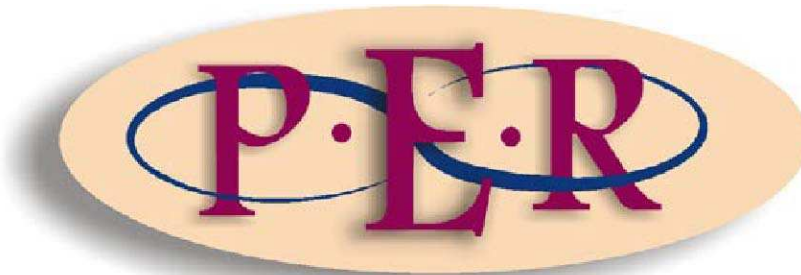


**THE GOOD, THE BAD AND THE UGLY: USING GOOD AND COOPERATIVE  
GOVERNANCE TO IMPROVE ENVIRONMENTAL GOVERNANCE OF SOUTH AFRICAN  
WORLD HERITAGE SITES: A CASE STUDY OF THE VREDEFORT DOME**

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**L Kotzé and S de la Harpe\***

**Summary**

South Africa became a signatory to and ratified the *World Heritage Convention*, 1972 (WHC) in 1997. It thereby voluntarily agreed to identify and conserve world heritage areas of universal value for the benefit of mankind. This article presents a case study of the Vredefort Dome, one of South Africa's World Heritage Sites (WHS) and specifically its governance strategies to ensure proper and sustainable governance. Firstly, the issue of fragmentation of the environmental governance regime applicable to WHS is discussed, and in doing so, refers to the various legislative and common law responsibilities and institutional structures related to environmental governance of WHS. Secondly, it briefly discusses the concept of good governance and the concept of cooperative governance as a sub-component of good governance. Finally it comprehensively proposes various strategies to ameliorate the current fragmented and unsustainable environmental governance effort relating to WHS.

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## 1 Introduction

South Africa became a signatory to and ratified the *World Heritage Convention*, 1972 (WHC) in 1997. It thereby voluntarily agreed to identify and conserve world heritage areas of universal value for the benefit of mankind. South Africa currently has eight world heritage sites (WHS) in its territory.<sup>1</sup> Governance of these sites is regulated in terms of an extensive legal framework, mainly consisting of environmental and incidental laws. The primary act is the World Heritage Convention Act (WHCA)<sup>2</sup> which incorporated the WHC into South African law. It provides for the recognition, establishment and management of WHS in South Africa.<sup>3</sup> Apart from the WHCA, there are a plethora of other acts directly or indirectly dealing with various aspects related to WHS.<sup>4</sup>

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1 These are: Fossil Humanid Sites of Sterkfontein, Kromdraai, Swartkrans and environment (Cradle of Humankind); Ukhahlamba Drakensberg Park; Mapungubwe Cultural Landscape; iSimangaliso Wetland Park (formerly known as Greater St Lucia Wetland Park); Robben Island, Cape Floral Kingdom, Vredefort Dome and the Richtersveld Botanical and Cultural Landscape.

2 *World Heritage Convention Act* 49 of 1999 (WHCA).

3 Various other acts and the common law principles are also applicable to WHS governance. See the discussion below.

4 In the Draft Integrated Management Plan (IMP) <http://www.vredefortdomewhs.co.za> 17 Apr at 9-11 the following acts were identified as being relevant to the land use and infrastructure planning of the Vredefort Dome WHS: *Constitution of the Republic of South Africa*, 1996; *Municipal Structures Act* 117 of 1998; *Restitution of Land Rights Act* 22 of 1994; *Interim Protection of Informal Rights Act* 76 of 1995; *Prevention of Illegal Eviction from Unlawful Occupation of Land Act* 19 of 1998; *Reconstruction and Development Programme Act* 79 of 1998; *Municipal Systems Act* 32 of 2000 and regulations on Municipal Planning and Performance, 2001 (Regulation R796); *Development Facilitation Act* 67 of 1995; *Subdivision of Agricultural Land Act* 70 of 1970; *Agricultural Resources Act* 43 of 1983; *Minerals Act* 50 of 1991; *Advertising on Roads and Ribbon Development Act* 21 of 1940; *Fencing Act* 31 of 1963; *Health Act* 63 of 1977; *National Building Regulations and Building Standards Act* 103 of 1977; *Urban Transport Act* 78 of 1977; *National Road Traffic Act* 93 of 1996; *National Veld and Forest Fire Act* 101 of 1998; *National Heritage Resources Act* 25 of 1999; *Land Transport Transition Act* 22 of 2000; *Water Act* 54 of 1956; *National Water Act* 36 of 1998; *Water Services Act* 108 of 1997; *Environment Conservation Act* 73 of 1989; *Physical Planning Act* 125 of 1991; *Less Formal Township Establishment Act* 113 of 1991; *Occupational Health and Safety Act* 85 of 1993; *Local Government Transition Act* 209 of 1993; *Housing Act* 107 of 1997; *National Land Transport Interim Arrangements Act* 45 of 1998; *National Environmental Management Act* 107 of 1998; *South African National Roads Agency Limited and National Roads Act* 7 of 1998; *World Heritage Convention Act* 49 of 1999; *Promotion of Access to Information Act* 2 of 2000; *Promotion of Administrative Justice Act* 3 of 2000; *National Transport Transition Act* 22 of 2000; *Municipal Finance Management Act* 56 of 2003; *National Environmental Management: Biodiversity Act* 10 of 2004; *National Environmental Management: Protected Areas Act* 57 of 2003; *Provincial Ordinance on Town Planning and Townships (Transvaal)* 15 of 1986; *Provincial Ordinance on Town Planning and Townships (Free State)* 9 of 1969; *Division of Land Ordinance (Transvaal)* Ordinance 20 of 1986; *Removal of Restrictions Act*

Numerous sustainability challenges, issues and considerations arise in WHS. Because of their uniqueness, scarceness, high tourism value, and perceptions regarding their aesthetic and economic value, developers often regard these sites as lucrative business opportunities and frequently embark on developments in, or adjacent to, a WHS in an effort to exploit the financial opportunities these sites offer. These developments vary and may be in the form of golfing, housing and country estates or eco-estates, and high density tourist attractions such as conference facilities. A further concern which threatens WHS is the influence of incorrect developments outside the WHS. WHS cannot be isolated from the influences from outside. This is particularly the case where the WHS might form part of a larger ecosystem. The pollution of, for instance, a river, or incorrect development upstream from a WHS may detrimentally affect it.<sup>5</sup> An example is where urbanisation directly adjacent to the Cradle of Humankind pollutes the dolomitic underground water and threatens the caves in the WHS.<sup>6</sup> A development or activity outside of a WHS, which on the face of it complies with all legal requirements, may pose a threat to such a WHS and compromise the state's obligations under the WHC, WHCA and other acts.<sup>7</sup> This makes the proper governance<sup>7</sup> of WHS more complicated and involves more parties and authorities in the environmental governance (EG) process.<sup>8</sup> Despite these threats, development and an increase in tourism are usually supported by arguments that it would improve the socio-economic conditions prevailing in the particular area by, *inter alia*, creating jobs, contributing to eco-tourism, capacity building and poverty alleviation.<sup>9</sup>

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84 of 1967; and *Local Government Ordinance (Free State) Ordinance 8 of 1962*. During 2007 the Department of Environmental Affairs Free State province contracted the firm of consultants, Ages (Pty) Ltd, to compile a draft IMP for the Vredefort Dome WHS. This Draft IMP has not yet been accepted in terms of s 25 of the WHCA.

5 Draft IMP *Biodiversity Management Plan* <http://www.vredefortdomewhs.co.za/> 17 Jul at 39. African EPA <http://www.vredefortdomewhs.co.za/> 17 Apr at 11-13.

6 See in this regard the work done by the IUCN Karst Working Group in South Africa which was established in 2004. The Cradle of Humankind is one of its pilot projects. Details of Karst and its work at Karst [http://www.iucnsa.org.za/our\\_work/initiatives/karst.htm](http://www.iucnsa.org.za/our_work/initiatives/karst.htm) 11 Jul.

