such companies.⁹⁵ This has resulted in the gradual split of company management and ownership.⁹⁶ Now, the management of companies is entrusted to professional managers who are competent in the difficult duties of management.⁹⁷ Considering this, the demand for

88 Gupta *Contemporary Auditing* 5; HubPages 2013 <http://hubpages.com/business/origin-of-auditing>; Kumar and Sharma *Auditing* 2; Teck-Heang and Ali 2008 *JMAA* 3.

89 Gupta *Contemporary Auditing* 5.

90 Gupta *Contemporary Auditing* 5; Kumar and Sharma *Auditing* 2; Teck-Heang and Ali 2008 *JMAA* 7.

91 Gupta *Contemporary Auditing* 5.

92 Gupta *Contemporary Auditing* 5-6; HubPages 2013 <http://hubpages.com/business/origin-of-auditing>.

93 Gupta *Contemporary Auditing* 6.

94 Ibid.

95 Gupta *Contemporary Auditing* 6; Kumar and Sharma *Auditing* 2; Teck-Heang and Ali 2008 *JMAA* 3.

96 Gupta *Contemporary Auditing* 6; Kumar and Sharma *Auditing* 2.

97 Gupta *Contemporary Auditing* 6.

an independent specialist to report to the investors along with the owners on the matters of companies has taken on importance.⁹⁸ An auditor typically performs this duty.⁹⁹

2.2.2.1.3 Regulation by the government

Government regulation and control of companies in India (as a case in point) expanded greatly in the initial thirty years following independence.¹⁰⁰ Since the 1990s, though, there has been a change in the state's policy with the purpose of the elimination of needless controls and the relaxation of state restrictions in order to support development and entrepreneurship.¹⁰¹ The emphasis turned to the "regulation" instead of the "control" of companies.¹⁰² For instance, the *Securities and Exchange Board of India Act* of 1992¹⁰³ has given special exemption from the control procedures founded under the former *Capital Issues (Control) Act* of 1947.¹⁰⁴ The responsibilities and functions of auditors changed accordingly.¹⁰⁵

2.2.2.1.4 Judicial rulings

Recent years have also witnessed a change in the judiciary's outlook on the business domain and the functions of auditors.¹⁰⁶ The judgments of courts now mirror the rising assumptions of the public from the auditors to continually improve their standards of conduct and performance.¹⁰⁷ A wider outlook came to be adopted of the accountabilities of auditors towards intermediaries.¹⁰⁸ The auditing profession has responded to public demand by reformulating its scope and expanding its audit

98 Gupta *Contemporary Auditing* 6; HubPages 2013 <http://hubpages.com/business/origin-of-auditing>; Kumar and Sharma *Auditing* 2; Teck-Heang and Ali 2008 *JMAA* 3.

99 Gupta *Contemporary Auditing* 6.

100 Gupta *Contemporary Auditing* 6; Knapp *Contemporary Auditing* 497.

101 Gupta *Contemporary Auditing* 6; Knapp *Contemporary Auditing* 497.

102 Gupta *Contemporary Auditing* 6.

103 The *Securities and Exchange Board of India Act* of 1992 aspires to control the securities markets in India.

104 Gupta *Contemporary Auditing* 6; Kumar and Sharma *Auditing* 9.

105 Gupta *Contemporary Auditing* 6.

106 Gupta *Contemporary Auditing* 6; Teck-Heang and Ali 2008 *JMAA* 3.

107 Gupta *Contemporary Auditing* 6; Kumar and Sharma *Auditing* 10.

108 Gupta *Contemporary Auditing* 6.

methods by creating commonly accepted auditing standards and accounting principles.¹⁰⁹

2.2.2.1.5 Technology

The arrival of computers altered the techniques of information processing. With the increased use of computers by ever more companies, auditors had to change their methods of auditing as well.¹¹⁰ In a computerised accounting setting, the auditor of today typically has to put more emphasis on the assessment of controls, procedures and systems, and on analytical processes.¹¹¹ Similar to auditing in general, numerous influences have also affected the development of auditing in the public sector.

2.3 An overview of public sector auditing

2.3.1 Defining "public sector" auditing

According to the IRBA and the AGSA, public sector auditing forms part of a government's regulatory system.¹¹² Such auditing typically aspires to disclose divergences from accepted standards and infringements of the principles of effectiveness, efficiency, economy and legality of financial management, and to do so soon enough to implement corrective action.¹¹³ It further seeks to hold those accountable responsible, and to acquire compensation, or to implement the actions necessary to prevent divergences and infringements.¹¹⁴

Public sector auditing is conducted worldwide in the education sector, government and healthcare sector, among others.¹¹⁵ The public sector auditor's role originates from the principal/agent relationship (Figure 2-1).¹¹⁶ Principals (chosen figures) give power and resources to agents (government administrators) to realise government

109 Gupta *Contemporary Auditing* 6; Kumar and Sharma *Auditing* 10.

110 Gupta *Contemporary Auditing* 6; University of Mumbai *Section 1: Auditing* 4.

111 Gupta *Contemporary Auditing* 6; University of Mumbai *Section 1: Auditing* 4.

112 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

113 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

114 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

115 Wilkins Kennedy 2016 <http://www.wilkinskennedy.com/sectors/public-sector/audit-assurance/public-sector-audit/>.

116 IIA *Supplemental Guidance* 13; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Audit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en.

strategies.¹¹⁷ The agents account to the principals for their responsible planning and management of resources and their performance.¹¹⁸ The public sector auditor then gives impartial independent evaluations of the agent's performance and reports this to the principal.¹¹⁹

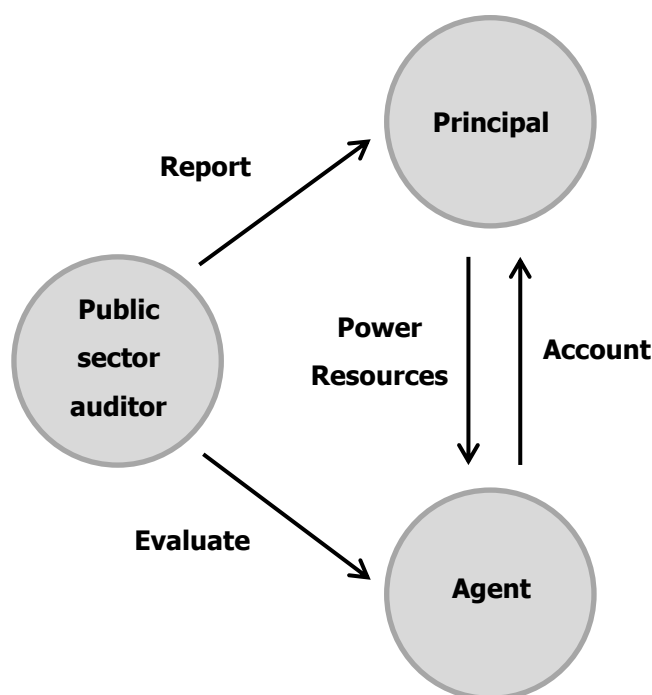


Figure 2-1: Principal/agent relationship¹²⁰

In accordance with the principal/agent relationship described above, Leclerc *et al*¹²¹ define public sector auditing as:

the independent, objective assessment of the fairness of management's representations on performance or the assessment of management's systems and practices, against criteria, reported to a governing body or others with similar responsibilities.

117 IIA *Supplemental Guidance* 13; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en.

118 IIA *Supplemental Guidance* 13; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en.

119 IIA *Supplemental Guidance* 13; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en.

120 Originally developed by IIA *Supplemental Guidance* 13; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en.

121 Leclerc *et al* *Accountability, Performance Reporting, Comprehensive Audit* 232.

It is evident from the principal/agent relationship and the above definition that public sector auditors not only offer typical auditing services, but also provide additional guidance. Such guidance may include how best public sector entities can manage their economic resources or how efficiently they can utilise tax. Public sector auditors can also evaluate whether a public sector entity is meeting its objectives.¹²² The aforementioned roles of the public sector auditor correspond with the development of public sector auditing.

2.3.2 Development of public sector auditing

Public sector auditing by impartial, independent public sector auditors has obtained professional status and developed progressively in common with the emergence of big entities and the separation of management from ownership.¹²³ During the 20th century public sector auditors progressed beyond mere financial auditing.¹²⁴ Today public sector auditing in and by public sector entities is an independent occupation, which performs an important part in the total management of governments' strategies.¹²⁵ The scope of audit criteria and objectives has changed and expanded because of numerous influences, such as:¹²⁶

- An increase in the extent of government actions, from the mere administration of justice to a commitment to contribute to socio-economic growth, which enlarged the scope of public spending;
- Rival demands for resource distribution. The shortage of resources requires knowledgeable and reasonable policy-making on public spending;
- The chance to grow efficiency gains *via* enhanced in-house management schemes;
- The demand to control public accountability risk; and

122 Wilkins Kennedy 2016 <http://www.wilkinskennedy.com/sectors/public-sector/audit-assurance/public-sector-audit/>.

123 This was evident during the 18th century; Pava 2016 <http://global.britannica.com/topic/auditing-accounting>.

124 IIA *Supplemental Guidance* 15.

125 Daujotaitė and Mačerinskienė "Development of Performance Audit in Public Sector" 178.

126 Daujotaitė and Mačerinskienė "Development of Performance Audit in Public Sector" 178.

- The establishment of self-governing entities and an increase in the consciousness of the community. There is an increasing need for the people who administer public resources to do so accountably.

Therefore, as government's plans continue to develop in difficulty, importance and size, public sector auditing has changed and broadened its scope beyond financial audits to the auditing in and of public sector entities with an emphasis on performance.¹²⁷ Public sector auditors must, for example, authenticate the efficiency of public services and report on whether or not a public sector entity has found means to determine and report on its efficiency.¹²⁸ Performance audits are but one of the types of public sector audits.

2.4 Types of public sector audits

Public sector audits are classified into three key types, namely compliance, financial and performance audits.¹²⁹

2.4.1 Compliance audits

Compliance audits, which are conducted as part of financial audits, concentrate on whether a specific audit object, e.g. an action, facility or information, complies with the recognised audit criteria, which rule the audited object.¹³⁰ The audit criteria may typically comprise laws, regulations and policies.¹³¹

Laws and regulations specify what actions public sector entities must perform for the people and any constraints on such actions.¹³² They also define the objectives to be realised and in what way the privileges of people are protected. Public money is assigned to public sector entities for appropriate management. It is the duty of public sector entities to practise responsible planning and management over such

127 Daujotaitė and Mačerinskienė "Development of Performance Audit in Public Sector" 178; Waring and Morgan date unknown
<http://siteresources.worldbank.org/PSGLP/Resources/33Performanceauditing.pdf>.

128 IIA *Supplemental Guidance* 15.

129 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

130 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

131 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

132 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

money; to be responsible to the people for the money assigned to them; and to be transparent about their activities.¹³³

The requirement to observe that the actions of public sector entities are consistent with applicable laws and regulations and that the privileges of people are protected is a significant public sector management function. *Via* compliance auditing, public sector auditors assist to observe that the values of good governance, responsible planning and management, and transparency are being implemented.¹³⁴

2.4.2 Financial audits

Financial audits concentrate on verifying whether an entity's financial information is being reported according to the appropriate financial regulatory and reporting structures.¹³⁵ This is achieved by finding adequate and suitable audit evidence to allow the financial auditor to articulate an audit conclusion with regard to the financial information not containing false or inaccurate statements owing to fault or fraud.¹³⁶ Financial audits focus on financial accountability, statements, systems and transactions, among other issues.¹³⁷

2.4.2.1 Audits of predetermined objectives

Audits of predetermined objectives, which form an important component of financial audits, are conducted to acquire confidence in the reliability and practicality of the stated performance against predetermined objectives. They are also concerned with the planning, implementation, monitoring and reporting of performance information.¹³⁸

In terms of the PFMA, the MFMA, the *Municipal Systems Act*¹³⁹ (hereafter the MSA) and the associated regulations, it is an enacted obligation for entities to report yearly on their performance against predetermined objectives. The performance reports are

133 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

134 INTOSAI 2010 http://www.issai.org/media/13200/issai_4200_e_.pdf.

135 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

136 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

137 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

138 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

139 32 of 2000.

employed to measure the delivery of services and the expenditure of money appropriated by the administrations.¹⁴⁰

Audits of predetermined objectives include the following, among others:

- Assessing and challenging the arrangements and controls applicable to the documenting, checking and stating of performance information;
- Confirming the actuality, significance and quantifiability of the intended and stated performance information; and
- Linking the stated performance information to applicable basis documents and confirming the comprehensiveness, correctness and legitimacy thereof.¹⁴¹

Sections 20(2)(c) and 28(1)(c) of the PAA make provision for audits of predetermined objectives, also known as mandatory audits, whilst section 20(3) of the PAA provides for performance audits, otherwise known as discretionary audits.

2.4.3 Performance audits

Performance audits, as independent auditing processes, focus on whether entities, involvements and plans are functioning according to the principles of economy, effectiveness and efficiency, and whether there are opportunities for development.¹⁴² They also assess the measures implemented by the management of an entity to certify that resources have been obtained economically and are employed effectively and efficiently.¹⁴³ Performance audits entail the auditing of:¹⁴⁴

- The exercise of economy with regard to the purchase of resources at the correct time and location, at the smallest price, in the correct amount and of the correct quality;
- The effectiveness of performance concerning the attainment of operational goals and policy objectives; and

140 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

141 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

142 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

143 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

144 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

- The efficient use of economic, human and other resources and the relationship among the production of products, services or other outputs and the resources utilised to make them.

Performance audits are concerned with a specific institutional process, programme or project and are conducted against appropriate audit criteria. Reasons for non-conformities with the audit criteria are examined. The objective of a performance audit is specifically to create the opportunity to respond to audit questions in relation to the acquirement, application and management of resources and to develop recommendations for improvement.¹⁴⁵ Public sector auditors employ performance audits to execute the functions of public sector auditing, amongst other purposes.

2.5 Functions of public sector auditing

Public sector auditing has changed from being an administrative process, where there is an emphasis on compliance, to being a significant driver of good public sector governance. In other words, public sector auditors have the potential to perform a significant role in good public sector governance.¹⁴⁶ Government cannot be efficient in the face of public distrust.¹⁴⁷ Public sector auditors perform a vital part in promoting public trust. Without public sector audits, civil society would be deprived of trustworthy information and a better understanding of the workings of its government.¹⁴⁸

Through offering impartial evaluations of whether public resources are being handled sensibly and efficiently to realise planned outcomes, public sector auditing assists public sector entities to attain accountability and honesty, to do better business, and to impart a sense of assurance amongst investors and people. The

145 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

146 INTOSAI 2010 https://na.theiia.org/standards-guidance/Public%20Documents/INTOSAI_GOV_9140_E.pdf; The concept of “good public sector governance” mentioned here is discussed in detail in ch 3 of this study.

147 The importance of the public’s trust in the government was recently highlighted in the State of Capture report; Public Protector of South Africa 2016 <http://www.da.org.za/wp-content/uploads/2016/11/State-of-Capture-14-October-2016.pdf>.

148 IIA *Supplemental Guidance* 9.

role of the public sector auditor thus supports the governance accountabilities of foresight, insight and oversight.¹⁴⁹

2.5.1 Foresight

Public sector auditing assist entities to plan ahead by identifying trends and giving consideration to developing problems before they turn into crises. A public sector audit can forecast problems to come, for example from a reading of economic circumstances. This type of audit can also identify opportunities and risks resulting from alterations in the nature of the economy, for instance.¹⁵⁰

2.5.2 Insight

Public sector auditing helps decision-makers by benchmarking information, exemplifying best-practices, discovering opportunities to adjust, borrow or change the design or structure of management practices, and evaluating which plans and strategies are succeeding and which are not.¹⁵¹ A public sector audit assists to establish learning as a norm in an organisation by giving continuous feedback to managers, who are then able to alter plans and strategies appropriately.¹⁵² Public sector audits can also give a description of the accountabilities, challenges, functions and resources that, together with a comprehension of the initiating cause of the challenge and recommendations, may inspire shareholders to reconsider solutions to

149 IIA *Supplemental Guidance* 5; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en.

150 IIA *Supplemental Guidance* 17; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en; Office of the AG Cayman Islands 2011 <http://www.auditorgeneral.gov.ky/powerpanel/modules/reports/html/uploads/pdfs/Corporate-Publications-Effective-Public-Sector-Governance-and-How-External-Public-Auditing-Supports-It---A-paper-by-the-AG.pdf>.

