

# Environmental management in South Africa: twenty years of governmental response to the global challenge, 1972-1992

PHIA STEYN

## 1. Introduction

It is widely acknowledged that humankind's concern for the environment is not a recent phenomenon, as numerous examples in history show preoccupation with aspects of the environment in every historical period. A well-known example dates back to 1661 when John Evelyn wrote his famous tract, *Fumifugium: the inconvenience of the aer and smoak of London dissipated*, in which he addressed the high levels of air pollution in London and suggested that trees be planted to freshen up the polluted air.<sup>1</sup> South African history also abounds with examples of tribal, individual and governmental attempts to regulate and improve environmental degradation<sup>2</sup> such as the

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♦ Ms. Phia Steyn is a lecturer in the department of history at the University of the Orange Free State. Her most recent publication is "A greener past? An assessment of South African environmental historiography" in *New Contree* 46, November 1999, pp. 7-27. She is currently busy with research for a Ph. D. on the environmental impact of multinational oil production on ethnic minority groups in developing countries in Africa and Latin America.

1. E. GOODIN, *Green political theory* (Polity Press, Cambridge, 1992), p. 1.
2. For an overview of initiatives prior to 1972 see P. STEYN and A. WESSELS, "The roots of contemporary governmental and non-governmental environmental activities in South Africa, 1654-1972" in *New Contree* (45), September 1999, pp. 61-81.

environment-related *placaaten* promulgated by the Dutch East India Company in the first years of white settlement at the Cape.<sup>3</sup>

The establishment of the conservation agenda or first-generation environmental issues around the world in the nineteenth century radically increased actions that regulated human interaction with and impacted on the environment. The conservation agenda was in particular concerned with the protection of the natural environment (both particular areas, and fauna and flora species), high air pollution levels (a direct result of the Industrial Revolution) and the conservation of resources. The conservation agenda dominated environmental concern until the 1960s when it proved incapable of successfully addressing the plethora of second-generation environmental problems (e.g. the proliferation of chemical waste and the impact of pesticides) that emerged after the Second World War.<sup>4</sup>

The existence of and questions surrounding these second-generation environmental problems were introduced to a wider audience during the so-called environmental revolution of the 1960s. During this period the academic community, through a great number of publications, and politically-oriented environmental activists continually demonstrated nature's finite capability to absorb unchecked industrial and demographic growth. Heightened public awareness of the environmental dangers of post-World War Two society in turn compelled governments and the United Nations (UN) to start addressing the environment-related fears of the general public.<sup>5</sup>

On national political levels, governments reacted to the public's demand for greater control over the detrimental human impact on the environment through the promulgation of wide-ranging environmental legislation and the institutionalisation of environmental affairs within governmental structures. On an international political level, the UN convened the United Nations Conference on the Human Environment

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3. See for example M.K. JEFFREYS (Ed.), *Kaapse plakkaatboek 1: 1652-1707* (Cape Times Ltd, Cape Town, 1944), *placaaten* of 14 October 1652, 21 December 1653 and 10/12 April 1655.

4. J. MCCORMICK, *The global environmental movement: Reclaiming paradise* (Belhaven Press, London, 1989), pp. viii-ix, 12; B.G. NORTON, *Towards unity among environmentalists* (Oxford University Press, Oxford, 1991), p. 62; S.P. HAYS, "Three decades of environmental politics; the historical context" in M.J. LACEY (Ed.), *Government and environmental politics: essays on historical developments since World War Two* (The Woodrow Wilson Center, Washington, 1991), p. 22.

5. For more information on the environmental revolution see P. STEYN and A. WESSELS, "Environmental non-governmental contributions to the global environmental movement, 1962-1992" in *Journal for Contemporary History* 24(2), December 1999, pp. 96-113.

(UNCHE) in Stockholm in June 1972. The importance of UNCHE to the development of global environmental governance cannot be overemphasised: unlike prior environmental conferences organised by the UN, UNCHE brought together the leading politicians of the day to address the environment as a political issue. UNCHE therefore succeeded in placing the environment on both national and international political agendas, which in turn sparked off a whole range of environmental management initiatives by governments.<sup>6</sup>

Virtually to the day twenty years later the UN convened the United Nations Conference on Environment and Development (UNCED - also known as the Earth Summit) in Rio de Janeiro to reflect on the paths taken since UNCHE and to consider the future direction of global environmental governance. UNCED redirected the global environmental movement towards the goal of sustainable development in the quest for a healthier and safer environment in both the short and long terms.<sup>7</sup>

This article aims at exploring the South African government's response to global environmental management initiatives between 1972 and 1992. Attention will be directed at South Africa's participation in UNCHE, the institutionalisation and management of environmental affairs within governmental structures, environmental legislation, and South Africa and the Earth Summit.

## **2. South Africa and the United Nations Conference on the Human Environment**

In June 1972 the UN convened the historic United Nations Conference on the Human Environment (UNCHE) in Stockholm. This conference brought together representatives from 114 countries, nine intergovernmental agencies and 400 intergovernmental and non-governmental organisations to discuss humankind's impact on the

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6. J. MCCORMICK, *The global environmental movement: Reclaiming paradise*, pp. 127, 134; UNITED NATIONS, *Human settlements: the environmental challenge* (MacMillan, London, 1974), p. xi; R.J. DALTON, *The green rainbow: environmental groups in Western Europe* (Yale University Press, New Haven, 1994), pp. 37-38. See UNITED NATIONS, "Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972", <[gopher://unepq.unep.org/00/un/unep/govcoun/decision/1972sto/gc1972.txt](http://gopher://unepq.unep.org/00/un/unep/govcoun/decision/1972sto/gc1972.txt)>, 1973 for the complete UN report.

7. R. SANDBROOK, "From Stockholm to Rio" in J. QUARRIE (Ed.), *Earth Summit 1992* (The Regency Press, London, 1992), pp. 15-16.

environment.<sup>8</sup> The theme of UNCHE was "Only one earth". It was specifically chosen to emphasise the interdependence of the whole ecosystem in general, and specifically that earth was all that humankind had and that there was nowhere else to go when humans completed their environmental destruction.<sup>9</sup>

South Africa's planned attendance of UNCHE generated very little interest before the actual event. It came up only twice in the House of Assembly on 20 March and 5 May 1972 when the Minister of Planning, Mr J.J. Loots, had to answer a couple of questions regarding the event. Having no environment minister and no department of environmental affairs, the Prime Minister entrusted the Department of Planning with the responsibility of representing South Africa at UNCHE. Dr P.S. Rautenbach, the Secretary of Planning, led the delegation and it included three other government officials stationed in Europe.<sup>10</sup> Rautenbach was not the most informed person on the environment and had to be briefed by James Clarke, environment reporter for *The Star* at the time, on environmental issues, before boarding the aeroplane to Stockholm.<sup>11</sup>

The South African delegation viewed their role at UNCHE as that of being observers, mainly because the country was not involved in any of the preparatory work for the conference. Conflict between the developed and developing countries dominated the discussions at UNCHE and Rautenbach believed that South Africa could play a valuable role in bridging the gap between the two opposing sides. This was not an easy task given the fact that many developing nations spoke out strongly against apartheid and demanded the condemnation of racial discrimination in the Declaration on the Human Environment. Rautenbach and the rest of the delegation ignored attacks on South

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8. An interesting absentee was the USA Ambassador to the UN, George Bush. M. MOWREY and T. REDMOND, *Not in our backyard: the people and events that shaped America's modern environmental movement* (William Morrow and Company, New York, 1993), p. 83. When Bush became President of the USA in 1989 he claimed to be the "environmental president". However, his initial refusal to attend the Earth Summit in 1992 and refusal to sign the conventions at the conference singled him out as one of the least environmentally sensitive political leaders in the world at the time.
  9. UNITED NATIONS, *Human settlements: the environmental challenge*, p. xiii; "United Nations Conference on the Human Environment" in *UN Monthly Chronicle* 9(7), July 1972, p. 51.
  10. REPUBLIC OF SOUTH AFRICA (RSA), Debates of the House of Assembly: questions and replies, 17.3.1972, Question 378, col. 616 and 5.5.1972, Question 25, col. 976.
  11. INTERVIEW with J. Clarke, Johannesburg, 5.3.1998.