7 African EPA <http://www.vredefortdomewhs.co.za/> 17 Apr. See in general Courrier (ed) *Global Biodiversity Strategy* 117-132; Miller *Balancing the Scales*.

8 The threat of development to the integrity of WHS is not confined to South Africa. From the overview and analysis of three decades of the implementation of the WHC by UNESCO, it appears that from 1972 up to 2004, 175 WHS were reported to UNESCO as threatened by development pressures. See Labadi (ed) *World Heritage* 184.

9 See Draft IMP *supra* n 8 at 62.

We do not question the merits of these arguments or the supposed validity of these benefits. The concern is that these developments very often can and do affect the integrity of a WHS.<sup>10</sup> It is often not sustainable and usually constitutes over-exploitation of the site and its resources. Threats to WHS are varied and real.<sup>11</sup> If unchecked, development can ultimately lead to the delisting of the WHS. At present approximately 30 WHS are, in terms of article 11(4) of the WHC, on the List of World Heritage Sites in Danger.<sup>12</sup> For example, in 2004 the Cologne Cathedral in Germany was listed because of plans to erect several high rise buildings on the bank of the Rhine river. It has since been removed from the list.<sup>13</sup> During 2006, the Dresden Elbe Valley in Germany was listed because of plans to build a bridge in the WHS which could seriously impact on the integrity of the site.<sup>14</sup> In 2007 the Galapagos Islands in Ecuador was also listed because of the threat of invasive species, immigration and growing tourism.<sup>15</sup> Delisting of a WHS, even though being a logical international legal consequence due to governance inefficiencies, is contrary to the very spirit and aims of protecting (and listing) it in the first place and should therefore be avoided at all costs.<sup>16</sup>

Apart from these obvious threats arising from human activities, various legal challenges also arise. The numerous laws governing WHS have the effect that interested and affected parties involved in the use and governance of WHS, do

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10 Draft IMP *supra* n 8 at 39-40. See WHE <http://www.whc.unesco.org/> 15 Apr. In its investigation to determine whether the Vredefort Dome should be included on the World Heritage List, the threats identified by UNESCO were theft and vandalism of certain features of the site, uncoordinated and unsupervised tourism access, and urbanisation of parts of the area.

11 The threats vary from natural disasters to man induced threats including inappropriate or bad management. For the list of the WHS in danger and the reasons therefore, see UNESCO <http://whc.unesco.org/en/danger/> 15 Apr.

12 See UNESCO <http://whc.unesco.org/en/danger/> 15 Apr.

13 See UNESCO <http://whc.unesco.org/en/news/71> 15 Apr.

14 See UNESCO <http://whc.unesco.org/en/list/1156> 15 Apr.

15 See UNESCO <http://whc.unesco.org/en/news/357> 15 Apr. The threats to a WHS can vary from natural disasters to man made threats like war.

16 The question of threats to protected areas, in particular forests, has also been the subject of an international workshop on Management Effectiveness of Protected Areas co-hosted by the IUCN WWF and the World Bank during June 1999. It was stated that protected areas are increasingly under threat from illegal activities such as poaching and logging, changes in national legislation, lack of management capacity and incursions by human populations. IUCN <http://cmsdata.iucn.org/> 15 Apr.

not always know, appreciate or fully understand the legal framework and institutional structures and processes governing these sites.<sup>17</sup> The EG framework relating to WHS is often ambiguous, uncertain, fragmented, time-consuming and expensive. This creates the opportunity for illegal developments, uninformed decisions by authorities, uncoordinated and opposing decisions by authorities, the unsustainable use of the particular WHS, and ultimately, massive environmental degradation because of these 'bad governance' practices.<sup>18</sup>

It goes without saying that there is a legal and moral obligation on South Africa properly to govern its WHS and properly to address all threats and governance inefficiencies which may adversely affect these sites. This obligation should be discharged within the parameters set by EG. There is, as yet, no universally accepted definition of EG. One definition explains it from a legal perspective as:

A management process executed by institutions and individuals in the public and private sector to holistically regulate human activities and the effects of human activities on the total environment (including all environmental media, and biological, chemical, aesthetic and socio-economic processes and conditions) at international, regional, national and local levels; by means of formal and informal institutions, processes and mechanisms embedded in and mandated by law, so as to promote the common present and future interests human-beings hold in the environment.<sup>19</sup>

What clearly arises from this definition is the obligation on government and the public to adopt appropriate laws and to utilise these laws to regulate the effects of human activities on the environment. Proper governance therefore requires a sound integrated legal framework which ultimately mandates sustainable EG efforts. A sound integrated legal framework, however, is not enough. Laws should also be adequately implemented and enforced to ensure sustainable use. Current experience with governance of WHS, as explained above,

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17 Draft IMP *supra* n 8 at 70.

18 See Draft IMP *supra* n 8 at 69-71, table 3.3, where the known illegal developments are listed and at 34 where it is concluded that the policy, legislative and guideline framework applicable to land use and infrastructure management within the VDWHS area is complicated, fragmented and uncoordinated.

19 Kotzé Environmental Governance Perspectives.

suggests that this is not the case. Plainly put: governance of WHS currently is 'bad', and should be transformed by means of good governance practices before its turns 'ugly'.

The concept of good governance (GG) is coming to the fore as one of the preferred generic governance strategies to ensure proper and sustainable governance, and may be equally useful to address governance inefficiencies relating to WHS. GG emphasises, amongst other things, the need for coherence, legal certainty, accountability and a holistic approach to governance. The main focus of this article is the fragmented legal framework pertaining to WHS. We consequently argue that cooperative governance as an element of GG, and alongside the principles and practices of GG, be utilised in the South African context to address the current fragmented EG regime in relation to WHS. The hypothesis is that this should lead to a more sustainable EG effort of WHS.

Generally, we illustrate this hypothesis by means of a legal analysis of the current EG framework relating to WHS and we employ the Vredefort Dome as a case study to illustrate current governance inefficiencies. We confine ourselves to a discussion of the legal challenges arising from the fragmented EG framework currently governing the Vredefort Dome and specifically focus on the challenges arising from the fragmented legal framework. We employ the Vredefort Dome as an example since many governance issues discussed above are prevalent in this particular site. The Vredefort Dome was inscribed in July 2005 by UNESCO as South Africa's seventh World Heritage Site. It is considered the oldest, largest and most deeply eroded complex meteorite impact site on earth.<sup>20</sup> It straddles two provinces and falls within the jurisdiction of two provincial governments,<sup>21</sup> two district municipalities<sup>22</sup> and three local municipalities.<sup>23</sup> It is predominantly a farming area and the land is almost

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20 UNESCO <http://whc.unesco.org/en/decisions/466> 17 Jul.

21 North West and Free State Provinces.

22 Fizele Dabi District Municipality in the Free State and Southern District Local Municipality in North-West province.

23 Ngwathe Local Municipality, Moqhaka Local Municipality and Potchefstroom Local

exclusively owned by private individuals.<sup>24</sup> Governance of the Vredefort Dome therefore poses unique challenges which need to be addressed in order to fulfil the obligations imposed by the WHC.<sup>25</sup>

In light of the foregoing, this article, more specifically and in this order:

- Discusses the issue of fragmentation of the environmental governance regime applicable to WHS, and in doing so, refers to the various legislative and common law responsibilities and institutional structures related to EG of WHS;
- Briefly discusses the concept of GG;
- Briefly discusses the concept of cooperative governance as a sub-component of GG; and
- Comprehensively proposes various strategies to ameliorate the current fragmented and unsustainable EG effort relating to WHS.

## 2 Legal framework

The legal framework dealing with environmental governance relating to WHS is fragmented, discontinuous and issue specific. No integrated legal instrument or authority exists which has as its primary objective regulating governance of these sites in an integrated and streamlined manner. Glazewski<sup>26</sup> reiterates this point by stating that:

The sources of law providing for formal protected areas are also many and varied and include international conventions...as well as national and provincial statutes, local authority by laws and both state and private contractual agreements.

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Municipality.

24 Draft IMP *Land Use* <http://www.vredefortdomewhs.co.za/> 17 Jul at 22-25.

25 Part of the resolutions was that the South African government, within two years of its inscription, completes and starts to implement a management plan for the site. As at the end of 2007 no management plan is in place and no permanent management authority has been appointed. A draft integrated management plan has, however, been formulated which still has to be accepted by the Minister of Environmental Affairs and Tourism in terms of s 25 of the WHCA.