151 IIA *Supplemental Guidance* 16; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en; OECD 2016 <http://www.oecd.org/gov/ethics/supreme-audit-institutions-and-good-governance-9789264263871-en.htm>.

152 IIA *Supplemental Guidance* 16; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3AArchive&Itemid=431&lang=en; OECD 2016 <http://www.oecd.org/gov/ethics/supreme-audit-institutions-and-good-governance-9789264263871-en.htm>.

challenges.¹⁵³ Not only can the execution of the particular plan or strategy under audit be enhanced, but dealing with the matters exposed by a specific audit can improve the ability of the public and the public sector to handle the same challenges. Alongside the accountability role, public sector audits enhance the workings of the public sector.¹⁵⁴

2.5.3 Oversight

Public sector auditors help decision-makers to apply oversight by relating decision-making to the relevant legislation, by assessing whether or not public sector entities are accomplishing what they are meant to accomplish, and by assessing if they are using moneys for the proposed intention.¹⁵⁵ The exercise of oversight assists the government by substantiating entities' reports of economic and strategic performance and by checking their adherence to the prescribed objectives and rules.¹⁵⁶ Furthermore, oversight adds to public accountability by giving access to this performance information to internal and external shareholders of the entity under audit.¹⁵⁷ In their oversight function, public sector auditors evaluate and report on the successful assessment of risks, and determine controls to accomplish objectives and prevent risks.¹⁵⁸ Oversight is a function of public sector auditors that leads to the

153 IIA *Supplemental Guidance* 16; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en; OECD 2016 <http://www.oecd.org/gov/ethics/supreme-audit-institutions-and-good-governance-9789264263871-en.htm>.

154 IIA *Supplemental Guidance* 16-17; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en.

155 IIA *Supplemental Guidance* 15; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en; Provincial Auditor Saskatchewan 2013 <https://auditor.sk.ca/pub/publications/special/2013IA%20in%20the%20Public%20Sector.pdf>.

156 IIA *Supplemental Guidance* 15; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en; Provincial Auditor Saskatchewan 2013 <https://auditor.sk.ca/pub/publications/special/2013IA%20in%20the%20Public%20Sector.pdf>.

157 IIA *Supplemental Guidance* 15; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en; Provincial Auditor Saskatchewan 2013 <https://auditor.sk.ca/pub/publications/special/2013IA%20in%20the%20Public%20Sector.pdf>.

158 The reporting line of public sector auditors is discussed in detail in para 2.6 of this study; IIA *Supplemental Guidance* 15; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en.

discovery and prevention of corruption, comprising fraud, misuse, waste and additional abuses of the resources entrusted to government administrators.¹⁵⁹

Through the exercise of their foresight, insight and oversight services, public sector auditors help to ensure that government administrators manage the public's affairs and the private sector's affairs fairly, justly, and transparently, with honesty and impartiality, whilst performing their own functions with complete honesty.¹⁶⁰ Public sector auditors must not only evaluate the possible misuse of power, but must also be aware of their own power as an entity.¹⁶¹ The public sector auditor is granted power that might be conducive to misuse. Consequently, the public sector auditor's performance of his or her own job should exemplify the same principles of honesty, impartiality and transparency that are required of the rest of the public sector.¹⁶² Public sector auditors use instruments such as compliance, financial and performance audits to perform the functions of foresight, insight and oversight.¹⁶³

Since the public sector's achievements are determined by its ability to supply amenities effectively and to execute programmes in a reasonable and suitable way, public sector auditing must enable the assessment of the economy, its effectiveness and efficiency, as well as the extent to which public programmes and financial management are compliant with the legislation.¹⁶⁴ Public sector auditors have a significant role to play in scrutinising the government resources used on community plans and amenities and in offering confidence that the information presented is

governance&catid=77%3Aarchive&Itemid=431&lang=en; Provincial Auditor Saskatchewan 2013 <https://auditor.sk.ca/pub/publications/special/2013IA%20in%20the%20Public%20Sector.pdf>.

159 IIA *Supplemental Guidance* 15; Lapointe 2008 https://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=297%3Aaudit-contribute-better-governance&catid=77%3Aarchive&Itemid=431&lang=en; Provincial Auditor Saskatchewan 2013 <https://auditor.sk.ca/pub/publications/special/2013IA%20in%20the%20Public%20Sector.pdf>.

160 IIA *Supplemental Guidance* 17; Office of the AG Cayman Islands 2011 <http://www.auditorgeneral.gov.ky/powerpanel/modules/reports/html/uploads/pdfs/Corporate-Publications-Effective-Public-Sector-Governance-and-How-External-Public-Auditing-Supports-It---A-paper-by-the-AG.pdf>.

161 IIA *Supplemental Guidance* 18.

162 IIA *Supplemental Guidance* 18.

163 IIA *Supplemental Guidance* 5.

164 The concept of "performance audits comprising the audit of economy, effectiveness and efficiency" repeated here was discussed in detail in para 2.4.3 of this study. IIA *Supplemental Guidance* 14.

impartial and correctly represents the financial situation.¹⁶⁵ Furthermore, public sector auditors should protect the fundamental values of the public sector and improve public sector management by highlighting the principles of accountability, governance, performance and transparency, since the public sector serves everyone.¹⁶⁶ Public sector auditors use the guidelines steering public sector auditing to realise the above-mentioned functions of public sector auditing.

2.6 Guidelines steering public sector auditing

Auditing in the public sector is conducted in accordance with the INTOSAI's ISAs.¹⁶⁷ The INTOSAI has incorporated three audit guideline packages, found in the ISSAIs, into the ISAs, namely the *ISSAI 1000-2999: Financial Audit Guidelines*, *ISSAI 3000-3100: Performance Audit Guidelines*, and the *ISSAI 4000-4200: Compliance Audit Guidelines*.¹⁶⁸

The *ISSAI 1000-2999: Financial Audit Guidelines*¹⁶⁹ afford guidance for performing financial audits of public sector institutions. In addition to the ISAs, the guidelines also contain practice notices. Practice notices assist with the application of the ISAs in financial audits of public sector institutions, supplementary to the assistance afforded in the ISAs. Thus, in applying the *ISSAI 1000-2999: Financial Audit Guidelines* in financial audits of public sector institutions, the SAIs acknowledge that the ISAs and the practice notices jointly provide assistance. The guidelines do not

165 INTOSAI 2010 https://na.theiia.org/standards-guidance/Public%20Documents/INTOSAI_GOV_9140_E.pdf; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

166 IIA *Supplemental Guidance* 14; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

167 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

168 ISSAI date unknown <http://www.issai.org/4-auditing-guidelines/general-auditing-guidelines/>; INTOSAI 2010 http://www.issai.org/media/13509/financial_audit_guidelines_e.pdf; ISSAI date unknown <http://www.issai.org/classification-principles/>. The three audit guideline packages form the fourth level of the ISSAI Framework. The hierarchical levels of the ISSAI Framework are as follows. The INTOSAI Founding Principles, i.e. the Lima Declaration, form the first level of the ISSAI Framework. The INTOSAI Principles and Guidelines for SAIs comprise the second level. In this level the fundamentals for the proper operation and specialised behaviour of SAIs are described. The INTOSAI Auditing Standards constitute the third level of the ISSAI Framework. This level explains the important values in conducting audits of public sector entities. The INTOSAI Audit Guidelines packages make up the fourth level. This level converts the important auditing values into exact, thorough and operative guidelines that can be utilised daily for auditing.

169 INTOSAI 2010 http://www.issai.org/media/13509/financial_audit_guidelines_e.pdf.

afford guidance when compliance with authorities is the objective of the audit. The *ISSAI 4000-4200: Compliance Audit Guidelines* provide such assistance.

The *ISSAI 3000-3100: Performance Audit Guidelines*¹⁷⁰ address performance audits conducted as a separate investigation that necessitates specific skills, standards, reports *etcetera*. The guidelines are intended for the SAIs that are carrying out, or planning to carry out, this kind of performance audit. The guidelines comprise of five parts. Part 1, for example, describes the framework for performance audits.¹⁷¹ The appendices to the guidelines hold additional information on planning and conducting performance audits with an environmental and information technology perspective, for instance.

The *ISSAI 4000-4200: Compliance Audit Guidelines*¹⁷² address compliance audits at national, regional and local levels of government. The guidelines also address compliance audits of private institutions which are concerned with the administration of public property and/or services.¹⁷³ The guidelines constitute two compliance auditing perspectives, namely the compliance audits performed separately from the audits of financial statements,¹⁷⁴ and the compliance audits related to the audits of financial statements.¹⁷⁵ The AGSA and other public sector auditors should possess some essential characteristics to effectively conduct compliance, financial and performance audits.

170 INTOSAI 2010 http://www.issai.org/media/13509/performance_audit_guidelines_e.pdf.

171 The five parts of the *ISSAI 3000-3100: Performance Audit Guidelines*: Part 1: What is Performance Auditing?; Part 2: Government Auditing Principles Applied to Performance Auditing; Part 3: Field Standards and Guidance - Initiating and Planning the Performance Audit; Part 4: Field Standards and Guidance - Conducting the Performance Audit; and Part 5: Reporting Standards and Guidance - Presenting the Audit Results.

172 INTOSAI 2010 http://www.issai.org/media/13509/compliance_audit_guidelines_e.pdf.

173 E.g. beneficiaries of public funding.

174 *ISSAI 4100: Compliance Audit Guidelines: For Audits Performed Separately from the Audit of Financial Statements*.

175 *ISSAI 4200: Compliance Audit Guidelines: Compliance Audit Related to the Audit of Financial Statements*; For compliance audits related to the audits of financial statements, the *ISSAI 4000-4200: Compliance Audit Guidelines* complement the *ISSAI 1000-2999: Financial Audit Guidelines*.

2.7 Essential characteristics of effective public sector auditors

Effective public sector auditors reinforce governance by growing the public's capacity to hold public sector entities responsible.¹⁷⁶ Public sector auditors play a significant role in the features of governance that are vital for advancing fairness, suitable conduct and the trustworthiness of public sector administrators, whilst lessening the risk of corruption.¹⁷⁷ Consequently, it is vital that public sector auditors are appropriately mandated to attain these aims.¹⁷⁸ They should be authorised to audit with honesty and to deliver dependable services. At least, public sector auditors require:¹⁷⁹

- An official mandate: The public sector auditor's powers and responsibilities must be determined. These may include, among others, the duty of the audited entity to cooperate with the public sector auditor;
- Capable and impartial public sector auditors: Public sector auditing requires that public sector auditors have the capability and qualifications to conduct public sector audits as needed to be able to execute their mandate. Public sector auditors should furthermore prevent conflict of interest¹⁸⁰ and be impartial;
- Capable lead public sector auditors: Lead public sector auditors should be capable of efficiently and impartially employing, recalling and managing other capable and impartial public sector auditors without unnecessary executive or governmental influence;
- Enough funding: Public sector auditors should have enough funding in relation to the scope of their responsibilities. The budget affects the auditor's ability to execute his or her responsibilities;

176 IIA *Supplemental Guidance* 5.

177 IIA *Supplemental Guidance* 5-6.

178 IIA *Supplemental Guidance* 6.

179 Costa Marques *The Role of Auditing in the Public Sector* 14; IIA *Supplemental Guidance* 6-8; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

180 Conflict of interest exists when a public sector auditor has conflicting personal and professional interests.

- Established audit standards: Public sector auditors must conduct public sector audits in line with established audit standards, e.g. the *International Professional Practices Framework by the Institute of Internal Auditors*;¹⁸¹
- Organisational impartiality: Organisational impartiality permits the public sector auditor to conduct public sector audits without intervention by the entity under audit. The public sector auditor must maintain a distance from the audited entity in order to be able to conduct the audit without interference. Organisational impartiality adds to the accurateness of the audit and the trustworthiness of the findings;
- Shareholder backing: Public sector auditors must be understood and backed by various public sector administrators, the media and the concerned public; and
- Unobstructed access: Public sector audits must be conducted with unobstructed access to documents, property and workers, as applicable for the execution of the audits.

To guard the public interest, all public sector entities need impartial public sector auditors delivering a variety of advisory and assurance services; from financial confirmation to operational and performance efficiency; whether through internal or external public sector audits or a mixture of the two.¹⁸² The public sector auditor's mandate must be broad to allow the auditor to respond to the entire scope of the entity's actions.¹⁸³

On the other hand, public sector entities should set up protections to ensure that public sector auditors are indeed authorised to report important findings to suitable oversight authorities.¹⁸⁴ These protections can be realised through the formation of independent audit committees.¹⁸⁵

181 IIA 2016 <https://na.theiia.org/standards-guidance/Pages/Standards-and-Guidance-IPPF.aspx>.

182 IIA *Supplemental Guidance* 8.

183 IIA *Supplemental Guidance* 8.

184 IIA *Supplemental Guidance* 8.

185 IIA *Supplemental Guidance* 8.

2.8 Audit committees in the public sector

An “audit committee” is defined as:

A committee of the board of directors whose role typically focuses on aspects of financial reporting and on the entity's processes to manage business and financial risk, and for compliance with significant applicable legal, ethical, and regulatory requirements. The audit committee typically assists the board with the oversight of (a) the integrity of the entity's financial statements, (b) the entity's compliance with legal and regulatory requirements, (c) the independent auditors' qualifications and independence, (d) the performance of the entity's internal audit function and that of the independent auditors and (e) compensation of company executives (in the absence of a remuneration committee).¹⁸⁶

Audit committees provide increased oversight of publicly owned entities' conformity to internal controls, compliance with legal and other requirements, ethical and financial integrity and performance management.¹⁸⁷ This oversight duty is vital to efficient governance.¹⁸⁸ Dependent on the particular conditions of publicly owned entities, audit committees function in a range of governance structures.¹⁸⁹

All public sector entities must assess their governance structures to decide if an audit committee is suitable for their particular circumstances.¹⁹⁰ In certain public sector entities, audit committees are established as subcommittees of the board of directors or the legislative branch.¹⁹¹ Other public sector entities may establish audit committees consisting of managers or ministers of external oversight entities, public members who are chosen by the executive or legislative branches, and/or the leadership team of the public sector entity under audit.¹⁹² The arrangement of and demand for an audit committee will be subject to specific conditions, the decision of the legislative branch and the scope of the public sector audit.¹⁹³ In South Africa the PFMA requires national or provincial public sector entities to set up or share an audit

186 INTOSAI 2004 http://www.issai.org/media/13329/intosai_gov_9100_e.pdf.

187 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

188 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

189 IIA *Supplemental Guidance* 23.

190 IIA *Supplemental Guidance* 23.

191 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

192 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

193 IIA *Supplemental Guidance* 23.

committee, whilst the MFMA requires local government to do the same.¹⁹⁴ The *Companies Act* 71 of 2008 makes it compulsory for public entities that are registered as companies to establish or share an audit committee.¹⁹⁵

The duties of an audit committee are often explained in a committee charter, which is frequently accessible on the entity's web page.¹⁹⁶ These duties normally comprise:¹⁹⁷

- Considering risk management practices and strategies with management;
- Monitoring the internal control procedure;
- Monitoring the selection of accounting principles and strategies;
- Supervising whistle-blower, regulatory compliance and ethics hotlines;
- Supervising the appointment, performance and impartiality of public sector auditors;
- Supervising the disclosure procedure and financial reporting; and
- Supervising the performance of the internal audit operation.

