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Legal Mechanisms For Cooperative Governance In South Africa: Successes And Failures

South Africa's democracy is 10 years old. The Constitution of the Republic of South Africa, 1996 explicitly provides for cooperative governance between the different line functions and spheres of government. The new dispensation, however, inherited a fragmented bureaucracy, which divides government departments amongst the different environmental media (water, soil, environment, minerals etc.). The fragmentation of departments dealing with different elements of the environment resulted in fragmented application of environmental policies and legislation. Even 10 years into the new dispensation, these departments are still struggling to rid them of past practices of non-cooperation and turf wars.

The National Environmental Management Act of 1998 provides for integrated environmental management and prescribes certain sustainability principles that government should take into account in decision-making. The Department of Environmental Affairs and Tourism (DEAT) which is the responsible department for the enforcement of this Act, is however not regarded as a lead agent. Its role, vis-à-vis the other departments, is not clearly spelled out. The Act however provides for cooperation between government departments with the institution of a committee for environmental cooperation between departments and spheres of government involved in environmental issues. Several inter-ministerial committees on both national and provincial levels are sometimes also involved in addressing environmental issues. Despite these mechanisms, fragmentation still occurs and departments are taking responsibility for their own decision-making on matters regarding the environment. The Department of Minerals and Energy's (DME) legislation for example indicates a strong trend in monopolizing issues regarding the environment within their own departmental sphere, excluding the final decision-making from the other departments. The DEAT, on the other hand, is proposing legislation (for example biodiversity and environmental impact legislation) which will provide them again with a say in energy and mining issues pertaining to the environment. This tug of war is in contrast with the Constitutional mandate of cooperative governance. To prevent this, parliament has introduced a positive obligation on government departments to draft cooperative agreements, for example in the National Nuclear Regulator Act of 1999.

Although government departments do not always cooperate, applicants for development sometimes initiate informal gatherings to ensure cooperative governance in environmental matters creating new mechanisms to ensure the enforcement of environmental policies and legislation.

In this paper the different legal mechanisms creating opportunities for cooperative environmental governance in South Africa are investigated in the light of their successes and failures.