26 Glazewski *Environmental Law* 325.



This fragmented legal framework causes serious overlap and duplication which leads to an expensive and time consuming EG effort. There are various authorities and processes set up in terms of the complex legal framework which only exacerbates legal uncertainty and unsustainable governance practices. This fragmented legal framework is, however, not unique to this specific sector of environmental governance. It is indeed ubiquitous in the entire EG regime in South Africa which is silo-based and divided into certain EG sub-categories, including, *inter alia*: land use management; pollution control; water resources protection; air quality management; soil protection; natural resources management, including biodiversity, genetically modified organisms, and protected areas; and various provincial laws and by laws.<sup>27</sup> Subsequent paragraphs illustrate the extent to which this legal framework is fragmented by discussing some of the principal framework acts, sectoral acts, provincial and local acts and common law principles which may be directly or indirectly applicable to EG in WHS.<sup>28</sup> It should be noted from the outset that the sheer volume of laws precludes a comprehensive discussion which addresses all legal aspects. This article only aims to highlight some of the most pertinent laws dealing with certain governance issues in WHS.

## **2.1 International law and the WHCA**

The WHC was adopted on 16 November 1972 at the 17<sup>th</sup> meeting of the United Nations Educational, Scientific and Cultural Organisation (UNESCO).<sup>29</sup> It is noted in the Preamble to the Convention that the cultural and natural heritage of the world are increasingly threatened by destruction, not only by the traditional causes of decay, but also by changing social and economic conditions and patterns which aggravate the situation with even more formidable consequences of damage or destruction. It considers that the deterioration or disappearance of any item of cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the

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27 See, generally, Kotzé *Legal Framework*.

28 Note that the following survey only identifies the relevant acts and some of the provisions. A detailed description is not given due to space constraints and focus considerations.

29 See UNESCO <http://portal.unesco.org/> 15 Apr.

world. Parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole. It is incumbent on the international community to participate in the protection of the cultural and natural heritage of outstanding universal value.

By ratifying the WHC, South Africa undertook under international law to fulfil the convention's obligations. These obligations include, *inter alia*, the duty to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated in its territory. South Africa must do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation (in particular, financial, artistic, scientific and technical), which it may be able to obtain.<sup>30</sup> It must ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory. To this end it must take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.<sup>31</sup> These measures, broadly speaking, all relate to the obligation and mandate to govern as postulated by the EG concept defined above. The convention does not prescribe how Member States should fulfil their obligations. It is left to the individual states to determine how it will ensure that it complies with the convention. It is clear from these provisions that there is an obligation on South Africa to 'govern' WHS to the best of its ability. Being part of the 'environment',<sup>32</sup> WHS would necessarily be governed by means of EG as defined above.

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30 Art 4.

31 Art 5.

32 A plain reading of the definition of 'environment' in the *National Environmental Management Act 107 of 1998* makes it clear that WHS are part of the environment. S 1 of the act states that 'environment' includes:

...the surroundings within which humans exist and that are made up of –

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

The World Heritage Convention Act<sup>33</sup> recognises that cultural heritage and natural heritage are among the priceless and irreplaceable possessions, not only of the country, but of humankind as a whole. It acknowledges that the loss, through deterioration, disappearance or damage through inappropriate development, constitutes an impoverishment of the heritage of all the peoples of the world and, in particular, the people of South Africa.<sup>34</sup> The primary objective of the act is to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage in South African territory.<sup>35</sup> The act also provides for the incorporation of the WHC into South African law;<sup>36</sup> enforcement and implementation of the WHC in South Africa;<sup>37</sup> recognition and establishment of WHS;<sup>38</sup> establishment of authorities and granting of additional powers to existing organs of state;<sup>39</sup> the powers and duties of such authorities, especially those safeguarding the integrity of WHS;<sup>40</sup> the establishment of boards and executive staff components of authorities;<sup>41</sup> integrated management plans for WHS; land matters in relation to WHS;<sup>42</sup> and financial, auditing and reporting controls over the authorities.<sup>43</sup> The act further provides that regulations may be issued to attain the objectives of the act.<sup>44</sup>

The most important aspects for present purposes are the provisions relating to the governance of WHS. For each WHS a management authority must be established.<sup>45</sup> Either an existing organ of state, such as a state department,

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33 WHCA *supra* n 2.

34 Preamble.

35 S 3.

36 S 2, which reads: "The Convention is enacted into law in the Republic." The WHC is attached as a schedule to the act.

37 Ch 1.

38 S 6.

39 Ch II and III.

40 S 13.

41 Ch III.

42 Ch V.

43 Ch IV.

44 S 44.

45 S 7.

may be declared the management authority,<sup>46</sup> or a new authority may be established.<sup>47</sup> Such new authority will also be an organ of state.<sup>48</sup> In South Africa the management authorities of all WHS, save the iSimangaliso Wetland Park, are existing organs of state. In the case of iSimangaliso a new management authority, not being an existing organ of state, was established in terms of section 9 of the WHCA.<sup>49</sup> A management authority for the Vredefort Dome has not yet been established. At present the interim management is executed by existing state organs.<sup>50</sup> The powers and duties of such an authority, which enables it to govern the site on a day to day basis, are set out in the act.<sup>51</sup> All governance activities must primarily be executed in terms of an Integrated Management Plan (IMP) as per the act.<sup>52</sup>

Although the Vredefort Dome was listed during July 2005, in terms of the WHC, by the World Heritage Committee as a WHS, it has not yet been declared as such in terms of the WHCA. When it was so listed, the South African government was requested to compile an IMP for the Vredefort Dome and to implement same within two years of its inscription.<sup>53</sup> It is already three years later and this has not been done. This of course creates intolerable problems with regard to the governance of the Dome. On the one hand it is listed as a WHS in terms of the WHC but not declared as one in terms of South African law. The national legislation applicable to WHS is not applicable to the Vredefort Dome until it is declared as a WHS in terms of the WHCA. Also on local government level, the Vredefort Dome is not specifically provided for in the Spatial Development Frameworks, the Integrated Development Plans and the Land Use Management Schemes of the relevant Local Authorities.<sup>54</sup>

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46 S 8.

47 S 9.

48 S 239 of the *Constitution of the Republic of South Africa*, 1996. (Hereafter, the 'Constitution'.)

49 GN R1193 in GG 21779 of 24 November 2000. This new management authority is also an organ of state albeit a newly created one.

50 WHE <http://www.whc.unesco.org/> 15 Apr.

51 S 13, 15 and 19.

52 Ch IV.

53 UNESCO <http://whc.unesco.org/en/decisions/466> 17 Jul.

54 Draft IMP *supra* n 8 at 37.

## 2.2 *Protected areas*

Another statute which specifically relates to WHS is the National Environmental Management: Protected Areas Act (NEM:PAA).<sup>55</sup> A WHS is a protected area for purposes of this act.<sup>56</sup> The objectives of NEM:PAA are to provide, within the framework of national legislation, including the National Environmental Management Act (NEMA),<sup>57</sup> for the declaration and management of protected areas; to provide for cooperative governance in the declaration and management of protected areas; to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity; to provide for a representative network of protected areas on state land, private land and communal land; to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas; and to promote participation of local communities in the management of protected areas.<sup>58</sup>

This act binds all organs of state, including management authorities of a WHS.<sup>59</sup> The act must furthermore be interpreted and applied in accordance with the national environmental management principles and be read with the applicable provisions of NEMA.<sup>60</sup> The resolution of conflicts arising from the implementation of this act must be done in terms of chapter 4 of NEMA. The act must also, in relation to any protected area, be read, interpreted and applied in conjunction with the National Environmental Management: Biodiversity Act (NEM:BA).<sup>61</sup>

In the event of any conflict between a section of NEM:PAA and other national legislation, NEM:PAA prevails if the conflict specifically concerns the management or development of protected areas. In the case of provincial

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55 *National Environmental Management: Protected Areas Act* 57 of 2003.

56 S 1.

57 *National Environmental Management Act* 107 of 1998.