Audit committees can increase the efficiency, independence and integrity of public sector audits through arbitrating the public sector auditor's relationship with the public sector entity, evaluating audit resource requirements and providing independent oversight of the audit findings.¹⁹⁸ Furthermore, audit committees ensure that audit findings are reported and that the corrective actions suggested are

194 S 77 of the PFMA; s 166 of the MFMA; PSACF *Challenges Facing Public Sector Audit Committees* 2.

195 S 61 of the *Companies Act* 71 of 2008; PSACF *Challenges Facing Public Sector Audit Committees* 2.

196 See e.g. *Knysna Municipality's Audit Committee Charter*, Knysna Municipality 2013 http://www.knysna.gov.za/wp-content/uploads/2013/06/Audit-Comm-Charter-Adopted_-28Mar13.pdf.

197 AICPA *The AICPA Audit Committee Toolkit: Public Companies* 9; IIA *Supplemental Guidance* 24; PSACF *Challenges Facing Public Sector Audit Committees* 2.

198 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

adopted.¹⁹⁹ Said reporting is conducted in accordance with established reporting lines.

2.9 Reporting line of public sector auditors

A reporting line is an entity's arrangement under which the individual accountable for managing a public sector audit is employed and managed in relation to the actions subject to audit.²⁰⁰ The reporting line of the public sector auditor is bound to the discipline's impartiality, which is an important component of an effective and reliable public sector auditor.²⁰¹ Since the public sector auditor's function is to give correct and impartial information on the usage of public resources, public sector auditors should be capable of conducting and reporting on their audits without interference.²⁰² Impartiality is attained when the public sector auditor reports outside the hierarchy of the entity and the actions being audited, and when the auditors are allowed to perform their audits without having to respond to pressure from the entity under audit.²⁰³ Interference can occur if the entity under audit has the power to reject or change audit reports, manage budgets or workers for participation, or restrict admission to documents or workers, for instance.²⁰⁴ Above all else, public sector auditors must be impartial. That is, public sector auditors must be free from prejudices or conflicts of interest that might influence their judgement.²⁰⁵

2.10 Conclusion

In this chapter the scope of and rationale behind public sector auditing have been discussed to introduce auditing as an activity which is of increasing importance in the public sector. From the above discussion, it can be concluded that public sector auditing typically aspires to disclose divergences from accepted standards and infringements of the principles of effectiveness, efficiency, economy and legality of

199 IIA *Supplemental Guidance* 23; PSACF *Challenges Facing Public Sector Audit Committees* 2.

200 IIA *Supplemental Guidance* 18; OECD 2011 <https://www.oecd.org/governance/47638204.pdf>; PSACF *Challenges Facing Public Sector Audit Committees* 7.

201 IIA *Supplemental Guidance* 19; OECD 2011 <https://www.oecd.org/governance/47638204.pdf>.

202 IIA *Supplemental Guidance* 19; OECD 2011 <https://www.oecd.org/governance/47638204.pdf>.

203 IIA *Supplemental Guidance* 19; PSACF *Challenges Facing Public Sector Audit Committees* 7.

204 IIA *Supplemental Guidance* 19.

205 IIA *Supplemental Guidance* 19.

financial management, and to do so soon enough to implement corrective action.²⁰⁶ It further seeks to hold those accountable responsible, and to acquire compensation, or to implement the actions necessary to prevent divergences and infringements.²⁰⁷ As government's plans continue to develop in difficulty, importance and size, public sector auditing has changed and broadened its scope beyond financial audits to the auditing in and of public sector entities with an emphasis on performance.²⁰⁸

Public sector audits are classified into three key types, namely compliance, financial and performance audits.²⁰⁹ Compliance audits concentrate on whether a specific audit object complies with the recognised audit criteria, which rule the audited object.²¹⁰ Financial audits concentrate on verifying whether an entity's financial information is being reported according to the appropriate financial regulatory and reporting structures.²¹¹ Performance audits focus on whether entities, involvements and plans are functioning according to the principles of economy, effectiveness and efficiency, and whether there are opportunities for development.²¹² They also assess the measures implemented by the management of an entity to certify that resources have been obtained economically and are employed effectively and efficiently.²¹³

Through offering impartial evaluations of whether public resources are being handled sensibly and efficiently to realise planned outcomes, public sector auditing assists public sector entities to attain accountability and honesty, to do better business, and to impart a sense of assurance amongst investors and people. The role of the public sector auditor thus supports the governance accountabilities of foresight, insight and oversight.²¹⁴ Through the exercise of their foresight, insight and oversight services, public sector auditors help to ensure that government

206 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

207 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

208 Dajotaitė and Mačerinskienė "Development of Performance Audit in Public Sector" 178; Waring and Morgan date unknown <http://siteresources.worldbank.org/PSGLP/Resources/33Performanceauditing.pdf>.

209 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

210 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246; INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

211 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

212 INTOSAI 2013 <http://www.issai.org/media/69909/issai-100-english.pdf>.

213 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

214 IIA *Supplemental Guidance* 5.

administrators manage the public's affairs and the private sector's affairs fairly, justly, and transparently, with honesty and impartiality, whilst performing their own functions with complete honesty.²¹⁵

Building on the role of auditing in governance as discussed in this chapter, the following chapter continues the study with an examination on environmental auditing specifically as an environmental governance instrument. This includes a discussion on environmental governance and a description of environmental auditing in the setting of environmental governance.

215 IIA *Supplemental Guidance* 17.

CHAPTER 3 ENVIRONMENTAL AUDITING AS AN ENVIRONMENTAL GOVERNANCE INSTRUMENT

3.1 Introduction

The preceding chapter focused on the scope of and rationale behind public sector auditing in general. This chapter examines environmental auditing specifically as an environmental governance instrument. Following a discussion on the meaning and working of environmental governance as an overarching concept, environmental auditing is described and situated within the broader context of environmental governance. Attention is paid to the development of environmental auditing, the numerous definitions thereof, the types of environmental auditing and to their potential benefits. The main aim of this chapter is to situate environmental auditing as a key environmental governance instrument.

3.2 The notion of environmental governance

In order to situate environmental auditing as a key environmental governance instrument, the notion of environmental governance must be understood first. Such understanding is created by discussing the meaning and working thereof in this section.

The United Nations Environment Programme (UNEP) defines environmental governance as the:²¹⁶

Multi-level interactions (i.e., local, national, international/global) among, but not limited to, three main actors, i.e., state, market, and civil society, which interact with one another, whether in formal and informal ways; in formulating and implementing policies in response to environment-related demands and inputs from the society; bound by rules, procedures, processes, and widely accepted behavior; possessing characteristics of “good governance”; for the purpose of attaining environmentally-sustainable development.

The term “environmental governance”, then, alludes to the practices of decision-making implicated in the management and control of the environment.²¹⁷

216 UNEP 2008
http://www.unep.org/training/programmes/Instructor%20Version/Part_2/Activities/Interest_Groups/Decision-Making/Core/Def_Enviro_Governance_rev2.pdf.

Environmental governance concerns the way in which decisions are formed in the relevant domain.²¹⁸ Principles such as accountability, efficacy, efficiency, inclusivity, justice, representivity and social fairness create the basis of good environmental governance,²¹⁹ which must demonstrate an understanding of the arrangement, function, inconsistency and processes that characterise the environment.²²⁰ Deprived of this understanding, inappropriate decisions may be made with disastrous environmental results.²²¹ The government plays an important role in how the environment is controlled, protected and used.²²² The World Resources Institute is of the view that environmental governance is successful only if it advances sustainable development.²²³ Weak governance often brings about environmental harm.²²⁴ The absence of the protection of environmental resources can lead to environmental degradation, which in Africa in particular is often an outcome of governmental mismanagement or intergovernmental disputes.²²⁵ Enhancing the institutions and processes government employs to form environmental decisions will result in improved outcomes, with fewer detrimental environmental effects, and a reasonable sharing of the advantages and costs pertaining to environmental resources.²²⁶ According to the *White Paper on Environmental Management Policy*, the following elements constitute good environmental governance:²²⁷

- Access to information to all people;
- Accountable and responsible governance;
- Community and governmental skills development;
- Legislation that is enforced;

217 DEAT *Environmental Governance* 4.

218 Ibid.

219 Ibid.

220 Ibid.

221 Ibid.

222 Ibid.

223 World Resources Institute *A Guide to World Resources* 2.

224 DEAT *Environmental Governance* 5.

225 DEAT *Environmental Governance* 5; Dinar "Resource Scarcity and Environmental Degradation" 3.

226 World Resources Institute 2003 <http://www.wri.org/our-work/project/earthtrends-environmental-information>.

227 DEAT *White Paper on Environmental Management Policy* 7.

- Established integrated arrangements and procedures that enable participation;
- Inter-departmental and inter-ministerial organisation; and
- Separated governmental duties for controlling environmental effects and encouraging the use of environmental resources.

Kotzé's definition of environmental governance adds another element to good environmental governance, which is the legal nature thereof.²²⁸ Kotzé²²⁹ defines environmental governance from a legal view as:

A management process executed by institutions and individuals in the public and private sector to holistically regulate human activities and the effects of human activities on the total environment (including all environmental media, and biological, chemical, aesthetic and socio-economic processes and conditions) at international, regional, national and local levels; by means of formal and informal institutions, processes and mechanisms embedded in and mandated by law, so as to promote the common present and future interests human beings hold in the environment.

This definition highlights that the mandate to govern is stipulated by law.²³⁰ Law will stipulate the framework and methods of controlling the actions of persons in the environment, and supply the reason for doing so.²³¹

The South African environmental system contains the governance institutions, procedures, and means necessary to allow the private and public sector to control anthropogenic effects on the environment.²³² Several of these institutions, procedures, and means have the purpose of enforcing environmental compliance.²³³

228 Kotzé "Environmental Governance" 108.

229 Kotzé "Environmental Governance" 107-108.

230 Kotzé "Environmental Governance" 108.

231 Kotzé "Environmental Governance" 108.

232 Kotzé "Environmental Governance" 108. Some of the required governance institutions, procedures and means include, among others, common law provisions, constitutional provisions and statute law (including framework and sectoral law); See, e.g. Kidd M *Environmental Law* (Juta Cape Town 2008) for discussions on the environmental law framework.

233 Kotzé "Environmental Governance" 108.

Environmental compliance and enforcement are vital elements of good environmental governance.²³⁴

Environmental governance can be effected through a bottom-up or top-down method.²³⁵ Regarding the bottom-up method, the extent of government enforcement and involvement is lessened by supporting and co-opting compliance through a range of co-regulatory,²³⁶ incentive-based²³⁷ and self-regulatory instruments.²³⁸ Regarding the top-down method, government institutions use a range of administrative²³⁹ and criminal instruments²⁴⁰ to force conformity to legal and other requirements.²⁴¹ In general, South Africa follows a top-down method.²⁴²

The scope of environmental governance is comprehensive and covers everything that might affect the control of human behaviour and its effect on the environment.²⁴³ In addition to the elements of good environmental governance provided in the *White Paper on Environmental Policy* (as already discussed above),²⁴⁴ Kotzé is of the view that environmental compliance and enforcement instruments are also an element of good environmental governance.²⁴⁵ Environmental compliance and enforcement instruments ensure the success of the whole environmental governance attempt.²⁴⁶ Environmental compliance and enforcement are therefore elements of the good environmental governance process to the extent that they relate to the advancement of mutual concerns that persons

234 Kotzé "Environmental Governance" 108.

235 Kotzé "Environmental Governance" 108.

236 E.g. agreements between government and industry.

237 E.g. environmental taxes, subsidies for pollution control and tradable permits.

238 E.g. certification schemes, eco-labelling systems and voluntary environmental agreements. For an analysis of co-regulatory, incentive-based and self-regulatory instruments see, e.g. chapters 11 and 12 in Paterson A and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2009). Kotzé "Environmental Governance" 108.

239 E.g. compliance notices, directives and the suspension and/or withdrawal of environmental authorisations.

240 E.g. fines or imprisonments.

241 For an analysis of administrative and criminal instruments see e.g. chapters 9 and 10 in Paterson A and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2009). Kotzé "Environmental Governance" 108.

242 Kotzé "Environmental Governance" 108.

243 Kotzé "Environmental Governance" 108.

244 DEAT *White Paper on Environmental Management Policy* 7.

245 Kotzé "Environmental Governance" 108.

246 Kotzé "Environmental Governance" 108-109.

have in the environment.²⁴⁷ If effective, environmental compliance and enforcement translate into good environmental governance.²⁴⁸ Without environmental compliance and enforcement, the whole environmental governance effort would be subverted.²⁴⁹ Environmental compliance and enforcement therefore appear to be essential requirements for a sustainable and successful environmental governance attempt.²⁵⁰ Environmental compliance and enforcement may be affected through checking instruments.²⁵¹ Checking instruments, one of which is environmental auditing, form part of the suite of environmental governance instruments that is discussed in the next section.

3.3 The suite of environmental governance "instruments"

In the governance field, as elsewhere, instruments are viewed as the tools employed by management to realise particular results.²⁵² Environmental governance instruments can thus be considered to be whatever can be employed to realise an environment-related result.²⁵³ "Instruments are a means to an end and not an end in themselves."²⁵⁴

Du Plessis and Nel²⁵⁵ categorise environmental governance instruments in respect of the plan-do-check-act (P-D-C-A) stages of the Deming cycle. Environmental governance instruments are usually categorised in accordance with the processes intended to guide and steer behavioural change. This model usually distinguishes between agreement- or commitment-based instruments, civil-based instruments, command and control instruments, and economic or fiscal instruments. For the purposes of this chapter, the writer deviates from the aforementioned method to adopt du Plessis and Nel's categorisation, which corresponds to the PDCA management cycle presented by Deming. This categorisation is favoured since

247 Kotzé "Environmental Governance" 109.

248 Ibid.

249 Ibid.

250 Ibid.

251 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

252 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 96.

253 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 97.

254 Dale and English *Tools to Aid Environmental Decision Making* 2.

255 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

instruments are categorised and examined with regard to their role in the whole environmental governance process, instead of with regard to the methods employed to cause change.²⁵⁶ Efficient governance is achievable only when a sequence of instruments is utilised that provides for planning, doing, checking and acting.²⁵⁷ Two components are added to the original PDCA stages, namely criteria and standards, and reporting and communication instruments, since a sign of satisfactory environmental performance in the shape of criteria and standards, along with the responsibility to report, is important to good environmental governance.²⁵⁸

Analytical (or discovery) and planning instruments (the P in PDCA) accompany the PDCA stages of environmental governance instruments.²⁵⁹ These instruments are frequently informed by criteria and standards.²⁶⁰ Analytical and planning instruments and the supplementary criteria and standards informing them must be followed by management or doing instruments (D), which must in sequence be followed by checking and acting instruments (C) and (A) and lastly by reporting and communication instruments (R).²⁶¹ The plan-do-check-act-report (PDCAR) environmental governance instruments are depicted in Figure 3-1 and Table 3-1 respectively.²⁶²

256 Environmental governance instruments are conventionally categorised in accordance with the methods created to guide and steer behavioural change. This methods-based model generally distinguishes between agreement-based instruments, civil-based instruments, command and control instruments, and economic or fiscal instruments. du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 259.

257 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

258 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

259 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 103.

260 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 103.

261 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 103.

262 The P-D-C-A stages are extended to incorporate reporting and communication instruments; therefore the allusion to the P-D-C-A-R stages. Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 103.