Africa and apartheid for they held the opinion that they were in Stockholm to talk about the environment and not politics.<sup>12</sup>

The demands of the developing countries prevailed and the 26 principles of the draft Declaration on the Human Environment included one (principle 1) that condemned all policies promoting apartheid, racial discrimination and any form of colonialism. The South African delegation was strongly against the new draft of principle 1 and went on record as having entered a reservation on UNCHE's competence to include the new draft principle in the Declaration. They felt that it constituted interference in the domestic affairs of a member state of the UN, which was against the Charter of the organisation. Apart from that, South Africa supported the Declaration as a whole.<sup>13</sup>

One of the telltale signs of ambiguities in South Africa's conservation policy (and record) was the fact that it opposed a call for a total ban on commercial whaling. With no official legislation at the time to protect whales, and being the third largest whaling nation in the world, South Africa, together with Portugal, supported the suggestion from Japan that a moratorium be placed only on the hunting of those species in danger of becoming extinct. The South African delegate, Julian Thomas (Agricultural Attaché in Paris), considered a total ban on commercial whaling unnecessarily harsh and based on insufficient scientific evidence. The belief was held that a controlled utilisation of whale resources was both possible and reasonable.<sup>14</sup>

It appears as though the South African delegation attained the goal they set for themselves, namely merely to be observers at UNCHE. From the official UN report it is very clear that the delegation participated in few of the discussions and only reacted when their country's domestic policy of apartheid came under attack and when its economic interests were threatened, as in the case of commercial whaling.

UNCHE generated little interest in the South African media with only *The Star* and the *Rand Daily Mail* affording ongoing coverage of the then "biggest and most important conference on man's environment"

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12. *The Star*, 5.6.1972, pp. 7, 23; 6.6.1972, p. 9; 7.6.1972, p. 9; *The Daily News*, 5.6.1972, p. 11; *Die Burger*, 5.6.1972, p. 3; *Rand Daily Mail*, 5.6.1972, p. 5.

13. UNITED NATIONS, "Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972", Declaration on the Human Environment, principle 1, par. 322.

14. *The Star*, 10.6.1972, p. 3.

*Historia* 46(1), May 2001, pp. 23-53.

as the *Rand Daily Mail* called it.<sup>15</sup> The media is not entirely to blame for this lack of coverage; important events took place in South Africa in June 1972 which took up the attention of the government and space in the printed media, namely student riots at English universities aimed at the government and the harsh treatment of protesters by the police; an explosion at a coal mine in Wankie, Rhodesia which trapped 468 mineworkers; the Organisation for African Unity's annual summit; a bus disaster in the Western Cape which left 59 dead, and a burst in the Durban-Johannesburg oil pipeline at Bellair. All these events contributed towards making June 1972 an eventful month in which there was hardly time for environmental concerns.<sup>16</sup>

One of the most important outcomes of UNCHE was the establishment of the United Nations Environment Programme (UNEP) in 1973. UNEP became the first UN specialised agency to be headquartered in the developing world, namely in Nairobi, Kenya. South Africa was not invited to become a member of the Governing Council of this programme, and although it attended the first meeting held in Geneva in June 1973, it played no active part in UNEP between 1973 and 1992. Despite limited participation in UNCHE, the conference was very important within the South African context. According to Rautenbach, it brought order to the concept of environmental conservation in so far as it highlighted the uncoordinated nature of conservation efforts in many countries including South Africa. It produced a definite environmental policy (which South Africa lacked at the time) and a basis for action and technical co-operation on all levels.<sup>17</sup>

### **3. The institutionalisation and management of environmental affairs within governmental structures**

In the first half of the 1970s, governments world-wide addressed the growing environmental concern among their citizens in two ways: firstly, by strengthening existing environment-related laws and by adopting wide-ranging new ones; and secondly, by creating a

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15. *Rand Daily Mail*, 5.6.1972, p. 5. See also *The Star*, 5-17.6.1972; *Rand Daily Mail*, 5-17.6.1972.

16. See *The Star*, 5-17.6.1972; *Rand Daily Mail*, 5-17.6.1972; *The Daily News*, 5-17.6.1972; *Die Burger*, 5-17, 6.1972; *The Pretoria News*, 5-17.6.1972; *Die Transvaler*, 5-17.5.1972.

17. P.S. RAUTENBACH, "The international status of environmental conservation" in *Proceedings of the international symposium on planning for environmental conservation*, 4-6.9.1973 (Department of Planning and the Environment, Pretoria, s.a.), pp. 8-9. See also J. WILEY, *Suid-Afrika se rol en betrokkenheid by internasionale omgewingsbewing* (C.R. Swart Lecture 19, University of the Orange Free State, Bloemfontein, 5.9.1986), pp. 4-5.

centralised Department of the Environment to co-ordinate government environment-related activities and to act as a kind of watchdog over both the public and the state. Britain led the way and created the first Department of the Environment in the world in November 1970. By 1972 Canada, the Netherlands, the United States of America (USA) and Australia had followed suit, while other countries acted in the same manner shortly after.<sup>18</sup>

The South African government was slow to react to the trend among governments to give the environment a specific place within the broad governmental structure. Calls for a separate department dealing with environmental matters were not entirely new to South Africa. Back in 1950 when the organisational structure of the country's Soil Conservation Services came under attack, the National Veld Trust started calling for an independent authority in the form of a ministry of conservation to deal with what it regarded as a crisis situation. The main reason behind this request was the poor state of the soil in the Union of South Africa.<sup>19</sup> Twenty years later, high levels of pollution in the Republic of South Africa once again prompted groups to begin requesting a separate state department for the environment.

### **3.1 The institutionalisation of environmental affairs**

Members of the United Party (UP) first voiced demands for changes in the administration of environmental affairs in South Africa. Led in particular by E.G. Malan and D.E. Mitchell, the UP in 1970 requested the Prime Minister, Adv. B.J. Vorster, to create a separate environment department headed by its own minister. This request was turned down and the UP made a similar request a year later on 26 March 1971. The gist of the UP's argument on that day and in subsequent discussions in the course of 1972 was that South Africa needed a central ministry with executive powers to deal with the environment. The party held the view that too many departments and state bodies were involved with the environment, and that this situation resulted in a lack of co-ordination, which weakened the overall effectiveness of the state's conservation efforts. The government, on the other hand, believed that the existing administrative efforts to conserve the environment were more than

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18. RSA, Pollution 1971: report by the Pollution Subsidiary Committee of the Prime Minister's Planning Advisory Council (Department of Planning and the Environment, The Government Printer, Pretoria, 1974), pp. 167-185; RSA, *Debates of the House of Assembly*, 2.3.1973, col. 1865-1866; J. MCCORMICK, *The global environmental movement: Reclaiming paradise*, p. 127.

19. ANON., "A ministry of conservation?" in *Veldtrust*, September 1950, pp. 11, 29.

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adequate. Nearly all state departments were directly or indirectly involved in environmental issues, while the Department of Planning dealt with those issues that were not in the jurisdiction of any particular department. The government also held the view that it had done a great deal to conserve the natural environment and that it should rather be congratulated on its achievements than be asked to reconsider the way it administered the natural environment.<sup>20</sup>

While the government was not willing to create an independent environment department, it did show its willingness to investigate the state of pollution in South Africa when it appointed a Cabinet Committee in 1971, consisting of the Ministers of Health, of Economic Affairs, of Water Affairs and of Planning, to consider the pollution problem. At the discussions on 26 March 1971, the National Party (NP) proposed the appointment of a specialised committee to investigate pollution. This proposal was accepted and on 20 April 1971 the Pollution Subsidiary Committee of the Prime Minister's Planning Advisory Council replaced the Cabinet Committee. In 1972 this committee produced a comprehensive report, *Pollution 1971*, in which the state of water, air, marine, noise, electronic, radio-active and radiation pollution, and environmental contamination and marring in South Africa, were dealt with.<sup>21</sup>

An important outcome of the Pollution Subsidiary Committee's report was the establishment of a permanent Cabinet Committee on Environmental Conservation on 29 May 1972. The committee was chaired by the Minister of Planning and included the Ministers of Transport, of Economic Affairs, of Water Affairs, of Agriculture and of Health. It was entrusted with the overall co-ordination of environmental conservation in South Africa. An advisory South African Committee on Environmental Conservation, consisting of representatives of the government departments concerned, the provincial administrations, the Council for Scientific and Industrial Research and other parastatal bodies, was also created. The tasks of the advisory committee were to advise the Cabinet Committee, to review existing legislation and to deal with all aspects of environmental conservation.<sup>22</sup> This non-statutory committee was renamed the Council for the Environment in 1975 and, according to

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20. REPUBLIC OF SOUTH AFRICA (RSA), *Debates of the House of Assembly*, 26.3.1971, col. 3727-3772 and 11.2.1972, col. 844-892.