58 S 2.

59 S 4.

60 S 5. NEMA is the principal act in South Africa that provides for cooperative environmental governance. See par 2.8 below for further discussion.

61 *National Environmental Management: Biodiversity Act* 10 of 200, s 6.

legislation, the conflict must be resolved in terms of section 146 of the *Constitution of the Republic of South Africa, 1996* (Constitution). Where there is conflict between a municipal by law and the act, the act prevails. In the event of any conflict between subordinate legislation issued in terms of the act and an act of Parliament, the act of Parliament prevails. In the case of provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and where a municipal by law is concerned, the subordinate legislation issued in terms of NEM:PAA prevails.<sup>62</sup>

The minister may prescribe norms and standards for the achievement of any of the objectives of NEM:PAA, including the management and development of a WHS; indicators to measure compliance with those norms and standards; and the requirement for the management authorities of such a WHS to report on these indicators to the minister.<sup>63</sup> During 2005, the minister promulgated regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites.<sup>64</sup> The regulations provide for a protected areas register,<sup>65</sup> biodiversity management and conservation,<sup>66</sup> use of biological resources,<sup>67</sup> access,<sup>68</sup> commercial activities,<sup>69</sup> use of water areas, land and airspace,<sup>70</sup> community-based natural resource utilisation,<sup>71</sup> prohibition or restriction of activities having an adverse effect,<sup>72</sup> prohibition or restriction of the use of biological resources,<sup>73</sup> prohibition or restriction of land use,<sup>74</sup> advisory committees,<sup>75</sup> norms and standards,<sup>76</sup> bioprospecting,<sup>77</sup> as well as the

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62 S 7. S 146 of the Constitution applies to a conflict between national legislation and provincial legislation falling within a functional area listed in sch 4. In terms of subs (2)(c)(vi) national legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if the national legislation is necessary for the protection of the environment.

63 S 11.

64 GN R1061 in GG 28181 of 28 October 2005.

65 Ch 2.

66 Ch 3 part 1.

67 Ch 3 part 2.

68 Ch 3 part 4.

69 Ch 3 part 5.

70 Ch 3 part 6.

71 Ch 3 part 7.

72 Ch 4 part 1.

73 Ch 4 part 2.

74 Ch 4 part 3.

75 Ch 5.

imposition of fines and penalties within a WHS.<sup>78</sup> These regulations may be regarded as the principal mechanism for regulating EG in WHS.

One of the main challenges with regard to the regulations is that they were apparently designed with protected areas, including WHS, that are state owned in mind. Approximately 89% of the land in the Vredefort Dome is privately owned.<sup>79</sup> It comprises of 798 private properties.<sup>80</sup> The effect hereof is that many of the regulations are not applicable to the Vredefort Dome or will be difficult or impractical to enforce. To give but one example: regulation 13(1)(a) provides that no one may stay overnight in a protected area without the permission of the Management Authority. This regulation was clearly meant for a protected area such as a game reserve and not for privately owned property.<sup>81</sup>

### **2.3 Water resources and waste management**

Water resources in WHS are regulated by various acts. In terms of the National Water Act (NWA)<sup>82</sup> a water use license is required in terms of section 21 before certain specified uses of water may commence.<sup>83</sup> A prospective applicant may also be required to conduct an environmental impact assessment (EIA) in terms of chapter 5 of NEMA where a water-related activity is concerned.<sup>84</sup> In the absence of an integrated and dedicated act governing wetlands, the NWA is also applicable to governance of South African wetlands (which may occur in WHS) as defined by the NWA in section 1(1).<sup>85</sup> Where a township is situated in

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76 Ch 6.

77 Ch 7.

78 Ch 8.

79 Draft IMP *supra* n 8 at 63.

80 *Ibid* 27.

81 See in particular reg 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 30(g), 30(h), 31, 32, 39, 43(a), 43(h), 43(i), 43(j), 44, 45 and 49 which creates similar problems.

82 *National Water Act* 36 of 1998.

83 See for a detailed discussion on the different uses of water and authorisation requirements for these uses, Thompson *Water Law* 417-447.

84 See also s 110(1) of the NWA that requires an EIA for construction of a water work. Town planning legislation will of course also be relevant in this regard. This article only focuses on environmental legislation due to focus and space constraints.

85 A 'wetland' is defined by the NWA as: "...land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil."

or near a WHS, town planners and local authorities must also take note that no person may establish a township unless the layout plan shows the line indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.<sup>86</sup> Dams occurring in WHS which may pose safety risks are also required to be registered in terms of chapter 12 of the act. The provisions of the Water Services Act (WSA)<sup>87</sup> will also be applicable so far as water institutions are required to obtain permission from the relevant authorities before providing water services in a WHS.<sup>88</sup> The *Mountain Catchment Areas Act* 63 of 1970 is furthermore applicable to land management issues in mountain catchment areas, also those situated in WHS.<sup>89</sup>

In the Vredefort Dome the Vaal River poses a particular problem. The pollution of the Vaal River was identified by the International Union for Conservation of Nature and Natural Resources (IUCN) as one of the aspects that require special management attention.<sup>90</sup> Also in the Draft Integrated Management Plan the issue of the pollution of the Vaal River, in particular upstream of the Dome, was identified as of particular concern. The poor state of sewage plants at the towns of Vredefort and Parys, seepage from septic tanks close to the river, and illegal sewage discharges into the river were highlighted. Although the main polluters are situated outside the WHS catchment area, their activities influence the Dome environment.<sup>91</sup>

## 2.4 Air quality

Air quality in WHS is regulated by at least two acts. The Atmospheric Pollution Prevention Act (APPA)<sup>92</sup> has for many years been the central act responsible

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86 S 144.

87 *Water Services Act* 108 of 1997.

88 The objectives of the act include, *ia*: to provide for the rights of access to basic water supply and basic sanitation; to provide for the setting of national standards and of norms and standards for tariffs; to provide for water services development plans; and to provide a regulatory framework for water services institutions and water services intermediaries. See the Preamble.

89 The act aims to provide, *ia*, for the conservation, use, management and control of land situated in mountain catchment areas. See the Preamble.

90 WHE <http://www.whc.unesco.org/> 15 Apr.

91 Draft IMP *Waste Management* <http://www.vredefortdomewhs.co.za/> 17 Jul at 15.

92 *Atmospheric Pollution Prevention Act* 45 of 1965.



for air quality management in South Africa and covered, amongst others, control of noxious and offensive gasses,<sup>93</sup> smoke pollution,<sup>94</sup> dust pollution,<sup>95</sup> and vehicular emissions.<sup>96</sup> APPA has, however, recently been replaced by the National Environmental Management: Air Quality Act (NEM:AQA).<sup>97</sup> The NEM:AQA provides for, amongst others, ambient and air quality standards,<sup>98</sup> licensing of certain activities,<sup>99</sup> and EIAs,<sup>100</sup> which may all be applicable to prospective applicants and authorities in WHS. Although the NEM:AQA replaced APPA, it should be noted that some of the provisions of the latter act will remain in force until further notice in the *Government Gazette*. Apart from national legislation, air quality is furthermore regulated by various provincial ordinances and local authority by laws, especially those relating to odour, dust and vehicle emissions.<sup>101</sup> The common law will also be applicable as far as air pollution activities may be regarded as a nuisance.<sup>102</sup>

The Vredefort Dome as such does not have major polluters that affect air quality. It is, however, threatened by the nearby Vaal Triangle, in particular, specific industries such as the iron and steel, chemical, ferro-alloy industries, power generation (Lethabo), brickworks, boiler and incinerator operations, petrochemical industry (SASOL) and crude oil refinery (NATREF).<sup>103</sup>

## **2.5 Land use management**

The fragmented legal framework regulating land use in WHS may be especially cumbersome and confusing. Land use lies at the core of some of the most contentious issues surrounding development initiatives in WHS. The current land use and planning framework is to a large extent fragmented and

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93 S 8-13.

94 S 14-20.

95 S 27.

96 S 39.

97 *National Environmental Management: Air Quality Act* 39 of 2004.