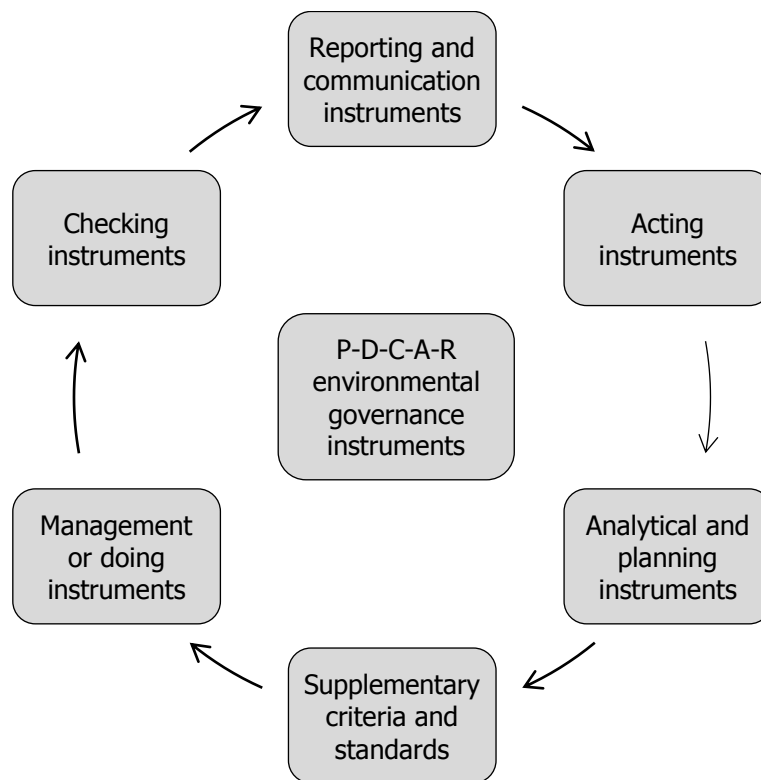


Figure 3-1: P-D-C-A-R environmental governance instruments²⁶³

Analytical (or discovery) and planning instruments are employed to recognise concerns and to suggest measures to attend to them. Standard analytical and planning instruments might comprise the set of impact assessment tools such as environmental impact assessment, environmental risk assessment and strategic environmental assessment.²⁶⁴ Supplementary criteria and standards informing analytical and planning instruments concern specific performance conditions for air quality, occupational health exposure limits and standards and water quality.²⁶⁵ Criteria and standards are needed to describe maximum and optimal exposure limits to persons and environmental media.²⁶⁶ Good environmental governance is unattainable where well-defined and legally assigned performance criteria and standards are lacking.²⁶⁷ Management or doing instruments are intended to deliver

263 Adopted from du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 261.

264 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

265 Ibid.

266 Ibid.

267 Ibid.

on analytical and planning instruments and criteria and standards.²⁶⁸ An important matter concerning environmental management is the efficient provision of resolutions intended in the planning stage. Management or doing instruments are by need varied and might contain implementation instruments such as management plans and operational control *etcetera* and administrative instrumentation (for example disaster management plans and standard operating procedures).²⁶⁹ Checking instruments follow management or doing instruments in line with the dictate that governance is unfinished if its effects are not checked and confirmed.²⁷⁰ Checking instruments might consist of environmental auditing, environmental monitoring and inspections.²⁷¹ Acting instruments concern instruments or components of instruments that vigorously promote and steer advancement in the performance of environmental management.²⁷² Such instruments might include management review, legal compliance audits and the implementation of performance and plan tracking.²⁷³ A fundamental principle of environmental governance is the responsibility to notify others of the degree and stages of environmental challenges and performance. Reporting and communication instruments range from the statutory to voluntary reporting and communication.²⁷⁴

268 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

269 Ibid.

270 Ibid.

271 Ibid.

272 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 261.

273 Ibid.

274 Ibid.

Table 3-1: P-D-C-A-R environmental governance instruments²⁷⁵

Analytical (or discovery) and planning instruments (P)	Supplementary criteria and standards informing analytical (or discovery) and planning instruments	Management or doing instruments (D)	Checking and acting instruments (C) and (A)	Reporting and communication instruments (R)
Baseline environmental studies and carbon and ecological footprint analysis	Global reporting initiative requirements and guidelines for baseline studies, sampling and testing	Sector environmental management plans and programmes	Environmental auditing and environmental measuring and monitoring	Environmental outlook reports, state of environment reports and triple bottom line reports
Environmental aspect and impact assessment	International Organisation for Standardisation (ISO) 14001: 2015-based environmental management systems	Implementation instruments, for example management plans and operational controls <i>etcetera</i>	Audits, management review, and measurement and monitoring	Statutory and voluntary reporting
Environmental risk assessment	ISO 31000: 2009 risk management – principles and guidelines	Administrative instrumentation (for example disaster management plans and standard operating procedures) and environmental risk management plans	Analysis, inspection, measurement, monitoring and records	Statutorily required emergency reporting
Environmental, heritage, social and sustainability impact assessments	Guidelines, legislation and national standards (for example South African national standards)	Environmental and sector management plans and programmes	Environmental and social measuring and monitoring	Interested and affected party-based statutory reporting
Legal compliance baseline assessment	Applicable requirements in legislation, licence and permit conditions, norms and	Legal compliance management plans	Legal compliance audits and legal compliance verification	External (for example national or provincial government) performance reports, internal performance reports and legal

275 Originally developed by Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 104-105.

Analytical (or discovery) and planning instruments (P)	Supplementary criteria and standards informing analytical (or discovery) and planning instruments	Management or doing instruments (D)	Checking and acting instruments (C) and (A)	Reporting and communication instruments (R)
	standards and regulations			compliance reports
Policy analysis	National or provincial norms, requirements and standards	Policy implementation instruments	Policy monitoring	External and internal communication and reporting
Strategic environmental assessment (SEA)	Department of Environmental Affairs guidelines for SEAs	-	-	Environmental and social communication
Strategic scenario planning	National guidelines and policies	Strategic management plans and policies	Implementation of performance and plan tracking	External and internal communication and reporting

3.4 Environmental auditing as a typical environmental governance instrument

As indicated in Table 3-1, environmental auditing is situated as a checking instrument in the suite of environmental governance instruments. This situation is motivated by the firm establishment of the “checking duty” of environmental auditing throughout the development of environmental auditing, the numerous definitions thereof, and the types of environmental auditing.

3.4.1 The development of environmental auditing

According to Greeno, Hedstrom and DiBerto, environmental auditing dates back to the enactment of the United States *National Environmental Policy Act* of 1969.²⁷⁶ The United States government’s awareness of environmental auditing seems to have started with a draft report released by the United States Environmental Protection Agency (EPA), which flagged the need for accredited, impartial third-party environmental auditors who would go to factories, gather samples, do analyses and report their results to the government.²⁷⁷ The draft report did not progress past a draft phase; however, it did cause vigorous discussion in the government and among members of the public.²⁷⁸

More records on environmental auditing started to show in the 1980s.²⁷⁹ Since then, the practice of environmental auditing has developed and became internationally recognised, with environmental audits being conducted in several regions such as Africa, the Caribbean, Europe, the Middle East and the United States.²⁸⁰

According to South Africa’s Department of Environmental Affairs and Tourism (now the Department of Environmental Affairs), the first known environmental audit in

276 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4.*

277 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4.*

278 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4.*

279 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4.*

280 INTOSAI WGEA 2012 <http://www.environmental-auditing.org/tabid/126/RegionId/226/Default.aspx>.

South Africa was conducted in 1989.²⁸¹ Eskom²⁸² carried out an environmental audit which was considered by observers as having had varied success.²⁸³ Nonetheless, it was successful in motivating numerous other entities to start considering environmental auditing.²⁸⁴ Be that as it may, one can safely say that environmental auditing is not a foreign concept in the South African context.

3.4.2 Defining environmental auditing

Environmental auditing has been described in various ways. A few of the most widely recognised and accepted definitions are considered here for the purposes of capturing the predominant understanding of the concept.

The EPA²⁸⁵ has defined environmental auditing as an impartial, methodical, recorded and regular review by controlled entities of facility practices and processes pertaining to fulfilling environmental obligations. This definition emphasises the characteristics of environmental auditing, namely that it is documented, objective, periodic and systematic. It also emphasises the aim of environmental auditing, which is verifying compliance with environmental requirements.

The International Chamber of Commerce²⁸⁶ has defined environmental audits as environmental management instruments²⁸⁷ consisting of impartial, methodical, recorded and regular assessments of how satisfactorily environmental entities, managements and apparatuses are functioning, with the objective of assisting to protect the environment by enabling management control of environmental applications, and evaluating compliance with entity strategies that would lead to fulfilling regulatory obligations. This definition highlights that environmental auditing is a management tool that objectively, periodically and systematically evaluates and

281 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4*.

282 The South African electricity public utility.

283 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4*.

284 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14 4*.

285 EPA 1986 *Federal Register* 25008.

286 Sarkar *et al An Integrated Approach to Environmental Management* 487.

287 The environmental governance instruments mentioned here are discussed in detail in para 3.3 of this study.

documents the environmental performance of an entity in compliance with legal and other requirements.

The definition of the International Organisation for Standardisation²⁸⁸ reads that environmental auditing is a methodical, recorded confirmation process of impartially finding and assessing proof to verify whether stipulated environmental actions, conditions, occurrences, management schemes, or information regarding these issues comply with audit criteria, and conveying the outcomes of this process to the customer. In this definition the documented, objective and systematic nature of the environmental auditing employed to verify compliance to requirements is prominent.

From these definitions the following features of environmental auditing can be identified:²⁸⁹

- Confirmation: the assessment of compliance with obligations, for example compliance with environmental legislation;
- Impartiality: the objectivity of environmental auditors, for example independence from individuals that have an interest in the audit findings recorded in the audit reports of an entity;
- Instrumental use: environmental auditing is a management instrument employed to evaluate and manage environmental matters;
- Methodologically soundness: environmental audits are conducted in consistence with established procedures;
- Reporting: audit reports are formulated and audit results are recorded; and
- Regularity: environmental audits are performed in accordance with a fixed audit schedule and at regular intervals.

288 ISO ISO 14010 1-2.

289 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series 14* 4-5; Sarkar *et al An Integrated Approach to Environmental Management* 487.

In the above context it is proposed that for the purposes of this study environmental auditing shall be understood to be an environmental governance instrument in terms of which government periodically employs procedures *inter alia* to objectively measure its own environmental performance or the environmental performance of another entity, and that identifies and reports the actions necessary to improve the existing level of environmental performance.²⁹⁰

3.4.3 Types of environmental audits

For the present purposes it is important to note that not all environmental audits are exactly the same. Different types of environmental audits exist. To the extent that this study argues in favour of environmental audits for improved environmental governance in the public sector of South Africa, the term “environmental auditing” is interpreted in the most inclusive way and does not exclude any of the existing types or categories of environmental audits described in the available literature.

The INTOSAI WGEA identifies three types of environmentally relevant audits: compliance audits, audits of financial statements, and performance audits.²⁹¹ Compliance audits provide the necessary confidence that governmental actions are being managed in consistence with applicable environmental laws, regulations and policies, for example.²⁹² Audits of financial statements may typically include the assessment of environmental matters of the following kind:²⁹³

- Plans to avoid, minimise or remedy harm to the environment;
- The outcomes of contravening environmental legislation;

290 Wade 1995 *Eco-Management and Auditing Journal* 26. The core of an environmental audit is to discover how well the environmental entity, equipment and management are performing. All three elements are key in ensuring that the entity's environmental performance fulfils the objectives established in its environmental policy, for example. The individual operation and the successfulness of integration will determine the level of either the failure or the success of the entity's environmental performance; DEAT *Environmental Auditing, Integrated Environmental Management, Information Series* 14 5.

291 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

292 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

293 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

- The outcomes of vicarious liability²⁹⁴ enforced by the government; and
- The protection of environmental resources.

Performance audits, when conducted in relation to environmental matters, may typically ensure that environmental plans are managed in an economical, effective and efficient way; and that measures of environment-associated performance justly indicate the performance of the entity under audit.²⁹⁵

The South African government identified five additional environmental audit types.²⁹⁶ The first is environmental assessment audits, which are employed to verify that environmental impact assessments conform to legal requirements; and that due process as prescribed in law has been complied with. The second is environmental due diligence audits, which are used to investigate the “actual and potential environmental liabilities of operations or sites”,²⁹⁷ whether current or historic operations and processes, that may cause pollution; possible pollution migration pathways and receptors; and the controls employed to prevent pollution.²⁹⁸ The third type is environmental management audits. These are performed to assess and verify the efficiency of environmental management systems, since good environmental management is subject to guidelines, monitoring systems and other procedures being executed by audited entities such as government departments or municipalities. The fourth type is supplier audits conducted by clients (or civil society agents) to check the environmental conformance of suppliers (including government) with the environmental requirements contained in the suppliers’ contracts. The fifth type is a sector-specific type of audits such as waste audits, which are employed to inspect the numerous facets of waste management such as the methods employed and the level of implementation of the waste hierarchy (which is avoid, reduce, reuse, and recycle.)

294 Vicarious liability concerns circumstances in which somebody is liable for the activities or negligence of another individual.

295 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

296 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series* 14 5-6.

297 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series* 14 6.

298 Jason Poole and Bloomer Consultants date unknown
http://www.jpb.co.uk/JPB/Environmental_Issues.html.16

This is not an exhaustive list of types of environmental audits. Other types which can be applied to environmental management include environmental liability accrual audits; pollution prevention audits; product audits; site assessments; and transactional audits, for example.²⁹⁹ Also, a comprehensive environmental audit may address several different environmental issues simultaneously. This is especially true, considering the interrelated nature of matters environmental.³⁰⁰ Addressing environmental issues is not the only benefit of environmental audits. The next section discusses numerous other benefits of environmental auditing.

3.5 The benefits of adding environmental auditing to the environmental governance effort of government

South African public sector auditors and their environmental audits have the potential to perform a significant role in reinforcing good environmental governance by improving accountability and transparency.³⁰¹ They accomplish this by giving impartial, realistic and thorough investigations of how environmental laws, objectives, plans and regulations are being implemented, managed and monitored in and by all spheres of the government.³⁰² In addition to the public sector auditors, the AGSA has a duty to give the government and public the information they require to govern wisely and to hold the government responsible respectively.³⁰³ The AGSA audits the government's financial management and compliance, implementation and performance of/with domestic environmental laws and policies and international environmental agreements and policies.³⁰⁴

Between 1993 and 2011 the AGSA conducted 20 compliance, financial and performance audits connected to the environment.³⁰⁵ In respect of environmental

299 Stanwick and Stanwick 2001 *Journal of Corporate Accounting and Finance* 11-12.

300 Karagiorgos *et al* "Environmental Auditing; Conceptual Framework and Contribution to the Business Environment".

301 INTOSAI WGEA "Improving National Performance" 5.

302 INTOSAI WGEA "Improving National Performance" 5.

303 INTOSAI WGEA "Improving National Performance" 4.

304 INTOSAI WGEA "Improving National Performance" 4.

305 E.g. the: Environmental Conversation, Antarctica, Islands and Weather Workshop and Stores: Repair of the Reserve Pool at Jan Kempdorp, Lower Fish River Government Water Scheme and Water Quality Management in 1993; Audits of Medical Waste Conducted at Provinces, such as: the Eastern Cape (three hospitals), Free State (one hospital) and Mpumalanga (one hospital) in

auditing, a financial audit is an audit of whether South Africa's environmental liabilities have been completely and correctly integrated into the government's financial records.³⁰⁶ Regarding environmental auditing, a compliance audit is an audit of whether the South African government has fulfilled its duties regarding environmental impact assessments (EIAs).³⁰⁷ Performance audits are receptive to any environmental matter that is controlled by the South African government.³⁰⁸

Frisch has flagged some of the potential benefits of environmental auditing by stating that these audits:³⁰⁹

- Allow an entity to demonstrate concern for environmental matters and principles: Environmental auditing necessitates communication and collaboration in the entity on environmental matters. These actions increase employees' level of education on environmental concerns as necessitated by legislation and as established by the entity;
- Allow an entity to improve its compliance with environmental laws, regulations, policies *etcetera*: Environmental auditing may pinpoint compliance issues before they are evident to regulators. As soon as an issue is identified, corrective action can be applied. If regulators identify a compliance issue, the entity can use the environmental audit and take action toward execution of audit recommendations as evidence of due diligence in resolving the issue;
- May lead to substantial cost savings in an entity: Environmental auditing may flag liability issues that can be attended to before an incident happens. The practice of working towards compliance decreases the possible costs of non-compliance. Frequently, modifications in processes can be developed that prevent emissions of any kind, for example, consequently minimising the demand for costly pollution-abatement technology; and

2002; and Coordinated International Audit on Climate Change: Key Implications for Governments and their Auditors (UNFCCC, Kyoto Protocol) in 2010; INTOSAI WGEA 2016 <http://www.environmental-auditing.org/tabid/126/CountryId/270/Default.aspx>.