21. RSA, *Pollution 1971: report by the Pollution Subsidiary Committee of the Prime Minister's Planning Advisory Council*, pp. xxi-xxvi, 1-167; RSA, *Debates of the House of Assembly*, 26.3.1971, col. 3737-3738.

22. RSA, *Environmental conservation (Department of Planning and the Environment, The Government Printer, Pretoria, 1973)*, p. 8.



Richard Fuggle, Shell Professor of Environmental Studies at the University of Cape Town, was not very effective, mainly because of the number of civil servants on the Council and its non-statutory status. It was replaced in 1982 by a statutory Council for the Environment (version 2) which became an important role-player in the 1980s.<sup>23</sup>

The aspirations of those parties and individuals that longed for an independent ministry of the environment headed by its own minister, were partially met in 1973 when the State President, Dr N.J. Diedericks, announced at the opening of parliament that the Minister of Planning would henceforth be known as the Minister of Planning and the Environment. The Department of Planning was accordingly renamed the Department of Planning and the Environment.<sup>24</sup> Although nowhere explicitly stated as such, it seems as though UNCHE was the decisive factor that finally prompted the government to officially entrust a specific department with the important role of co-ordinating environmental efforts in the country. In September 1973, Rautenbach, the head of the South African delegation to UNCHE, emphasised the role UNCHE had played in bringing order to the administration of environmental affairs by highlighting the uncoordinated nature of actions. The UP had also tried its best to bring this to the attention of the government prior to UNCHE, but the latter refused to acknowledge it at the time.<sup>25</sup>

The newly established Department of Planning and the Environment meant little more than the creation of an official department to co-ordinate environmental efforts. The stated functions of this department included the application of sound environmental principles in national physical planning; the co-ordination, gathering and dissemination of information on the natural environment; the co-ordination of all national environmental conservation actions, and the provision of a secretariat for the South African Committee on Environmental Conservation".<sup>26</sup>

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23. INTERVIEW with R.F. Fuggle, Cape Town, 26.3.1998; J.G.S. MALAN, M.A. RABIE and R.F. FUGGLE, "Official administration of environmental affairs" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental concerns in South Africa: technical and legal perspectives* (Juta, Johannesburg, 1983), p. 115.

24. RSA, Debates of the House of Assembly, 2.3.1973, col. 1827.

25. P.S. RAUTENBACH, "The international status of environmental conservation", pp. 8-9. See RSA, *Debates of the House of Assembly*, 2.3.1973, col. 1823-1868 for renewed requests by the UP for the establishment of a centralised environment department.

26. RSA, Environmental conservation, p. 11.

Apart from the above-mentioned functions given to the Department of Planning and the Environment, environmental affairs in South Africa remained fragmented. A total of twelve state departments, the provincial and local authorities, and six state and parastatal bodies were involved in either the enforcement of environmental legislation or environment-related research. Pollution control alone was carried out by no fewer than nine government departments, namely the Departments of Labour, of Bantu Administration and Development, of Health, of Agricultural Technical Services, of Mines, of Industries, of Transport, of Water Affairs, and the South African Railways and Harbours.<sup>27</sup>

### **3.2 The changing face of the department of the environment**

At first the government believed that the natural home of the overall co-ordination of environmental affairs was within the Department of Planning. The opinion was held that the enhancement of the South African environment could only be achieved if all planning actions were environmentally sound and purposeful.<sup>28</sup> Subsequently the Department of Planning and the Environment was "created" in 1973. It remained as such until 1979 when it became the Department of Environmental Planning and Energy. The latter was short-lived and on 1 March 1980, the environmental branch of the Department of Environmental Planning and Energy was transferred to the Department of Forestry. The name of the department was changed accordingly to the Department of Forestry and Environmental Conservation.<sup>29</sup>

The life of the Department of Forestry and Environmental Conservation was even shorter and on 1 April 1980 the Department of Water Affairs, Forestry and Environmental Conservation was created. The amalgamation of Water Affairs with the Department of Forestry and Environmental Conservation was the result of two processes. The first was the rationalisation process of the civil service which the Prime Minister, P.W. Botha, began in 1980. The aim of this

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27. J.J. LE GRANGE, "The national status of environmental conservation" in Proceedings of the international symposium, planning for environmental conservation, 4-6.9.1973, pp. 12-13.

28. P.S. RAUTENBACH, "Toespraak oor omgewingsbewaring voor die Vereniging vir die Beskerming van die Omgewing, Pretoria, 18 Oktober 1972" in *Society for the Protection of the Environment Newsletter* 2(4), 1972, p. 12.

29. J.G.S. MALAN, M.A. RABIE and R.F. FUGGLE, "Official administration of environmental affairs", p. 115.

rationalisation was to reduce the number of state departments in order to streamline the civil service.<sup>30</sup>

More importantly, the amalgamation of the two departments signalled a change in government policy towards fragmentation of environment-related actions in the Republic. By 1980 it had become increasingly evident that the various committees and state bodies instituted to co-ordinate environmental affairs between the different role-players, were struggling to fulfil their tasks. Their work, like that of the Council of the Environment (version 1), was seriously hampered by the fact that they did not have any executive powers to enforce decisions or policies. The fragmented approach to environmental administration also gave rise to a lack of unity of action with some departments appearing more willing than others to enforce legislation entrusted to them.<sup>31</sup>

The need for a more centralised administration of all environment-related actions was addressed in the White Paper on a National Policy Regarding Environmental Conservation in 1980. The White Paper propagated a strong department of Water Affairs, Forestry and Environmental Conservation with two main responsibilities: firstly, it had to be responsible for wide-ranging environmental policy (which South Africa still lacked at the time), and secondly, it had to co-ordinate all environmental conservation activities with the help of statutory representative bodies.<sup>32</sup>

The functions of the Department of Water Affairs, Forestry and Environmental Conservation were to ensure the availability of enough water of an acceptable quality for all necessary purposes, to administer the wood industry, to protect the living environment and to create a balance between environmental conservation and development. Despite its name, some sections within the Department were more equal than others. It was divided into three directorates, namely of Administration, of Forestry, and of Water Affairs. Environmental Conservation was but a branch of the Directorate of

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30. *Ibid.*, p. 115; RSA, Suid-Afrika 1980/1: amptelike jaarboek van die Republiek van Suid-Afrika (3rd edition), pp. 138-139; G.F. BARKHUIZEN, *Die administrasie van omgewingsbewaring in die Republiek van Suid-Afrika* (D.Admin. thesis, University of the Orange Free State, 1981), p. 181.

31. G.F. BARKHUIZEN, *Die administrasie van omgewingsbewaring in die Republiek van Suid-Afrika*, pp. 298-304.

32. RSA, W.P.O – '80: Witskrif oor 'n nasionale beleid insake omgewingsbewaring (Departement van Waterwese, Bosbou en Omgewingsbewaring, The Government Printer, Pretoria, 1980), p. 13.