98 S 9.

99 S 21-22.

100 S 30 read with s 24 of NEMA.

101 Glazewski *supra* n 26 at 591-604.

102 See the discussion at 2.11 below.

103 Draft IMP *Air Quality Management* <http://www.vredefortdomewhs.co.za/> 17 Jul at 9.

incoherent. This point has been reiterated in the High Court of South Africa, where it was stated that:

The present application illustrates that the statutory framework regulating town planning and building regulations in its present form is fragmented and cumbersome in the extreme... It requires a vast bureaucratic machine to administer all these provisions... The system also frequently ... gives rise to conflicting and inconsistent decisions taken by different functionaries, officials and organs at different levels of local and provincial government. It would be of great assistance to everyone involved in the process ... if the administrative machinery required to regulate these matters could be consolidated, simplified and streamlined.<sup>104</sup>

Land use (excluding environmental issues), is currently regulated by various separate, yet inter-related acts including, *inter alia*: the Physical Planning Act,<sup>105</sup> the Conservation of Agricultural Resources Act,<sup>106</sup> the Mountain Catchment Areas Act,<sup>107</sup> the Development Facilitation Act,<sup>108</sup> the Local Government Transition Act,<sup>109</sup> the Local Government Municipal Structures Act,<sup>110</sup> the Communal Property Associations Act,<sup>111</sup> and the Restitution of Land Rights Act.<sup>112</sup> Other Acts which may also be applicable include: the Provision of Land and Assistance Act,<sup>113</sup> the Interim Protection of Informal Land Rights Act,<sup>114</sup> the Extension of Security of Tenure Act,<sup>115</sup> the Prevention of Illegal Eviction from Unlawful Occupation of Land Act,<sup>116</sup> the NEMA, the NWA, the Marine Living Resources Act,<sup>117</sup> the National Forests Act,<sup>118</sup> and the National Veld and Forest Fire Act.<sup>119</sup> Apart from these national acts, land use and

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104 *Camps Bay Ratepayers and Residents Association v The Minister of Planning, Culture and Administration (Western Cape)* 2001 4 SA 301 (CPD).

105 *Physical Planning Act* 125 of 1991.

106 *Conservation of Agricultural Resources Act* 43 of 1983.

107 *Mountain Catchment Areas Act* 63 of 1970.

108 *Development Facilitation Act* 15 of 1994.

109 *Local Government Transition Act* 209 of 1993.

110 *Local Government Municipal Structures Act* 117 of 1998.

111 *Communal Property Associations Act* 28 of 1996.

112 *Restitution of Land Rights Act* 22 of 1994.

113 *Provision of Land and Assistance Act* 126 of 1993.

114 *Interim Protection of Informal Land Rights Act* 31 of 1996.

115 *Extension of Security of Tenure Act* 62 of 1997.

116 *Prevention of Illegal Eviction from an Unlawful Occupation of Land Act* 19 of 1998.

117 *Marine Living Resources Act* 18 of 1998.

118 *National Forests Act* 84 of 1998.

119 *National Veld and Forest Fire Act* 101 of 1998.

planning are furthermore regulated by a vast number of provincial ordinances and laws.<sup>120</sup> All of these laws will be applicable to any land use development in WHS.

The land use challenges are exacerbated in the Vredefort Dome in that the Dome has not formerly been declared a WHS yet, there is no proper zoning for land use, and local governments at this stage do not provide for special land use for the area in their Integrated Development Plans, Spatial Development Frameworks or Land Use Management Schemes.<sup>121</sup> Moreover, there is no IMP that can inform any planning. The Draft IMP relating to land use and Infrastructure already comprises 164 pages. To this must be added any future policies and regulations issued by local government in terms of their respective Integrated Development Plans and Spatial Development Frameworks and Land Use Management Schemes. It will be extremely difficult for any person not knowledgeable in this field to understand, integrate and apply the legal requirements and guidelines contained in the aforementioned.

## **2.6 Biodiversity**

Biodiversity conservation is often one of the primary considerations in governance initiatives concerning WHS, since these sites are usually situated in biodiversity rich and sensitive areas. One such example is the Western Cape floristic region which is described as one of the world's six plant kingdoms and has subsequently been inscribed as a WHS in 2003 in terms of the WHCA. NEM:BA is (or at least should be) the primary act responsible for biodiversity management in South Africa. The act contains various provisions and mechanisms which may be applicable to governance activities in WHS. These include, *inter alia*: biodiversity planning and monitoring by way of planning instruments which must also be aligned with environmental implementation and management plans in terms of NEMA and any subsequent integrated development plans (IDPs).<sup>122</sup> These planning and monitoring instruments

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120 For a detailed discussion see generally, Scheepers *Practical guide*.

121 Draft IMP *supra* n 8 at 37.

122 See ch 3 (despite the various instruments, this allows for some commendable degree of

include: a national biodiversity framework;<sup>123</sup> bioregions and bioregional plans;<sup>124</sup> and biodiversity management plans.<sup>125</sup> Chapter 4 deals with threatened or protected ecosystems and species and may require, amongst others, an EIA,<sup>126</sup> a permit for any activity relating to a listed activity, and trade in listed threatened or protected species. Whilst chapter 5 requires permits with regard to activities relating to species and organisms posing potential threats to biodiversity, chapter 6 requires a permit before engaging in bioprospecting. Other acts that may be applicable to biodiversity regulation in WHS include: NEMA, the National Forests Act,<sup>127</sup> the Genetically Modified Organisms Act,<sup>128</sup> the Conservation of Agriculture Resources Act,<sup>129</sup> the Plant Breeders' Rights Act,<sup>130</sup> the Plant Improvement Act,<sup>131</sup> the Animal Improvement Act,<sup>132</sup> the Agricultural Pests Act,<sup>133</sup> the Foodstuffs, Cosmetics and Disinfectants Act,<sup>134</sup> and of course all acts dealing with protected areas and WHS. It is thus clear that despite the intention of the NEM:BA of serving as a centralised and integrated act dealing with biodiversity, this is certainly not the case given the fragmented legal framework applicable to the various facets of biodiversity conservation in WHS.

Little research has been done on the biodiversity aspects of the Vredefort Dome which in itself gives rise to governance uncertainties. The grassland plant communities are of specific concern. These include the Carletonville Dolomite Grassland (CDG), Rand Highveld Grassland (RHG) and the Vredefort Dome Granitic Grassland (VDGG). The RHG and the VDGG are considered

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alignment with some of the primary mechanisms of cooperative governance provided for by NEMA).

123 S 38.

124 S 40.

125 S 43.

126 Read with s 24 of NEMA.

127 *Supra* n 118.

128 *Genetically Modified Organisms Act* 15 of 1997.

129 *Conservation of Agricultural Resources Act* 43 of 1983.

130 *Plant Breeders' Rights Act* 15 of 1976.

131 *Plant Improvement Act* 53 of 1976.

132 *Animal Improvement Act* 62 of 1998.

133 *Agricultural Pests Act* 36 of 1983.

134 *Foodstuffs, Cosmetics and Disinfectants Act* 54 of 1972.

endangered and the CDG is considered vulnerable.<sup>135</sup> Many red data species occur in the Vredefort Dome but, save for broad generalisations, little is said in the Draft IMP with regard to the proper management of biodiversity.<sup>136</sup> The fact that most of the land is at present used for agricultural purposes, the presence of many alien invasive vegetation, the threat of pollution to the Vaal River and the fish life, especially Yellow fish, the problem of veldfires, the threats posed by an increase in tourism and development itself, are all factors that need to be properly governed.<sup>137</sup>

## **2.7 Mining legislation**

The Mineral and Petroleum Resources Development Act (MPRDA)<sup>138</sup> is the primary act responsible for regulating mining activities in South Africa. Mining is not allowed in WHS in terms of section 48(1)(c) of the NEM:PAA.<sup>139</sup> There may, however, be extraordinary circumstances where mining activities are allowed, in which instance numerous provisions of the MPRDA will be applicable. These include, amongst others: provisions on EIA and accompanying environmental management plans and programmes;<sup>140</sup> prospecting, reconnaissance and retention permits, mining rights and permits and provisions relating to mine closure and rehabilitation.<sup>141</sup> Other acts which may also be applicable to mining activities include, amongst others: NEMA, the NEM:BA so far as mining in national parks is concerned, the NWA, the WSA,<sup>142</sup> NEM:AQA, and the Mine Health and Safety Act.<sup>143</sup>

One of the principal considerations for declaring the Vredefort Dome a WHS, was its geological features. The area is a potentially lucrative site for gold mining, granite and sand mining. A few small exploited and unrehabilitated gold

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135 Draft IMP *Biodiversity Management Plan* <http://www.vredefortdomewhs.co.za/> 17 Jul at 4-5.