306 INTOSAI WGEA "Improving National Performance" 5.

307 INTOSAI WGEA "Improving National Performance" 5.

308 INTOSAI WGEA "Improving National Performance" 5.

309 Frisch *The Application of Environmental Auditing Techniques to Cities and Regions* 12.

- May permit an entity to determine its environmental progress: Environmental auditing might exceed compliance and demonstrate progress made toward a “greener” environment that surpasses what is necessitated by legislation. These audit results may be employed to advance an entity’s image as a “green” environmental participant. Since society places value on environmental matters, the reporting of entity performance may be a successful publicity tool.

As stated in the introduction section of this study, these benefits of environmental auditing are attractive from a South African point of view when one considers the outcome captured in recent reports documenting environmental (mal) performance in the country.³¹⁰ These reports allude to several environment-related challenges regarding the present state of the environment; the stresses on the environment and the reactions to these stresses; the future condition of the environment if the present trends persist; and the recommended interventions that must be considered.³¹¹ The report findings suggest that the government has been able to generate opportunities in the general environmental portfolio.³¹² These opportunities include protecting environmental resources by addressing environmental management challenges and the associated infrastructure development, while simultaneously growing the economy.³¹³ Economic growth is to be achieved by implementing such strategies as creating employment in the waste management administration; minimising emissions in the agriculture, energy and industry sectors; and improving the legal framework

310 See, among others, DEA 2013-2014 https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf; DEAT 2006 http://soer.deat.gov.za/dm_documents/Executive_summary_5hHwD.pdf; and OECD 2013 [http://www.oecd.org/env/country-reviews/South%20Africa%20EPR%20\[f\]%20\[lr\].pdf](http://www.oecd.org/env/country-reviews/South%20Africa%20EPR%20[f]%20[lr].pdf).

311 DEAT 2006 http://soer.deat.gov.za/dm_documents/Executive_summary_5hHwD.pdf. Some of the environment-related challenges include, *inter alia*, an over-dependence on natural resources (SA’s is ranked amongst the greatest carbon and energy-demanding economies); the escalating destruction caused by invasive species; inadequately regulated mining bringing about severe environmental harm; increased stresses on restricted water resources; reduced access to environmental services, e.g. waste collection, and environmental quality; unlawful poaching and the unlawful wildlife trade.

312 DEA 2013-2014 https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf.

313 DEA 2013-2014 https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf.

for the management of health care waste, for instance.³¹⁴ As the custodian or trustee of South Africa's environmental resources,³¹⁵ the government must execute the sustainable use and protection thereof for the benefit of all the people of South Africa and in accordance with its constitutional mandate.³¹⁶ As a regulator, the government may conduct environmental auditing to govern public sector entities' environmental performance. Likewise, environmental auditing may be conducted in organs of state as regulated entities.³¹⁷ In both instances environmental auditing, as an environmental governance instrument, may be conducted to foster public sector compliance with environmental law;³¹⁸ improved environmental practice; and operational environmental efficiency.³¹⁹

3.6 Conclusion

This chapter has examined environmental auditing specifically as an environmental governance instrument to situate environmental auditing as a key environmental governance instrument. It can be concluded from the above discussion that the term "environmental governance" alludes to the practices of decision-making implicated in the management and control of the environment.³²⁰ Law will stipulate the framework and methods of controlling the decisions and actions of persons in the environment, and supply the reason for doing so.³²¹ Environmental governance can be effected through environmental governance instruments.³²²

314 DEA 2013-2014
https://www.environment.gov.za/sites/default/files/reports/annual_report2013_14.pdf.

315 E.g. heritage, mineral and petroleum, and water resources. The concept of "public trusteeship" is entrenched in the following South African legislation: s 3(1) of the MPRDA, NEMA, NEM: BA, NHRA and NWA. Also see van der Schyff *PELJ* 121-159.

316 Ss 7(2) and 24 of the Constitution. The constitutional mandate of the government referred to here is discussed in detail in ch 4, para 4.2.1 of this study.

317 As a regulated entity, the government's environmental performance is governed by public sector auditors.

318 For example, by conditions contained in licences.

319 AGSA 2013 <http://www.agsa.co.za/Documents/AGSAreports/AGSAsannualreports.aspx>.

320 DEAT *Environmental Governance* 4.

321 Kotzé "Environmental Governance" 108.

322 Kotzé "Environmental Governance" 108.

Environmental governance instruments can encompass whatever can be employed to realise an environment-related result.³²³ They can be categorised in respect of the P-D-C-A-R stages of the (amended) Deming cycle.³²⁴ Environmental auditing is situated as a checking instrument in the suite of environmental governance instruments in line with the dictum that an act of governance is incomplete if its effects are not checked and confirmed.³²⁵

Environmental auditing is an environmental governance instrument in terms of which government periodically employs procedures *inter alia* to objectively measure its own environmental performance or the environmental performance of another entity, and that identifies and reports the actions necessary to improve the existing level of environmental performance.³²⁶ Different types of environmental audits exist, namely compliance audits; audits of financial statements; performance audits; environmental assessment audits; environmental due diligence audits; environmental management audits; supplier audits; and waste audits.³²⁷ Other types of environmental audits which can be applied to environmental management include environmental liability accrual audits; pollution prevention audits; product audits; site assessments; and transactional audits, for example.³²⁸ The environmental relevance of these audits lies therein that the issues being audited are interrelated. Thus, a comprehensive audit may address several issues, including environmental issues, simultaneously.³²⁹ One such environmental issue is the sustainable use and protection of environmental resources.

The government must execute the sustainable use and protection of South Africa's environmental resources for the benefit of all the people of South Africa.³³⁰ As a

323 Nel, du Plessis and du Plessis "Instrumentation for Local Governance" 97.

324 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

325 Du Plessis and Nel "Driving Compliance to and Enforcement of South African Legislation" 260.

326 See fn 290.

327 DEAT *Environmental Auditing, Integrated Environmental Management, Information Series* 14 5-6; INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

328 Stanwick and Stanwick 2001 *Journal of Corporate Accounting and Finance* 11-12.

329 Karagiorgos *et al* "Environmental auditing; conceptual framework and contribution to the business environment".

330 As the custodian or trustee of South Africa's environmental resources, and in accordance with its constitutional mandate. The concept of "public trusteeship" is entrenched in the following South African legislation: s 3(1) of the MPRDA, NEMA, NEM: BA, NHRA and NWA. Also see van der

regulator, the government may conduct environmental auditing to govern public sector entities' environmental performance. Likewise, environmental auditing may be conducted in organs of state as regulated entities.³³¹ In both instances environmental auditing, as an environmental governance instrument, may be conducted to foster public sector compliance with environmental law;³³² improved environmental practice; and operational environmental efficiency.³³³

Since environmental auditing may be conducted in and by the public sector to realise the abovementioned benefits thereof, the following chapter continues the study with a review on the South African law framework on environmental auditing in the public sector. This includes a review of the legislation governing and applying to public sector auditing in general and on environmental auditing in the public sector.

Schyff *PELJ* 121-159. The constitutional mandate of the government referred to here is entrenched in ss 7(2) and 24 of the Constitution.

331 As a regulated entity, the government's environmental performance is governed by public sector auditors.

332 By, e.g., conditions contained in licences.

333 AGSA 2013 <http://www.agsa.co.za/Documents/AGSAreports/AGSAsannualreports.aspx>.

CHAPTER 4 SOUTH AFRICAN LAW FRAMEWORK ON ENVIRONMENTAL AUDITING IN THE PUBLIC SECTOR

4.1 Introduction

The preceding chapter focussed on environmental auditing as an environmental governance instrument. This chapter reviews the South African law framework on environmental auditing in and by the public sector. The review of the law framework focuses on the legislation governing and applying to public sector auditing in general and on environmental auditing in the public sector. The main aim of this chapter is to determine the extent to which the law framework provides for environmental auditing in the public sector.

4.2 Legislation governing and applying to public sector auditing in general

There are numerous laws and regulations relevant to public sector auditing in the general sense. Relevant to the purposes of this study is the legislation that makes provision for public sector auditing and that regulates and determines the functions of public sector auditors. The laws to be reviewed include the following: the Constitution, the PAA, the PFMA and the *Local Government: Municipal Finance Management Act* 56 of 2003 (hereafter the MFMA). The objective with the review below is to determine how public sector environmental auditing plays out or has the potential to play out in the context of public sector auditing in general. The relevance of the legislation governing and applying to public sector auditing in general is discussed at the end of the reviews of the Constitution, PAA, PFMA and MFMA in section 4.2.5.

4.2.1 Constitution of the Republic of South Africa, 1996

As the SAI of the country, it is the constitutionally entrenched duty of the AGSA to use auditing to reinforce constitutional democracy in South Africa by advancing

accountability, governance and oversight of government.³³⁴ Thus, “the mandate of the AGSA to audit public sector entities is derived from the Constitution”.³³⁵

Section 181 of the Constitution establishes the AGSA as a government institution that is independent and bound only by the governing principles prescribed in the Constitution and other sources of law.³³⁶ One of these governing principles prescribes, for example, that the AGSA should be impartial, and should execute its functions and use its powers without bias, fear or preconception.³³⁷ Other state organs, *via* judicial and additional means, should guard and support the AGSA to ensure the dignity, efficiency, impartiality and independence of the AGSA.³³⁸ No individual or state organ may impede the functioning of the AGSA.³³⁹ The AGSA is accountable to the National Assembly and should report on its actions and the execution of its functions to the Assembly annually.³⁴⁰

Section 188 of the Constitution describes the AGSA’s functions. These functions include auditing and reporting on the accounts and financial management and statements of every national and provincial government administration and department; every municipality; and every additional accounting entity or institution necessitated by national or provincial laws and regulations to be audited by the AGSA.³⁴¹ Besides the aforementioned functions, and dependent on any laws and regulations, the AGSA can audit and report on the accounts and financial management and statements of every institution financed by a municipality or from the National or a Provincial Revenue Fund; and every institution that is permitted in respect of any law to obtain funds for a public cause.³⁴² The AGSA should present the aforementioned audit reports to every legislature that has a direct concern in the audit, and to every additional administration stipulated by national laws and

334 Ch 9 of the Constitution.

335 AGSA and IRBA for Auditors 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

336 S 181(1)(e) and (2) of the Constitution.

337 S 181(2) *Idem*.

338 S 181(3) *Idem*.

339 S 181(4) *Idem*.

340 S 181(5) *Idem*.

341 S 188(1) *Idem*.

342 S 188(2) of the Constitution.

regulations.³⁴³ All of these audit reports should be publicly available.³⁴⁴ The AGSA possesses the added functions and powers stipulated by national laws.³⁴⁵ It follows that “the mandate of the AGSA to audit public sector entities is derived from the Constitution”.³⁴⁶ In addition to the mandate, the Constitution also describes the functions of the AGSA. These functions are further prescribed in the PAA.³⁴⁷

4.2.2 Public Audit Act 25 of 2004

Sections 4 and 5 of the PAA stipulate the constitutional and other functions of the AGSA respectively.³⁴⁸ The PAA necessitates the AGSA to audit and report on the accounts and financial management statements of:³⁴⁹

- every national and provincial government administration and department;
- every constitutional institution;
- the administration of Parliament and every provincial legislature;
- every municipality;
- every municipal entity; and
- every additional accounting entity or institution mandated by additional national or provincial laws and regulations to be audited by the AGSA.

The AGSA must further audit and report on the combined financial statements of the national government as necessitated by section 8 of the PFMA; every provincial government as necessitated by section 19 of the PFMA; and a parent municipality and every municipal entity under its solitary or tailored jurisdiction as necessitated by

343 S 188(3) of the Constitution.

344 S 188(3) of the Constitution.

345 S 188(4) of the Constitution.

346 AGSA and IRBA for Auditors 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

347 AGSA and IRBA for Auditors 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

348 Only the constitutional functions of the AGSA are discussed in this study.

349 S 4(1) of the PAA.

section 122(2) of the MFMA.³⁵⁰ The AGSA may audit and report on the accounts, financial management and financial statements of every public entity recorded in the PFMA; and every additional institution not alluded to in section 4(1) of the PAA and which is financed by a municipality or from the National or a Provincial Revenue Fund; or permitted in respect of any law to obtain funds for a public cause.³⁵¹ The AGSA may permit one or more individuals to conduct or to help in conducting an audit mentioned in section 4(1)-(3) of the PAA.³⁵² Such an individual might be a private practitioner or an employee of the AGSA.³⁵³ In these cases section 12(3)(a) of the PAA necessitates the AGSA to establish the “minimum qualifications, experience and competence for authorised auditors”. Public sector auditors conducting public sector audits must ensure that they possess the competence to conduct such public sector audits consistent with the distinctive circumstances, legal and regulatory requirements and specialised standards of the public sector.³⁵⁴ The AGSA should, in respect of every audit mentioned in section 4(1)-(3) of the PAA, establish the audit method and standards to be used,³⁵⁵ and prepare an audit report.³⁵⁶ The said report should express a conclusion or opinion on whether the yearly financial statements of the auditee justly portray the financial situation and outcomes of its cash flow and operations;³⁵⁷ the auditee’s conformity to relevant laws and regulations regarding financial affairs and additional associated matters;³⁵⁸ and the stated information regarding the “performance of the auditee against predetermined objectives”.³⁵⁹ Additionally, the AGSA may state whether the auditee’s resources were obtained economically and used efficiently and effectively.³⁶⁰

350 S 4(2) of the PAA.

351 S 4(3) of the PAA.

352 S 12(1) of the PAA.

353 S 12(2)(a)-(b) of the PAA.

354 AGSA and IRBA for Auditors 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

355 Ss 12(3)(c) and 13(1)(a) of the PAA.

356 S 20(1) of the PAA.

357 Audit report prepared after conducting a financial audit.

358 Audit report prepared after conducting a compliance audit.

359 Audit report prepared after conducting an audit of predetermined objectives; Ss 20(2)(c) and 28(1)(c) of the PAA.

360 Audit report prepared after conducting a performance audit; S 20(3) of the PAA.

4.2.3 Public Finance Management Act 1 of 1999

The PFMA encourages the aim of good financial management to increase delivery via the well-organised and successful application of restricted resources.³⁶¹ The PFMA constitutes the foundation for an efficient corporate governance structure and includes, among others, the submission of:³⁶²

- financial statements by constitutional institutions, departments and trading entities within two months of the financial year-end to the AGSA and applicable treasury;³⁶³
- the AGSA's auditor's report on the aforementioned financial statements within two months of receiving the financial statements;³⁶⁴
- the AGSA's auditor's report, an annual report and financial statements by constitutional institutions, departments and trading entities within five months of the financial year-end, to the applicable treasury, and in the instance of a trading entity or department, also to the executive authority;³⁶⁵
- the auditor's report by a constitutional institution, annual report and financial statements to Parliament within one month of receiving the AGSA's auditor's report;³⁶⁶
- financial statements by public entities within two months of the end of the financial year to their auditors. If the public entity is under the ownership or control of a provincial or national government or a business enterprise, the financial statements should also be submitted to the applicable treasury;³⁶⁷ and

361 PFMA; AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

362 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

363 S 40(1)(c) of the PFMA.

364 S 40(2) of the PFMA; Ss 8(2) and 19(2) of the PFMA instructs that the AGSA should audit the combined financial statements and present an audit report on the financial statements to the Provincial Treasury and National Treasury.

