Public Participation in Environmental Decision-making in the new South Africa:
A Research Project to Identify Practical Lessons Learned

Final Research Project Report
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Environmental Evaluation Unit &
Occupational and Environmental Health Research Unit

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1 Introduction and Background

1.1 Project Context

Public participation in environmental decision-making in South Africa was spearheaded through the Consultative National Environmental Policy Process (CONNEPP) in 1995. Aimed at securing stakeholder input to the development of a new environmental policy, this process resulted in the adoption of the National Environmental Management Act (NEMA) in 1998. As far as its procedural environmental rights are concerned, NEMA is considered one of the most modern and innovative environmental framework statutes in the world. Ten years following the abolishment of apartheid and more than five years after the adoption of a new environmental policy for South Africa, many stakeholders in South Africa point to valuable lessons learned regarding the involvement of the public in environmental decision-making. It is one of the aims of this project to document lessons learned and to make relevant experience available, with the hope of contributing to future environmental decision processes in the new South Africa.

The involvement of the public in activities and decisions that affect their lives has been recognised as a fundamental right and principle and as such has been incorporated into a number of international agreements and policy initiatives (e.g. The Rio Declaration, the Aarhus Convention) and plans of action (e.g. Agenda 21, the Johannesburg Implementation Plan). Many countries have initiated processes of strengthening public participation schemes, following the adoption of Principle 10 of the Rio Declaration in 1992 at the Earth Summit. Principle 10 promotes public participation in environmental decision-making and access to information and justice in environmental matters. Some countries committed to the implementation of Principle 10 have pointed to the challenges of implementing its public participation provisions (such as lack of skills and resources).

Public participation in administrative and legislative decision-making has become an integral and important aspect of environmental governance in many democratic countries, including a growing number of developing countries. However, striking a good balance between democratic participation and administrative efficiency presents challenges for many governments. Experience suggests that a one-size-fits-all approach to public participation does not exist. Rather, consultative procedures to involve the public would need to be adapted to the nature of the decision process and take into consideration national and issue specific circumstances, while satisfying the expectations of stakeholders for a transparent and fair process. Apart from strategic considerations about the nature and scope of public participation, a number of practical issues may affect the success of a consultative process, such as providing clarity about the expected input from stakeholders, organizing effective meetings, or providing appropriate feedback on comments received. It is within this context that the research project on “Public Participation in Environmental Decision-Making in the New South Africa” has been developed.
1.2 Project Objectives

The project’s main objective was to document public participation opportunities and patterns and to identify practical lessons learned during the first phase of the environmental law reform process in the new South Africa. The project specifically sought to contribute towards a better understanding of procedural aspects, capacities and resources that may need to be in place to facilitate design and implementation of public participation processes in the South African context. Lessons learned could inform the design of future decision processes that will be undertaken within the country. It is also hoped that a case study library documenting past experiences would gradually be developed. In the long-term, it is hoped that the project might contribute to strengthening the relationship of government and its clients within civil society and therefore enhance the trust of the public in government.

Some of the specific objectives of the research were:

- To assess if current public participation is meeting stakeholders’ expectations and how they feel it can be improved.
- To examine different aspects of public participation within environmental decision-making – degree of inclusiveness, nature of deliberation and sharing of decision authority.

At the international level, the project contributes towards international information exchange on public participation in environmental decision-making. It will in particular, inform the development of UNITAR guidance and resource materials aimed at assisting countries in strengthening their national capacities for developing and implementing public participation in environmental decision-making. The methodology can also be used to undertake similar studies in other countries adding to a potential body of case study research on public participation.
2 Overview of Methodology and Project Activities

2.1 Methodology and Case Study Selection

The research methodology begins with the premise that a one-size-fits-all approach to public participation does not exist. Rather, participation procedures would need to address specific circumstances and take into consideration needs and expectations of stakeholders. Thus, rather than evaluating decision processes against pre-determined benchmarks, the methodology applied in the research focused on eliciting from stakeholders to what extent, and in what way, the participation approach adopted in the particular case by the lead agency addressed stakeholder needs and expectations.

The project was implemented through a number of stages. The first stage was conducted through collaboration of UCT’s Occupational and Environmental Health Research Unit (OEHRU) and UNITAR and focused on identifying general issues and concerns relevant to public participation in environmental decision-making in South Africa. Relevant information was obtained from initial interviews with governmental officials and stakeholder representatives in South Africa during the course of 2003-2004. Insights gleaned from these interviews helped shape the methodology that was subsequently employed in the case study research.

The second stage involved the examination of a number of case studies that analyzed procedural issues as well as government and stakeholder perceptions of the participation processes. A pilot methodology for the case study research was developed, taking into consideration issues raised during the interviews with South African experts as part of the first stage. During the course of 2005-2006, the methodology was tested by OEHRU through selected pilot case studies, which focused on public participation in the development of legislation, policy and standards in the area of air quality management:

- National Environmental Management: Air Quality Act (No. 39 of 2004), Department of Environmental Affairs and Tourism (DEAT);
- South African National Standards 69 & 1929, Standards South Africa (STANSA); and
- South African Vehicle Emissions Strategy, Department of Minerals and Energy (DME)/DEAT.

These case studies were selected to demonstrate three different types of environmental decisions (namely national legislation, policy development and standard-setting), while still having similar synergies between them. Undertaking case studies within the field of air quality allowed the issues to be tracked collectively. Activities are still being undertaken by DEAT regarding air quality, and the findings gained from this research have the potential to feed into further air quality developments. Since these processes were fairly recent (the public participation processes ending in 2004-2006), information and feedback from stakeholders was relatively easy to obtain.

Taking into consideration lessons learned from the pilot testing of the methodology, the case study methodology was refined. Several additional case studies were undertaken by the Environmental Evaluation Unit (EEU) during the course of 2006. These case studies involved...
public participation in the other areas of environmental management at the national and local levels:

- National Environmental Impact Assessment Regulations, DEAT;
- National Environmental Management: Biodiversity Act (No. 10 of 2004), DEAT;
- EIA for the Dreamworld Film City and Residential Development, The Environmental Partnership; and
- EIA for the Table Mountain Aquifer Feasibility Study, Ninham Shand.

The national-level case studies were deliberately selected from different sectors (such that there was minimal overlap of respondents). Rather these case studies were selected as a result of the very different responses and approaches to public participation associated with each of them. The EIA case studies were selected because of their recent time-frame, the availability of information, the ability to interact directly with the EIA consultants and the different groups of Interested and Affected Parties who were engaged, including historically-disadvantaged individuals (HDIs).

The case study research involved three steps: (1) documenting opportunities for and patterns of public participation, (2) eliciting feedback on the process from stakeholders, and (3) conducting a final analysis to determine to what extent the process met stakeholder needs and expectations. Each of the three steps is described below.

**Documenting public participation opportunities, patterns and methods (Step 1)**

During the early phase of the case study research, a baseline document was prepared summarizing participation opportunities and actual participation patterns. The document described approaches and methods used (such as workshops, notice and comment, etc.) and attempted to document which groups and sectors actually participated and responded. The document was meant to provide a factual overview of the process and enabled a preliminary assessment of procedural characteristics of the process to be undertaken. It also served as the foundation for the elucidation of stakeholders’ perspectives on procedural aspects of the process. Information for preparing the document was provided by line managers, consultants involved in the process, experts, and through archival research.

**Stakeholder satisfaction survey (Step 2)**

During stage 2 of the case study research, an invitation to participate in the study was sent to participants using databases acquired from the lead agencies and consultants involved in managing the public participation. The stakeholders in these databases were people who had been engaged in the public participation processes of the case studies, and included people who attended meetings, workshops, provided written submissions, registered as Interested and Affected Parties (I&APs), etc. For the stakeholders who indicated an interest to participate, a questionnaire survey was administered to them featuring closed and open-ended questions. The survey sought to elicit stakeholder perspectives and satisfaction regarding procedural aspects of the process, such as the timing of public participation, inclusion of relevant groups, level of interaction and deliberation, management and facilitation. Where necessary, follow-up telephone interviews were undertaken to clarify and/or gather additional information. In cases where the survey format was not suitable to acquire feedback (e.g. with communities without first language English, and/or where access to electronic
communication is limited, etc.), focus group meetings were held with stakeholders to elicit their views.

**Analysis (Step 3)**

Once the completed survey forms were received and focus group meetings and interviews were completed, the survey results were analyzed qualitatively and quantitatively. The analysis in this report drew on responses to the specific questions in the survey, and is supplemented by other discussions and interviews with additional role-players and stakeholders. The overall analysis revealed to what extent the participation approaches selected and implemented by the lead agency were considered appropriate and adequate by stakeholders involved in that process. Given that the responses often varied widely according to what sector respondents were coming from, where trends were evident responses were grouped according to sectors. Respondents were classified as belonging to:

- Business and industry (ranging from large corporations to small companies);
- Professional consultants;
- Public interest & community groups;
- Research and academia (including research institutes and tertiary institutions);
- Government (including local, provincial and national); and
- Other (consisting of non-affiliated members of the public).

Final case study reports were drafted including a summary of the process, results of the stakeholder survey and a preliminary section on lessons learned. These case study reports were compiled into a Case Studies Summary Document, which was used as the basis for discussions at the National Review Workshop.

**2.2 National Review Workshop**

The next stage of the project involved conducting a *National Review Workshop on Public Participation in Environmental Decision-making in South Africa*. This Workshop was held from 12-14 June 2006 with 90 participants who had either participated in the research or who were involved in public participation issues in South Africa. The main objective of the Workshop was to present and review the results of the case study research and provide an opportunity for dialogue between researchers, government representatives, members of civil society, and the business community. The Workshop also provided an opportunity for developing practical recommendations to decision-makers involved in designing and implementing public engagement processes, to assist them in strengthening effective public participation in South Africa. A *National Workshop Report and Recommendations* document is available as a separate output of this project.

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1 It is acknowledged that there is some overlap with these sector groups. Where required, we have endeavoured to align the interests of the organisation with the sector group and maintained consistency across all case studies. For example, industry associations were classified under “Business and Industry”; consulting companies were classified under “Professional Consultants”; individuals who were not affiliated with any organisation but were engaging as a private citizen were classified as “Other”.

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2.3 Final Analysis

Final analysis has been undertaken and culminated with this Final Research Report based on the findings from the project. Discussions and presentations have been held with various agencies and forums (e.g. DEAT, the National Environmental Advisory Forum) to provide feedback and present recommendations that have emerged from the study.

2.4 Limitations

Research of this nature has limitations and constraints, which have been recognised and considered during the course of the analysis. These limitations are summarised as follows below.

*Control over sample size and sample type*

Participation in the research was voluntary. As a result, the number of participants could not be predicted. Furthermore, whilst every effort was made to secure a significant number of participants, in a number of case studies the response rate was deemed low for certain sector groups. However, in some cases this was due to the low number of people who participated in those cases.

As a result of these uncertainties surrounding the sample size, data was largely interpreted through qualitative analysis and the identification of major trends, rather than through a quantitative statistical analysis that assumed representation of sector groups. In some cases, percentages are insignificant since there are such small sample numbers (e.g. only one Business and Industry stakeholder was surveyed and that stakeholder felt dissatisfied, which is reflected as 100% of Business and Industry stakeholders). Simple quantitative analysis is included in this report, though, for the purposes of identifying significant trends in certain issues and sector groups. It should be stressed that what is being expressed are trends among stakeholder respondents who were surveyed, and cannot in all cases be extrapolated to the stakeholders overall.

The scope of respondents was deliberately limited to people who had been engaged in or were strongly aware of these processes. The focus of the research was to ascertain from people already engaged if they were satisfied. This inevitably excludes gaining perspectives from those who were not part of the public engagement processes as to how these people should be targeted and reached. Nevertheless, limiting the respondents to those who were part of the public process allows for a more accurate representation of the stakeholders who were engaged.

As the soliciting of survey participants was based on databases obtained from the lead agencies and conducted extensively through electronic communication, it largely excluded those who did not have access to electronic communication and those whose contact details were out of date. Where possible, efforts were made to telephone stakeholders who did not have emails and send the survey through other means. The survey and all communications were only in English, however, which might have excluded those not comfortable communicating in English.
Sample bias

It must be recognised that those participants who choose to participate in certain research activities may be motivated as a result of issues which they wish to bring to the attention of researchers and others. Stakeholders who have had positive experiences or who felt neutral about the process may be considered to have less of an interest in participating in the survey. As it was a voluntary process of respondent selection, rather than attempting a random sample, those participants with issues to raise may have responded more than participants who were pleased with the process.

Disparity between qualitative and quantitative results

There were some occasions where the quantitative and qualitative survey responses did not support each other. For example, in the quantitative component of a question, a participant would indicate that they were “satisfied”. However, in their written comment directly below this response, they would provide text that would appear to indicate dissatisfaction. Where possible, these disparities were followed up with personal interviews, but that was not feasible for all cases where the situation arose.

Subjective interpretation of the quantitative scale

The quantitative scale in the survey questions involved respondents providing a personal rating, such as “strongly agree”, “agree” or “strongly disagree”. The response provided by the participant was dependent on their understanding of the options on this scale, which would be subject to personal interpretation.

Multi-faceted questions

In order to keep the questionnaire to a reasonable length, certain questions were collapsed. For example, understanding respondent perspectives concerning their capacity to participate was phrased as “capacity of resources”. This would include capacity in terms of time, financial resources and human resources. Ideally these could be captured independently, as some respondents indicated that they would have different responses for each component of the question.

Time lag

Although being completed recently, the duration of the decision-processes used as case studies spanned between 3-6 years. A few of the participants involved in these case studies indicated that due to the time lapsed, it was difficult for them to comment accurately on the process.
3 Theoretical Considerations Underpinning the Research

3.1 Benefits and Costs of Public Participation

According to Fiorino\(^2\), public participation in environmental decision-making can be justified according to three rationales: normative, substantive and instrumental. The normative rationale is based on the democratic fundamental that individuals and groups which may be affected by an administrative decision should be informed and consulted in advance. It also assumes that public participation in the administrative process increases democratic oversight and accountability. This is perhaps the most compelling rationale for involving the public in decision-making: people should have a right to be consulted and involved in decisions that affect their lives. The substantive rationale is based on the premise that the public has significant expertise to contribute to the substantive quality of the decision. It also questions the technocratic perspective, that elites make more rationale decisions. Finally, the instrumental rationale of public participation assumes that public participation will decrease conflict and build trust among stakeholders, thus raising the overall societal acceptability of decisions. This is achieved by identifying concerns and values of the public during the early stage of a process rather than when decisions have been made.