136 *Ibid* at 5.

137 *Ibid* at 39-46.

138 *Mineral and Petroleum Resources Development Act* 28 of 2002.

139 *National Environmental Management: Protected Areas Act* 57 of 2003.

140 S 39 read with s 24 of NEMA.

141 This must be read with S 28 and 19 of NEMA and NWA respectively that also deal with pollution prevention and remediation.

142 *Water Services Act* 108 of 1997.

143 *Mine Health and Safety Act* 29 of 1996.

and granite mines occur in the area. Borrow pits for road construction, which likewise have not been rehabilitated, exist and a few sand mines are still operative. The need for development and upgrading of the roads in the area will increase the need therefor. Sample-taking of the geological features of the site is at present being done indiscriminately.<sup>144</sup>

## **2.8 NEMA as framework legislation**

NEMA as environmental framework legislation (EFL) will be applicable in its entirety to the governance of WHS since EFL aims to define overarching principles, procedures and institutions for the broader EG effort in South Africa which are also applicable to all the various sectors, including WHS.<sup>145</sup> These include all the provisions of NEMA relating, amongst others, to: the principles of sustainability;<sup>146</sup> institutions created under NEMA such as the National Environmental Advisory Forum and the Committee for Environmental Coordination;<sup>147</sup> procedures for cooperative governance;<sup>148</sup> fair decision-making and conflict management;<sup>149</sup> provisions on EIA;<sup>150</sup> international obligations and agreements;<sup>151</sup> compliance and enforcement measures;<sup>152</sup> and environmental management co-operation agreements (EMCAs).<sup>153</sup>

One of the principal objectives of NEMA is to co-ordinate and integrate the current fragmented EG effort in South Africa. The application of the act to WHS is therefore not undesirable. It may, in fact, create useful opportunities, if properly applied, to address some of the governance inefficiencies created by fragmentation. Some of the provisions which may be effectively utilised in this regard include, the provisions on cooperative governance, conflict management and EMCAs. The discussion returns to these issues below.

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144 Draft IMP *Geology Management* <http://www.vredefortdomewhs.co.za/> 17 Jul at 4, and 7-12.

145 Nel and Du Plessis 2001 SAJELP 1-37.

146 S 2.

147 Ch 2.

148 Ch 3.

149 Ch 4.

150 Ch 5.

151 Ch 6.

152 Ch 7.

153 Ch 8.

## 2.9 *Heritage resources*

A WHS may be declared part of the national estate of South Africa in terms of the National Heritage Resources Act (NHRA)<sup>154</sup> which means that the act would then be applicable in its entirety. WHS are likely to contain: places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes; landscapes and natural features of cultural significance; geological sites of scientific or cultural importance; archaeological and palaeontological sites; graves and burial grounds; sites of significance relating to the history of slavery in South Africa; and movable objects, all of which are protected by the mentioned act. If a WHS is declared part of the national estate of South Africa it will fall within the sphere of operations of heritage resources authorities which may be the South African Heritage Resources Authority (SAHRA), a provincial authority or local authority.<sup>155</sup> There is thus the potential of yet another authority being added to the already complex institutional system governing WHS. The following provisions of the act may, *inter alia*, further be applicable: identification and declaration of heritage sites; protected areas; provisional protection measures; keeping of heritage registers; land use and planning measures; heritage objects; heritage structures; archaeology, palaeontology and meteorites; burial grounds and graves; public monuments and memorials; heritage impact assessment; restitution of heritage objects; heritage agreements; and presentation of protected resources.<sup>156</sup>

In the case of the Vredefort Dome, cultural heritage is of great significance in that it has been described as a lens through which the history of South Africa can be viewed.<sup>157</sup> It represents the cultural heritage from the early, middle and late Stone Age, the early and late Iron Age through the 19<sup>th</sup> and 20<sup>th</sup> centuries.

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154 *National Heritage Resources Act* 25 of 1999.

155 S 3(1) of the NHRA stipulates that: "For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities."

156 See generally ch 2 of the Act.

157 Bakker *et al Vredefort Dome*.

These include, amongst others, important moments like the Sotho and Tswana settlements, the *difaqane* era,<sup>158</sup> the Great Trek settlers,<sup>159</sup> gold mining at Venterskroon from 1887 onwards, Anglo-Boer War sites, and buildings by Italian internees during the Second World War.<sup>160</sup> The Dome was, however, inscribed by UNESCO on the basis of the natural criterion and not because of its cultural heritage.<sup>161</sup> To date, the Vredefort Dome has not been declared a national heritage site, but initiatives are underway to do so.<sup>162</sup> This will then add another layer of management principles and authorities to the governance of the site.<sup>163</sup>

### **2.10 Provincial and local government legislation**

On both provincial and local government level the legislation pertaining to conservation, environment, development and economic activities within a WHS arguably has the biggest potential influence on governance of a WHS.<sup>164</sup> On a provincial level all the provincial legislation may in principle also be applicable to a WHS. Some of the governance functions provided in national legislation are also exercised by provincial authorities, especially insofar as nature conservation is concerned.<sup>165</sup> In particular, with regard to the so-called wall-to-wall municipalities, local municipal by laws significantly impact on such sites, especially insofar as they relate to the provision of services, the Spatial Development Framework, IDPs and Land Use Management Schemes of local authorities. This is further exacerbated by the fact that a single WHS may fall within the jurisdiction of different provinces and different local authorities. As there are usually marked differences between the legislation of different provinces, and even more so between the by laws of different local authorities,

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158 The period of turmoil from 1822-1833 when Mzilikazi and his troops made war in the area.

159 1836.

160 Draft IMP *Cultural Heritage* <http://www.vredefortdomewhs.co.za/> 17 Jul at 35-47.

161 UNESCO <http://whc.unesco.org/en/decisions/466> 17 Jul.

162 Draft IMP *supra* n 160 at 50.

163 Draft IMP *supra* n 160 at 21-24 and 64.

164 In view of the volume of legislation and by laws that may be applicable on provincial and local government level they are not dealt with in any detail.

165 See, eg, the multitude of provincial acts regulating nature conservation in KwaZulu Natal alone.



an intolerable situation may be created where the same WHS is subject to different and incompatible legislation.

This issue is vividly illustrated by the Vredefort Dome which falls within the jurisdiction of two provinces, and several local and district municipalities. The absence of incorporating the site into the numerous IDPs, Spatial Development Frameworks and Land Use Management Schemes further exacerbates the problem.<sup>166</sup>

### **2.11 Common law**

Save for the multitude of acts referred to above, the common law also regulates the legal position between individuals and between the state and individuals in such a WHS. Administrative law, the law of delict, neighbour law, property law and the law of contract are important in WHS context. The private law still regulates the rights and obligations between private individuals as it would in any other part of the country. It is particularly important when agreements are entered into between individuals with regard to any aspect affecting a WHS and also when any organ of state and an individual enter into such an agreement. The provisions of administrative law are of the utmost importance as the governance of a WHS directly affects the rights and obligations of private landowners and other stakeholders in such a site. In the administrative law context, the provisions of the Promotion of Administrative Justice Act (PAJA)<sup>167</sup> and the Promotion of Access to Information Act (PAIA)<sup>168</sup> of course also directly affect the governance of WHS.

### **2.12 Constitutional provisions**

All legal provisions applicable to governance of WHS need to comply with the Constitution.<sup>169</sup> The rights provided in the Bill of Rights are particularly important. They include, *inter alia*, the right of everyone to choose their trade,

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<sup>166</sup> Draft IMP *supra* n 8 at 37.

<sup>167</sup> Promotion of Administrative Justice Act 3 of 2000.

<sup>168</sup> Promotion of Access to Information Act 2 of 2000.