365 S 40(1)(d) of the PFMA.

366 S 40(1)(e) of the PFMA.

367 S 55(1)(c) of the PFMA.

- the auditor's report by public entities, an annual report and financial statements within five months of the end of the financial year, to the AGSA if the AGSA is not the auditor of the public entity, applicable treasury and the executive authority.³⁶⁸

4.2.4 Local Government: Municipal Finance Management Act 56 of 2003

The MFMA seeks to update financial management and budget practices by putting municipal finances on a sustainable basis to increase the ability of local government to provide amenities to all.³⁶⁹ The MFMA provides among other things for the submission of:³⁷⁰

- The accounting officer's financial statements of a municipality within two months of the end of the financial year to the AGSA (three months for combined financial statements);³⁷¹
- The accounting officer's financial statements of a municipal entity within two months of the end of the financial year to the parent municipality and the AGSA;³⁷² and
- The AGSA's auditor's report within three months of receiving the financial statements of a municipal entity or municipality.³⁷³

368 S 55(1)(d) of the PFMA.

369 MFMA; AGSA and IRBA 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

370 AGSA and IRBA 2012 www.irba.co.za/index.php/component/docman/doc_download/1246.

371 S 126(1) of the MFMA.

372 S 126(2) of the MFMA.

373 S 126(3)(b) of the MFMA; S 92 of the MFMA instructs that the AGSA should audit and present on the accounts, financial management and financial statements of every municipal entity; S 126(3)(a) of the MFMA directs that the AGSA should audit the annual financial statements and, in the case of a municipality which has sole control of a municipal entity, or which has effective control within the meaning of the MSA of a municipal entity which is a private company, the consolidated annual financial statements of the entity or municipality.

4.2.5 Relevance of legislation governing and applying to public sector auditing in general

As explained in chapter 2 of this study and as shown above, compliance, financial, and performance audits are not necessarily limited to the auditing of finance-related matters. According to the INTOSAI a SAI (such as the AGSA, as established by the provisions contained in sections 181, 188 and 189 of the Constitution) may for example conduct “environmental” audits in terms of its mandate to carry out compliance audits (as required by sections 20(2)(b) and 28(1)(b) of the PAA) and financial audits (as required by sections 20(2)(a) and 28(1)(a) of the PAA) or performance audits (as required by section 20(3) of the PAA) as defined in the INTOSAI’s ISAs. Governments are progressively acknowledging that the costs resulting from environmental responsibilities and strategies and failures to execute or fully execute these responsibilities and strategies may be considerable.³⁷⁴ The environmental responsibilities and strategies may present contingent and material liabilities,³⁷⁵ such as the costs associated with the clean-up or remediation of contaminated sites; environmental fines, penalties and taxes; and the purchase of pollution prevention technologies.³⁷⁶ Environmental impacts can also considerably influence the valuation of equipment, factories, properties and structures.³⁷⁷ Such environmental impacts, liabilities and costs influence the planning and audit of financial accounts as required by section 188 of the Constitution, section 4 of the PAA, sections 40 and 55 of the PFMA and section 126 of the MFMA.³⁷⁸ A performance audit might where appropriate³⁷⁹ be concerned with the economy of administrative procedures, the effectiveness of the plan or action in realising its objects and its planned effect, and the efficiency of the use of financial, human and other resources used in the plan or action, as required by section 20(3) of the PAA.³⁸⁰ An

374 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

375 Contingent liabilities, i.e. the costs are subject to a possible upcoming event.

376 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

377 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

378 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

379 In the setting of an audited entity’s execution in completing government environmental plans and actions.

380 The principles of economy, effectiveness and efficiency mentioned here were discussed in detail in ch 2 of this study.

environmentally focussed performance audit can typically be categorised into one of five categories, i.e. audits of environmental management systems; audits of compliance with environmental legislation as required by sections 20(2)(b) and 28(1)(b) of the PAA; audits of the environmental effect of additional government plans; audits of the execution of government environmental plans; and assessments of suggested environmental plans and strategies.³⁸¹

4.3 Legislation governing and applying to environmental auditing in the public sector

4.3.1 Constitution of the Republic of South Africa, 1996

The Constitution is the supreme law of South Africa.³⁸² It provides the basis of South African law, describes the organisation of the country's government, and specifies the responsibilities and rights of South Africa's people.³⁸³ Section 24 of the Constitution provides for one such right, which is the environmental right. The environmental right is formulated as follows:³⁸⁴

- 24. Everyone has the right -
 - (a) to an environment that is not harmful to their health or well-being; and
 - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In terms of section 24 of the Constitution the government, as the custodian or trustee of South Africa's environmental resources,³⁸⁵ should realise the environmental right "through reasonable legislative and other measures".³⁸⁶ The country's body of

381 INTOSAI 2000 http://www.issai.org/media/13004/issai_5110e.pdf.

382 S 2 of the Constitution.

383 Ss 1-243 of the Constitution.

384 S 24 of the Constitution.

385 E.g. heritage; mineral and petroleum; and water resources. The concept of "public trusteeship" is entrenched in the following South African legislation: s 3(1) of the MPRDA; ss 2(4)(o), 28(5)(e) and 30(6)(d) of the NEMA; s 3 of the NEM: BA; s 5(1)(b) of the NHRA; and s 3 of the NWA. See also van der Schyff 2010 *PELJ* 121-159.

386 S 7(2) of the Constitution.

environmental law constitutes the required reasonable “legislative measures”.³⁸⁷ A failure to comply with or enforce the body of environmental law (that is the “legislative measures”) that causes an environment that is damaging to an individual’s health or well-being contravenes section 24.³⁸⁸ If the “legislative measures” fail in and by themselves, “other measures” must cause relief.³⁸⁹ If the government *per se* does not comply with or enforce its legislation, the situation escalates to a constitutional contravention, given that it is required to respect, protect, promote and fulfil the section 24 environmental right.³⁹⁰ It is thus argued that the government has a duty to ensure that all laws are complied with and are enforced. This duty may be performed through environmental auditing, since environmental auditing acts as a checking instrument in the suite of environmental governance instruments as explained in the previous chapter. As a regulator, the government may use environmental auditing to this effect.³⁹¹ Likewise, environmental auditing may be used in organs of state as regulated entities.³⁹² A relevant question is whether environmental auditing may be regarded as one such “other measure” required by the Constitution.

When referring to and interpreting section 24, the Courts have not (yet) interpreted “other measures” *per se*.³⁹³ Since the existing jurisprudence does not clearly delineate and define “other measures”, it might be helpful to refer to the environmental management literature in search of clarity.³⁹⁴ The reference to “other measures” in ISO 14001: 2015 *Environmental Management Systems – Requirements with Guidance for Use* (hereafter ISO 14001: 2015)³⁹⁵ is commonly interpreted as signifying the best practicable means,³⁹⁶ international standards decided on by various entities, and South African National Standards (SANS) guidelines and

387 E.g. NEMA, NEM: AQA, NEM: BA *etc.*

388 Du Plessis 2004 *SAJELP* 146.

389 Du Plessis 2004 *SAJELP* 146.

390 Du Plessis 2004 *SAJELP* 146.

391 The government, as a regulator, must govern public sector entities’ performance.

392 As a regulated entity, the government’s performance is governed by public sector auditors.

393 Du Plessis 2004 *SAJELP* 146.

394 Du Plessis 2004 *SAJELP* 145-146.

395 ISO 2015 *ISO 14001: 2015*.

396 S 10(2)(a)(i) of the APPA.

standards.³⁹⁷ “Other measures” can also be interpreted as signifying an ISO 14001:2015-based management system.³⁹⁸ The actual implementation of environmental management principles, for example the duty of care principle and the precautionary principle, could also be considered as “other measures”.³⁹⁹ Following this line of thinking, it is safe to assume that environmental auditing is also an “other measure” by means of which to execute the government’s duties arising from the constitutional environmental right.

4.3.2 National Environmental Management Act 107 of 1998

The NEMA is the framework environmental law of South Africa. The NEMA aims to provide for co-operative environmental governance by enunciating principles for decision-making on issues influencing the environment, institutions that will advance co-operative governance, and processes for organising environmental functions carried out by organs of state, and by providing for associated issues.⁴⁰⁰ A review of the NEMA showed blurriness in the direct application of the NEMA to public sector environmental audits.⁴⁰¹ Only one section in the NEMA directly provides for environmental auditing; that is section 24N(7)(d). Two sections of the NEMA indirectly provide for environmental performance auditing. GN R982 in GG 38282 of 4 December 2014 (hereafter the EIA Regulations, 2014) arguably compensates for the lack of a provision for environmental auditing in the act by providing, among other things, for an environmental auditor and the characteristics of an environmental auditor, for environmental compliance auditing and the frequency of environmental auditing, and the submission of an environmental audit report. All of the aforementioned provisions of the NEMA and the EIA Regulations, 2014 are subsequently discussed.

Section 24N of the NEMA allows for environmental management programmes (EMPrs). Section 24N(1A) instructs that where an environmental impact assessment

397 Du Plessis 2004 *SAJELP* 146.

398 Du Plessis 2004 *SAJELP* 146.

399 Du Plessis 2004 *SAJELP* 146; Nel J and du Plessis 2001 *SAJELP* 1-36.

400 NEMA.

401 Not all of the provisions discussed amount to auditing provisions *per sé*.

(EIA) has been determined as the environmental governance instrument to be used as the foundation for a decision on an application for environmental authorisation (EA), the Minister in charge of environmental affairs, the Minister in charge of mineral resources or a Member of the Executive Council (MEC) should require the presentation of an EMPr before determining an application for an EA. Section 24N(2)(e) additionally directs that an EMPr should include information concerning the procedures suggested for monitoring compliance with the EMPr and for reporting on compliance. Section 24N(7)(d) furthermore commands that the holder of an EA and any individual supplied with an EA should audit and monitor compliance with the conditions of the EMPr. It follows that section 24N(7)(d) provides for environmental compliance auditing. However, the environmental compliance auditing provided for is applicable to the public sector only if the holder and individual supplied with an EA is part of government.

Chapter 6 of the NEMA provides for international obligations and agreements. Section 26 allows for reports. Section 26(2)(d)(i) instructs that the intention of the Annual Performance Report on Sustainable Development to realise the government's commitment to Agenda 21 will be to provide an audit and a report of the government's performance regarding Agenda 21. It follows that section 26 does not provide for environmental auditing by the government. It nevertheless commands an annual audit to be performed on the government's performance regarding Agenda 21 obligations. An Annual Agenda 21 Performance Report should be collated by the Minister, after the aforementioned audit, to function as an audit report on the government's performance.

Chapter 9 of the NEMA provides for the administration of the NEMA and specific environmental management acts (SEMAs). Section 44 allows for regulations in general. Section 44(1)(aF) mandates that the Minister in charge of environmental affairs may draw up regulations on the auditing and reporting of environmental liability. Regulation 26(h) of the EIA Regulations, 2014 provides for the auditing and reporting of environmental liability. The relevance of regulation 26(h) is discussed under the content of EAs in Table 4-1.

Section 46 of the NEMA makes provision for model environmental management bylaws. Section 46(1) mandates that the Minister in charge of environmental affairs may draw up model environmental management bylaws intended to put in place actions for the management of environmental effects of any development in the jurisdiction of a municipality, which may be embraced by a municipality as municipal bylaws. Section 46(4) instructs that the intention of the model environmental management bylaws mentioned in section 46(1) should be to mitigate unfavourable environmental effects;⁴⁰² ease the execution of decisions taken, and requirements forced because of the authorisation of recent activities and developments, or by the establishing of norms and standards concerning prevailing activities and developments;⁴⁰³ and ensure successful conservation and environmental management of effects and resources in the jurisdiction of a municipality in collaboration with other organs of state.⁴⁰⁴ Section 46(5)(a) directs that the model environmental management bylaws mentioned in section 46(1) should contain actions for environmental management, which may contain auditing, ensuring compliance and monitoring. It follows that section 46 does not directly provide for environmental auditing by the government. It nevertheless provides for the publishing of model environmental management bylaws by the national government subsequently to be adapted and adopted by municipalities. Model environmental management bylaws could potentially be an instrument providing for environmental audits to be conducted by municipalities in local jurisdictions.

4.3.2.1 GN R982 in GG 38282 of 4 December 2014

GN R982 in GG 38282 of 4 December 2014 contains the EIA Regulations. The aim of the EIA Regulations, 2014 is to control the process and criteria as anticipated in Chapter 5 of the NEMA regarding the preparation, assessment, submission, handling and deliberation of, and decision on, requests for EAs for the start of activities, dependent on EIA, to prevent or mitigate harmful effects on the environment, and to enhance positive environmental effects, and for related issues. The EIA Regulations,

402 S 46(4)(a) of the NEMA.

403 S 46(4)(b) of the NEMA.

404 S 46(4)(c) of the NEMA.

2014 relevant to environmental auditing in the public sector of South Africa are described in Table 4-1. These regulations provide various requirements for environmental auditors, environmental auditing and environmental audit reports compiled in terms of the environmental authorisations issued under the NEMA. These requirements relate among other things to the characteristics of environmental auditors, environmental compliance auditing and the submission of environmental audit reports.

Table 4-1: Relevance of the EIA Regulations, 2014 for public sector auditing

Regulation	Content	Relevance
Interpretation of words/terms used in regulations		
Reg 1 (independent)	The concept “independent” concerning the individual in charge of devising an environmental audit report is interpreted as (a) such individual that has no business, economic, personal or other interest in the activity or application in terms of which that individual is designated in respect of the EIA Regulations, 2014; or (b) that there are no situations that may undermine the impartiality of that individual in carrying out such tasks, excluding (ii) reasonable payment for tasks carried out regarding that environmental audit report.	Provides for: • an environmental auditor; and • the characteristics of an environmental auditor.
Content of EAs		
Reg 26(e)	An EA should state the frequency of auditing of compliance with the requirements of the EA and of compliance with the EMPr, and where relevant the closure plan, to decide whether such closure plan and EMPr persistently fulfil mitigation conditions and attends to environmental effects, considering procedures for such auditing stipulated in respect of the EIA Regulations, 2014: given that the frequency of the auditing of compliance with the requirements of the EA and of compliance with the EMPr may not be more than intervals of five years.	Provides for environmental compliance auditing.
Reg 26(f)	An EA should state the frequency of presentation of an EA report to the competent authority (CA), containing the timeframe in which a last environmental audit report should be presented to the CA.	Provides for: • the frequency of environmental auditing; and • the submission of an environmental audit report.
Reg 26(h)	An EA should state a condition that all compliance monitoring reports, any impartial evaluations of economic preparations for environmental liability and rehabilitation, audit reports which include the environmental audit report anticipated by regulation 34, closure plans where relevant, the	Provides for an environmental audit report to be publicly available.