Nevertheless, public participation also faces challenges and may have negative impacts, if not properly planned and implemented. First, participatory processes can be resource intensive both for the relevant agency, as well as for the public and necessary resources are not always available. Second, public participation may significantly delay urgent decision-making. Third, identifying the relevant parties that should participate in the process in order to obtain a balanced perspective is challenging and, if not done properly, may distort the decision outcome. Finally, public participation may in certain cases actually exacerbate cleavages in society unless facilitated effectively. Given the above factors, public participation may, under certain conditions, lead to unsatisfactory outcomes for all parties and actually reduce trust of the public in government.

3.2 Challenges of Designing and Implementing Public Participation

Designing and implementing a public participation process presents a multitude of challenges for public administrators and their service providers. Questions relevant to the design and implementation of any public participation process include, for example, the following:

- Who is the public for a given decision, which groups should be invited to participate in order to ensure representation, and how can the interests of disadvantaged groups/communities be elicited?

- Which participation techniques are most appropriate in a given situation in order to obtain public input, e.g. notice and comment, face-to-face discussions, workshops, etc.?

- At what stage in a particular decision-process should the public be involved and how much technical/preparatory work should be undertaken prior to such involvement?

Theoretical Considerations Underpinning the Research

- What type of information needs to be available to ensure meaningful participation and fulfil the public’s right-to-know?

- How can participation processes become more efficient, while remaining open and transparent, recognizing the limited resources of government and stakeholders?

- Which skills and capacities would need to be developed to ensure that participation processes are professionally managed and implemented, thus enhancing the trust of the public?

- How can governments ensure that stakeholders are satisfied with procedural aspects of the decision process, while recognizing that disagreement may exist concerning the substance of the final decision?

A number of techniques are available to facilitate public participation. Mostert provides a listing of no less than twenty-nine different methods to facilitate public participation. These include, for example, notice and comment, citizen juries, opinion surveys, face-to-face negotiations, etc. All of these techniques have different strengths and weaknesses and would be appropriate in particular contexts. The main issue for government therefore is to identify those methods which accommodate best the decision-process at hand and which can be effectively implemented within the available resources.

3.3 How Democratic is an Administrative Process?

Democratic theorists and administrative practitioners have differences in opinion concerning the scope, magnitude and depth of public participation in administrative decision-making processes. On one side of the spectrum, Arnstein argues that agencies should fully share their decision-making authority with the public and ensure the greatest public involvement possible – the popular democratic approach. On the other side of the spectrum, the technocratic model of governance emphasizes that technical matters of decision-making are best placed in the hands of a professional bureaucracy, working closely with experts.

A third “in between” model of governance is pluralism. It assumes that interest groups stand in competition with each other in influencing decision-making outcomes and that administrative decision-making becomes a surrogate of the political process. Within pluralism, the role of the agency is to serve as facilitator of a process rather than being its engine; its central role is to mediate between various competing group interests.

Democratic theorists are also concerned with the nature of interaction between the administration and the public. Barber argues, for example, that unless a decision-process is deliberate and seeks to explore the common good, it should not be called democratic. Mansbridge draws a clear line between deliberative and adversarial democracy. Deliberative democracy assumes that a common interest exists between individuals and interest groups and that through reflection and reasoning a common solution to a problem can be identified. In contrast, adversarial democracy emphasizes the need for open public debate about

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diverging issues and aggregates preferences in taking a final decision. This approach has a result that some win (the majority), while others lose (the minority).

Thomas takes a practical approach and proposes that the greater the need for public acceptability of a decision, the more public managers should share their decision-making authority with the public and explore opportunities for meaningful participation\(^7\). According to Thomas, the greater the need for technical analysis and technical competence, the lower should be the need for extensive public involvement. Thomas thus recommends that policy makers should ask first whether or not the nature of the decision-problem requires public participation, rather than promoting it as a principle.

Who is then right concerning the desired democratic nature of administrative processes and what criteria should be used to evaluate public participation? The premise of this research is that a one-size-fits-all approach to public participation does not exist and suggests that evaluating the success of public participation process should take into account stakeholder’s expectations for particular processes.

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4 Outline of Case Study Findings

4.1 Overview

The case study findings are presented in the following order:

- National Environmental Management: Biodiversity Act (No. 10 of 2004);
- National Environmental Management: Air Quality Act (No. 39 of 2004);
- South African National Standards 69 & 1929, Standards South Africa;
- South African Vehicle Emissions Strategy;
- National Environmental Impact Assessment Regulations;
- EIA for the Dreamworld Film City and Residential Development; and
- EIA for the Table Mountain Aquifer Feasibility Study.

Each case study begins with a brief overview summary of the process of development and the public participation throughout, ending with an update on the current status (as of November 2006). Details are then provided regarding the numbers of survey respondents who participated for that particular case study, identified according to sector group. The overall level of satisfaction is then presented by sector group, followed by a detailed discussion of various aspects of the public participation process in which there were significant issues raised. This discussion is based on qualitative responses received from survey participants. The quantitative data gathered through the surveys is presented in the form of bar charts which display different sector groups’ satisfaction with key aspects of the public participation process, related to the qualitative feedback.

4.2 Explanation to the Charts of Survey Respondent Satisfaction

The charts for each case study have been developed from the quantitative data collected from survey respondents. Specific survey questions were used to draw data on the particular issue. Some issues discussed in the report do not have corresponding charts because there were no specific questions dealing with these issues (but were raised through respondents’ qualitative responses in a number of questions).

A five-point Lickert scale was used throughout the survey to elicit responses from stakeholders concerning their overall satisfaction with the public participation process with the following values: (1) Very Satisfied (2) Satisfied (3) No Opinion (4) Not Satisfied and (5) Strongly Dissatisfied. For the analysis of the results, the very satisfied and satisfied categories have been combined and the not satisfied and strongly dissatisfied were also combined (indicated as positive and negative in Table 2).

The categories in the quantitative components of the questions were collapsed from five to three, by combining strongly agree + agree (to form the “Satisfied” category) and strongly disagree + disagree (to form the “Dissatisfied” category). For each issue/question, the number of responses within each sector group was converted into percentages for that particular sector group. Each bar in the chart represents the total number of respondents per sector group as a percentage (100% in all cases), and shows the percentage of respondents in that sector who are satisfied, neutral or dissatisfied regarding the issue.
The analysis of these charts (included in text on the first page of the charts) is based largely on the sector-specific responses. Since each sector has a differing number of respondents, it may be misleading to assume overall trends in some cases, except where a similar trend is found across all sectors. The analysis within the findings text, however, is mainly based on overall numbers of responses and qualitative responses.

### 4.3 Capacity Charts

Within the study, the level of capacity of stakeholders to engage was comprised of three questions in the survey relating to:

- adequacy of resources for stakeholders to engage (e.g. financial resources to attend meetings, human resources with respect to time);
- sufficient access to information to be able to engage; and
- sufficient access to technical knowledge to enable stakeholders to understand the decision being made and the underlying issues surrounding the decision.

In analysing the level of capacity of stakeholders for a particular case study, the different stakeholder groups were combined. The initial information was disaggregated according to sector groups, however significant trends were more clearly evident in examining responses to the capacity issues overall.
5 Overview of the Case Studies and Case Study Findings

5.1 National Environmental Management: Biodiversity Act (No. 10 of 2004)

5.1.1 Summary of the process

In August 1997, the White Paper on the Conservation and Sustainable Use of South Africa’s Biological Diversity was developed by the Department of Environmental Affairs and Tourism (DEAT). At the beginning of 2000, consultants were appointed by DEAT to develop a Bill stemming from the White Paper and to consolidate a range of legislation that was being developed at the time relating to biodiversity (funded by the Danish Cooperation for Environment and Development). A Task Team was set up to develop the first draft comprising of two legal drafters and a technical advisor.

These initial stages of drafting the Biodiversity Bill were largely internal among DEAT, with meetings undertaken between DEAT and key stakeholder agencies and government departments. From 2001 to 2002 there was extensive consultation with Provinces and other National government departments. Consultations were also undertaken with MINTEC, MINMEC and the Committee for Environmental Coordination. The purpose of this extensive process was to develop a formal document which the government agreed upon that could be released for public comment. After the Biodiversity Bill was submitted by DEAT to the Cabinet in May 2002, Cabinet requested that DEAT ensured the alignment of the Bill with other draft legislation from the Department of Land Affairs and the National Department of Agriculture. After further alignment and compilation of submissions from national and provincial departments, the Bill was submitted to Cabinet again and approved in January 2003.

Formal public participation was initiated by DEAT at this time, with the Bill being published in the Government Gazette on 22 January 2003 with closing date for comments on 26 February 2003. Eighty-nine written comments were received from public stakeholders. A total of eight workshops were held during this commenting period: three for government, three for civil society and upon request by other interested groups. The three Civil Society workshops were facilitated by ContactTrust, a non-governmental organisation, with the three for government authorities facilitated by DEAT together with a consulting firm. ContactTrust and NetBio (a network forum of NGOs and civil society organisations involved in biodiversity issues) were active in using their networks to publicise the workshops and communicate updates on the status of the Bill and opportunities for public participation.

All written comments together with the discussion points and comments raised and noted at the consultation workshops were studied and discussed by an internal DEAT task group. Where deemed appropriate, the draft Bill was amended to accommodate comments. An internally distributed table was compiled indicating all the comments received through the workshops (41 pages). The written comments were summarised in a public consultation report which was made available to stakeholders upon request.

The amended Biodiversity Bill went to the Cabinet committee and was approved in April 2003, and then allowed to be tabled in Parliament. The version of the Bill taken to Cabinet was published again in Government Gazette on 30 May 2003 for written comments, with the
Official deadline of 10 June 2003, prior to public hearings. The deadline for submissions was initially extended for several weeks, but then extended until late July 2003. The deadline was extended again until 13 August 2003, and was only advertised in national newspapers on 10 August 2003.

Parliamentary public hearings were held by the national Portfolio Committee on 18 and 26 August 2003. They were attended by representatives of affected and interested parties to allow an opportunity for them to make verbal presentations to the Portfolio Committee on the Bill. Fourteen organisations made presentations to the Portfolio Committee over both days on the Biodiversity Bill.

Amendments were made to the Bill by the Portfolio Committee which were approved by the National Assembly on 20 November 2003. The Bill with amendments went to the Provinces again for approval. Provincial mandates were submitted from the end of January to the beginning of February 2004. The National Environmental Management: Biodiversity Act (No. 10 of 2004) was ultimately signed into law by the President on 31 May 2004, and entered into effect on 1 September 2004.

5.1.2 Current status

Arising from the NEM: Biodiversity Act (No. 10 of 2004), Regulations Dealing with Threatened or Protected Species, as per Chapter 4 of the legislation, were published on 5 May 2006 for public comment. From May to October 2006, there was an extensive public consultation process consisting of workshops with Provinces and other stakeholders (including people involved in the wildlife industry and conservation agencies). DEAT intends for the Regulations to be published in its final form in the first quarter of 2007.

A process is underway to develop Regulations Dealing with Alien Species & Listed Invasive Species, including associated lists as per Chapter 5 of the NEM: Biodiversity Act (No. 10 of 2004). The draft regulations have been developed by a consultant for DEAT and, as of December 2006, is being considered for publication for public consultation. Once approved, DEAT anticipates that the public consultation process will carry on for about another six months. The Regulations Dealing with Access & Benefit Sharing (as per Chapter 6) are also being developed, and are at a similar stage in the process.

5.1.3 Survey participation

Thirty-eight stakeholders participated in the survey research to elicit perspectives about the public participation aspect of developing NEM:BA. There were about 300 stakeholders on the compiled databases for people who had been engaged in the NEM:BA public participation process, although only 240 of those listed had working emails. Out of those communicated to, 66 expressed initial interest and 38 completed the survey. The following table provides an overview of stakeholder participation in the research by group membership.
5.1.4 Significant findings

**Overall satisfaction with the process**

The level of overall satisfaction by stakeholder groups ranged from satisfied to dissatisfied, and largely depended on who was running the public participation process. Respondents who participated in the process run by ContactTrust and NetBio felt satisfied with the process – these mostly being public interest and community groups. Many groups who were involved with the government-run participation process, or had attended forums where the government presented indicated that they were not satisfied. Those who indicated no opinion felt that they did not have enough engagement to assess their level of satisfaction.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Satisfaction with the Process (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Business &amp; Industry</td>
<td>20</td>
</tr>
<tr>
<td>Professional Consultants</td>
<td>25</td>
</tr>
<tr>
<td>Public Interest &amp; Community Groups</td>
<td>75</td>
</tr>
<tr>
<td>Academia &amp; Research</td>
<td>37.5</td>
</tr>
<tr>
<td>Government</td>
<td>33.3</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 2. Satisfaction by stakeholder group

**Timing of initiation of public engagement**

Across all sectors, respondents felt that public participation was initiated at too late a stage, only when the Bill was developed too far ‘down the line’ to make any significant changes. Most respondents felt that public engagement should have happened much earlier, during the earlier drafts of the Bill. Non-profit organisations and non-technical participants felt that there was not enough time allowed to understand, review and comment on draft Bills during the commenting periods.
Accessibility of documentation and information

Many respondents indicated that it was difficult to get documents directly from government. Those who had access to NGO networks could get them through informal means, and those who had access to internet could get them off the website. Both groups, though, indicated that drafts accessed were always old, and that they never had the latest drafts to comment on. Current drafts were usually only available at the last minute or at the meetings, which did not give respondents enough time to review them. However, respondents within government were provided with updated and timely documentation. Other comments raised were that the legal language of legislation makes it difficult for the broader public to engage and that publishing in the Government Gazette is ineffectual, since most people do not read it.

Feedback on public comments

Comments were submitted during workshops and formal commenting periods, but respondents indicated that there was no continued dialogue or information afterwards on how comments were dealt with (i.e. if they were taken or not taken into account in subsequent versions of the Bill; and how it would be decided if they would be). Very few people had access to or were aware of the issues table that was developed after the submission periods and workshops. From those that did, a couple felt that the responses to the comments were inadequate. This led to a general feeling from respondents that although they were given a number of opportunities to participate, they question the level of influence their individual contributions had towards the finalising of the Bill.

Stakeholder representation

With DEAT focusing their engagement efforts with other government departments and spheres, and ContactTrust working with public interest and community groups, the other sector groups (business and industry, academia and research, and others) felt that they were not engaged sufficiently. Some government respondents themselves noted that government was mostly speaking to government regarding the draft Bill (National-Provincial, National-National or Provincial-Provincial). Business & industry, local government and non-affiliated (general public) respondents felt left out of the loop and were not kept up-to-date on meetings, workshops, comment periods, etc. Respondents felt there should have been more efforts to engage other groups such as traditional healers, smaller organisations, rural stakeholders, and scientists and researchers.