Forestry<sup>33</sup> and, if budget allowances can be taken as a measure of importance, it was not considered to be an important section within the Department. The voted budget allowance for the Environmental Conservation Branch was only 3,63% of the total budget of the Department of Environment Affairs in 1981-1982, 3,91% in 1982-1983, and 4,6% in 1983-1984.<sup>34</sup> The main functions of the branch were the co-ordination of all government environment-related activities and the provision of a secretariat for the Council for the Environment. The name of the Department was changed to the Department of Environment Affairs in 1982, but it still retained all its functions, responsibilities and organisational structure.<sup>35</sup>

The independent nature of the non-administrative directorates within the Department was acknowledged only in 1984 when the Directorate of Water Affairs became a full-fledged state department.<sup>36</sup> In this respect 1984 can be considered a turning point in the history of the Department of Environment Affairs. Changes made to its organisational structure after Water Affairs "broke away", took away the directorate status of Forestry which consequently became the Forestry Branch. This change in structure meant that the various sections of the Department became equal for the first time, which in future would enable it to develop its own unique identity. From 1984 the department consisted of five identifiable sections, namely Administration, Forestry, Environmental Conservation, Marine Development, and Meteorological Services (from 1 October 1985). Notable additions to its functions included the transfer of the responsibility for South Africa's research activities on Antarctica and on Marion and Gough Islands, the combating of oil pollution at sea, and the *S.A. Agulhas* (an Antarctic survey and supply vessel) from the

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33. *Ibid.*, p. 128, figure 6.4; RSA, Suid-Afrika 1980/1, p. 138.

34. RSA, RP 105/1982: Annual report of the Department of Environment Affairs, 1981-1982 (The Government Printer, Pretoria, 1982), pp. 4, 21; RSA, RP 58/1984: Annual report of the Department of Environment Affairs, 1982-1983 (The Government Printer, Pretoria, 1984), p. 23 and unnumbered page following p. 4; RSA, RP 28/1985: Annual report of the Department of Environment Affairs, 1983-1984 (The Government Printer, Pretoria, 1985), p. 11 and unnumbered page following p. 4.

35. J.G.S. MALAN, M.A. RABIE and R.F. FUGGLE, "Official administration of environmental affairs", p. 122.

36. RSA, RP 44/1986: Annual report of the Department of Environment Affairs, 1984-1985 (The Government Printer, Pretoria, 1986), p. 1.

Department of Transport to the Department of Environment Affairs in 1985.<sup>37</sup>

An important development within the Department was the adoption of an environmental philosophy that would henceforth determine priorities and focus areas. In accordance with the World Conservation Strategy (WCS) of 1980, the Department set out to achieve three main objectives from 1987 onwards, namely "the maintenance of essential ecological processes and life-supporting systems, the maintenance of genetic diversity, and the assurance of the sustainable utilisation of species and ecosystems".<sup>38</sup> The WCS remained the single most important environmental document for the Department and the South African government up to the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). By doing so the Department neglected to address the changes that had occurred in world environmental thought and management after the publication of the Brundtland Commission's report, *Our common future*, in 1987. This report was the forerunner of the sustainable development blueprint, Agenda 21 that was introduced at UNCED in 1992. The government thus opted for an environmental strategy that by the end of 1987 was considered to be outdated.<sup>39</sup>

### **3.3 The Council for the Environment**

For most of the twenty years under discussion, the Department of Environment Affairs (in whatever form) was perceived by environmental professionals to be a weak administrative department staffed by non-professionals. There was a general lack of initiatives in policy formulation, development and effective implementation of both policy and law by this Department.<sup>40</sup> Within this context, the

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37. RSA, RP 32/1987: Annual report of the Department of Environment Affairs, 1985-1986 (The Government Printer, Pretoria, 1987), pp. 1, 12, 114, 127. See also RSA, RP 119/1987: Annual report of the Department of Environment Affairs, 1986-1987 (The Government Printer, Pretoria, 1987); RSA, RP 114/1988: Annual report of the Department of Environment Affairs, 1987-1988 (The Government Printer, Pretoria, 1988); RSA, RP 32/1990: Annual report of the Department of Environment Affairs, 1988-1989 (The Government Printer, Pretoria, 1990).

38. RSA, RP 114/1988: Annual report of the Department of Environment Affairs, 1987-1988, p. 47. Compare with IUCN, UNEP and WWF, *World Conservation Strategy: living resource conservation for sustainable development* (IUCN, Gland, 1980), p. vi.

39. See for example I. DAVIS, "The Natal Parks Board" in *South African Panorama* 32(10), October 1987, p. 18.

40. ANON., "Pretoria and the professionals" in *Environmental Action*, September 1990, pp. 26-29.

contributions made by the Council for the Environment (version 2) from 1982 onwards to the development of environmental management practices in South Africa are very important.

The Council for the Environment was probably the single most important environment-related government body between 1982 and 1992. Established on 7 July 1982 in terms of the Environment Conservation Act (no 100 of 1982), its main function was to advise the Minister of Environment Affairs "on the co-ordination of all actions directed at or liable to have an influence on any matter affecting the conservation and utilisation of the environment".<sup>41</sup> The Council comprised a maximum of 25 members, four nominated by the Provincial Administrators (one each for the provinces), while the Minister appointed the rest of its members.<sup>42</sup>

The statutory Council for the Environment differed from its namesake predecessor in that its members were not government officials, but were drawn mainly from the private sector. All members were either environmental experts or people that would, in the Minister's opinion, be able to make a substantial contribution towards environmental conservation. According to Richard Fuggle, the membership base of the Council was the strength of the body because it gave the Minister direct access to expert opinions on the environment. It also provided a forum where more complicated environmental issues could be debated and acted upon, and where environmental policy could be formulated. Well-known South African environmental experts such as Fuggle (1982-1994), Prof. W.R. Siegfried (1982-1994), Prof. M.A. Rabie (1982-1992), Dr G.T. Fagan (1982-1994) and Dr D. Hey (1982-1989) were included in the Council. It stood under the chairmanship of Prof. P.R. Botha (1982-1994) who, at the time of his appointment as chairman, also chaired the then influential environmental non-governmental organisation (ENGO), the Habitat Council.<sup>43</sup>

Although only an advisory body, the general lack of professional expertise within the Department of Environment Affairs enabled the Council to become the leading role-player within governmental

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41. RSA, RP 36/1987: Annual report of the Council for the Environment, 1986 (The Government Printer, Pretoria, 1987), p. 1.

42. RSA, RP 42/1985: Eerste verslag van die Raad vir die Omgewing, 7 Julie 1982 - 30 September 1984 (The Government Printer, Pretoria, 1985), p. 1.

43. INTERVIEW with R.F. Fuggle, Cape Town, 26.3.1998; *Council for the Habitat Newsletter*, January 1983, p. 1. See RSA, RP 200/1994, COUNCIL FOR THE ENVIRONMENT: annual report, 1994 and overview of activities, 1982 to 1993 (The Government Printer, Pretoria, 1994), pp. 21-22 for a complete list of all the members of the Council between 1982 and 1994.

structures.<sup>44</sup> Between 1982 and 1992 the Council did pioneering work in numerous environmental fields such as environmental policy, waste control, noise impact studies, the urban environment, coastal and marine conservation, environmental education and legislation. Specific issues investigated included, *inter alia*, municipal noise and the combating thereof, open spaces in urban environments, the conservation and management of wetlands, environmental impact assessments (EIAs), integrated environmental management, off-road vehicles in coastal zones, a national environmental education policy, and the shortcomings of the Environment Conservation Act (no 100 of 1982).<sup>45</sup>

The main shortcoming of the Council for the Environment was its advisory status. The Minister of Environment Affairs often ignored its advice and reports, while the tension that existed between the Council and some of the Directors General of the Department undermined its effectiveness. (Some Directors General felt that the Council was trespassing on departmental terrain and tried their best to isolate the Council.) With no executive powers of its own, the usefulness of the Council's work was determined by politicians who, more often than not, had little knowledge and understanding of the processes of the natural environment, and who were part of a bigger system in which the environment was not a top priority.<sup>46</sup>

#### **4. Environmental legislation in South Africa**

Changes in humankind's perception of the natural environment also found expression in environmental legislation. Prior to 1970, industrial development necessitated the control of air and water quality through legislation, while laws to ensure the optimal utilisation of natural resources were also passed. These laws were essentially anthropocentric and were aimed at the protection of human

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44. RSA, *s.n.*: Report of the committee on the restructuring of the Council for the Environment and other related matters (Pretoria, 1995), p. 6.