Regulation	Content	Relevance
	EMPr, and the EA be displayed for duplicating and inspection at the area of the authorised activity; ⁴⁰⁵ to anyone on appeal; ⁴⁰⁶ and where holder of EA has a website, on such publically reachable website. ⁴⁰⁷	
Auditing of compliance with closure plan, EA and EMPr		
Reg 34(1)	The holder of an EA should, for the time during which the EA and EMPr, and where relevant the closure plan, stay valid ensure that the compliance with the requirements of the EA and the EMPr, and where relevant the closure plan, is audited; ⁴⁰⁸ and present an environmental audit report to the applicable CA. ⁴⁰⁹	Provides for: • environmental compliance auditing; and • the submission of an environmental audit report.
Reg 34(2)	The environmental audit report anticipated in regulation 34(1) should be developed by an impartial individual with the applicable environmental auditing skills; ⁴¹⁰ furnish provable audit findings, in an arranged and methodical way, on the level of compliance and performance of an organisation or project with the preparations of the necessary EA or EMPr and, where relevant, the closure plan; ⁴¹¹ and the capacity of the actions included in the EMPr, and where relevant the closure plan, to adequately furnish for the avoidance, management and mitigation of environmental effects related to the carrying out of the activity; ⁴¹² include the information specified in Appendix 7; ⁴¹³ and be carried out and presented to the CA at intervals as stated in the EA. ⁴¹⁴	Provides for: • an environmental auditor to draft an environmental audit report; • environmental compliance auditing; • the content of an

405 Reg 26(h)(i) of the EIA Regulations, 2014.

406 Reg 26(h)(ii) Idem.

407 Reg 26(h)(iii) Idem.

408 Reg 34(1)(a) Idem.

409 Reg 34(1)(b) Idem.

410 Reg 34(2)(a) Idem.

411 Reg 34(2)(b)(i) Idem.

412 Reg 34(2)(b)(ii) Idem.

413 Appendix 7 of the EIA Regulations, 2014 provides for the objective and content of the environmental audit report; Reg 34(2)(c) of the EIA Regulations, 2014.

Regulation	Content	Relevance
		environmental audit report; and the frequency of conducting and submitting an environmental audit report.
Reg 34(3)	The environmental audit report anticipated in regulation 34(1) should identify the capacity of the EMPr, and where relevant the closure plan, to adequately furnish for the avoidance, management and mitigation of environmental effects related to the carrying out of the activity on a continuous basis and to adequately furnish for the avoidance, management and mitigation of environmental effects related to the closure of the facility; ⁴¹⁵ and the level of compliance with the preparations of the EA, EMPr and where relevant the closure plan. ⁴¹⁶	Provides for environmental compliance auditing.
Reg 34(4)	Where the findings of the environmental audit report anticipated in regulation 34(1) state inadequate mitigation of environmental effects related to the carrying out of the activity; ⁴¹⁷ or inadequate levels of compliance with the EA or EMPr and, where relevant the closure plan; ⁴¹⁸ the holder should when presenting the environmental audit report to the CA in respect of regulation 34(1), present recommendations to revise the EMPr or closure plan to correct the defects specified in the environmental audit report.	Provides for the inclusion of recommendations in an environmental audit report.
Reg 34(6)	Within seven days of the date of presentation of an environmental audit report to the CA, the holder of an EA should inform all possible and registered interested and affected parties of the presentation of the environmental audit report, and make the environmental audit report immediately obtainable to anyone on appeal; ⁴¹⁹ and on a publically reachable website, where the holder has such a website. ⁴²⁰	Provides for an environmental audit report to be publicly available.

414 Reg 34(2)(d) Idem.

415 Reg 34(3)(a) Idem.

416 Reg 34(3)(b) Idem.

417 Reg 34(4)(a) Idem.

418 Reg 34(4)(b) Idem.

419 Reg 34(7)(a) Idem.

420 Reg 34(7)(b) Idem.

Regulation	Content	Relevance
Reg 34(7)	An environmental audit report should include all information specified in Appendix 7 to the 2014 Regulations.	Provides for the content of an environmental audit report.
Amendment of closure plan or EMPr as result of audit		
Reg 35(1)	The CA should take into consideration the environmental audit report and revised EMPr and, where relevant the revised closure plan, anticipated in regulation 34 and accept such revised EMPr, and where relevant the revised closure plan, if it is pleased that it adequately furnishes for the avoidance, management and mitigation of environmental effects related to the carrying out of the activity, or where relevant the closure of the facility, and that it has been subjected to a suitable public participation process.	Provides for the amendment of: - the closure plan; or - the EMPr based on a consideration of the findings included in an environmental audit report.
Appendix 7 Environmental audit report		
Environmental audit report		
Appx 7(1)	The environmental audit report should provide for recommendations concerning the need to change the EMPr, and where relevant, the closure plan.	Provides for the inclusion of recommendations in an environmental audit report.
Intention of environmental audit report		
Appx 7(2)	The intention of the environmental audit report is to report on the level of compliance with the requirements of the EA and the EMPr, and where relevant, the closure plan; ⁴²¹ and the degree to which the avoidance, management and mitigation actions furnished in the EMPr, and where relevant, the closure plan reach the outcomes and intentions of the EMPr, and closure plan. ⁴²²	Provides for environmental compliance auditing.

421 Appx 7(2)(a)(i) of the EIA Regulations, 2014.

422 Appx 7(2)(a)(ii) Idem.

Regulation	Content	Relevance
	The intention of the environmental audit report further is to determine and evaluate any new effects and risks due to the carrying out the activity; ⁴²³ assess the successfulness of the EMPr, and where relevant, the closure plan; ⁴²⁴ determine defects in the EMPr, and where relevant, the closure plan; ⁴²⁵ and determine the necessity for any changes to the avoidance, management and mitigation actions furnished in the EMPr, and where relevant, the closure plan. ⁴²⁶	
Content of environmental audit reports		
Appx 7(3)	An environmental audit report compiled in respect of the EIA Regulations, 2014 should cover details of the environmental auditor who compiled the environmental audit report; ⁴²⁷ and the expertise of the environmental auditor that prepared the environmental audit report; ⁴²⁸ a statement that the independent auditor is independent; ⁴²⁹ an indication of the extent of, and the intention for which, the environmental audit report was compiled; ⁴³⁰ an explanation of the method accepted in compiling the environmental audit report; ⁴³¹ an indication of the capability of the EMPr, and where relevant, the closure plan to adequately provide for the management, mitigation and prevention of environmental effects related to the carrying out of the activity on an continuing basis and the closure of the facility; ⁴³² and ensure conformity with the requirements of EA, EMPr, and where relevant, the closure plan; ⁴³³ an explanation of any assumptions formed, and any ambiguities or gaps in information; ⁴³⁴ an explanation of any	Provides for the content of an environmental audit report.

423 Appx 7(2)(b) of the EIA Regulations, 2014.

424 Appx 7(2)(c) Idem.

425 Appx 7(2)(d) Idem.

426 Appx 7(2)(e) Idem.

427 Appx 7(3)(1)(a)(i) Idem.

428 Appx 7(3)(1)(a)(ii) Idem.

429 Appx 7(3)(1)(b) Idem.

430 Appx 7(3)(1)(c) Idem.

431 Appx 7(3)(1)(d) Idem.

432 Appx 7(3)(1)(e)(i)-(ii) Idem.

433 Appx 7(3)(1)(e)(iii) Idem.

434 Appx 7(3)(1)(f) Idem.

Regulation	Content	Relevance
	consultation process that was carried out during the course of undertaking the environmental audit report; ⁴³⁵ a synopsis and duplicates of any comments that were obtained during any consultation process; ⁴³⁶ and any additional information asked for by the CA. ⁴³⁷	

435 Appx 7(3)(1)(g) of the EIA Regulations, 2014.

436 Appx 7(3)(1)(j) Idem.

437 Appx 7(3)(1)(k) Idem.

4.3.3 *Specific environmental management acts*

SEMA's fall under the auspices of the NEMA. So far, five SEMA's have been enacted, namely the *National Environmental Management: Protected Areas Act* 57 of 2003 (hereafter the NEM: PAA), the NEM: BA, the NEM: AQA, the NEM: ICMA and the *National Environmental Management: Waste Act* 59 of 2008 (hereafter the NEM: WA). The NEM: BA and NEM: AQA do not provide for environmental auditing. The rather limited requirements relating to environmental auditing in the NEM: PAA, NEM: ICMA and NEM: WA are discussed in the section to follow.

4.3.3.1 National Environmental Management: Protected Areas Act 57 of 2003

The NEM: PAA aims to provide, among other things, for the creation of a national register of all protected areas, intergovernmental collaboration and public participation in issues affecting protected areas, and for the management of all protected areas, in line with national norms and standards.⁴³⁸ The NEM: PAA mandates that the Minister or MEC may employ external auditors to check a management authority's conformance with the objects of the management plan for a protected area.⁴³⁹ The purpose of a management plan is to ensure the conservation, management and protection of a protected area. A management plan should include, among other matters, a coordinated policy framework,⁴⁴⁰ controls, planning measures and performance criteria as can be stipulated,⁴⁴¹ and the execution of community-based environmental resource management.⁴⁴² It follows that the NEM: PAA provides for the audit scope, audit objective and audit criteria of environmental auditing in terms of the Act. The management plan for a protected area is subject to environmental compliance auditing. The management plan must be audited to determine whether the plan continuously meets the objects. The audit criteria that will be used during the audit will be the objects of the management plan.

438 NEM: PAA.

439 S 43(4) of the NEM: PAA.

440 S 41(2)(b) of the NEM: PAA.

441 S 41(2)(c) of the NEM: PAA.

442 S 41(2)(f) of the NEM: PAA.

4.3.3.2 National Environmental Management: Integrated Coastal Management Act 24 of 2008

The NEM: ICMA aims to create a scheme of integrated coastal and estuarine management in South Africa, including norms, policies and standards to control dumping at sea, pollution in the coastal zone, the unsuitable development of the coastal environment and additional unfavourable impacts on the coastal environment; to describe responsibilities and rights concerning coastal areas; and to establish the duties of organs of state concerning coastal areas. Sections 2 to 5 of Schedule 2 of the NEM: ICMA provide for waste prevention audits as discussed in section 3.4.3 of chapter 3 of this study. If the waste prevention audit shows that “opportunities exist for waste prevention at its source”, an applicant for a dumping permit is required to prepare and execute a waste prevention plan, which comprises waste minimisation objectives and arrangements for additional waste prevention audits to see to it that these objectives are being fulfilled.⁴⁴³ It follows that, like the NEM: PAA, the NEM: ICMA also provides for the audit scope, audit objective and audit criteria of environmental auditing in terms of the Act. The waste prevention plan is subject to environmental compliance auditing. The waste prevention plan must be audited to determine whether the plan continuously meets the waste minimisation objectives. The audit criteria that will be used during the audit will be the waste minimisation objectives of the waste prevention plan.

4.3.3.3 National Environmental Management: Waste Act 59 of 2008

The NEM: WA aims to improve the legislation controlling waste management in order to protect the environment and health by stipulating measures for the prevention of environmental degradation and pollution and for ensuring environmentally sustainable development.⁴⁴⁴ The NEM: WA further stipulates compliance and enforcement, institutional arrangements and planning matters and licensing and control of waste management activities, among other matters.⁴⁴⁵ Chapter 5 of the

⁴⁴³ S 3 of Schedule 3 of NEM: ICMA.

⁴⁴⁴ NEM: WA.

⁴⁴⁵ NEM: WA.

NEM: WA provides for the licensing of waste management activities. Section 51 prescribes the content of waste management licences. Section 51(1)(k) mandates that a waste management licence should state auditing, monitoring and reporting needs. It follows that, like the NEM: PAA and now the NEM: ICMA too, the NEM: WA also provides for the audit scope, audit objective and audit criteria of environmental auditing in terms of the Act. The waste management licence is subject to environmental compliance auditing. The waste management licence must be audited to determine whether the licence continuously meets the auditing, monitoring and reporting needs. The audit criteria that will be used during the audit will be the auditing, monitoring and reporting needs of the waste management licence.

4.3.3.3.1 GN R926 in GG 37088 of 29 November 2013

The aim of GN R926 in GG 37088 of 29 November 2013 (hereafter the National Norms and Standards for the Storage of Waste) is to ensure best practice in the management of waste storage facilities, provide a consistent method of the management of waste storage facilities and provide minimum standards for the planning and functioning of waste storage facilities. The National Norms and Standards for the Storage of Waste relevant to environmental auditing in the public sector of South Africa are described in Table 4-2. These norms and standards provide requirements for the frequency of auditing, the content and submission of audit reports and the right to audit.

Table 4-2: National Norms and Standards for the Storage of Waste relevant for public sector environmental auditing

Norm and standard		Content	Relevance
Auditing			
16(1)	Internal audits	Internal audits should be carried out twice a year and on every audit instance a formal report should be collated by the relevant auditor to describe the findings of the audits, which should be displayed to the external auditor.	Provides for: • audit frequency; • the content of the audit report; and • the submission of the audit report of both the internal and the external audits.
16(2)		An impartial external auditor should be designated to audit the waste storage facility twice a year and the auditor should collate an audit report recording the findings of the audit, which should be presented to the applicable authority.	
16(3)	External audits	The external audit report should particularly specify whether the requirements of the National Norms and Standards for the Storage of Waste are abided by; ⁴⁴⁶ contain an explanation of all obtainable data and test results concerning the functioning of the storage facility and all its effects on the environment; ⁴⁴⁷ identify objective dates for the execution of the recommendations to reach compliance; ⁴⁴⁸ include recommendations concerning non-compliance or possible non-compliance and should identify objective dates for the execution of the recommendations and whether corrective action executed for the preceding audit non-conformities was sufficient; ⁴⁴⁹ and display monitoring scores graphically and carry out trend analysis. ⁴⁵⁰	Provides for the content of an external audit report.

446 Reg 16(3)(a) of the National Norms and Standards for the Storage of Waste.

447 Reg 16(3)(b) Idem.

448 Reg 16(3)(c) Idem.

449 Reg 16(3)(d) Idem.

450 Reg 16(3)(e) Idem.

Norm and standard	Content	Relevance
Applicable authority audits and inspections		
17(1)	The applicable authority in charge of waste management retains the right to audit and/or inspect a waste storage facility without prior notice at any time.	Provides for the right to audit without prior notice.

4.4 Conclusion

This chapter reviewed the South African law framework on environmental auditing in and by the public sector specifically to determine the extent to which the law framework provides for environmental auditing in the public sector. From the review it can be concluded that “the mandate of the AGSA to audit public sector entities is derived from the Constitution”.⁴⁵¹ In addition to the mandate, the Constitution also describes the functions of the AGSA. These functions include auditing and reporting on the accounts and financial management and statements of every national and provincial government administration and department, among others.⁴⁵² The functions of the AGSA are further prescribed in the PFMA and the MFMA and the PAA. These functions include the audit of financial accounts as required by section 4 of the PAA, sections 40 and 55 of the PFMA and section 126 of the MFMA. The PAA further provides for environmental auditing. The AGSA may for example conduct “environmental” audits in terms of its mandate to carry out compliance audits [as required by sections 20(2)(b) and 28(1)(b) of the PAA] and financial audits [as required by sections 20(2)(a) and 28(1)(a) of the PAA] or performance audits [as required by section 20(3) of the PAA].

Along with the legislation that makes provision for public sector auditing and that regulates and determines the functions of public sector auditors, the legislation governing and applying to environmental auditing in the public sector were also reviewed. This legislation included the Constitution, the NEMA, the NEM: BA, the NEM: AQA, the NEM: PAA, the NEM: ICMA and the NEM: WA. The government should realise the environmental right contained in section 24 of the Constitution “through reasonable legislative and other measures”.⁴⁵³ The country’s body of environmental law constitutes the required reasonable “legislative measures”.⁴⁵⁴ If

451 AGSA and IRBA for Auditors 2012
www.irba.co.za/index.php/component/docman/doc_download/1246.

452 S 188(1) of the Constitution.

453 S 7(2) and 24 of the Constitution.

454 E.g. NEMA, NEM: AQA, NEM: BA *etc.*

the “legislative measures” fail in and by themselves, “other measures” must cause relief.⁴⁵⁵ Environmental auditing is arguably an “other measure” by means of which to execute the government’s duties arising from the constitutional environmental right. Environmental auditing may accordingly be directly applicable to the government as guardian of section 24 and the protection it affords. Environmental audits in and by government typically focus on compliance with South Africa’s suite of environmental framework (the NEMA)⁴⁵⁶ and sector legislation (that is the NEM: PA, NEM: ICMA and the NEM: WA).⁴⁵⁷

Only one section in the NEMA directly provides for environmental compliance auditing. Two sections of the NEMA indirectly provide for environmental performance auditing. The EIA Regulations, 2014 arguably compensates for the lack of environmental auditing in the act by providing, among others, for an environmental auditor and the characteristics of an environmental auditor, for environmental compliance auditing and the frequency of environmental auditing.