Capacity of stakeholders to participate

Generally, public interest and community groups and non-technical participants felt that the timeframes were too short for them to be able to understand, review and comment on the documents, particularly because of the legal language used. Non-profit and academia and research respondents often did not have enough financial resources to travel to attend meetings.

Workshops and meetings often could only be attended by those who are near to the major centres where these are being held, regardless of which sector they are in.
Overall, more stakeholders indicated they had inadequate access to resources and information (very few indicating it was adequate), while having adequate access to technical knowledge required to understand the issues.

**Benefits of the Parliamentary process**

The Parliamentary process provided an opportunity for a second round of inputs from the public. Many members of the public who were not engaged in the process before had the opportunity to provide inputs in this forum, and indicated that being able to give formal presentations and interact with the Portfolio Committee was better than just submitting written comments only. Direct communication with the Portfolio Committee also provided an opportunity to do further capacity-building in order to make a stronger case, through NetBio’s organising of information pamphlets and a study tour (although few Committee members were present and attended the study tour).

**External agencies facilitating public participation**

Many groups involved in NetBio and that had participated through the ContactTrust process indicated that without ContactTrust, they would not have been able to engage in the process. It was only through ContactTrust that they were made aware of commenting periods, were invited to workshops and Parliamentary hearings and had access to documentation. ContactTrust played a strong role in building the capacity of public interest and community groups to participate in the development of NEMBA and had all the necessary documents and tools to enable them to make their voices heard. In some cases ContactTrust (with outside funding) provided financial resources to organisations to assist them in travel costs to attend meetings. Groups who were involved in this civil society process felt that they were collectively able to influence the outcome and their capacity has increased, although they still question their individual influence.
5.1.5 National Environmental Management: Biodiversity Act (No. 10 of 2004): Survey Respondent Satisfaction for Key Issues

**Trends from quantitative data**

Except for the level of feedback on public comment, Business and Industry and Academia and Research respondents appear largely dissatisfied with other aspects of the public participation process. Respondents in the “Other” category only had a majority satisfied with the accessibility of documentation. The satisfaction by Public Interest and Community Groups is a result of their engagement in public participation activities that were undertaken and driven by an outside agency facilitating the process. Those agencies were integral in ensuring communication and establishing a network of the PICGs, obtaining drafts of the Bill, and building the capacity of the PICGs to analyse the issues and provide effective input.
Overview of the Case Studies and Case Study Findings

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**Satisfaction with Announcements of Public Participation**

- BI: 20.0%, PRO: 40.0%, PICG: 41.7%, GOV: 25.0%, AR: 37.5%, OTH: 40.0%

**Satisfaction with Accessibility of Documentation**

- BI: 20.0%, PRO: 50.0%, PICG: 50.0%, GOV: 50.0%, AR: 25.0%, OTH: 50.0%
Overview of the Case Studies and Case Study Findings

![Satisfaction with Quality of Interaction and Deliberation](image)

![Feedback on Public Comments](image)
5.2 National Environmental Management: Air Quality Act (No. 39 of 2004)

5.2.1 Summary of the process

The development of new legislation on air quality in South Africa, namely the National Environmental Management: Air Quality Act (No. 39 of 2004), was initiated in 2001 by the Department of Environmental Affairs and Tourism (DEAT) within the context of the Environmental Law Reform Process. Several legal and policy initiatives preceded and informed the development of the Act, including the Consultative National Environmental Policy Process (CONNEP, 1997), the National Environmental Management Act (NEMA, 1998) and the development of the White Paper on Integrated Pollution and Waste Management (IP&WM, 2000). The Air Quality Act replaces the 1965 Atmospheric Pollution Prevention Act (APPA)\(^8\), which had failed to provide an effective legal framework to address South Africa’s air pollution problems, in particular those occurring in hot spot areas.

The concept for a draft Bill was initiated during the second half of 2001 resulting in the approval of an internal Concept Document by DEAT senior officials and the Director-General in October 2001. Following internal approval, DEAT initiated a consultation process involving all three spheres of government (national, provincial, local), including MINTEC Working Group II (IP&WM), MINMEC, and the Committee for Environmental Coordination (CEC) Environmental Law Reform Subcommittee. A number of workshops were organized which specifically dealt with the Air Quality Bill. In May 2002, the Draft Bill was ready for discussion and approval by a number of executive institutions involved in the environmental law-making process, including the Environmental Law Reform Subcommittee of the CEC on 3 May 2002. In early April 2003, the Minister of Environmental Affairs and Tourism approved the submission of the Draft Bill to Cabinet. On 9 April 2003, Cabinet discussed the Draft Bill and recommended that it be published in the Government Gazette for public comment without further amendment.

DEAT published the Draft Bill as “National Environmental Management: Air Quality Bill” for public comment in the Government Gazette on 22 April 2003. The deadline for submitting written comments was 30 May 2003. The Draft Bill was also made available on DEAT’s website. During the course of May 2003, DEAT supported a series of workshops to introduce and explain the Draft Bill to provincial stakeholders, as well as to industry and non-governmental stakeholders. Workshops in the nine provinces were organized by the provincial departments responsible for environmental management. In addition, national workshops were organized for industry in Pretoria and for NGO stakeholders in Cape Town. DEAT developed an internal database which included a summary of written comments and how they were addressed in a revised draft Bill which was tabled in Parliament for further discussion and review. A revised Draft Bill was published in the Government Gazette on 1 August 2003.

The Portfolio Committee for Environmental Affairs and Tourism started its deliberations on the Bill in early 2004. Two days of Hearings took place on 3-4 February 2004, during which stakeholders from various sectors had the opportunity to make oral submissions. Although all contributions highlighted the importance and urgency of the Bill during the February Hearings, a number of stakeholder groups indicated that the Bill would require additional

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\(^8\) Republic of South Africa, Act No. 45 of 1965.
clarifications and amendments. In light of these comments, the Portfolio Committee requested DEAT to undertake another review of stakeholder comments and prepare a revised Draft. Given that Parliament had to recede due to the upcoming April 2004 elections, the parliamentary process had to be postponed until the next legislature.

In February 2004, a parliamentary delegation of members of the Portfolio Committee went on a study tour to a number of air pollution hot spots in the country, including Durban South, Sasolburg, Secunda and Table View. The study tour aimed to facilitate the first-hand learning of Members of Parliament regarding air pollution problems in the country, as well as relevant efforts and challenges in addressing them.

During the course of July 2004, DEAT organized a series of bilateral meetings with sectors and organizations that had presented submissions during Portfolio Committee Hearings in February 2003. In preparation for these meetings, DEAT prepared an extensive database summarizing the written comments made by the groups during the Parliamentary process, as well as DEAT’s proposed responses.

The new legislature re-initiated discussions on the Draft Air Quality Bill in August 2004. DEAT presented a consolidated list of amendments to the Portfolio Committee which the Committee accepted. On 7 September 2004, the National Assembly initiated the second reading of the Bill at the close of which the Bill was approved. Following the President’s signature in early 2005, the Act was published on 24 February 2005 as the National Environmental Management: Air Quality Act, No. 39 of 2004.

5.2.2 Current Status

In terms of Section 7(1) of NEMA:AQA, the Minister must establish a National Framework for achieving the objectives the Act within 2 years of its entry into effect which will be 1 September 2007. The Framework must include: (a) mechanisms, systems and procedures to attain compliance with ambient air quality standards; (b) mechanisms, systems and procedures to give effect to the Republic's obligations in terms of international agreements; (c) national norms and standards for the control of emissions from point and non-point sources; (d) national norms and standards for air quality monitoring; (e) national norms and standards for air quality management planning; (f) national norms and standards for air quality information management; etc.

As initial contributions to the National Framework, DEAT initiated a number of activities in 2006, including the development of the National Air Quality Information System and revision of the old Atmospheric Pollution Prevention Act, 1965 (APPA) certificates. DEAT also published on 9 June 2006 draft ambient air quality targets for air quality management interventions (Government Notice 529 of 9 June 2006). The Government Notice included permissible amounts or concentrations for seven common air pollutants. A comment period of three months was allocated for the public to submit written representations or objections to the Government Gazette Notice. Furthermore, on 18 October 2006, a stakeholder meeting took place in East London to discuss the National Framework.
5.2.3 Survey participation

As many of the stakeholders in the air quality sector were involved in more than one of the air quality case studies, a joint appeal was sent to all stakeholders in which they were given the opportunity to indicate which case study(ies) they would be able to participate in. The combined database for the air quality case studies included 790 stakeholders, with about 740 whose emails were functioning. 156 stakeholders indicated interest in participating. In actuality, a total of 94 stakeholders completed the surveys to elicit perspectives about the public participation process in developing the AQA. Table 3 provides an overview of respondents according to stakeholder groups and their level of participation in the process.

<table>
<thead>
<tr>
<th>Stakeholder Groups</th>
<th>Business &amp; Industry</th>
<th>Professional Consultants</th>
<th>Public Interest &amp; Community Groups</th>
<th>Academia &amp; Research</th>
<th>Government</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Respondents</td>
<td>24</td>
<td>19</td>
<td>21</td>
<td>21</td>
<td>9</td>
<td>94</td>
</tr>
</tbody>
</table>

Table 3: Respondents by stakeholder group

5.2.4 Significant findings

Overall satisfaction with the process

Overall, 35.5% of respondents were satisfied or very satisfied with the public participation process, 14.4% were neutral, and 42.2% were not satisfied or strongly unsatisfied. A review of responses from the perspective of stakeholder groups reveals that respondents from Government and Academia and Research were in general more satisfied than Public Interest & Community Groups, Business and Industry and Professional Consultants.

Respondents who were inherently involved in process were slightly more satisfied with the consultative nature of the decision process than those who participated less intensively. Table 4 summarizes the satisfaction level of stakeholder groups in general.
Table 4: Level of satisfaction by stakeholder group

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Satisfaction with the Process (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Business &amp; Industry</td>
<td>33.3</td>
</tr>
<tr>
<td>Professional Consultants</td>
<td>26.7</td>
</tr>
<tr>
<td>Public Interest &amp; Community Groups</td>
<td>40</td>
</tr>
<tr>
<td>Academia &amp; Research</td>
<td>50</td>
</tr>
<tr>
<td>Government</td>
<td>47.4</td>
</tr>
</tbody>
</table>

Timing of initiation of public engagement

Timing of public participation within the decision process was a contested issue. One group of respondents had the opinion that public participation took place at the appropriate point in time, i.e. once a draft had been developed by DEAT. For many other respondents, public participation took place too late in the process and when important substantive decisions had already been taken, leaving limited room for changes. These respondents suggest that stakeholders should have been involved at earlier stages during the conceptualization of the proposed legislation. They suggest that the adjournment in the adoption of the Act requested by Parliament could have been avoided with an earlier stakeholder involvement.

Announcement of public participation opportunities

Several respondents pointed out the announcement tools used (e.g. notice and comment in the Government Gazette, and draft available on DEAT’s website) were not sufficient to reach certain interested and affected parties. The reasoning for this perspective was that only certain stakeholders do have the capacity to track government gazettes and websites on a regular basis. Other complementary means of outreach should thus have been considered – such as direct communications, newspapers adverts, etc – with the goal to reach communities, local government and small industry.

Accessibility of documentation and information

Some respondents pointed out though that a first official version of the draft Bill was only published some three years after the process started which was considered by some rather late in the process, limiting the chances of making informed comments. Concerns were also expressed regarding the informal availability of the draft Bill during the preparatory and inter-governmental process. While some stakeholders were able to access the draft Bill through contacts following the leakage of the draft Bill, others were not. Some respondents pointed out that distribution channels were not favourable to underprivileged groups (e.g. those without access to internet). Although stakeholder networks, NGOs and professional associations played a key role in the distribution of documentation and information, more
could have been done to make relevant documentation available to all interested and affected parties.

**Quality of interaction and deliberation**

During the first phase of preparing the Bill (internal governmental development and consultation) a lot of discussions and deliberation took place, but key stakeholders pointed out that they did not have access to these deliberations. Many respondents also pointed out that the public participation process following publication of the draft Bill in form of workshops provided limited opportunities to discuss key concerns. Starting with the Parliamentary Hearings in 2003 and especially during the DEAT bilateral meetings with selected stakeholders, a deeper level of interaction and deliberation took place.

**Feedback on public comments**

A significant number of respondents expressed that feedback on comments made throughout the process could have been better. The process would have gained in interaction and deliberation should the agency have provided stakeholders with reasons concerning the submissions made to the gazetted drafts.

**Capacity of stakeholders to participate**

Various stakeholders argued the need to undertake capacity-building exercises on the different aspects of the proposed legislation with certain groups with lower capacity levels especially affected non for profit organisations.

![Capacity of Stakeholders](image)

Overall, more respondents indicated they had adequate resources, information and knowledge than those that felt had inadequate capacity.
5.2.5 Additional issues raised

Benefits of the Parliamentary process

Many respondents valued the positive role of the Portfolio Committee on Environmental Affairs and Tourism in allowing stakeholders to express their opinions over the proposed legislation at the Parliamentary Hearings in 2004. They also appreciated the fact finding mission of Members of Parliament to “hot spot” areas to gather first hand knowledge towards making informed decisions concerning the proposed legislation.

Lack of a coordinated public engagement plan

A number of stakeholders pointed out (including some of those who were satisfied with the public participation process) that the lead agency did not seem to have developed an overall public engagement plan. Or, if such a plan was in place, it was not communicated to the public so that stakeholder groups would understand better the process and prepare for those aspects of it which included public participation opportunities.