45. RSA, RP 200/1994, COUNCIL FOR THE ENVIRONMENT: annual report, 1994 and overview of activities, 1982 to 1993, pp. 21-37. See for example COUNCIL FOR THE ENVIRONMENT, *Guidelines for environmental conservation and environmental creation in structure planning for the urban environment* (Joan Lötter Publications, Pretoria, 1989); RAAD VIR DIE OMGEWING, *Geïntegreerde omgewingsbestuur in Suid-Afrika* (Joan Lötter Publications, Pretoria, 1989); RAAD VIR DIE OMGEWING, *'n Benadering tot 'n nasionale omgewingsbeleid en strategie vir Suid-Afrika* (Joan Lötter Publications, Pretoria, 1989).

46. RSA, *s.n.*: Report of the Committee on the restructuring of the Council for the Environment and other related matters, pp. 9-10, 15-16; INTERVIEW with R.F. Fuggle, Cape Town, 26.3.1998; INTERVIEW with J. Clarke, Johannesburg, 5.3.1998.

health and economic activities. They stemmed from the prevailing belief that nature itself was an infinite resource that could be utilised in any way humans saw fit. The environmental revolution shattered this belief. An important outcome was that governments, now dealing with a finite nature, had to re-evaluate the kind of legislative protection they afforded the natural environment. The USA led the way in 1970 with the promulgation of the comprehensive National Environmental Policy Act and other developed countries soon followed suit.<sup>47</sup>

#### **4.1 General environmental legislation**

Environmental legislation in South Africa reflected the main concerns of the environmental movement, while also addressing some problems experienced during the industrialisation and urbanisation processes. Pollution control, probably the main concern of the environmental revolution, also received governmental attention prior to 1972 in the form of the Water Act (no 54 of 1956) and the Atmospheric Pollution Prevention Act (no 45 of 1965). The former controlled the use of water and the treatment and disposal of effluent, while the latter provided for the prevention of atmospheric pollution and for the establishment of a National Air Pollution Advisory Council.<sup>48</sup>

By 1972 South Africa already had an impressive list of acts that directly or indirectly related to the environment. Shortcomings in legislation were addressed after 1972 through amendments, while others like the National Parks Act (no 57 of 1976) and the Prevention and Combating of Pollution of the Sea by Oil Act (no 6 of 1981) repealed earlier versions. New environmental legislation included the Weather Modification Control Act (no 78 of 1972), the Sea Birds and Seals Protection Act (no 46 of 1973) and the Dumping at Sea Control Act (no 73 of 1980).<sup>49</sup> The existing and new acts covered the whole environmental spectrum ranging from soil protection, nature and built-

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47. RSA, PC 5/1984: Report of the Planning Committee of the President's Council on priorities between conservation and development (The Government Printer, Pretoria, 1984), p. 15.

48. M.A. RABIE, *South African environmental legislation* (The Institute of Foreign and Comparative Law, Pretoria, 1976), pp. 5-7; W. VAN DER MERWE and D.C. GROBLER, "Development of water pollution control in South Africa" in *The Civil Engineer in South Africa* 31(10), October 1989, p. 357.

49. Butterworths statutes of South Africa: classified and annotated from 1910 as at 31 December 1994 2 (Butterworths, Durban, 1995), pp. 3-1 - 3-5.



environment conservation, to the combating of atmospheric, marine, radiation, solid waste, noise, litter, and water pollution.<sup>50</sup>

According to André Rabie, a South African environmental law expert, South African environmental legislation was adequate by 1976, though shortcomings did exist.<sup>51</sup> Despite these shortcomings, the main problem with environmental laws was the fact that the government failed in its attempts to enforce these laws. Soil conservation legislation, for example, was introduced for the first time in 1941; despite educational campaigns by the government and the NVT among the farming community, soil erosion in South Africa gradually increased.<sup>52</sup> In 1952 the average annual silt run-off in the country's rivers was estimated to be 400 million tons. By 1972 silt sampling in the Orange River, above the Hendrik Verwoerd Dam (now the Gariep Dam), indicated that the surrounding area alone was losing that amount of top soil annually. This in effect meant that the equivalent of 15 cm of the top layer of soil on 137 000 ha was lost annually.<sup>53</sup>

Enforcing environmental control measures was also difficult due to the government's direct involvement in the South African economy. Through Escom, Iscor and the South African Railways, the government was one of the major polluters in the country and its industries contributed to the rapid depletion of natural resources.<sup>54</sup> Within South African environmental legislation, the near "untouchable" status of the state, and thus also state-owned industries, in turn meant that the state was free to act as it wished where the environment was concerned. Air pollution control measures, for example, did not fully apply to the state. In terms of legislation the state was exempt from implementing measures to combat the control of smoke, and had little responsibility other than to inform the public if complaints were lodged against state-owned industries. In short, there was no mechanism in place that could ensure that the state conformed to the standards laid down by law and no legal terms by

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50. See RSA, PC 5/1984: Report of the Planning Committee of the President's Council on priorities between conservation and development, pp. 16-18 for a list of environmental laws and the departments responsible for their enforcement.

51. M.A. RABIE, *South African environmental legislation*, p. 193.

52. R.F. FUGGLE, "An overview of lessons that can be learned from efforts to protect the South African environment" in *National Veld Trust jubilee conference, Pretoria, 2 to 4 November 1993 (S.n., s.l., 1994)*, pp. 49-50.

53. M.A. RABIE, *South African environmental legislation*, p. 16.

54. *Ibid.*, pp. 7-8.

which the state could be called to account for its pollution control or natural resource management.<sup>55</sup>

#### **4.2 The Environment Planning Act (no 73 of 1975)**

The South African government initially opted not to formulate an all-embracing environmental conservation act that would become the sole responsibility of the environmental department to enforce. The main piece of legislation the Department of Planning, and from 1973 the Department of Planning and the Environment, had to enforce, was the Physical Planning and Utilisation of Resources Act (no 88 of 1967). This act was amended and renamed the Environment Planning Act (no 73) in 1975.<sup>56</sup>

The Physical Planning and Utilisation of Resources Act was an important piece of legislation at the time and fit neatly into the grand apartheid scheme of the government. It was aimed mainly, despite its name, at controlling the establishment of industries in the Republic through a policy of industrial decentralisation. Industrial decentralisation had two objectives: firstly, to stimulate industrial growth outside the main industrial centres in the country; and secondly, to provide work for black people close to their homelands in order to curb black migration to the white metropolitan areas.<sup>57</sup> The Physical Planning and Utilisation of Resources Act also regulated the racial composition of the work force by determining colour ratios with which industries had to comply. Specific areas were identified in which coloured and Indian people were given preference over black people in terms of job opportunities.<sup>58</sup>

The amending and renaming of the act to the Environment Planning Act in 1975 gave the Department of Planning and the Environment the power to control land use in the Republic. Previously its power was limited to the restriction of land for industrial development; after 1975 land reservation for a whole range of other uses like water works,

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55. R.F. FUGGLE and M.A. RABIE, "Air pollution" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental concerns in South Africa*, pp. 296-298. M.A. RABIE and M.G. ERASMUS, "Environmental law" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental concerns in South Africa*, pp. 48-49.

56. M.A. RABIE, South African environmental legislation, pp. 6, 8.

57. SA FEDERATED CHAMBER OF INDUSTRIES, *Guide to industrialists regarding metropolitan industrial expansion and the decentralisation of industries* (SA Federated Chamber of Industries, Pretoria, 1977), pp. 7-15; I. Botha, 'n Teoretiese en historiese oorsig van streekbeplanning in Suid-Afrika, met riglyne vir 'n toekomstige beleid (M.Sc. dissertation, University of the Orange Free State, 1990), pp. 50-52.