Two of the five enacted SEMAs do not provide for environmental auditing, that is the NEM: BA and the NEM: AQA. The other three SEMAs, that is the NEM: PA, NEM: ICMA and the NEM: WA contain limited requirements relating to auditing. These requirements provide for the audit scope, audit objective and audit criteria of environmental auditing in terms of each of the acts respectively. The National Norms and Standards for the Storage of Waste, promulgated under the NEM: WA, provide requirements for the frequency of auditing, the content and submission of audit reports and the right to audit.

Taking all of the above mentioned into consideration, the following chapter concludes the study with a discussion on the extent to which South African law regulate environmental auditing in the public sector. This includes a summary of findings and the formulation of recommendations.

455 Du Plessis 2004 *SAJELP* 146.

456 NEMA.

457 Such as the NEM: PAA, NEM: ICMA and NEM: WA.

CHAPTER 5 CONCLUSION

5.1 Introduction

This study set out to explore and assess the extent to which South African law provide for and regulate environmental auditing in and by the public sector.⁴⁵⁸ In so doing, this study methodically considered the following: the scope of and rationale behind public sector auditing, environmental auditing as an environmental governance instrument and the South African law framework on environmental auditing in and by the public sector.⁴⁵⁹

5.2 Findings

In discussing the scope of and rationale behind public sector auditing to introduce auditing as an activity which is of increasing importance in the public sector, the study provided an overview of auditing in general and public sector auditing specifically.⁴⁶⁰ This was followed by an exploration of the types of public sector audits in existence and the functions of public sector auditing.⁴⁶¹ The essential characteristics of effective public sector auditors and audit committees in the public sector were then reviewed.⁴⁶² Lastly, the reporting line of public sector auditors was discussed.⁴⁶³ In considering these matters, this study found that public sector auditing typically aspires to disclose divergences from accepted standards and infringements of the principles of effectiveness, efficiency, economy and legality of financial management, and to do so soon enough to implement corrective action.⁴⁶⁴ It further seeks to hold those accountable responsible, and to acquire compensation, or to implement the actions necessary to prevent divergences and infringements.⁴⁶⁵

458 As discussed in ch 1 of this study.

459 Ibid.

460 As discussed in ch 2, paras 2.2 and 2.3 of this study respectively.

461 Idem 2.4 and 2.5 of this study respectively.

462 Idem 2.6 and 2.7 of this study respectively.

463 Idem 2.8 of this study.

464 Idem 2.3.1 of this study.

465 As discussed in ch 2, para 2.3.1 of this study.

Public sector audits are classified into three key types, namely compliance, financial and performance audits.⁴⁶⁶ Compliance audits, which are conducted as part of financial audits, concentrate on whether a specific audit object, e.g. an action, facility or information, complies with the recognised audit criteria, which rule the audited object.⁴⁶⁷ Financial audits concentrate on verifying whether an entity's financial information is being reported according to the appropriate financial regulatory and reporting structures.⁴⁶⁸ Audits of predetermined objectives, which form an important component of financial audits, are conducted to acquire confidence in the reliability and practicality of the stated performance against predetermined objectives.⁴⁶⁹ Performance audits, as independent auditing processes, focus on whether entities, involvements and plans are functioning according to the principles of economy, effectiveness and efficiency, and whether there are opportunities for development.⁴⁷⁰ They also assess the measures implemented by the management of an entity to certify that resources have been obtained economically and are employed effectively and efficiently.⁴⁷¹ Through offering impartial evaluations of whether public resources are handled sensibly and efficiently to realise planned outcomes, public sector auditing assists public sector entities to attain accountability and honesty; to do better business; and to impart a sense of assurance amongst investors and people.⁴⁷² The role of the public sector auditor thus supports the governance accountabilities of foresight, insight and oversight.⁴⁷³

In examining environmental auditing as an environmental governance instrument to situate environmental auditing as a key environmental governance instrument, the study discussed the meaning and working of environmental governance as an

466 Idem 2.4 of this study.

467 Idem 2.4.1 of this study.

468 Idem 2.4.2 of this study.

469 Idem 2.4.2.1 of this study.

470 Idem 2.4.3 of this study.

471 Ibid.

472 As discussed in ch 2, para 2.5 of this study.

473 Ibid.

overarching concept.⁴⁷⁴ This was followed by a description and situation of environmental auditing within the broader context of environmental governance.⁴⁷⁵ Attention was paid to the development of environmental auditing, the numerous definitions thereof, the types of environmental auditing and to their potential benefits.⁴⁷⁶ In considering these matters, the study found that environmental auditing is situated as a checking instrument in the suite of environmental governance instruments in line with the dictate that governance is unfinished if its effects are not checked and confirmed.⁴⁷⁷ Environmental auditing is an environmental governance instrument in terms of which government periodically employs procedures *inter alia* to objectively measure its own environmental performance or the environmental performance of another entity, and that identifies and reports the actions necessary to improve the existing level of environmental performance.⁴⁷⁸ Different types of environmental audits exist, namely compliance audits; audits of financial statements; performance audits; environmental assessment audits; and environmental due diligence audits, to mention a few.⁴⁷⁹ As a regulator, the government may conduct environmental auditing to govern public sector entities' environmental performance.⁴⁸⁰ Likewise, environmental auditing may be conducted in organs of state as regulated entities.⁴⁸¹ In both instances environmental auditing, as an environmental governance instrument, may be conducted to foster public sector compliance with environmental law; improved environmental practice; and operational environmental efficiency.⁴⁸²

In reviewing the South African law framework on environmental auditing in and by the public sector to determine the extent to which the law framework provides for environmental auditing in the public sector, the study focussed on the legislation

474 As discussed in ch 3, paras 3.2 and 3.3 of this study respectively.

475 Idem 3.4 of this study.

476 Idem 3.4.1 – 3.4.3 and para 3.5 of this study respectively.

477 Idem 3.3 of this study.

478 Idem 3.4.2 of this study.

479 Idem 3.4.3 of this study.

480 Idem 3.5 of this study.

481 Ibid.

482 Ibid.

governing and applying to public sector auditing in general and environmental auditing in the public sector. In considering these matters, the study found that the Constitution, the PAA, the PFMA and the MFMA makes provision for public sector auditing and regulate and determine the functions of public sector auditors. "The mandate of the AGSA to audit public sector entities is derived from the Constitution". The Constitution also describes the functions of the AGSA. These functions include auditing and reporting on the accounts and financial management and statements of every national and provincial government administration and department, among others. The functions of the AGSA are further prescribed in the PFMA and the MFMA and the PAA. These functions include the audit of financial accounts as required by section 4 of the PAA, sections 40 and 55 of the PFMA and section 126 of the MFMA. The PAA further provides for environmental auditing. The AGSA may for example conduct "environmental" audits in terms of its mandate to carry out compliance audits [as required by sections 20(2)(b) and 28(1)(b) of the PAA] and financial audits [as required by sections 20(2)(a) and 28(1)(a) of the PAA] or performance audits [as required by section 20(3) of the PAA]. Environmental auditing is arguably an "other measure" by means of which to execute the government's duties arising from the constitutional environmental right. Environmental auditing may accordingly be directly applicable to the government as guardian of section 24 and the protection it affords. Environmental audits in and by government typically focus on compliance with the NEMA and environmental sector legislation. Only one section in the NEMA directly provides for environmental compliance auditing. Two sections of the NEMA indirectly provide for environmental performance auditing. The EIA Regulations, 2014 arguably compensates for the lack of environmental auditing in the act by providing, among others, for an environmental auditor and the characteristics of an environmental auditor, for environmental compliance auditing and the frequency of environmental auditing. Two of the five enacted SEMAs do not provide for environmental auditing, that is the NEM: BA and the NEM: AQA. The other three SEMAs, that is the NEM: PA, NEM: ICMA and the NEM: WA contain limited requirements relating to auditing. These requirements provide for the audit scope,

audit objective and audit criteria of environmental auditing in terms of each of the acts respectively. The National Norms and Standards for the Storage of Waste, promulgated under the NEM: WA, provide requirements for the frequency of auditing, the content and submission of audit reports and the right to audit.

It follows that it has been ascertained in this study that environmental auditing plays an important role in good environmental governance. The degree and limits of this role depends on numerous issues, one of which is the scope and opportunities generated by the regulatory framework relevant to environmental auditing, environmental governance and the public sector in South Africa. This study has been carried out in a legal setting; it warrants to conclude with a concise assessment of the strengths and weaknesses of the current regulatory framework.

5.2.1 Strengths

- The Constitution specifically requires that the government should realise the environmental right “through reasonable legislative and other measures”.⁴⁸³ It may therefore be argued that the Constitution, albeit indirectly, promotes the use of environmental auditing as an “other measure” for environmental protection.
- The NEMA has established protective measures (such as EAs, EIAs and EMPs) to ensure that a potential environmental project (such as an application for EA) will be in the best interest of the economy, environment and society.⁴⁸⁴ Auditing the holder of an EA’s compliance with the conditions of the EMP, can ensure that the EMP’s conditions are being implemented and reported appropriately and that performance issues in relation to the conditions of the EA are brought to the attention of the holder of the EA.

⁴⁸³ As discussed in ch 4, para 4.2.1 of this study.

⁴⁸⁴ Idem 4.2.2 of this study.

- The provision in the NEMA which require an audit of the government's performance regarding Agenda 21⁴⁸⁵ may be useful in ensuring that the government's performance remain at an acceptable level of quality throughout its commitment to Agenda 21.
- The NEMA bestows upon municipalities the executive authority to adapt and adopt model environmental management bylaws to manage the environmental impacts of developments by providing for environmental auditing.⁴⁸⁶ These bylaws thereby provide municipalities with the authority to use environmental auditing as an instrument to address environmental management challenges.
- By establishing the EIA Regulations, 2014, the legal framework ensures among others, that environmental audit reports are monitored and transparent.⁴⁸⁷ This is beneficial to environmental auditing in and by the public sector as public sector entities are often worried about the possibility of being thought to be engaged in corrupt dealings.
- The NEM: PAA specifically requires the employment of external auditors to check a management authority's conformance with the objects of the management plan for a protected area.⁴⁸⁸ Similarly, the NEM: ICMA requires waste prevention audits to see to it that waste minimisation objectives are being fulfilled,⁴⁸⁹ while the NEM: WA requires a waste management licence to state auditing needs.⁴⁹⁰ It may therefore be argued that the NEM: PAA, NEM: ICMA and NEM: WA directly promotes the conduct of environmental audits for environmental protection.

485 As discussed in ch 4, para 4.2.2 of this study.

486 Ibid.

487 As discussed in ch 4, para 4.2.2.1 of this study.

488 Idem 4.2.3.1 of this study.

489 Idem 4.2.3.2 of this study.

490 Idem 4.2.3.3 of this study.

- The published guidelines for compliance, financial and performance auditing provide a useful “quick reference” for the public sector auditor which require support in conducting compliance, financial and performance audits with an environmental perspective.⁴⁹¹ These guidelines may prove to be useful for public sector auditors which require such assistance.

It follows that the strength of the current regulatory framework lies therein that provisions is made to ensure that a proposed or existing activity which has or may have an impact on the environment (including activities in and by the public sector) is subject to environmental auditing.

5.2.2 Weaknesses

- While the Constitution requires that the government should realise the environmental right “through reasonable legislative and other measures”,⁴⁹² it does not specifically refer to the use of environmental auditing for such realisation. This may result in confusion as to whether or not the Constitution recognises the use of environmental auditing as an instrument for the fulfilment of the environmental right.
- While the Constitution mandates the AGSA to audit public sector entities,⁴⁹³ it does not specifically refer to environmental auditing as a function of the AGSA, as is the case with financial auditing. The Constitution, PAA, PFMA and the MFMA provides for financial auditing by the AGSA.⁴⁹⁴ The Constitution thus does not recognise environmental auditing as a function of the AGSA.
- Environmental auditing in and by the public sector is sector specific and differs from compliance, financial and performance auditing.⁴⁹⁵ It may therefore be argued that the existing guidelines steering public sector auditing may not

491 As discussed in ch 4, para 4.4 of this study.

492 Idem 4.2.1 of this study.

493 Idem 4.3.1 of this study.

494 As discussed in ch 4, paras 4.3.1 – 4.3.4 of this study.

495 As discussed in ch 3, para 3.4.3 of this study.

adequately address issues related to environmental auditing in and by the public sector specifically.

- The function of conducting environmental audits is complex.⁴⁹⁶ A public sector entity which does not have the adequate resources and environmental auditors may be unable to adequately conduct an environmental audit. This may result in the audit client's needs not being adequately met or the deterioration of the current environmental conditions.

It follows that the weaknesses of the current regulatory framework lies in the silence of the framework on the conducting of public sector audits to deal with environmental governance problems, for instance the state's sufficient protection of the environment. There is also a lack of sufficient guidelines created especially for the execution of sector specific environmental auditing.

5.3 Recommendations

The following recommendations are made to support public sector entities to address the above weaknesses and to reinforce the function of public sector environmental auditing for good environmental governance.

- Public sector entities should bring the weaknesses in the legal framework for environmental auditing to the attention of government, and should require that actions be taken to address the weaknesses. A suggestion is that sector-specific guidelines for environmental auditing be drafted, for instance specific guidelines on environmental auditing in and by the public sector.
- Public sector entities should develop their environmental auditing capacity by sharing their experience and skill with other public sector entities on the conducting and failures or successes of environmental audits.

⁴⁹⁶ As discussed in ch 2, para 2.6 of this study.

- Public sector entities should develop their own by-laws and guidelines on environmental auditing in and by the public sector.
- Public sector entities should encourage political commitment to environmental auditing. The public sector frequently requires a guarantee of commitment from political entities that their investment in environmental auditing may be productive and is supported.
- Public sector entities should ensure that their environmental audits are founded on clearly allocated roles and responsibilities for all of the parties involved. Before audit teams are formed, the potential parties should explain the objectives of the audit and clarify each party's specific role and responsibility.
- Public sector entities should ensure that their environmental auditing is supplemented by a suitable governance structure that allows for potential disagreement between parties. This could be achieved by developing frameworks for planning and conducting environmental audits, for instance.
- Public sector entities should familiarise themselves with audit reports of environmental audits in and by the public sector elsewhere in the world and gain from lessons learned.

5.4 Conclusion

As the importance of good environmental governance in South Africa is anticipated to continue to grow, it is contended that environmental auditing plays a crucial role in contributing towards environmental accountability and integrity; b) improving environmental operations; and c) instilling confidence amongst the public and stakeholders that environmental resources are being managed effectively and responsibly.⁴⁹⁷ However, while this study acknowledges the benefits of

⁴⁹⁷ IIA *Supplemental Guidance* 5.

environmental auditing for good environmental governance and argues that environmental auditing is a useful environmental governance instrument, which plays an additional role in supporting the government to fulfil the environmental right, environmental auditing should not be considered as the solution to all environmental governance problems. The public sector must conduct environmental audits to supplement and support the totality of their environmental governance initiatives. The importance of institutions, mechanisms and processes in environmental governance should not be downplayed while considerable experimentation and research continue to be carried out in this field. For now, the public sector is urged to unlock the environmental governance instruments provided, such as environmental auditing, to facilitate good environmental governance and minimise harm to the environment.

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