5.2.6 National Environmental Management: Air Quality Act (No. 39 of 2004):  
Survey Respondent Satisfaction for Key Issues

Trends from Quantitative Data

A clear observation is that all sector groups are overwhelmingly dissatisfied with the feedback on public comments. Even among sector groups in which the majority were satisfied with other aspects of the public participation process, such as Government and Business and Industry, they were largely dissatisfied with the lack of feedback on comments submitted and changes to the draft Bill. Other areas with majority dissatisfaction were with the PICGs regarding the timing of initiation of public engagement and Professional Consultants over the quality of interaction and deliberation. An interesting aspect to note is that the majority of Government respondents, on the other hand, were satisfied with the quality of interaction and deliberation. In this case study, government had more opportunities and direct engagement by the lead agency than were afforded to the public.
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Satisfaction with Timing of Initiation of Public Engagement

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>BI</th>
<th>PRO</th>
<th>PICG</th>
<th>AR</th>
<th>GOV</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BI</strong></td>
<td>Business &amp; Industry</td>
<td>43.5%</td>
<td>33.3%</td>
<td>30%</td>
<td>37.5%</td>
</tr>
<tr>
<td><strong>PRO</strong></td>
<td>Professional Consultant</td>
<td>26.1%</td>
<td>44.4%</td>
<td>70%</td>
<td>37.5%</td>
</tr>
<tr>
<td><strong>PICG</strong></td>
<td>Public Interest and Community Groups</td>
<td>30.4%</td>
<td>22.2%</td>
<td>25%</td>
<td>15.8%</td>
</tr>
<tr>
<td><strong>GOV</strong></td>
<td>Government</td>
<td>36.8%</td>
<td>22.2%</td>
<td>25%</td>
<td>15.8%</td>
</tr>
<tr>
<td><strong>AR</strong></td>
<td>Academia &amp; Research</td>
<td>26.1%</td>
<td>44.4%</td>
<td>70%</td>
<td>37.5%</td>
</tr>
<tr>
<td><strong>OTH</strong></td>
<td>Other</td>
<td>30.4%</td>
<td>22.2%</td>
<td>25%</td>
<td>15.8%</td>
</tr>
</tbody>
</table>

Legend:
- Yellow: Satisfied
- Purple: Neutral
- Blue: Dissatisfied
Overview of the Case Studies and Case Study Findings

**Satisfaction with Announcements of Public Participation Opportunities**

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>BI</td>
<td>43.5%</td>
</tr>
<tr>
<td>PRO</td>
<td>17.6%</td>
</tr>
<tr>
<td>PICG</td>
<td>23.8%</td>
</tr>
<tr>
<td>AR</td>
<td>55.6%</td>
</tr>
<tr>
<td>GOV</td>
<td>57.1%</td>
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**Satisfaction with Accessibility of Documentation**

<table>
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<th>Sector Groups</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>PRO</td>
<td>29.4%</td>
</tr>
<tr>
<td>PICG</td>
<td>23.8%</td>
</tr>
<tr>
<td>AR</td>
<td>44.4%</td>
</tr>
<tr>
<td>GOV</td>
<td>47.6%</td>
</tr>
</tbody>
</table>
Overview of the Case Studies and Case Study Findings

**Satisfaction with Quality of Interaction and Deliberation**

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>BI</th>
<th>PRO</th>
<th>PICG</th>
<th>AR</th>
<th>GOV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>27.3</td>
<td>31.8</td>
<td>21.4</td>
<td>40</td>
<td>45</td>
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<tr>
<td>Satisfaction</td>
<td>40.9</td>
<td>14.3</td>
<td>64.3</td>
<td>50</td>
<td>5.3</td>
</tr>
</tbody>
</table>

**Feedback on Public Comments**

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>BI</th>
<th>PRO</th>
<th>PICG</th>
<th>AR</th>
<th>GOV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>95.8</td>
<td>86.7</td>
<td>89.5</td>
<td>75</td>
<td>78.9</td>
</tr>
<tr>
<td>Feedback</td>
<td>4.2</td>
<td>13.3</td>
<td>10.5</td>
<td>25</td>
<td>21.1</td>
</tr>
</tbody>
</table>
5.3 South African National Standards on Air Quality (SANS 69 & 1929)

5.3.1 Summary of the process

Standards South Africa (STANSA), a division of the South African Bureau of Standards (SABS), is the national institution responsible for developing standards and providing information and guidance on issues related to standards. In early 2001, SABS initiated discussions with the Department of Environmental Affairs and Tourism (DEAT) concerning the possibility of developing air quality standards for South Africa in support of DEAT’s efforts to develop air quality legislation. In parallel, SABS consulted with members of the National Association for Clean Air (NACA) and other industry representatives concerning the possible development of air quality standards through the SABS standard setting process. During these discussions, sufficient interest was demonstrated, in the perspective of SABS, to justify moving forward with the development of an air quality standard in South Africa.

In May 2001, SABS approved the establishment of Technical Committee (TC) 5140.43 on Air Quality. The initial membership of the TC included 14 organizations. On 19 July 2001, SABS organized an exploratory meeting with initial TC members and some other groups. Meeting participants suggested putting work of the TC on hold until SABS would receive a mandate and guidance from DEAT on the proposed standards. In January 2002, DEAT wrote a letter to SABS formally requesting SABS to develop a standard on air quality. In May 2002, the SABS Manager for Chemical and Biological Standards wrote to potentially interested organisations and requested that they indicate their interest in participating in a SABS TC on air quality and to nominate a representative. The task of the Committee would be the development of national air quality standards taking into consideration relevant international standards.

TC 5140.43 met for the first time on 11 September 2002. The meeting discussed and adopted a strategic policy statement, and agreed to establish three Working Groups (WGs) to support its work: WG 1 to deal with sulphur dioxide and nitrogen oxides; WG 2 for heavy metals; and WG 3 for volatile organic compounds (VOCs). Two members of the TC assisted with the drafting of the Standard. The WGs met 2-3 times during 2002. Initially, a single Draft Standard was developed, with one section defining the basic principles of a strategy for ambient air quality management, and a second section providing limit values for common air pollutants. On the 17 January 2003, the first version of the Draft Standard was emailed to members of the TC for comment. On the 29 January 2003, it was made available to all WG members.

The TC held its second meeting on 21 January 2003. The meeting discussed and agreed that the framework section should be published as a separate standard. Both Draft Standards were tabled and discussed: the Draft Framework Standard (to become SANS 69) and the Draft Ambient Air Quality Standards (to become SANS 1929). The third and final meeting of the TC was held at the SABS premises in Pretoria on 7 March 2003. The meeting agreed that the two draft documents should be completed and published as Draft South African Standards (DSS) as a matter of priority.

On 12 May 2003, the two Draft Standards (SANS 69, May 2003 and SANS 1929, May 2003) were sent to all TC and WG members as well as to other interested parties to vote on. On 4

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9 During the course of developing SANS 1929 and 69, SABS was reorganized and STANSA became the standard setting division of SABS.
July 2003, the TC met for last time to discuss and adopt some of the comments made during the voting on the TC Drafts. After this, the Drafts were again circulated to the TC members with a comment period of one week. In May 2003, STANSA requested feedback from senior DEAT officials concerning the two Draft Standards. DEAT further requested STANSA to delay the publication of the Draft Standards until DEAT submitted a re-worked framework document to the TC.

On 22 April 2004, STANSA announced on its website that the DSS 69 and 1929 were open for public comment from all interested and affected parties. The deadline for submitting written comments was 25 June 2004. The Draft Standards could be purchased from STANSA for a nominal fee. In parallel, STANSA requested members of the TC and WGs to forward the two Draft Standards to interested parties within their respective networks and constituencies. In response to the notice and comment announcement, STANSA received two written comments.


5.3.2 Current status

Taking into account SANS 1929:2005, Ambient Air Quality-Limits for Common Pollutants, DEAT published on 9 June 2006 (Government Notice 529) draft ambient air quality targets for all air quality management interventions. The Notice included permissible amounts or concentrations for seven pollutants including SO2, NO2, CO, PM10, O3, Pb and C6H6. The Government Gazette Notice further stated that margins of tolerance, compliance timeframes and permissible frequencies are to be included in further regulations or the National Framework to be established in terms of Sec. 7 of the NEM:AQA. A comment period of three months was allocated for interested persons to submit written representations or objections to the Government Gazette Notice.

5.3.3 Survey participation

After the appeal for survey participation, 137 stakeholders indicated an interest in undertaking the survey for the developing the SANS. Of the stakeholders who indicated an interest, 55 stakeholders completed and returned the surveys. Table 5 provides an overview of respondents according to stakeholder groups and their level of participation in the process.

<table>
<thead>
<tr>
<th>Stakeholder Groups</th>
<th>Business &amp; Industry</th>
<th>Professional Consultants</th>
<th>Public Interest &amp; Community Groups</th>
<th>Academia &amp; Research</th>
<th>Government</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Respondents</td>
<td>19</td>
<td>11</td>
<td>7</td>
<td>7</td>
<td>11</td>
<td>55</td>
</tr>
</tbody>
</table>

Table 5. Respondents by stakeholder group
5.3.4 Significant findings

**Overall satisfaction with the process**

Overall, 29.6% of respondents were satisfied or very satisfied with the public participation process, 11.1% were neutral, and 53.7% were not satisfied or strongly unsatisfied. A review of responses from the perspective of stakeholder groups reveals that respondents from Business and Industry were in general more satisfied than Government and Professional Consultants. Significantly, Public Interest & Community Groups were especially unsatisfied with the process.

A review of responses by level of participation reveals that those respondents who were inherently involved in the process (either through the Technical Committee or the Working Groups) were more satisfied with the consultative nature of the decision process than those who participated less intensively. Table 6 summarizes the satisfaction level of stakeholder groups in general.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Satisfaction with the Process (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Business &amp; Industry</td>
<td>52.6</td>
</tr>
<tr>
<td>Professional Consultants</td>
<td>11.1</td>
</tr>
<tr>
<td>Public Interest &amp; Community Groups</td>
<td>0</td>
</tr>
<tr>
<td>Academia &amp; Research</td>
<td>50</td>
</tr>
<tr>
<td>Government</td>
<td>18.2</td>
</tr>
</tbody>
</table>

Table 6. Level of satisfaction by stakeholder group

**Timing of initiation of public engagement**

A number of respondents who were strongly engaged considered that the opportunities for public participation started sufficiently early. Many other respondents pointed out that opportunities for involving the general public took place too late in the process. Some respondents who were directly engaged in the process raised the concern that the process was too hurried, and that not enough time was allowed for comment.

**Announcement of public participation opportunities**

Several respondents who were more engaged in the process pointed out that the call for participation in the TC was adequately announced by STANSA, using relevant technical, professional and industry networks. However, a number of other respondents indicated these channels left out stakeholders who would have liked to participate in the development of the standards. Given the standard’s implications in terms of air quality management, many
respondents thus suggested that a more extensive effort to announce participation would have been valuable. Concerning participation opportunities during the public enquiry phase, some respondents expressed that only organisations that kept their eye on legislative and standards developments had a chance to participate, which particularly excluded non-profit groups, local authorities, and small businesses.

**Accessibility of documentation and information**

Respondents directly involved in the process tended to indicate that information and documents provided during the development process were both appropriate and timely, but external participants felt there should have been more public access. A number of respondents from both sides expressed that conditions for the general public to access the Draft SANS during public enquiry and consultation phase were unfavourable, as they had to pay for the documents and obtain them from SABS offices in Pretoria. Finally, some respondents suggested that all documents, and especially the Draft SANS, should have been freely available to the public in order to follow progress made and allow wider public input.

**Quality of interaction and deliberation**

Many engaged respondents considered that the standard development process had a very good level of interaction and deliberation. However, outside of the Technical Committee and Working Groups there was little or no interaction at all.

**Feedback on public comments**

Within the Technical Committee and Working Groups, in-depth discussions and deliberations took place and members always had the opportunity to learn why (or why not) their perspectives were taken on board. Since the notice and comment process generated only 2 comments, little feedback was required. However, outside of these groups, the lead agency provided little, if no feedback, on the process.

**Stakeholder representation**

Concerns were raised regarding the diversity of stakeholders represented in the Technical Committee and Working Groups. For some respondents who were not engaged in these groups, industries and professionals were overrepresented while many of those who would be affected by the standards were not represented. Thus, the process mainly involved groups who could pay members to attend, excluding groups who could not afford participation and lacked technical capacities. It was thus suggested that funding and capacity building should have been provided for under-resourced parties to prepare and attend the process. Some strongly engaged respondents expressed, however, that even if there had been a more intense outreach, the nature of the standard setting process was too technical in order that public interest groups or the public in general would be interested to participate.

**Capacity of stakeholders to participate**

A high number of respondents involved in the Standard-setting process felt that their capacity with relation to resources, information and knowledge was adequate, and very few people indicated inadequacy regarding their access to information.
5.3.5 National Environmental Management: South African National Standards on Air Quality 69 & 1929: Survey Respondent Satisfaction for Key Issues

*Trends from quantitative data*

In all aspects of the public participation, the majority of PICGs were dissatisfied, particularly with the announcements of public participation opportunities, the accessibility of documentation and the feedback on public comments. As development of the standards was deemed a highly technical process, it was overseen by the South African Bureau of Standards which formed a Technical Committee and Working Groups. Few PICGs participated. For both the quality of interaction and deliberation and the feedback on public comments, all of the sector groups except one express at least 50% dissatisfaction with those aspects. The other three aspects of the public participation had varying levels of satisfaction and dissatisfaction among the sector groups.
Overview of the Case Studies and Case Study Findings

Satisfaction with Timing of Initiation of Public Engagement

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>BI</td>
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<tr>
<td>PRO</td>
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<td>AR</td>
<td>50.0</td>
</tr>
<tr>
<td>GOV</td>
<td>55.6</td>
</tr>
<tr>
<td>BI</td>
<td>25.0</td>
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<tr>
<td>PRO</td>
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</tr>
<tr>
<td>PICG</td>
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<td>AR</td>
<td>50.0</td>
</tr>
<tr>
<td>GOV</td>
<td>44.4</td>
</tr>
</tbody>
</table>

- **BI**: Business & Industry
- **PRO**: Professional Consultant
- **PICG**: Public Interest and Community Groups
- **GOV**: Government
- **AR**: Academia & Research
- **OTH**: Other

- **Satisfied**
- **Neutral**
- **Dissatisfied**
Overview of the Case Studies and Case Study Findings

Satisfaction with Announcements of Public Participation Opportunities

<table>
<thead>
<tr>
<th>Sector Group</th>
<th>Percentage</th>
</tr>
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<td>GOV</td>
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Satisfaction with Accessibility of Documentation

<table>
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<th>Sector Group</th>
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<td>PRO</td>
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<tr>
<td>PICG</td>
<td>83.3%</td>
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<tr>
<td>AR</td>
<td>28.6%</td>
</tr>
<tr>
<td>GOV</td>
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</tr>
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</table>
Overview of the Case Studies and Case Study Findings

**Satisfaction with Quality of Interaction and Deliberation**

<table>
<thead>
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<th>Percentage</th>
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<td>15.8</td>
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</table>

**Feedback on Public Comments**

<table>
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<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>BI</td>
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<tr>
<td>27.8</td>
</tr>
<tr>
<td>55.6</td>
</tr>
</tbody>
</table>

Public Participation in Environmental Decision-making in the new South Africa
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5.4 Implementation Strategy for the Control of Exhaust Emissions from Road-Going Vehicles

5.4.1 Summary of the process

Exhaust emissions from vehicles are a significant cause of urban pollution in South Africa and as such entail a range of negative impacts on human health and the environment. South Africa also has an important oil and motor industry competing in a global market and thus striving to align its technologies with international standards. To address these issues, the Government of South Africa initiated discussions with the oil and automotive industry in the early 90’s concerning the need to update fuel specifications and to address human health and environmental concerns associated with vehicular emissions. The two Departments initially involved in the discussions included the Department of Minerals and Energy (DME) and the Department of Environmental Affairs and Tourism (DEAT). A decision taken in 1991 that unleaded gasoline should be introduced in South Africa starting in 1996 represented an important initial milestone in the process.