58. M. HORREL, *Laws effecting race relations in South Africa, 1948-1976* (SA Institute of Race Relations, Johannesburg, 1978), pp. 170-174.

harbours, airports, power stations, nuclear installations and recreational and tourist attractions, was included.<sup>59</sup> Industrial decentralisation remained the core of the Environment Planning Act, with the Department of Planning and the Environment enforcing these measures.<sup>60</sup>

Prior to 1973, the Department of Planning can be viewed as an instrument in the implementation of grand apartheid. Its power to control industrial settlement and the racial composition of the work force had a direct bearing on the lives of black, coloured and Indian people in South Africa. This situation did not change after the department was renamed the Department of Planning and the Environment, and for the first five years of its existence, the "environment" department was closely involved in attempts to make the domestic policy of apartheid succeed. This connection between apartheid and the environment was not new, and all its components contributed towards the formation of a negative attitude towards the natural environment and environmental conservation measures among black people in particular.<sup>61</sup>

#### **4.3 The Environment Conservation Act (no 100 of 1982)**

The origin of the Environment Conservation Act (no 100 of 1982) dates back to 1977 when a Bill on the Disposal of Containers was referred to a select committee of the House of Assembly. The select committee was transformed into a Commission of Enquiry that had to report on the bill and had to recommend methods to combat the enormous litter problem in the country. The Commission tabled its report in 1978 and recommended that the proposed Bill on the Disposal of Containers be dropped. In its place the Commission submitted its own bill that dealt only with solid waste control. The government, though accepting some of the Commission's recommendations, decided not to accept the bill on solid waste control and opted rather to review environmental conservation in South Africa.<sup>62</sup>

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59. M.A. RABIE, *South African environmental legislation*, pp. 186-187.

60. See SA FEDERATED CHAMBER OF INDUSTRIES, *Guide to industrialists regarding metropolitan industrial expansion and the decentralisation of industries*, pp. 7-48.

61. INTERVIEWS with F.R. Fuggle, Cape Town, 26.3.1998 and F. Khan, Cape Town, 30.3.1998.

62. M.A. RABIE and M.G. ERASMUS, "Environmental law", p. 36; J.I. GLAZEWSKI, "Current and future directions in South African environmental law" in *Strategic Review for Southern Africa* 13(1), May 1991, p. 13.

The result of this review was the publication of the White Paper on a National Policy Regarding Environmental Conservation in 1980. The White Paper was a landmark event in that it was the first time the South African government attempted to define its broad environmental policy. The White Paper highlighted many issues including the need to find a golden mean between development and environmental conservation in the country. It included in its broad policy the need for environmental impact assessments of all new development projects and the promotion of environmental education as a key factor in conservation efforts. The White Paper also dealt with specific environmental issues like noise, air, marine, radiation, solid waste, litter and water pollution, as well as with soil, nature and built-environment conservation. It proposed the restructuring of the Council for the Environment (version 1) into a statutory body with a co-ordinating role and the centralisation of the administration of environmental affairs.<sup>63</sup>

The White Paper was followed on 25 July 1980 by the publication for comment of an Environment Conservation Bill. The Bill surfaced again in 1981 as the Environment Conservation Bill (no 39 of 1981) and was referred, after its first reading, to a select committee appointed to inquire into and report on the bill. This committee was changed into the Commission of Inquiry into Environmental Legislation, which despite a broad ranging mandate, reported only on the 1981 bill. The Commission's report included its findings and views and its own Environment Conservation Bill which incorporated its recommendations. The Commission's own bill became the basis of the Environment Conservation Act (no 100 of 1982), promulgated by the House of Assembly on 7 July 1982.<sup>64</sup>

Despite its name the Environment Conservation Act was not all-embracing and it dealt only with limited aspects of the environment. The most important part of the act provided for the establishment of a statutory Council for the Environment, which like its predecessor, was to remain an advisory body. Other important provisions included the management of nature areas and the power to formulate and enforce regulations relating to solid waste and noise control. The act had two major weaknesses: firstly, the Environment Conservation Act was subordinate to all other acts of parliament and its provisions had no

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63. RSA, W.P.O – '80: Witskrif oor 'n nasionale beleid insake omgewingsbewing, pp. 5-13. See also J.G.S. MALAN, M.A. RABIE and R.F. FUGGLE, "Official administration of environmental affairs", pp. 115-116.

64. M.A. RABIE and M.G. ERASMUS, "Environmental law", p. 37. See also RSA, RP 10/1982: Report of the Commission of Inquiry into environmental legislation (The Government Printer, Pretoria, 1982).

overriding powers with respect to any provisions contained in any other act. Secondly, the act provided for the overall co-ordination of environment-related activities through the Council for the Environment. The Council in turn had to advise the Minister of Water Affairs, Forestry and Environmental Conservation. The Minister, however, was not given the corresponding co-ordinating powers.<sup>65</sup>

The Environment Conservation Act (no 100 of 1982) had many shortcomings and could in no way be seen as an all-embracing national policy on environmental conservation. However, the importance of the act is not to be found in its content, but rather in the fact that an act of this nature was promulgated in the South African parliament. The act was far from perfect, but it was a first step towards a central national environmental policy - a step that the government had resisted from 1971 when the UP asked for such a policy.

#### **4.4 The Environment Conservation Act (no 73 of 1989)**

According to Fuggle and André Rabie, the promulgation of the Environment Conservation Act (no 73 of 1989), that repealed the Act of 1982, constituted a major milestone in the development of South African environmental law.<sup>66</sup> The act was preceded by extensive deliberations encompassing three official and one unofficial draft bills over a period of two years. A characteristic of the deliberations was the unfamiliar public participation that followed the open invitation of the first two draft bills (29 May 1987 and 30 October 1987) for interested parties to voice their opinions, criticism and recommendations. The final version of the Environment Conservation Bill was tabled in 1989 and, after some amendments, was formally adopted as the Environment Conservation Act (no 73 of 1989) on 9 June 1989.<sup>67</sup>

The 1989 Environment Conservation Act was a considerable improvement on its predecessor of 1982 in that it provided for the effective protection and controlled utilisation of the environment. The

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65. M.A. RABIE and M.G. ERASMUS, "Environmental law", pp. 37-38; RSA, *Debates of the House of Assembly*, 11.6.1982, col. 9310-9337.

66. M.A. RABIE and R.F. FUGGLE, "The rise of environmental concern" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental management in South Africa*, p. 23.

67. M.A. RABIE, "Environment Conservation Act" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental management in South Africa*, p. 100; J.I. GLAZEWSKI, "The Kruger Park Conference and the Environment Conservation Bill" in *African Wildlife* 43(1), 1989, pp. 12-13; J. GILIOMEE, "New environmental legislation" in *African Wildlife* 43(1), 1989, p. 2.

1982 Act merely provided for the co-ordination of all actions directed at or liable to have an influence on the environment. But, like its predecessor, the 1989 Act did not constitute a codification of existing environment-related legislation and was thus not an all-embracing environmental act.<sup>68</sup>

An important provision of the Act was that it allowed for the Minister of Environment Affairs to declare a statutory environmental policy, by notice in the *Government Gazette*, with which all administrative bodies had to comply. Initially the minister had to obtain the concurrence of the Minister of Finance as well as all other ministers whose departments might be affected by such a policy. This provision was amended by the Environment Conservation Amendment Act (no 79 of 1992) in 1992, which required only consultation of such ministers prior to determining the policy. The Minister of Environment Affairs did not declare any such policy between 1989 and 1992, despite the formulation of a comprehensive model for such a policy by the Council for the Environment.<sup>69</sup>

The Act also took the first tentative steps towards making EIAs compulsory by granting the Minister discretionary powers to declare certain designated areas or activities, to be affected areas or activities. Once an affected area was declared, authorisation for carrying on with developments in the area was subject to an EIA. The same rule applied to activities that were declared affected (i.e. affecting the natural environment). Again the Minister did not make use of these powers between 1989 and 1992, which rendered the provision useless.<sup>70</sup>

Other important provisions of the Act included, *inter alia*, the right of interested persons to request reasons for administrative decisions that affected their environmental interests, the creation of a Board of Investigation for controversial environmental issues and a new

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68. M.A. RABIE, "Environment Conservation Act", p. 99; P.D. GLAVOVIC, "Some thoughts of an environmental lawyer on the implications of the Environment Conservation Act 73 of 1989: a case of missed opportunities" in *The South African Law Journal* 107(1), February 1990, p. 107.