<sup>169</sup> Constitution of the Republic of South Africa, 1996.

occupation or profession freely,<sup>170</sup> the right to property,<sup>171</sup> to access to information<sup>172</sup> and to just administrative action.<sup>173</sup> With regard to environmental matters, the Constitution explicitly provides for the right to an environment that is not harmful to peoples' health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>174</sup> The constitutional mandate for well-executed EG in WHS can thus also be found in the Constitution, especially as far as there is an obligation on government to adopt and implement reasonable legislative and other measures to achieve the objectives of the environmental right.<sup>175</sup>

### **2.13 Evaluation**

The fragmented set of laws described above results in various processes (including authorisations, registrations, monitoring, reporting, *et cetera*) to be followed by all those involved in WHS governance. Various legal rights and obligations are also created (including liability regimes, enforcement obligations by government, and compliance obligations by indigenous communities and land users). Moreover, various authorities are involved, including, amongst others, the South African National Biodiversity Institute (SANBI), the Department of Water Affairs and Forestry (DWAF), relevant Catchment Management Agencies, Water User Associations, the Department of Environmental Affairs and Tourism (DEAT), various provincial and/or nature conservation departments, the South African Heritage Resource Agency

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170 S 22.

171 S 25.

172 S 32.

173 S 33.

174 S 24.

175 In certain instances, the Constitution, unfortunately, also contributes to the fragmented EG regime. This is especially apparent from sch 4 and 5 of the Constitution, which provide clarification on different governance competencies by outlining concurrent and exclusive functional areas, including various issues relating to the environment. However, the competencies listed in sch 4 and 5 to the Constitution, read with the definition of 'environment' in NEMA, could potentially lead to inconsistency in decision-making and even conflict among and between spheres of government. For a further discussion, see, Bosman, Kotzé and Du Plessis 2004 *SAPL* 411-421.

(SAHRA), local authorities, the Department of Minerals and Energy (DME), and the Department of Agriculture (DA).<sup>176</sup> Not only on national level, but also on provincial and local government level a vast array of acts and by laws apply to WHS. Add to this private land-owner associations, non-governmental organisations (NGOs) and community-based organisations (CBOs), and one ends up with an utterly confusing institutional and legislative framework responsible for WHS governance. It is safe to deduce that the fragmented legal framework may give rise to legal uncertainty, duplication of responsibilities and actions, time delays and ultimately governance inefficiencies – all those aspects which directly contrasts with the spirit of sustainable EG and GG.

When applied to the present case study, one observes that many developments are done illegally in the Vredefort Dome – in some instances because of ignorance, but in many cases deliberately because of the lack of cooperative governance, legal uncertainty and no or little consultation with the relevant authorities.<sup>177</sup> In many cases developers obtain permission for a development from the one authority (for instance from DEAT) and then carry on with the development despite not having the permission or permits from other authorities like the local municipality, DME, DWAF, DA and others.<sup>178</sup> This creates an intolerable situation in that there is uncertainty whether the development is legal, whether all permits and permissions are in place, and what the parties' rights and duties are.<sup>179</sup> There often is no coordinating body or

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176 Cf Glazewski *supra* n 26 at 330-331.

177 According to the Draft IMP for the Vredefort Dome World Heritage Site, many illegal land uses, unlicensed businesses and illegal residences exist on the site. See Draft IMP *Land Use* <http://www.vredefortdomewhs.co.za/> 17 Jul at 41. The Draft IMP states that the current state of illegal land use and the absence of proper records is the direct result of inadequate development control practices related to land use management and building and construction control by the competent authorities. A review of activities within the VDWHS indicated that the illegal land use in the area can be associated with the following activities: chalets; absailing; rock climbing; illegal structures close to the Vaal River; conference facilities; residential developments; disposal of sewerage into the river; crusher, gravel and sand operations; quad bike tracks; 4X4 tracks; practices leading to erosion and degradation; wedding villages and accommodation; mining of sand; lodges; feedlots; bundu camps etc. Draft IMP *supra* n 24 at 67. Similar problems exist in some of the other WHS like the Greater St Lucia Wetland Park as reported on the environmental television programme 50/50. See the documentary insert screened on 23 March 2003 at 50/50 <http://www.5050.co.za/> 8 May.

178 Draft IMP *supra* n 24 at 88.

179 Draft IMP *supra* n 24 at 71 and 88.

final controlling entity which ensures that all legislation is complied with and all permits, permissions and other relevant authorisation obtained.

All of the above could logically lead to uncertainty, distrust, wrong perceptions, negative attitudes, uncooperative behaviour, exploitation of loopholes in legislation and procedures, illegal activities and generally speaking, a waste of time, money and human resources. Further challenges could also relate to, *inter alia*, lack of information regarding rights and obligations of all involved; a lack of participation and consultation in decision-making by the authorities in all spheres of government; confusion with regard to the role of the different authorities and the hierarchy of decision-making and implementation; a lack of enforcement of rules and regulations and who the enforcing agencies are; illegal developments; a lack of communication at all levels, including NGO and CBO stakeholders; unclear future plans; the divergence of legislation, authorities and officials involved; the lack of capacity in government; and the lack of a final decision-making authority which can ensure certainty.<sup>180</sup>

The effect is that good and sustainable governance cannot be achieved which may adversely affect the integrity of a WHS.<sup>181</sup>

### **3 Governance reform strategies for WHS**

#### **3.1 Good governance**

The search for an ideal governance system is as old as the idea of government itself. The concept of good governance was again brought to the fore by the World Bank when it introduced good governance as a requirement before, *inter*

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180 Many of the mentioned aspects were also identified in Courrier (ed) *supra* n 7; Miller *supra* n 7; and Labadi *supra* n 8.

181 NEM:PAA s 50(5) provides that no development, construction or farming may take place without the written permission of the managing authority. This section can be used by the management authority to ensure that all the necessary authorisations are in place before any development takes place. More than two years after its declaration a permanent management authority is however still not in place for the VDWHS.

*alia*, monetary assistance was to be granted to a specific country.<sup>182</sup> Through good governance the World Bank also wished, amongst other things, to ensure sustainable development.<sup>183</sup>

The concept of good governance gained momentum in that many international organisations, in particular those involved in developmental and financial assistance, required a mechanism or strategy to ensure that their financial assistance be properly directed and utilised by a borrowing state.<sup>184</sup> The debate on good governance in the context of governance in the European Union led to the White Paper on European Governance, published by the European Commission (EC) in July 2001.<sup>185</sup> This triggered a wide discussion on the concept of good governance and it has become a popular subject for discussion by many.<sup>186</sup>

It is not the purpose of this article to determine a definition of good governance. Rather, generally accepted definitions and generally accepted requirements will be used to assist in determining how GG can be achieved in WHS in South Africa.

Governance is defined by the United Nations Commission for Global Governance as follows:

Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interests.<sup>187</sup>

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182 World Bank *Sub-Sahara Africa*.

183 Although the World Bank's definition of sustainable development focuses more on sustainable socio-economic human development and less on environmental concerns.

184 Wouters and Ruyngaert *Working Paper* 69.

185 Commission of the European Communities <http://eur-lex.europa.eu/> 24 Jun.

186 Curtin and Dekker *Good Governance*.

187 *Ibid* at 9; CGG *Our Global Neighbourhood* 2.

Good administration is seen as part of good governance. According to the European Commission White Paper on Administrative Reform,<sup>188</sup> the key principles thereof are service, independence, responsibility, accountability, efficiency and transparency.<sup>189</sup> The principles of good governance developed by the EC in the white paper are openness, participation, accountability, effectiveness and coherence.

The Organisation for Economic Development (OECD) defines good governance as follows:

Good governance is the respect for the rule of law, openness, transparency and accountability to democratic institutions; fairness and equity in dealings with citizens, including mechanisms for consultation and participation; efficient, effective services; clear, transparent and applicable laws and regulations; consistency and coherence in policy formation; and high standards of ethical behaviour.<sup>190</sup>

Good governance is defined by the United Nations Economic and Social Commission for Asia and the Pacific as:

...participation, the rule of law, transparency, responsiveness, consensus oriented, equity and inclusiveness, effectiveness and efficiency and accountability.<sup>191</sup>

Resolution 2000/64 of the UN Human Rights Committee defines it as:

...transparency, responsibility, accountability, participation and responsiveness to the needs of people.<sup>192</sup>

The ideal governance of WHS in South Africa will clearly be governance that complies with the generally accepted principles of good governance. For present purposes the definition by the OECD above can be accepted as representative of the core issues of good governance and a yardstick against

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188 EC *White Paper* 200.