In 1995, DME and DEAT, in association with and funded by the fuel and vehicle manufacturing industries, initiated the Vehicle Emissions Programme (VEP). Phases 4 and 5 of this Programme were to develop a policy to regulate air emissions from vehicles and to develop a plan of action to ensure compliance with new vehicle emission requirements. The Fuels Reformulation Task Team (FRTT) was established by DME as a consultative body that initially had the task of studying the means and feasibility of reducing sulphur in diesel. Its initial membership included representatives of DME and DEAT, as well as representatives of the oil and automobile industries.

During the course of 1999, environmental organizations became concerned with the quality of automotive fuels and related emissions to the environment, as well as the lack of participation of health and environmental groups in the FRTT. In response to this, representatives of DME, the Department of Health (DOH), and Department of Trade and Industry (DTI) included representatives of the oil industry and environmental organizations in their deliberations on the possible reduction of the sulphur content in diesel.

Between 2000 and 2002, the FRTT met regularly to discuss the reduction of sulphur in diesel. The FRTT also initiated discussions on the elimination of lead from petrol, and the introduction of replacements for lead, such as MMT. Subsequent meetings of the FRTT focused on the elimination of lead from petrol, with the goal to seek consensus by all stakeholders.

The interest of Government to address air pollution problems in South Durban and a growing recognition that coherent and integrated action on fuel quality and vehicle emissions in South Africa was needed, led to a Cabinet decision on the matter in November 2000. Cabinet requested that DME and DOT work with DEAT to jointly develop a strategy to effectively address air pollution from vehicles in South Africa.

During the course of November 2000 to mid-2002, DEAT, DME and DOT held a number of internal meetings with the aim of developing a common approach of Government, both on procedural and substantive aspects of developing the Vehicle Emissions Strategy called for

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by Cabinet in 2000. The rationale of these discussions was that Government should develop first a coherent message prior to an engagement with the broader public.

The consultative process to develop the Strategy commenced in 2002. On 21st May 2002, DEAT organised a national workshop in Durban involving a total of 69 individuals representing a diversity of organisations, including business and industry, public interest groups, transport associations, and national and provincial Government departments.

A second workshop took place on 25 July 2002, in Pretoria, at the Council for Scientific and Industrial Research. At the workshop, 83 participants discussed a concept proposal for the draft Vehicle Emissions Strategy and provided specific suggestions concerning its content. This Draft Vehicle Emissions Strategy was completed during the second half of 2002. At this point, other Government departments were invited to join the discussions. A number of inter-departmental meetings took place to coordinate the overall position of Government on the proposed Strategy and its implementation.

The Draft Strategy was finalised in March 2003 and was made available to the FRTT. Agreement was reached in the FRTT that details of the strategy should not be made available to the general public until an unleaded petrol octane structure had been agreed upon by the FRTT. After more revisions by DEAT and DME, the draft Vehicle Emissions Strategy was published for public comment in the Government Gazette on 12 December 2003. The deadline for providing written comments was one month. However, a number of stakeholders contacted DME and DEAT in December 2003 to request an extension of the consultation period, given that it fell over the festive season. These requests resulted in the prolongation of the comment period by notice in the Government Gazette until 10 February 2003.

During the consultation period, DME and DEAT received written comments from members of the public as well as from some 24 organisations. Comments were summarized by DME in a Comment and Response Report that was finalised in April 2004. The Comment and Response Report was sent to all the organisations and individuals that had submitted comments. In addition, DME organized a workshop in April 2004 to which all organisations that had commented on the draft Strategy were invited. Key issues of the Comments and Response report were also discussed within the FRTT. Following the close of the comment period, a number of additional written and oral submissions and presentations were made to Government departments.

The Vehicle Emissions Strategy has not yet been formally adopted by Cabinet. However, DME has proceeded with the fuel specifications segment of the Strategy by proposing new fuel specifications to Cabinet. In March 2005, Cabinet approved fuels specifications consistent with the specifications included in the draft Vehicle Emission Strategy. Relevant regulations will be promulgated under the Petroleum Products Amendment Act. As far as emission standards are concerned, DEAT has initiated internal action to promulgate relevant standards under the new Air Quality Act which came into force on 1st September 2005.

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11 Government Gazette No. 25741.
5.4.2 Current Status

The Vehicle Emissions Strategy has not yet been formally adopted and published. However, DME has proceeded with the fuel specifications segment of the Strategy by proposing new fuel specifications to Cabinet. In March 2005, Cabinet approved fuel specifications consistent with the specifications included in the draft Vehicle Emissions Strategy. On 4 November 2005 DME published Regulations regarding Petroleum Products Specifications and Standards in terms of the Petroleum Products Act, 1977, which included fuel quality specifications, one of the components of the Vehicle Emissions Strategy. The regulations were three months later repealed in January 2006. On 13 January 2006, DME published again for public comment reviewed Draft Regulations introducing changes on the fuel quality specifications. The Draft Regulations provided a period for public comments of two months. A public workshop was organized in Pretoria by DME in March 2006 to receive public feedback from interested and affected parties on the proposed Draft. Following this, a number of stakeholder representations were made to DME on the content of the proposed regulations.

In the meantime, unleaded gasoline ceased to be offered, starting January 2006, throughout South Africa, as decided by Cabinet Memorandum of May 2002. As far as emission standards are concerned, DEAT is in the process of initiating internal action to promulgate vehicles as controlled emitters and develop the relevant standards under the new National Environmental Management: Air Quality Act (No. 29 of 2004), which came into force on 1 September 2005.

5.4.3 Survey participation

After the call for survey participation, 107 stakeholders indicated an interest participating in the study. A total of 37 stakeholders completed the surveys to elicit perspectives about the public participation process in developing the Vehicle Emissions Strategy. Table 7 provides an overview of respondents according to stakeholder groups.

<table>
<thead>
<tr>
<th>Stakeholder Groups</th>
<th>Business &amp; Industry</th>
<th>Professional Consultants</th>
<th>Public Interest &amp; Community Groups</th>
<th>Academia &amp; Research</th>
<th>Government</th>
<th>Total</th>
</tr>
</thead>
<tbody>
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<td>8</td>
<td>8</td>
<td>3</td>
<td>9</td>
<td>37</td>
</tr>
</tbody>
</table>

Table 7. Respondents by stakeholder group
5.4.4 Significant findings

**Overall satisfaction with the process**

Overall, 28.5% of respondents were satisfied or very satisfied with the public participation process, 11.4% were neutral, and 51.4% were not satisfied or strongly unsatisfied. A review of responses from the perspective of stakeholder groups reveals that respondents from Government were in general more satisfied with the process than Public Interest & Community Groups and Research and Academia. The greatest level of dissatisfaction had respondents from non profit organisations who were not core participants. Table 8 summarizes the general satisfaction level of stakeholder groups and by level of participation.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Satisfaction with the Process (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Business &amp; Industry</td>
<td>33.3</td>
</tr>
<tr>
<td>Professional Consultants</td>
<td>16.7</td>
</tr>
<tr>
<td>Public Interest &amp; Community Groups</td>
<td>16.7</td>
</tr>
<tr>
<td>Academia &amp; Research</td>
<td>0</td>
</tr>
<tr>
<td>Government</td>
<td>55.6</td>
</tr>
</tbody>
</table>

Table 8. Level of satisfaction by stakeholder groups

**Timing of initiation of public engagement**

For many respondents formal opportunities for participation of the general public were provided too late, i.e. once the process was too advanced and when the FRTT had already developed its position. An earlier opportunity for broader public input should, according to these views, have taken place and not limited to selected stakeholders.

**Announcement of public participation opportunities**

According to most respondents, the overall announcement for public participation in the Vehicle Emissions Strategy process was not sufficient, given the major implications of the issues addressed. For some respondents announcement of participation opportunities were targeted only to “selected” stakeholders, and did not reach a sufficient number of other interested and affected parties who would and could have contributed to the process. Some respondents specifically pointed that the use of the Government Gazette was a limited means to reach the public, and that only those who had been previously involved could follow the announcement. Other means were suggested (e.g. the press, distribution lists, TV) to reach other stakeholders with interest in air quality matters (e.g. small local authorities, communities and grass-roots, professional groups and private sector).
Accessibility of documentation and information

Some of the respondents who were engaged more directly (e.g. through the FRTT) expressed they had adequate access to information and documentation during the process. However, a number of respondents noted the secrecy with which agencies treated certain documents. Other respondents stated that process documentation was not readily available for public review (i.e. documents, records of meetings, drafts, etc). For some respondents, the fact that minutes and records in the FRTT were not kept affected negatively their perception over the process. Finally, some respondents who requested information from lead agencies pointed out that they could not obtain the requested information.

Quality of interaction and deliberation

For a number of respondents engaged directly in the process, the participation allowed for knowledge-sharing, deliberation and give and take – only – for the participants, particularly during discussions between government departments and the various stakeholders at the FRTT. For other respondents, the process lacked the necessary levels of deliberation, and a number of decisions were made without a proper assessment of options and consultation with affected stakeholders.

Feedback on public comments

Most respondents expressed that there was a low level of feedback over comments made on the process. Even for some respondents directly involved in the process, how government applied their mind to make decisions was not always understood. However, the stakeholder’s database provided to all those participants who submitted comments to the Draft Strategy (November 2003) assisted in providing stakeholders with reasons on whether their comments were taken into account and why.

Stakeholder representation

Some respondents pointed out that public participation of environmental groups in the process happened only in light of the “intervention” of a non profit group who compelled authorities to allow their participation, especially at the FRTT level. For some non profit organisations, however, the NGOs present at the FRTT could not fully represent the interests of other non for profit groups involved in air quality issues. According to a number of respondents, representatives of the fuel and car industry had a pre-eminent role in the process, whereas the general public and other directly interested stakeholders (such as additive manufacturers or the taxi industry) were not adequately represented.

Capacity of stakeholders to participate

For some respondents (especially those from non profit groups), the process allowed an NGO network to build capacities on substantive issues and make meaningful contributions to the process. While respondents from this group acknowledged the role of NGOs to build capacities in communities and the public, they also expected a more intense capacity-building role from government. Some also pointed out that government should have facilitated access to the process by facilitating transport to meeting venues.
In all aspects of capacity, collectively respondents indicated more adequacy than inadequacy in the public participation process of developing the Vehicle Emissions Strategy.

![Chart showing capacity of stakeholders](chart.png)

5.4.5 Vehicle Emissions Strategy: Survey Respondent Satisfaction for Key Issues

**Trends from quantitative data**

There was very little dissatisfaction with any of the aspects of the public participation process among all sector groups. With respect to the feedback on public comments, the large majority of respondents were satisfied. The highest levels of dissatisfaction were among Business and Industry and Government respondents regarding the quality of interaction and deliberation (yet that was only 44.4% for both). Academia and Research respondents indicated no dissatisfaction with any aspects of the public participation, and Professional Consultant respondents had few people who were dissatisfied over particular aspects.
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Overview of the Case Studies and Case Study Findings

**Satisfaction with Announcements of Public Participation Opportunities**

<table>
<thead>
<tr>
<th>Sector Group</th>
<th>BI</th>
<th>PRO</th>
<th>PICG</th>
<th>AR</th>
<th>GOV</th>
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</thead>
<tbody>
<tr>
<td>Percentage</td>
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**Satisfaction with Accessibility of Documentation**

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<th>Sector Group</th>
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<th>PICG</th>
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<td>33.3</td>
<td>28.6</td>
<td>33.3</td>
<td>33.3</td>
</tr>
</tbody>
</table>
Overview of the Case Studies and Case Study Findings

**Satisfaction with Quality of Interaction and Deliberation**

- BI: 22.3%
- PRO: 50.0%
- PICG: 57.1%
- AR: 33.3%
- GOV: 33.3%

**Feedback on Public Comments**

- BI: 11.1%
- PRO: 16.7%
- PICG: 16.7%
- AR: 33.3%
- GOV: 12.5%

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Public Participation in Environmental Decision-making in the new South Africa
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5.5 Environmental Impact Assessment Regulations

5.5.1 Summary of the process

Currently the EIA regulations which were promulgated in 1997 in terms of the Environment Conservation Act (No. 73 of 1989) are still being used. DEAT initiated the Law Reform Programme for Environmental Assessment as part of a bilateral environmental cooperation agreement between South Africa and Norway. The goal of this Norwegian Agency for Development Cooperation (NORAD) funded programme is to streamline environmental assessment legislation and administration. The programme commenced during October 2000 with the appointment of two legal drafters. In early 2001, a technical advisor was also appointed. The initial legal drafting work on the amendments to the National Environmental Management Act (No. 107 of 1998) and the new EIA regulations was undertaken during the nearly two years that this team was involved in the project.

During the first three years of the process (October 2000 to November 2003) participation was restricted to national and provincial interaction. In December 2003 a Concept Document for the new EIA regulations was developed and public participation was initiated as this document was circulated to a limited number of organisations/individuals. Deliberation required submission of comments using the written medium. Very few comments on this Concept Document were received by DEAT.

During the following six months (February to June 2004), a series of draft EIA regulations were developed through (i) workshops with provinces; (ii) informal consultations within DEAT and other directorates, and (iii) meetings with a select group of experts.

The first draft of the EIA regulations was published for public comment in the Government Gazette in June 2004, with an extended 60 day comment period. During this commenting period there was interaction between DEAT and the CEC Council of Law Reform as well as ongoing bilateral meetings between DEAT and other national authorities. Public participation was broadened during this period as the provincial authorities were responsible for conducting workshops with relevant stakeholders, and DEAT engaged in bilateral meetings with representatives from various business and industry sectors as well as para-statal organisations. Numerous comments were submitted to DEAT by the end of the commenting period and several editorials appeared in the media concerning the EIA regulations drafting process.

A second draft of the EIA regulations was compiled, based ostensibly on the feedback from the first iteration of public participation, as well as ongoing internal interaction between the provinces and DEAT. This second draft of the EIA regulations was published in the Government Gazette in January 2005, with a standard 30 day comment period. Approximately half the number of comments was submitted to DEAT in response to this second draft, relative to the first.