69. J.I. GLAZEWSKI, "Current and future directions in South African environmental law" in *Strategic Review for Southern Africa* 13(1), May 1991, p. 20; M.A. RABIE, "The Environment Conservation Act and its implementation" in *The South African Journal of Environmental Law and Policy* 1(1), March 1994, pp. 113, 116. See RAAD VIR DIE OMGEWING, 'n Benadering tot 'n nasionale omgewingsbeleid en strategie vir Suid-Afrika for the environmental model developed by the Council for the Environment.

70. J.I. GLAZEWSKI, "A new Environment Conservation Act: an awakening of environmental law" in *De Rebus* 263, November 1989, pp. 873-874; J.I. GLAZEWSKI, "Current and future directions in South African environmental law", pp. 20-21.

classification system for protected areas. The Act further provided for the continuation of the Council for the Environment.<sup>71</sup>

While the Environment Conservation Act (no 73 of 1989) was a big improvement on its predecessor, its success depended largely on the Minister of Environment Affairs who had to use his discretionary powers first before action was possible. Despite internal and external pressures, the Minister did not make use of any of the discretionary powers granted to him between 1989 and 1992.<sup>72</sup>

## **5. The South African government and the Earth Summit**

Twenty years after the historic United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972), the world gathered again to discuss environmental issues at Rio de Janeiro from 3 to 14 June 1992. The United Nations Conference on Environment and Development (UNCED, also known as the Earth Summit) was the biggest conference ever convened and brought together a diversity of interest groups to discuss and decide upon mechanisms to protect the global environment and to implement sustainable development.<sup>73</sup> The main significance of UNCED and the processes that preceded it lies in the identification of sustainable development as the goal the whole world should work towards. This concept and its action plan, Agenda 21, subsequently became the model and barometer according to which states would be judged in the future.<sup>74</sup>

South Africa contributed little to the UNCED process, not out of choice, but because of its non-participatory status at the UN. The government was not represented at any of the preparatory meetings leading up to UNCED, and thus made no contribution towards determining the content of the sustainable development action plan (Agenda 21) adopted at the conference. Official representation at the actual event was also denied, although the country was invited to attend the conference as an observer and to submit a report on

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71. J.I. GLAZEWSKI, "Current and future directions in South African environmental law", pp. 21-23; J.I. GLAZEWSKI, "A new Environment Conservation Act", pp. 874-878.

72. See M.A. RABIE, "The Environment Conservation Act and its implementation", pp. 113-125 for a discussion of the implementation of the Act.

73. D. KORTEN, "The Earth Summit, Brazil 1992) in *Indicator South Africa* 9(2), Autumn 1991, p. 10; R. ELMERL-DEWITT, "Rich vs. poor" in *Time* 139(22), 1.6.1992, p. 26; *Vrye Weekblad*, 2.10.1992, p. 23; D. LOVEJOY, "What happened at Rio?" in *The Planner* 78(15), 7.8.1992, p. 13.

74. See "Agenda 21" in J. QUARRIE (Ed.), *Earth Summit 1992* (The Regency Press, London, 1992), pp. 46-240) for an abridged version of Agenda 21.

development and the environment in South Africa. In accordance with the invitations, the country submitted a report entitled *Building the foundation for sustainable development in South Africa* (which was incorporated into the *Nations of the earth report*), while a governmental delegation attended the proceedings as observers.<sup>75</sup>

The South African government's lack of status within the international political community was emphasised by the fact that both the African National Congress (ANC) and Pan-Africanist Congress (PAC) were invited to send delegates with observer status to the official proceedings. Both organisations were also given the opportunity to address the conference, with the ANC endorsing the main principles and guidelines of Agenda 21 in their paper, and the PAC presenting their energy policy. Other South African representatives included a delegation from the Industrial Environmental Forum, which participated in an event organised by the International Network for Environmental Management, and a representative from the South African ENGOs who was invited to join a regional delegation from Southern Africa. Arguably the most important representative of the country to UNCED was Elsie Mashinini, who was named to the United Nations Environment Programme's "Global 500 Roll of Honour" in 1992. Mashinini was one of only 74 individuals (by 1992) to have received this honour and it was awarded for her achievements in soil enrichment, trench-gardening and waste recycling in Ecolink's Earthcare programme.<sup>76</sup>

The limited participation by both the South African government and non-governmental role-players was unfortunate given the fact that UNCED determined not only the environmental agenda, but also the broad structure of future economic development. This situation impacted negatively on the formulation of a sustainable development policy that would best suit the country's needs. Lack of governmental understanding of the concept of sustainable development was further

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75. R.P. WYNBERG, *Exploring the Earth Summit. Findings of the Rio United Nations Conference on Environment and Development: implications for South Africa* (M.Phil. dissertation, University of Cape Town, 1993), pp. 16-17; I. VAN DER MERWE, "The summit of '92" in *Conserva* 7(5), September/October 1992, pp. 4-5; RSA, *Building the foundation for sustainable development in South Africa. National report to the United Nations Conference on Environment and Development (UNCED) to be held in Rio de Janeiro, June 1992* (Department of Environment Affairs, Pretoria, 1992).

76. L. VAN NIEKERK, "A woman of substance" in *Conserva* 7(3), May/June 1992, pp. 12-13; D. COOPER, "South Africa after UNCED?" in D. HALLOWES (Ed.), *Hidden faces. Environment, development, justice: South Africa and the global context* (Earthlife Africa, Pietermaritzburg, 1993), pp. 33-34; R. P. WYNBERG, *Exploring the Earth Summit*, pp. 16-17; D. COOPER, "After UNCED: NGOs must get their act together" in *New Ground* 9, Spring 1992, p. 49.



reflected in its national report to UNCED in which it failed to integrate environmental and developmental issues.<sup>77</sup>

## **6. Evaluation**

South Africa's position within the global environmental movement between 1972 and 1992 was dubious at best. Due to the government's domestic policy of apartheid, the country was isolated in the international political arena and thus had limited opportunities to contribute to the global efforts to improve the environment. Because of the isolation, South Africa was unable to participate in the activities of UNEP and was refused attendance of the appraisal conference held in Nairobi in 1982, ten years after UNCHE. Though politically isolated, the country participated in numerous international environmental conventions like the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973) and the Convention on the Conservation of Antarctic Marine Living Resources (Canberra, 1980).<sup>78</sup> However, many of the conventions resulted in mere extensions being made to the country's conservation efforts already in place and as such did not place serious limitations on South Africa's economic interests. When conventions did show promise of limiting state activities in certain areas the government either withheld its signature (e.g. the Treaty on the Non-Proliferation of Nuclear Weapons, 1968)<sup>79</sup> or took its time to accede to the conventions (e.g. the Convention for the Protection of the Ozone Layer, Vienna, 1985 and the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989).<sup>80</sup>

South Africa's limited involvement in the global environmental movement meant that there were few influences from outside its borders that could check on the government's environmental performance. The world at large focused on apartheid and South West Africa/Namibia and neglected to perform the additional role of

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77. R.P. WYNBERG, *Exploring the Earth Summit*, pp. 16-17.

78. J. WILEY, *Suid-Afrika se rol en betrokkenheid by internasionale omgewingsbewaring*, pp. 5-9; P.G.W. HENDERSON, *Environmental laws in South Africa 2* (Juta, Cape Town, 1996), pages numbered Conventions 1-Conventions 5.

