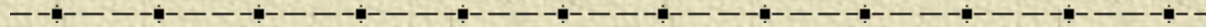


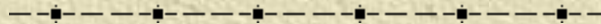


Climate Change Law and Policy

From a South African
Conservation Perspective



Climate Action Partnership



Assumptions (1)

✦ Global Climate Change:

- ✦ Natural and historical process;
- ✦ Definite warming trend;
- ✦ Anthropogenic emissions and sink destruction;
- ✦ Historically unprecedented GHG levels and rate of climate change;
- ✦ Unavoidable (in short term)

Assumptions (2)

✦ Mitigation:

- ◆ Source mitigation
- ◆ Sink mitigation

✦ Adaptation:

- ◆ Natural
- ◆ Engineered

Assumptions (3)

✦ Law

◆ Statutes

- Promulgated by parliament,
- Legally binding provisions,
- Enforceable

◆ Regulations

- Used to implement Statute,
- Promulgated by minister / MEC

Assumptions (4)

✦ Policy

- ◆ Papers,
- ◆ Strategies, and
- ◆ Plans

✦ Not legally enforceable

✦ Guides decision making and implementation

South African Government

Schedule 4 (Concurrent)		Schedule 5 (Exclusive)	
Part A	Part B	Part A	Part B
National	National		
Provincial	Provincial	Provincial	Provincial
	Local		Local
Indigenous Forests	Air Pollution	Provincial planning	
Agriculture	Municipal planning		
Disaster Management	Stormwater Management in built up areas		
Environment			
Nature Conservation			
Pollution Control			
Regional Planning and Development			

International Law and Policy

- ✦ UNFCCC – United Nations Framework Convention on Climate Change
- ✦ KP – Kyoto Protocol
- ✦ UNCCD - Elaboration of an International Convention to Combat Desertification in Countries Experiencing Serious Drought and / or Desertification, Particularly in Africa
- ✦ CDB - Convention on Biological Diversity

South African Law

- ✦ The Constitution of the Republic of South Africa
- ✦ National Environmental Management Act (NEMA)
- ✦ National Environment Management : Biodiversity Act (NEMBA)
 - ◆ National Biodiversity Framework 2008 (NBF)
- ✦ National Environment Management: Air Quality Act (NEMAQA)
- ✦ National Environmental Management: Protected Areas Act (NEMPAA)
- ✦ National Environmental Management: Integrated Coastal Management Act (NEMCMA)
- ✦ National Environmental Management: Waste Act (NEMWA)
- ✦ The National Water Act (NWA)
- ✦ National Forest Act (NFA)

South African Policy (1) – White Papers

- ✦ White Paper on Environmental Management Policy for South Africa, May 1998
- ✦ White Paper on the Energy Policy of the Republic of South Africa, December 1998
- ✦ White Paper on the Promotion of Renewable Energy and Clean Energy Development part one – Promotion of Renewable Energy, November 2003
- ✦ White Paper on Integrated Pollution Waste Management for South Africa, March 2000

South African Policy (2)

- ✦ Environmental Impact Assessments
- ✦ South African National Communication (ZAFNC01)
- ✦ National Framework for Sustainable Development in South Africa (NFSD)
- ✦ National Climate Change Response Strategy
- ✦ South African National Climate Change Plan
- ✦ Protected Area Expansion Strategy (NPAES)

South African Policy (3)

✦ PROVINCIAL POLICY

- ✦ Western Cape Climate Change Response Strategy and Action Plan

✦ LOCAL POLICY

- ✦ Durban
- ✦ Cape Town

Towards Copenhagen: AWG-KP

✦ CDM

- ◆ Include NAMAs
- ◆ Nuclear Power
- ◆ CO₂ Sequestration
- ◆ Co-benefits

✦ LULUCF

- ◆ to include, e.g. crop land management, wetlands, range management
- ◆ REDD

✦ NAMAs

- ◆ assist Parties not included in Annex I in undertaking NAMAs that produce a net mitigation benefit to the atmosphere, to promote cost-effective global mitigation through the use of markets, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3

Towards Copenhagen: AWG-LCA

✦ Enhanced Mitigation

- ◆ CDM
- ◆ REDD
- ◆ NAMA

✦ Enhanced Adaptation

- ◆ REDD+
- ◆ NAPA

✦ Enhanced Technology

✦ Enhanced Financing

Towards Copenhagen : South Africa

‘For South Africa, a successful outcome is one that is inclusive, fair and effective; that has a balance between ***adaptation and mitigation***, and a balance between ***development and climate*** imperatives. Success in Copenhagen should strengthen ***climate resilient development*** and must urgently assist the world’s poorest and most vulnerable to adapt.’ Official Statement, Dept of Environment, Sept 2009

Discussion

- ✦ Stabilisation through Mitigation
- ✦ Ecosystem Services
- ✦ Natural Adaptation
- ✦ CDM
- ✦ Adaptation v Mitigation
- ✦ South Africa's Predicament

Nature of Laws and Gaps

- ✦ Enabling not prescriptive
- ✦ Antiquated policies
- ✦ Lack of enforcement provisions
- ✦ Alien v Indigenous : NEMBA, NEMPAA, NFA
- ✦ Coastal Protection Zone: Narrow concept
- ✦ Afforestation as preferred mitigation method
- ✦ Conflicting definitions: NEMBA, NFA
- ✦ Fragmentation of responsibilities
- ✦ Lack of understanding : Local government
- ✦ New Policies / Strategies : Copenhagen, S.A.A.S.

Conclusion

✦ South Africa's Predicament

✦ Legal flaws: need to be addressed to make policy enforceable

✦ Positive Policy Developments:

- ◆ opportunity to contribute
- ◆ across all government levels
- ◆ Increasing global pressure to assist in mitigation and adaptation