Interactions within DEAT and the CEC Subcommittee on Law Reform produced a third draft. It was during this iteration of participation that DEAT interacted with local government in the main metropolitan areas, as well as providing ongoing interaction with provinces, although it appeared that DEAT were working under time constraints, providing authorities with limited time (3 days for the provinces) to respond. This third draft was also presented (May 2005) to
the Portfolio Committee on Environmental Affairs and Tourism (National Parliament) and the Select Committee on Land and Environmental Affairs (of the National Council of Provinces).

A fourth draft was produced after the third draft had undergone a legal review process and was submitted and approved by the DEAT Director-General and DEAT Minister (June 2005). The fourth draft was submitted to the State law advisors for certification, and the Department of Minerals and Energy (DME) submitted a letter to DEAT indicating problems with the fourth draft. These problems were resolved by December 2005, and a fifth draft was produced. The fifth draft was published as revised new EIA regulations launched by the Minister of Environmental Affairs and Tourism on 19 April 2006 and promulgated in the Government Gazette on 21 April 2006. These final regulations came into effect on 1 July 2006, with the exception of activities related to mining (1 April 2007).

5.5.2 Current status

After the EIA Regulations came into force on the 3 July 2006, DEAT and Provinces have held a number of workshops to discuss issues relating to implementation of the Regulations during April, June, September and November 2006. An agreement was reached that DEAT would file all enquiries relating to interpretation of the regulations and activities, and that responses would be made available to all provinces to ensure consistency in implementation. DEAT and the Department of Minerals and Energy have subsequently held meetings regarding drafting and discussing contents of a Memorandum of Understanding between the two Departments towards establishing EIA requirements for mining activities for April 2007.

5.5.3 Survey participation

77 stakeholders participated in the survey regarding the development of the new EIA regulations. The initial databases for the EIA Regulations included about 590 stakeholders, of which only 320 had working emails. Of the stakeholders who had been sent invitations to participate in the study, 120 expressed interest and 77 actually completed the survey. Table 9 provides an overview of stakeholder participation in the research by group membership.

<table>
<thead>
<tr>
<th>Stakeholder Groups</th>
<th>Business &amp; Industry</th>
<th>Professional Consultants</th>
<th>Public Interest &amp; Community Groups</th>
<th>Academia &amp; Research</th>
<th>Government</th>
<th>Others</th>
<th>Total</th>
</tr>
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<td>6</td>
<td>14</td>
<td>1</td>
<td>77</td>
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</table>

Table 9. Respondents by stakeholder group
5.5.4 Significant findings

Overall satisfaction with the process

Over half the respondents were dissatisfied or strongly dissatisfied with the process (54.5%). Thirty-two percent were satisfied (only one respondent was strongly satisfied) and ten percent had no opinion. Most respondents who had no opinion indicated that they were neutral about the process (neither satisfied nor dissatisfied). The largest sector group participating in the survey, professionals, which make up almost half the respondents, had 66% not satisfied or strongly dissatisfied with the process. On the other hand the majority of business and industry stakeholders were satisfied.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Satisfaction with the Process (%)</th>
</tr>
</thead>
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<td>Academia &amp; Research</td>
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<td>Government</td>
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</tr>
<tr>
<td>Others</td>
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</table>

Table 10. Satisfaction by stakeholder groups

Timing of initiation of public engagement

An overwhelming majority of respondents from all sectors indicated that, in their opinion, the public participation process had been initiated far too late in the decision-making process, and this had undermined genuine opportunities for stakeholder interaction and dialogue. Many participants noted that they felt that major decisions had been taken ahead of any opportunity for stakeholder involvement, and that this reflected a lack of DEAT commitment to genuine interaction, dialogue and deliberation. It was felt by numerous respondents that timeframes had been too tight, particularly for representatives from professional consulting bodies, where a substantial amount of time is necessary in order to derive collective input from members of professional bodies.

Announcement of public participation opportunities

The majority of respondents from both the non-profit sector and the professional bodies sector indicated that they did not hear about, nor subsequently attend, any public meetings/workshops organised by DEAT. The most frequently reported vehicle for the announcement of opportunities to participate was through the use of networks associated with established professional bodies, but by chance. Even within the government sector, it was
reported that insufficient notice was provided ahead of the workshops, such that participants were unable to properly plan and prepare for their involvement.

**Accessibility of documentation and information**

More than three quarters of the respondents (representing all sectors), indicated that the documents were not, in their opinion, easily available. The majority of these respondents indicated that they had had to personally search for the documentation, primarily using the internet. Some respondents who did receive hardcopies of supporting documentation indicated that it arrived too late (via the post), and so provided participants with insufficient time to familiarise themselves with the information ahead of the meeting/workshop. A few respondents indicated that the publication of notices and draft regulations through the Government Gazette also excluded the majority of stakeholders, across all sectors, but particularly the general public.

**Quality of interaction and deliberation**

Several stakeholders, particularly those from the professional sector and from public interest and community groups, indicated that they had expected initial interactions with DEAT to be focused on determining current gaps/issues/challenges with the existing regulations. This approach was deemed preferable to the sometimes confrontational or defensive approach that was perceived to have developed on occasion, and which undermined interaction and dialogue. Many of the respondents concluded that the process served only to inform stakeholders concerning DEAT’s perspective. Across all sectors it was felt that the process did not, in any way, aim to facilitate learning and the understanding of different perspectives.

**Feedback on public comments**

Many respondents, but particularly those from the professional sector, indicated frustration concerning the lack of a well written and consolidated report listing the comments submitted as part of the process, and feedback concerning the manner in which these comments had been addressed. They reported that the “Comments and Response Report” which been compiled, was of an unsatisfactory standard. Respondents generally all reported that the absence of an “issues trail”, such that participants could track the process as it unfolded, also undermined participation. Respondents noted that generally interaction took the form of stakeholders receiving information concerning the new regulations, and their concerns or suggestions were “noted”. They also indicated that there was a lack of two-way communication, with no follow-up or feedback, and that the issues were not really open for discussion.

**Stakeholder representation**

All sectors reported the perception that unequal opportunities for participation were afforded to different stakeholder groups. The professional sector and local government sector felt that the provincial authorities had been afforded the greatest opportunity for interaction with DEAT, and the research and academia respondents felt that it was government and business and industry who could afford more interaction. Many respondents across all sectors raised the concern that the general public, representatives from rural areas, and particularly representatives of groupings such as tribal authorities, developers, real estate agents, mining companies, farmers and community leaders were not provided with an adequate chance to
participate. Respondents indicated that DEAT should have actively identified a more representative set of stakeholders and other relevant NGOs and invited them, as early on as possible, into the process, despite recognition by a few respondents from the professional consulting sector that this would have been a “complex”, “costly” and “time consuming” exercise.

**Capacity of stakeholders to participate**

More respondents for the EIA Regulations case study indicated that they had adequate resources and knowledge to participate in the public engagement processes, but they had inadequate access to information.

![Capacity of Stakeholders](chart)

**5.5.5 Additional issues raised**

**Lack of a coordinated public engagement plan**

Some respondents indicated that, due to the importance of these regulations, they had expected a more widely publicised public participation process where interested persons and organisations were invited to register, and an outline of the process with key milestones and dates was developed (a participation process plan), as well as an issues trail tracking the process compiled and made publicly available.

**Stakeholder influence on the final outcome**

Stakeholders were unable to comment on their influence on the new regulations, as these had not, at the time of the survey, been released. The majority of the stakeholders did however report that, based on the revised draft versions of the regulations, as well as the limited opportunities afforded them to engage in the process, it was highly unlikely that their participation had influenced the nature of the regulations.
5.5.6 Environmental Impact Assessment Regulations: Survey Respondent Satisfaction for Key Issues

Trends from quantitative data

All stakeholder groups had much higher percentages of respondents indicating dissatisfaction with feedback on public comments than were satisfied. Also regarding announcements of public participation opportunities, except for the “Other” sector group (of which there was only one respondent), all other sector groups had greater numbers of respondents dissatisfied than satisfied. In each aspect of the public participation process, more Professional Consultants and PICGs were dissatisfied than were satisfied.

![Satisfaction with Timing of Initiation of Public Engagement](chart)

<table>
<thead>
<tr>
<th>Sector Groups</th>
<th>BI</th>
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</tr>
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</table>
5.6 Dreamworld Film City and Residential Development EIA

5.6.1 Summary of the Process

In 2003 the City of Cape Town and the Western Cape Provincial Government invited submissions for proposals to develop a film studio in Cape Town. The City of Cape Town and the Western Cape Provincial Government awarded the bid to the Dreamworld Film Consortium. Once selected, the Dreamworld project proponents commissioned The Environmental Partnership (TEP) to undertake the Environmental Impact Assessment (EIA) for the proposed film studio development.

The design of the development was undertaken by a team of designers, engineers, architects and other technical consultants, and involved developing alternative plans for the site. At the project formulation of layouts stage, baseline studies were done on the botanical and wetland issues which fed into layout design. Little public input was acquired at this stage.

During the process of the Scoping Phase, public engagement was undertaken by the project proponents through public forums, dissemination of information materials and focus group meetings. Comments were received throughout this period, and were responded to in the Scoping Report. Media notices were published to inform the general public of the proposed development and invite them to public forums to be held in September 2004. Notices went out in five newspapers in Afrikaans, English and Xhosa.

A one-page information sheet was compiled in English, Xhosa and Afrikaans. The information sheet and an invitation to attend the public forums were distributed to over 40 stakeholder groups by fax or post. In addition approximately 2000 information sheets were distributed within the residential area adjacent to the proposed development site.

Three public forums were held in September in different communities. These forums were held as Open Houses, where the public could attend at any time in the evening. Information about the proposed development was displayed at the Open House, including plans, text, posters and graphics. Members of the project team and TEP were present at the forum in order for attendees to ask questions and discuss aspects of the proposed project. Comment forms were available for people to submit issues to the project team. 49 people attended the forums and 19 written submissions were received. Several focus group meetings were held with local Development Forums from September to November 2004. All the comments received during this Scoping phase were compiled in a table in the Scoping Report, which also indicated the project team’s responses to individual comments.

The Scoping Report was made available on 15 November 2004 at eight local libraries and on TEP’s website. Notification of the report was published in three regional papers. Due to the end of year holidays, the comment period was open until 31 January 2005.

As a result of comments from the Scoping Phase, another alternative design was formed and included in the full Environmental Impact Assessment. When the draft Environmental Impact Report was completed in March 2005, notices were published in four newspapers to inform the public. A second information sheet was developed in English, Xhosa and Afrikaans and distributed to stakeholders to present the findings of the EIA, to indicate where the document
could be accessed, and the procedure for submitting comments. The report was at the same libraries as the Scoping Report and on TEP’s website. The public review and comment period was from 29 March to 25 April 2005. During this time, public meetings were held to present the draft EIR in three surrounding communities. In May 2005 another Open House and three meetings with Development Forums were held.

Comments submitted during the EIR phase were reviewed by the client, the project team and the design team. Workshops were held with the project proponents, the design team and specialist sub-consultants to determine what changes should be made to the recommended alternative. Meetings were held in May between the project team and the key I&APs that objected to the initial alternative in order to present the revised alternative.

An Addendum was written to update and finalise the draft EIR which would be submitted to the Western Cape Provincial Department of Environmental Affairs and Development Planning (DEA&DP). It was distributed for public comment on 2 June 2005 with the closing date of 15 June 2005. The final Addendum and recommendations, together with all the comments received on the draft EIR were submitted to DEA&DP for a Record of Decision on 21 June 2005. The development was approved with conditions in a Record of Decision by DEA&DP on 23 June 2005. The statutory 30 day period was granted for potential appeals.

Appeals were submitted by two organisations at the end of June 2005, and another government department objected to the proposed development. During the appeal period, the project team met with the appellants to try and address some of the raised issues.

The Minister of Environmental Affairs and Development Planning held a hearing on 6 February 2006 with the Appellants and the project proponent, and last arguments were submitted on 14 February 2006. The Minister announced on 5 April 2006 that the application was approved with a variation of the decision and conditions.

5.6.2 Survey participation

The approach for obtaining feedback from stakeholders was adjusted for the Dreamworld case study. The survey used for the other case studies was not deemed to be effective in this case, given that the majority of I&APs were from areas where the first language is not English, few I&APs have access to electronic communication and the written medium is not the most effective means of communication. Feedback for this case study was gathered by holding focus group discussions among each of the four affected communities that had been involved in the public participation for the Dreamworld EIA. There were about 190 I&APs on the available databases from the EIA consultant, including people from the surrounding communities targeted by the EIA consultant and outside the immediately affected area. 81 I&APs were called from these 4 key communities based on who had telephone contact details, to determine if they would be interested in participating in these focus group meetings. Fifteen people indicated interest\(^\text{12}\), however ten people in total actually participated in the discussions.

\(^{12}\) The large majority of those called had phone numbers which were no longer working.
5.6.3 Significant findings

Overall Satisfaction with the Process

There was a mixed response regarding overall satisfaction with public participation process. All respondents were very pleased with the level of engagement throughout the Scoping and EIA process and were happy to see that the communities had been actively and thoroughly engaged. However none of them could recall being informed about the status of the application after the EIR had been submitted or the appeal process that was undertaken. Some respondents were very dissatisfied that the communication had dropped off considerably after their inputs had been received for the EIR, that the consultants did not come back to inform them about the final decision, and that they had not been engaged in the appeal process. A few respondents only heard about the final decision after the appeal hearing through an article in a local newspaper.

Announcement of public participation opportunities

According to interviewees, the local Development Forums were used effectively by the consultant to communicate about the project and the EIA to a broad range of groups across the communities. Thus at the public meetings, most people who attended were drawn from member organisations of the Development Forums. In the other two communities that do not have established Development Forums, communication was largely public – loudhailers driving around the community announcing the public meetings and posters at community halls and libraries. The respondents felt that these were adequate means for announcing the public participation opportunities. In one of the communities where the announcements were printed in the local language newspaper (published weekly), respondents indicated that newspapers are not a useful way to communicate within these communities, as many are not able to read or do not read newspapers regularly.

Accessibility of documentation and information

All of the respondents in all of the communities were aware of the reports that were being written. Regular documentation was mailed to I&APs. If respondents wanted the information or communication in a language other than English, they were provided the opportunity to choose what language they would prefer (i.e. Afrikaans or Xhosa). However language was an barrier at some of the public meetings, as they were conducted largely in English, with some Afrikaans translation. Respondents from a Xhosa-speaking area indicated that at the meetings they were given comment forms for them to write their concerns if they were not comfortable communicating in English or Afrikaans. They noted, however, that the comment forms were also in English. According to respondents, information was not communicated to them regarding the initial Record of Decision, the appeal submissions and hearings, and the final decision with conditions by the MEC.