79. P.G.W. HENDERSON, *Environmental laws in South Africa 2*, pages numbered Conventions 1-Conventions 5.

80. RSA, RP 29/1991: Annual report of the Department of Environment Affairs, 1989-1990, p. 58; M. KIDD, *Environmental law*, p. 142; D.J. DEVINE and M.G. ERASMUS, "International environmental law" in R.F. FUGGLE and M.A. RABIE (Eds.), *Environmental management in South Africa*, pp. 169, 171.

environmental watchdog as far as South Africa was concerned. The South African government flourished in this environment, quickly pointing to all its conservation achievements when questions regarding its environment-related activities came up, while ignoring the detrimental environmental impact of its industrial and military activities. With little pressure from outside and limited criticism tolerated from inside its borders, the government went about dealing with the natural environment as though it was still an infinite resource.

The environment, given the political context of the period, was never a top priority for the South African government between 1972 and 1992. On a national level the government did respond to some aspects of the new environmental agenda established as a result of the environmental revolution and UNCHE. Probably the most important developments in governmental environmental management in South Africa were the establishment of a focused Department of Environment Affairs in 1984 and the adoption and implementation of the Environment Conservation Act (no 73) in 1989. The government also started to show greater sensitivity to environmental issues in the 1980s and requested the President's Council (established on 1 January 1981) on five occasions to investigate and report on environment-related issues.<sup>81</sup> The most important of these investigations focused on the way in which environmental affairs were managed within governmental structures. The *Report of the Three Committees of the President's Council on a National Environmental Management System* represents the most extensive investigation ever conducted into the management of environmental affairs in South Africa.<sup>82</sup> Unfortunately the final report was tabled in October 1991 when the NP government was unable to attend to it due to the ongoing negotiation process with anti-apartheid organisations and other political interest groups over the establishment of a new political dispensation in South Africa. This government initiative, like so many others between 1990 and 1994, therefore became a "victim" of the New South Africa in that they were deemed "worthless" after the ANC came to power in 1994.

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81. See the following for the final reports: RSA, PC 2/1984: Report of the Planning Committee of the President's Council on nature conservation in South Africa (The Government Printer, Cape Town, 1984); RSA, PC 5/1984: Report of the Planning Committee of the President's Council on priorities between conservation and development (The Government printer, Cape Town, 1984); RSA, PR 1/1983: Verslag van die Wetenskapskomitee van die Presidentsraad oor demografiese tendense in Suid-Afrika (The Government Printer, Cape Town, 1983); RSA, PC 3/1985: Report of the Committee for Constitutional Affairs of the President's Council on an urbanisation strategy for the Republic of South Africa (The Government Printer, Cape Town, 1985).

82. PC 1/1991, The Government Printer, Cape Town, 1991.

Despite the accusations that it was staffed by non-professionals, the Department of Environment Affairs did make important contributions to the development of environmental management in South Africa between 1972 and 1992. Notable contributions include the launching of the South African Natural Heritage Programme in November 1984 which aimed at encouraging and assisting private landowners in the country to conserve the natural environment on their property;<sup>83</sup> the development of a National Plan for Nature Conservation and the corresponding national atlas of critical environmental components;<sup>84</sup> the annual financial contributions made to ENGOs and scientific institutions that researched pollution and waste management, and the drafting of regulations aimed at controlling noise pollution and waste management.<sup>85</sup> Furthermore, the Department was involved in the government's ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal, 1987), and in preparing for the country's accession to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 1989). South Africa acceded to the Montreal Protocol on 15 January 1990 and, despite Cabinet approval being granted in 1989, to the Basel Convention only on 5 May 1994.<sup>86</sup>

South African governmental environmental management between 1972 and 1992 compares unfavourably with other governmental initiatives, notably those in Northern America and Western Europe. When compared with the US government, for example, the evidence points towards the South African government being as many as twenty years behind that of its American counterpart. Consider the following: the USA promulgated its first wide-ranging and all-embracing

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83. R. SOUTTER, "The South African Natural Heritage Programme" in *African Wildlife* 40(1), 1986, pp. 16-17; "Heritage 100. Founder sponsors of the SA Natural Heritage Programme: Telemacanique" in *Parks and Grounds* 50, 1989, p. 37.
84. RSA, National atlas of critical environmental components (National Plan for Nature Conservation), (Department of Environment Affairs, Pretoria, 1984), pp. 1-3.
85. RSA, RP 58/1984: Annual report of the Department of Environment Affairs, 1982-1983, pp. 200, 203; RSA, RP 28/1985: Annual report of the Department of Environment Affairs, 1983-1984, pp. 195, 198; RSA, RP 44/1986: Annual report of the Department of Environment Affairs, 1984-1985, pp. 51, 55; RSA, RP 32/1987: Annual report of the Department of Environment Affairs, 1985-1986, p. 101; RSA, RP 119/1987: Annual report of the Department of Environment Affairs, 1986-1987, p. 126; RSA, RP 114/1988: Annual report of the Department of Environment Affairs, 1987-1988, pp. 49, 51, 54.
86. RSA, RP 29/1991: Annual report of the Department of Environment Affairs, 1989-1990, p. 58; M. KIDD, *Environmental law*, p. 142; D.J. DEVINE and M.G. ERASMUS, "International environmental law", pp. 169, 171.

environmental act, the National Environmental Policy Act (NEPA), on 1 January 1970, during the presidential term of Richard Nixon. One of the major components of the NEPA was that it required all proposed federal developments to carry out an environmental impact assessment (EIA) before being allowed to proceed.<sup>87</sup> The closest South African environmental legislation came to the NEPA was the Environment Conservation Act (no 73) that was promulgated in 1989. This act replaced its predecessor, the Environment Conservation Act (no 100 of 1980), and was the first step that the government took to provide for the protection and controlled utilisation of the environment in legislation. EIAs, however, remained voluntary within the provisions of this act.<sup>88</sup>

The US government also responded to public concern over high pollution levels (one of the major concerns of the environmental revolution) by creating the Environmental Protection Agency (EPA) in December 1970. The EPA was (and still is) an independent pollution control agency responsible for the regulation and enforcement of all federal legislation on air and water pollution, environmental radiation, agrochemicals and waste disposal.<sup>89</sup> No similar regulatory agency was established within governmental structures in South Africa between 1972 and 1992. The South African government opted for a fragmented approach in the official administration of environmental affairs, which in turn meant that pollution control measures were enforced by a diversity of different role-players within governmental structures. More than eight state departments, the four provincial administrations and all the municipalities were directly involved in the control of the various types of pollution in South Africa. Lack of central control over pollution measures contributed directly to slack enforcement of related legislation, which in turn contributed to the poor image of the government and the Department of Environment Affairs with new environmentalist ENGOs such as Earthlife Africa and Consumers Against Pollution from 1988 onwards.

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87. J.MCCORMICK, *The global environmental movement*, p. 134.

88. EIAs only became compulsory in South Africa in 1998.

89. J. MCCORMICK, *The global environmental movement*, pp. 134-135.

## **Opsomming**

### **Omgewingsbestuur in Suid-Afrika: twintig jaar van regeringsreaksie op internasionale uitdagings, 1972-1992**

Hierdie artikel ondersoek inisiatiewe in Suid-Afrikaanse omgewingsbestuur in die twintig jaar tussen die twee historiese omgewingskonferensies wat deur die Verenigde Nasies georganiseer is, naamlik die United Nations Conference on the Human Environment in 1972 en die United Nations Conference on Environment and Development in 1992. Die periode onder bespreking was 'n belangrike ontwikkelingsfase in omgewingsbestuur op beide nasionale en internasionale politieke vlakke; 'n periode waarin die fokus geleidelik verskuif het vanaf die aanspreek van die omgewing as 'n politieke vraagstuk in die sewentigerjare tot die aanvaarding in 1992 dat die wêreld 'n nuwe ontwikkelingsmodel (naamlik volhoubare ontwikkeling) benodig indien die mensdom wou oorleef. In die artikel word daar gefokus op Suid-Afrika se deelname aan die twee Verenigde Nasies-konferensies, die institusionalisering van omgewingsbestuur, die departement van omgewingsake, die raad vir die omgewing en omgewingswetgewing.