Stakeholder representation

Beyond Development Forum organisations and formal community-based organisations in areas without Development Forums, all respondents felt that participation was limited among the general public. They noted that the consultants tried as much as possible to engage wide public participation. However, respondents in all communities feel that people generally do
not have an interest in engaging in these types of activities (even if it may affect them) and have a low understanding of environmental issues.

5.6.4 Additional issues raised

Stakeholder influence on the final outcome

Respondents felt that the consultants were treating them fairly and that if issues were raised they would have been taken into consideration in the final plans. The approachability and accessibility of the consultants made the respondents feel that their issues would be dealt with in the final reports. However, regarding the decision-outcome, none of the respondents were aware of the appeal process that occurred. Most respondents were surprised to hear that environmental organisations that they had not had any interaction with had appealed and were allowed to make their case before the MEC. They felt that the appeal hearing should have provided the opportunity for the affected communities to make their case heard as well. Because of this process in which they were excluded from, but would decide the final outcome, most of the respondents felt that other groups were making the decision without their concerns being represented.

5.7 Table Mountain Group Aquifer Feasibility Study EIA

5.7.1 Summary of the process

The City of Cape Town called for proposals from consultants during 2001 to undertake the Feasibility Study and Pilot Project into the viability of the Table Mountain Group (TMG) aquifer as a potential source of water for the City. The TMG aquifer covers an area from Vanrhynsdorp, south to Bredasdorp in Western Cape Province, and east as far as Port Elizabeth in Eastern Cape Province. A consortium called the Table Mountain Group Aquifer Alliance was awarded the contract in May 2002, and Ninham Shand was involved in conducting the EIA.

The consultation process was initiated in September 2002 with the establishing of a Key Stakeholder Forum (KSF). The KSF was comprised of thirty-five organisations that were considered to have a particular interest in the study. The role of the KSF was to assist the EIA study team in providing input, reviewing the findings of the study and disseminating information. The first three meetings of the KSF were held in September 2002, February 2003 and September 2003. In addition to the KSF, a Study Management Committee (SMC) was formed. The SMC was comprised of representatives from the City of Cape Town, and Provincial and National water and agriculture departments and agencies.

In May 2003, an information pamphlet on the study was produced in English and Afrikaans and was distributed among landowners and farm managers in late summer. In early 2004, about 1000 potential I&APs were identified from existing water and conservation databases. A letter inviting I&APs to register for the project was sent in February 2004. Approximately 200 people were registered for the project and remained on the database. A website was developed at this time to enable I&APs to download information and documentation on the project (http://www.tmg-aquifer.co.za/).
During the first week of April 2004, advertisements were placed in eight local newspapers publicising the study, announcing the dates for the public meetings and calling for comments. On 19 April 2004, a letter together with the information pamphlet was sent to all registered I&APs inviting them to attend public meetings. An illustrated Background Information Document (BID) was produced and distributed to I&APs upon request.

Press statements were provided to local radio, and posters were produced to inform local residents of the proposed project and invite them to attend the public meetings. These posters were placed in public areas in surrounding communities.

Prior to the public meetings, some organisations from the databases were identified and contacted telephonically to ensure their awareness of the study. These groups were identified as organisations that might have less capacity to understand the documentation that was sent to them or how they might be able to play a role in the process.

Four public meetings were held in late April and early May 2004. At the public meetings, a presentation on the background and study process was given. Comments received from the public during these meetings were recorded in meeting minutes and were sent to all participants (as well as included in the Scoping documents). Other comments received in writing were written into an issues table, together with responses from the consultants. During this time, focus group meetings were held between the project team and other selected groups who would be significantly impacted by the project.

In July 2004 the project proponent sent a letter to I&APs to inform them as to where to find the Draft Scoping Report and invite them to a public meeting to be held in August. The letter included a copy of the Executive Summary and a response form for comments.

In August 2004, letters were sent to affected landowners by the project proponents and the City of Cape Town, providing information, the executive summary of the report and requesting a meeting to discuss the project and obtain approval to drill on their land. CDs of the full report were also available upon request. The Draft Scoping Report was lodged at seven local libraries from 12 August 2004. The comment period was initially until 3 September, but was extended until 20 September 2004 upon request by some I&APs.

The public meeting on the Draft Scoping Report was held on 21 August 2004, at which the findings of the Report were presented and opportunity was given for public comment. Written comments received and responses by the project proponents were added to the issues table which was then included in the Final Scoping Report, along with copies of all of the written submissions. In November 2004, a letter was sent to I&APs, informing them of the submission of the Final Scoping Report to the authorities and where to find copies of the document. The Report was made available at the same public libraries that the Draft Report had been lodged and was also accessible on the website.

The Department of Environmental Affairs and Development Planning issued a positive Record of Decision in May 2005. A letter was sent out by the project proponent informing the I&APs and Local Authorities of the decision and their right to appeal. One appeal was received, which was with the MEC for her adjudication.
5.7.2 Current status

The MEC issued a decision on the appeal on 22 February 2006. The original authorisation was upheld with two additions related to two sites which must not be considered for development and I&AP opportunity for comment on the Environmental Management Plans. Fifteen boreholes have been sited for the exploratory drilling, which will commence in early 2007.

5.7.3 Survey participation

Overall satisfaction with the process

Thirty-seven stakeholders participated in the survey research to elicit perspectives about the public participation component of the TMGA EIA. There were about 370 I&APs in the consultant’s database, and over 230 I&APs with working email addresses. Out of those contacted, 64 expressed interest in participating and 37 completed and returned the survey. Table 11 provides an overview of stakeholder participation in the research by group membership.

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<thead>
<tr>
<th>Stakeholder Groups</th>
<th>Business &amp; Industry</th>
<th>Professional Consultants</th>
<th>Public Interest &amp; Community Groups</th>
<th>Academia &amp; Research</th>
<th>Government</th>
<th>Others</th>
<th>Total</th>
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<td>5</td>
<td>5</td>
<td>15</td>
<td>7</td>
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Table 11. Respondents by stakeholder group

5.7.4 Significant findings

Overall satisfaction with the process

Sixty-two percent of participants were satisfied with the public participation process. Nineteen percent were not satisfied or strongly dissatisfied and nineteen percent had no opinion. Government respondents largely indicated satisfaction with the process. In all the sectors except business, there was one respondent who had no opinion regarding the levels of satisfaction. This was either because they did not consider themselves to be part of the general public, they were neither satisfied nor dissatisfied or they felt they did not participate enough in the process to comment.
Timing of initiation of public engagement

A few respondents from differing sectors felt that public engagement should have been earlier, possibly at the initiation of the idea of utilising groundwater resources. They commented that the process was already very advanced by the time the EIA was initiated. Many respondents across the sectors felt that the process was too time consuming. A few other respondents felt that the process took too long, and that there was too much public participation which has stalled the starting of the project (the actual drilling).

Availability of documentation and information

Respondents generally commended the consultants for good and timely communication and keeping people informed. Some people who were involved later in the EIA process indicated that they only received initial documentation. For respondents who reviewed all the documents, they were pleased that they were very extensive and were provided in good time, but some felt they were too technical and too voluminous to spend adequate time reviewing them. They felt that this would be a barrier to lay-people to become engaged in the process, even if the issues impacted them directly.

Feedback on public comments

The responses varied greatly, from people who said they received adequate feedback to those who said that they did not see the final outcome. A few of these said that they were not communicated to and did not receive any information regarding the outcome. Some respondents who did see the issues table (in which I&AP comments were compiled and responded to by the project team), were not satisfied with the way issues were responded to. A couple of respondents found the feedback was too technical and too difficult to follow.
Quality of interaction and deliberation

There was a varying range of views on the quality of interaction and deliberation, which was directly related to the level of public engagement. Groups that had been involved in the Key Stakeholder Forum had good interaction and discussion at their meetings and were regularly communicated with. People who attended some of the public meetings, however, noted that there were very few members of the public at these meetings (public meetings ranging from 3 to 13 participants, with many of them from government). With so few ‘public’ people attending, the ability to hear a broad range of perspectives was minimal, thus affecting the quality of interaction and deliberation.

Stakeholder representation

A key issue was raised among all respondents, the fact that although this project would affect the public greatly, there was little interest shown by the public (demonstrated through poor attendance at meetings and few submissions of comments). Factors suggested that may have limited public engagement were that the documentation was excessive, that the importance of these studies was not stressed among the public, and that people would have to understand the process in order to be engaged.

Capacity of stakeholders to participate

All respondents found either time or financial resources a challenge for participating fully in the process. People who live or work near meeting venues were able to attend, but a few indicated that they were too far away to attend the public meetings. Particular difficulties were raised by public interest and community groups, who found it challenging to make time and resources available when the issue is not part of their core function and they are acting as volunteers. Government participants said they had a lack of staff resources and time to engage fully, particularly when the project was not part of their core function and they had only a few highly technical staff who could become engaged in the technical issues of the project. Although there was sufficient information made available, it was raised by some respondents that it may be difficult for the general public to have the technical capacity to understand the issues surrounding the project, thus making it difficult for them to engage in the EIA process.

![Capacity of Stakeholders](image-url)
The large majority of respondents that were engaged indicated adequate access to information and knowledge (very few indicated inadequate access to information and knowledge), though less adequacy in terms of resources to participate.

5.7.5 Environmental Impact Assessment: Table Mountain Group Aquifer Feasibility Study: Survey Respondent Satisfaction for Key Issues

Trends from quantitative data

For the various aspects of the public participation process, the large majority of respondents across the sectors indicated satisfaction, with very few indicating dissatisfaction with any aspects of the process. Only with regard to feedback on public comments did one sector group have a majority dissatisfied (Academia and Research with 60% dissatisfied). The only groups showing dissatisfaction with four out of five aspects were Academia and Research and Others.

![Satisfaction with Timing of Initiation of Public Engagement](image_url)
Overview of the Case Studies and Case Study Findings

Satisfaction with Announcements of Public Participation Opportunities

Satisfaction with Accessibility of Documentation

Public Participation in Environmental Decision-making in the new South Africa
Page 68
Overview of the Case Studies and Case Study Findings

Satisfaction with Quality of Interaction and Deliberation

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Feedback on Public Comments

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6 Summary of Research Findings

6.1 Key Issues Emerging from the Case Studies

A number of common issues could be drawn from the case studies regarding key aspects of public participation design and implementation. This section will elaborate on key issues and findings emerging from this research.

**Timing of initiation public participation**

A significant number of respondents indicated that public participation should be initiated earlier in the process. There was recognition that significant time and effort is spent at the outset of these processes through internal discussions amongst various relevant government departments and publication of draft documents prior to involvement of the public. Even though there is recognition that government needs to present a unified position before engaging with the public, many non-governmental stakeholders feel that by the time the public is engaged, there is often little room for significant changes to the substantive content and the proposed decision. Stakeholders feel that they should be engaged at the outset of these processes and once options are still open. Often, an initial meeting or hearing at the outset of the process would allow for the lead agency to get a sense of stakeholder perspectives.

**Stakeholder identification**

In many of the case studies, respondents listed numerous groups of people who they felt should have been more actively engaged by the agencies leading the public participation processes. They indicated that traditional mechanisms for engaging stakeholders or I&APs, especially poor and marginalized groups, are not suitable to reach these groups. Respondents felt that the first step should be to identify primary stakeholders, and then identify appropriate methods and techniques to engage other relevant groups. The use of existing networks, member associations and forums as well as existing databases for outreach, were deemed to be effective mechanisms in this regard. It was also pointed out that even if attempts are made to reach all relevant stakeholder groups, there is still a challenge in terms of reaching the real “public”. Expectations are high that the general public will be able to participate in one way or another, although the challenges associated with reaching this goal are appreciated.

**Accessibility of documentation**

Accessibility of documentation at all levels was considered by many respondents to be a key issue for promoting good governance. Accessibility entails making technical information available in user-friendly language, making legal documents understandable to the lay public and making documents available in languages other than English, as appropriate.

In a number of case studies related to national level processes, respondents expressed concern over the late release of drafts of documents (bills, strategies, etc). Some stakeholders in various case studies were only able to get drafts through “inside” contacts. The late access to documents, some of which were earlier versions, made it difficult to provide informed and meaningful comments.
Quality of interaction, deliberation and dialogue

In a number of national processes, respondents felt that public workshops and meetings were held mainly to relay information, rather than facilitate two-way communication and meaningful interaction amongst participants. Some stakeholders expressed the view that the opportunities provided through the Parliamentary process ensured more chances for authentic participation and had resulted in input that had influenced decisions (further elaborated in section 6.2 below). In case studies where selected forums were established to engage with a particular group of stakeholders, those involved in these forums felt that they had more interactive engagement with the process and were more satisfied with the level of interaction, than those involved in the general public forums.

Communication and feedback

Respondents across case studies emphasised that announcements should be accessible and timely. With relation to national processes, Government Gazettes and websites, in their present form, were not considered an accessible means of communication. In terms of reaching disadvantaged communities, it was found that notices in written media were not effective. Many respondents also indicated that communication should be on-going throughout the process, not only when there was an opportunity for public input, such as a workshop or comment period. Stakeholders also expressed the need to be fully informed of opportunities for engagement throughout the process. Often, the only form of direct communication with government or the proponent was through meetings or workshops set up as part of the participation process. Some respondents felt this was inadequate.

In most national decision-processes, respondents expressed dissatisfaction with the lack of feedback after comment periods and workshops. Respondents indicated that they were often not given reasons regarding how their input was addressed and integrated into the document. This lack of feedback made respondents question their impact and influence on the outcome, discouraging some of them from participating in future involvement processes. In many cases, a general document summarizing the rationale followed by the lead agency in considering comments would be appreciated.

Capacity building

A common finding was that stakeholder groups who have the financial and human resources to participate in such processes are able to better able to harness the engagement opportunities, regardless of the type or level of decision. Specific consideration should thus be given to mechanisms for strengthening participation capacities in particular of disadvantaged groups.

Visibility of the government/proponent in public participation activities

Visible engagement and presence of the government or the proponent in public participation activities was deemed in the majority of case studies to have a positive effect on the participation process. In cases where representatives of the decision-making agency were present at public engagement activities (e.g. workshops, meetings), respondents felt a sense of goodwill was created between the government or the proponent and stakeholders. They felt that it demonstrated sincerity on the part of government or the proponent in obtaining
feedback from stakeholders directly. In some cases, the absence of appropriate representation from the lead agencies caused significant concern amongst respondents.

**Considering public participation issues in advance**

With specific reference to national-level decisions, none of the government agencies indicated that they had developed implemented a public participation plan. Respondents felt that a clearly established and communicated participation plan would be a useful tool to provide stakeholders with an indication of what is expected of them, when in the process there would be an opportunity to participate and what the nature of that engagement would be. This would further assist clarifying expectations and identifying the constraints and realities faced by government when undertaking public engagement.

**6.2 Other Issues Emerging from the Research**

The research generated a number of additional findings which are not directly linked to the questions posed in the case study surveys, but emerged through respondent’s responses, interviews with key role-players and discussions during the National Review Workshop (Cape Town, 12-14 June 2006). The following section briefly summarizes these issues.

**Determining the appropriate level of public participation in technical decision-making**

Some case studies dealt with highly technical issues and required scientific understanding of the issues (e.g. Air Quality Standards, Vehicle Emissions Strategy, Table Mountain Aquifer EIA). Stakeholders had different opinions concerning the level of public engagement required. Many of the stakeholders with a technical background, and who were engaged extensively throughout these processes, were satisfied with the level of public participation. However, other stakeholders (many of whom belonging to the PICGs sector) felt a need for enhanced engagement of non-technical stakeholders. A balance between technical and non-technical stakeholder participation should be considered and discussed at the outset of the process, in order to determine the most suitable and acceptable mix of participants.

**Using appropriate mechanisms and agencies for meaningful engagement through capacity building**

In the NEM: Biodiversity Act (No. 10 of 2004) and the NEM: Air Quality Act (No. 30 of 2004) case studies, organisations and networks played a key role in improving the quality of public engagement throughout these processes. PICGs such as the ContactTrust, groundWork and the NetBio network were instrumental in building the capacity of other NGOs and interested individuals to engage with these processes. These facilitating agencies held workshops, developed awareness-raising materials and facilitated discussions with stakeholders on the underlying issues and potential problems associated with the Bills. They also assisted in developing skills on how to prepare written submissions and make public presentations. All of these activities were external to the government-led public engagement processes, although there were interactions with government officials throughout their activities.
Many stakeholders who were engaged in the above processes indicated that the assistance of these organisations had enabled them to engage in a meaningful way. Some indicated that they had been more successful in influencing the decision-outcome through this facilitated process as opposed to acting individually.

**Tailoring communication and feedback to stakeholders at the project level and the national level**

Ongoing communication and feedback that is tailored to the characteristics of stakeholders is easier to achieve at a project level. Having consulting agencies based locally to engage with the public enables more direct contact and regular engagement. As a result, people feel more involved and that they have more influence throughout the process. This was particularly seen in the Dreamworld EIA case study, where extensive participation was undertaken directly in local communities surrounding the proposed development site.

In comparison, at a national level, more generic approaches to engaging the public often exclude the diversity of stakeholders that have an interest in or may be affected by the proposal. National road-shows and public hearings typically reach only a limited audience. A number of stakeholders across the national case studies indicated that groups and individuals could not participate because they did not have the resources to attend public workshops/hearings in major cities (due to travel distances, cost implications, and language barriers). Engagement of a wider range of South African citizens will require the identification of innovative approaches to public outreach (e.g. making use of different agents to carry out public engagement processes in different regions or among certain stakeholder groups).
7 Conclusions and Recommendations

7.1 Summary Assessment

South Africa has committed itself to public participation through the Constitution and various other policies and laws, most notably, the Promotion of Administrative Justice Act (No. 3 of 2000), the Municipal Systems Act (No. 32 of 2000) and, for environmental matters, the National Environmental Management Act (No. 107 of 1998). Considerable progress has been made by lead agencies to improve the practice of public participation. As an emerging democracy, South Africa is in a unique position to shape and enhance the procedures and mechanisms for public participation through learning from recent policy formulation and decision-making processes.

This research highlighted that South African stakeholders have certain expectations as to what their role should be in planning and decision-making and how they should be engaged in such processes. It has been apparent throughout this research that stakeholders have a desire to help shape the way public participation is conducted in South Africa, and wish to participate in and influence decisions affecting the environment and their lives.

Although all processes examined revealed that public participation was undertaken in varying degrees, stakeholders’ expectations of how, and to what extent the public should be engaged in such processes, were not always met. Respondents’ levels of satisfaction with respect to six aspects of public participation were investigated namely: timing and initiation of public participation, stakeholder identification and inclusion in decision processes, access to relevant documentation, the quality of interaction, deliberation and dialogue and finally, communication and feedback. Respondent groupings across the seven case studies differed with respect to their levels of satisfaction as to how these six aspects of public participation had been handled in their particular case study. However, there were consistently high levels of dissatisfaction with respect to the nature of communication and feedback received across all case studies and stakeholder groups.

This research suggests that there are three key areas through which public participation in environmental decision-making should be improved. The first major area is the timing required to ensure effective public participation. There needs to be communication and engagement with stakeholders as early in the decision-making process as possible, so that comments received can be taken into account in the process during formative rather than concluding phases. This must be coupled with the timely release of documents and relevant information materials, made available in language that is accessible (plain language) and easy to understand by lay people. In some cases it may require materials to be available in languages other than English.

The second key area is meaningful communication and ongoing engagement amongst parties. Selected forums proved to be a very effective platform for this, yielding high levels of satisfaction amongst participants as opposed to general public forums which were not considered to be a satisfactory means of communication and engagement. The nature of public feedback is key to the level of satisfaction with the public participation process. A mechanism for providing systematic feedback on stakeholder input should be put in place. Such feedback should be provided regardless of whether input provided was taken into account or not. Also, the nature and level of public engagement intended in a particular
Conclusions and Recommendations

Process should be discussed and agreed upon at the outset of the process. This formalises the process in a way that gives all involved parties a realistic idea of what to expect, and an understanding of any logistical constraints.

The third area requiring attention is the identification of procedures and methods to enhance fulfilment of public expectations with respect to participation. Often there are high expectations that the general public will be actively involved in all stages of the decision process. This is often not possible, and when this is not achieved it may cause disappointment and high levels of dissatisfaction. This situation necessitates the exploration of new and innovative methods of public outreach and engagement, to be employed by those leading or facilitating such processes. These methods need to take into account the diversity of the South African public, in order to include as many different cultures and interests as possible, and thus avoid marginalisation of particular groups.

7.2 Recommendations

Discussions undertaken with stakeholders and government civil servants throughout the research project generated a number of practical ideas and suggestions towards strengthening the planning and practice of public participation in environmental decision-making. The following recommendations are meant to inform efforts within government, in particular within DEAT and provincial environmental departments, to develop an enabling framework for effective stakeholder engagement in environmental decision-making. In taking these recommendations forward, DEAT and other relevant government institutions are encouraged to take into account the specific issues raised in the earlier sections of this report.

**Recommendation 1**

Make public participation a strategic priority within government departments

In light of the importance and benefits of public participation, government departments should raise matters of public participation to the strategic level and encourage or require procedures, plans and innovative methods to be identified and implemented to enhance the practice of participation in South Africa. Furthermore, implementation of successful public participation processes should be an integral aspect of staff evaluation and reward structures.

**Recommendation 2**

Develop a department wide strategy on effective stakeholder engagement

DEAT is encouraged to develop a holistic, integrated and comprehensive public participation strategy. Such a strategy should include appropriate budgeting, training and capacity building as well as guideline development. The strategy should be as flexible as possible; however, some minimum internal standards for public participation should be developed and applied across the Department.
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Recommendation 3
Strengthen stakeholder engagement and management skills of government staff

Implementation of effective public participation requires skilled staff. Opportunities should be explored to strengthen relevant skills of DEAT staff involved in organizational and facilitation aspects of public participation processes. Skills development could be provided in matters such as: effective meeting organization and facilitation, maintaining professional relationships with stakeholders, communication principles and procedures, information provision methods, report writing, conflict resolution techniques, etc. Professional process management at the technical level can go a long way to develop trust and confidence of stakeholders.

Recommendation 4
Make use of knowledge and experience of DEAT staff to strengthen internal capacity for effective stakeholder involvement

A wealth of experience has been gained by DEAT staff in terms of lessons learned from involving the public in various decision processes. An internal DEAT workshop could be organized to take stock of these experiences, identify best practices, facilitate internal exchange of staff experiences, etc., as a contribution towards developing an internal strategy and guidelines for effective public participation.

Recommendation 5
Develop Public Involvement Plans for key policy, strategy, legal, planning and project processes

Prior to initiating important decision-processes, DEAT staff should be encouraged to develop a Public Involvement Plan in consultation with key stakeholders. The plan should consider important aspects of stakeholder involvement, such as the objectives of public participation, timing, methods to be used, special groups to be involved, funding, etc. The plan must not be complex, and should be communicated to the public, so that it is clear from the start what will happen, when and what public input will be desired. In developing the plan needs of the public should be taken into account.

Recommendation 6
Enhance communication of stakeholder involvement activities to the public

The research revealed that although DEAT carries out significant outreach and public participation activities, many of these opportunities are not known to the public. There are a number of initiatives that could enhance communication with and involvement of the public. These include development of a website that focuses on current processes and opportunities
Conclusions and Recommendations

for public engagement (see also recommendation 7), providing a summary of information on public participation and outreach activities in the Annual report, identifying a staff member to interact with the public.

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<th>Recommendation 7</th>
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<td>Develop a dedicated public participation section within the DEAT’s webpage</td>
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To strengthen communication with stakeholders DEAT should include a dedicated section on its website focusing on current and future participation opportunities, featuring relevant draft documents, contact points, etc. The current DEAT webpage does not provide this information in a systematic way. In addition, list servers should be developed to cover specific thematic areas. However, a webpage should not be seen as the only means to inform stakeholders on public participation processes, given the existing gaps in accessing electronic tools among a wide sector of South African population.

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<th>Recommendation 8</th>
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<td>Establishment of a DEAT focal point for public participation</td>
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In order to strengthen and rationalise the dialogue between DEAT and I&APs on strategic matters of public participation, DEAT should consider designating a public official who is dedicated to liaising with I&APs, local and provincial authorities. That would create a one window communicating channel and avoid misunderstandings associated with multiple communication channels.

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<td>Support specific capacity-building interventions to ensure effective participation of disadvantaged groups</td>
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Given the importance of skills and capacities for achieving effective participation, DEAT should systematically consider how resources can be provided to strengthen capacities of formerly disadvantaged groups to effectively participate in environmental decision-making. DEAT could investigate, for example, engaging specific groups in carrying out capacity-building programmes running alongside the formal public engagement process.

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<th>Recommendation 10</th>
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<td>Engage NEAF to systematically obtain stakeholder input on strategic matters of public participation</td>
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NEAF could provide systematic advice in matters of public participation to DEAT. If a number of decision-making processes for a particular area are upcoming (e.g. air quality management) a NEAF sub-committee could provide guidance.
7.3 Proposed Follow-up

As a first concrete and practical follow-up, the project invites DEAT to consider the organization of a National DEAT/Stakeholder Workshop on Public Participation. The purpose of such a workshop would be to bring together DEAT and stakeholders to discuss opportunities and challenges of public participation in environmental decision-making. The workshop would provide an opportunity to facilitate mutual understanding of needs and constraints of all parties and link stakeholder views with DEAT’s proposals to strengthen its public participation procedures and practices.

7.4 Concluding Remarks

This study has highlighted some gaps between stakeholders’ expectations of public participation in a post-apartheid South Africa and the way in which decision-making agencies engage the public. Stakeholders appreciate that public participation has become a basic feature of environmental decision-making, yet they have also indicated that there is need for improvement with respect to how and when the public is engaged. The information emanating from this research should encourage decision-makers and lead agencies involved in public processes to embark on a deeper dialogue with South African stakeholders and put in place procedures and mechanisms to ensure more efficient and effective public engagement processes that meet stakeholder needs and requirements. Government should thus be encouraged to spend sufficient time to carefully design public participation processes and strengthen capacities to ensure their effective implementation. Stakeholders are likely to reward such commitment and action by gradually strengthening their trust in the work of government, as well as in improving environmental compliance.
Abbreviations

APPA  Atmospheric Pollution Prevention Act
AQA   Air Quality Act
CBO   Community Based Organisations
CEC   Committee for Environmental Coordination
CONNEPP Consultative National Environmental Policy Process
DEA&DP Department of Environmental Affairs & Development Planning
DEAT  Department of Environmental Affairs and Tourism
DME   Department of Minerals and Energy
DOH   Department of Health
DTI   Department of Trade and Industry
EEU   Environmental Evaluation Unit
EIA   Environmental Impact Assessment
FRTT  Fuels Reformulation Task Team
HDIs  Historically Disadvantaged Individuals
IP&WM Integrated Pollution and Waste Management White Paper
I&APs Interested & Affected Parties
KSF   Key Stakeholder Forum
MEC   Member of the Executive Committee
MINMEC The periodic meeting of the Minister of a particular department (e.g. DEAT) and the respective provincial MECs to discuss matters of mutual interest
MINTEC The periodic meeting of the Heads of Departments of a particular department (e.g. DEAT) and the respective provincial Heads of Departments to discuss matters of mutual interest
NACA  National Association for Clean Air
NEAF  National Environmental Advisory Forum
NEMA  National Environmental Management Act (Act 107 of 1998)
NEM: BA National Environmental Management: Biodiversity Act (Act 10 of 2004)
NGO   Non-Governmental Organisations
OEHHRU Occupational and Environmental Health Research Unit
PEAF  Provincial Environmental Advisory Forum
PICG  Public Interest and Community Groups
RoD   Record of Decision
SABS  South African Bureau of Standards
SETA  Sector Education and Training Authority
STansa Standards South Africa
SMC   Study Management Committee
TMG   Table Mountain Group
TEP   The Environmental Partnership
UCT   University of Cape Town
UNITAR United Nations Institute for Training and Research
VEP   Vehicle Emissions Programme
VOCs  Volatile Organic Compounds
WESGRO Official Trade and Investment Promotion Agency for the Western Cape
The Environmental Evaluation Unit (EEU) is an independent, self-funded consulting, research and training unit based at the University of Cape Town. Founded in 1985, the EEU has established itself as a centre of excellence in the fields of integrated environmental management and sustainable development. The Occupational and Environmental Health Research Unit, located in the UCT School of Public Health and Family Medicine, is a principal centre of occupational and environmental health research, and supports, inter alia, multi-disciplinary public policy research which can be translated into teaching, training, service provision and outreach.

The United Nations Institute for Training and Research (UNITAR) was established in 1965 as an autonomous body within the United Nations with the purpose of enhancing the effectiveness of the United Nations through appropriate training and research. The Institute carries out a wide range of training programmes in the field of social and economic development, and supports research and knowledge management in support of sustainable capacity development in partner countries and institutions.