189 Accepted by the commission on 1 March 2000. See EC *White Paper* 200.

190 OECD <http://www.oecd.org/> 20 Oct.

191 UNESCAP <http://www.unescap.org/> 20 Oct.

192 Commission on Human Rights <http://www.unhchr.ch/> 21 Feb.

which governance in WHS can be measured. The exposition above also suggests that governance of WHS falls far short of this ideal. The question is whether it is possible to realistically address the problem and ensure good governance in South African WHS.

### **3.2 Towards integrated governance of WHS**

#### *3.2.1 Cooperative governance*

One must assume that the legislature recognises fragmentation of the environmental governance effort relating to WHS because of certain legislative mechanisms to achieve a more aligned and integrated regime. The primary and least intrusive mechanism available for integration and alignment is arguably that of cooperative governance. Cooperative governance is an acknowledged governance model to align fragmented governance processes in South Africa and is also applicable to the fragmented EG regime. Cooperative governance in this context is referred to as cooperative environmental governance (CEG) which may be defined as:

The integration of the different spheres of government and line functionaries at international, intra-regional and intra-governmental level; co-operation between individual government officials in each sphere/line functionary; co-operation between government officials in different spheres/line functionaries; integration of policy, regulation methods and tools, service provision and scrutiny; and co-operation with industry and the public in order to achieve the principles of sustainability.<sup>193</sup>

CEG may be utilised to address unsustainable governance efforts arising from fragmentation in the WHS governance regime. As such, it forms a fundamental part of the good governance rhetoric in that it requires a coherent and integrated governance approach which integration and coherence should improve governance efficiencies.<sup>194</sup>

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193 Kotzé *supra* n 27 at 40.

194 Compare, eg, the OECD definition of 'good governance', *supra* n 190.

CEG is provided for in various acts, including, amongst others: the Constitution, NEMA, the Intergovernmental Relations Framework Act,<sup>195</sup> and numerous sectoral environmental acts such as the Water Services Act,<sup>196</sup> the NWA, the National Heritage Resources Act,<sup>197</sup> the National Nuclear Regulator Act,<sup>198</sup> Local Government: Municipal Systems Act,<sup>199</sup> the MPRDA, the NEM:PAA,<sup>200</sup> NEM:BA, and NEM:AQA. Despite this comprehensive legal framework and potential utility of CEG as an integration mechanism, evidence suggests that CEG is not very successful in practise.<sup>201</sup> Reasons for lack of implementation, or minor success in implementing CEG, may be ascribed to, *inter alia*: lack of political commitment and commitment at the operational level of government; intensifying turf wars between government officials, spheres and departments of government; lack of human and financial resources to implement CEG and other governance priorities taking precedence over CEG.<sup>202</sup>

Despite these ‘failures’ in implementing CEG, we are inclined to believe that CEG is still the best basis from which to proceed to achieve a more integrated EG regime. It is possible under the existing legislation and opportunities for CEG, to address many of the problems and put in place a system which will encourage cooperative governance which will lead to better governance of WHS. Subsequent paragraphs elaborate on the proposed methodology for co-operation and integration.

### 3.2.2 *A strategy for co-operation and integration*

The WHCA provides for a managing authority for a WHS which has to manage the site in terms of an IMP. With the proper utilisation of the tools provided for in the act, we propose that great strides towards more cooperative and

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195 *Intergovernmental Relations Framework Act* 13 of 2005.

196 *Supra* n 87.

197 *National Heritage Resources Act* 25 of 1999.

198 *National Nuclear Regulator Act* 47 of 1999.

199 *Local Government: Municipal Systems Act* 32 of 2000.

200 *National Environmental Management: Protected Areas Act* 57 of 2003.

201 Kotzé *et al* 2008 SAJELP.

202 *Ibid.*



sustainable governance can be made. This may entail, amongst others, the following pragmatic initiatives and considerations:

- A managing authority must, in instances where all the property in a WHS is not exclusively state-owned, be established in terms of section 9 of the WHCA. At this stage only the management authority of the iSimangaliso Wetland Park has been established in terms of section 9 of the act. All other WHS are managed by existing organs of state.<sup>203</sup> A section 9 management authority entails that a board, as well as an executive staff component for the management authority, be established. Representatives of the main interest groups in the WHS must serve on this board. The act makes provision for representatives of national government; provincial government departments and cultural or nature conservation authorities; directly affected adjacent communities; heritage bodies; organised business; affected adjacent tribal authorities; nature conservation bodies; cultural organisations; non-governmental organisations; scientific or academic expert bodies; local authorities; private landowners; and international cultural or nature conservation bodies.<sup>204</sup> It will depend on the particular circumstances of each WHS how the board should be constituted. We suggest the greater the representation from all interested and affected parties, the better it will answer to transparency and participation as envisaged by good and cooperative governance. The board will be responsible for the policy of, and general oversight over that authority, provide directions to the executive staff component of that authority; monitor the activities of the executive staff component of that authority to ensure compliance with the act; and co-ordinate with boards of other authorities.<sup>205</sup>
- The executive staff component,<sup>206</sup> (which will fall under the supervision of a chief executive officer)<sup>207</sup> and which will be responsible for the day

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203 S 8 of the WHCA provides for the possibility of an existing state department to exercise all the functions of a managing authority. WHCA *supra* n 2.

204 S 14.

205 S 15.

206 S 19 and 20.

to day administration of the site, must be appointed. The act provides that this may include members who are skilled in matters relating to finances; business acumen; cultural heritage; natural heritage; tourism; project management; marketing; community involvement; and legal matters.<sup>208</sup> It is thus possible to ensure that the expertise necessary for a particular site be included in the executive staff component.

The powers and duties of such management authorities, which may be given to it by the relevant minister, are very broad.<sup>209</sup> They include, *inter alia*, the following:

- to implement the WHC, including to ensure the identification, protection, conservation, presentation and transmission of the cultural and natural heritage to future generations and that effective and active measures are taken for the effective protection, conservation and presentation of the cultural and natural heritage;
- liaise with relevant cultural, nature conservation and similar authorities on a local, provincial, national and, with the consent of DEAT, international level;
- conserve, manage, promote, facilitate and monitor cultural and natural heritage;
- manage cultural and natural heritage in accordance with all applicable national and provincial legislation, policies and management plans; undertake, or cause to be undertaken, research or investigations relevant to a WHS;
- co-ordinate with the relevant tribunals under the *Development Facilitation Act 67 of 1995*, if applicable; or similar bodies or relevant planning authorities, on a national, provincial and local level, in order to expedite sustainable development in WHS and to ensure that development takes place in accordance with all applicable laws and procedures;

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207 S 17.

208 S 17(3).

209 S 13.

- initiate, assist, comment on or facilitate any application under the *Development Facilitation Act 67 of 1995*, or other applicable development, planning or management law relating to or affecting a WHS; and
- with the consent of the Minister of DEAT, perform any function, on contractually agreed terms that are fair in relation to the obligations imposed on an authority, at the request of a national government department; an institution or statutory body; another country; a province; a regional council; a local government; or any other entity or person approved by the minister.

With regard to the IMP, the act provides that such a plan must be prepared and implemented for each WHS and that the management authority must conduct its affairs in terms thereof.<sup>210</sup> In preparing the IMP, the authority must, in terms of section 22 of the act, have due regard to, and seek to integrate and harmonise the IMP with the requirements of the convention and the operational guidelines to the convention, issued by UNESCO, and with applicable plans in terms of the National Environmental Management Act, the National Heritage Resources Act, the Cultural Institutions Act, the Development Facilitation Act, and the National Parks Act; provincial government planning and development plans; regional planning and development plans; and local government planning and development plans.<sup>211</sup>

It would be important for the management authority properly to heed and adhere to the spirit and elements of good governance. These are elaborated on below.

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210 Ch IV s 21.

211 Strangely enough the NEM:PAA is not mentioned.

First, there must be respect for the rule of law.<sup>212</sup> In South Africa the rule of law is, generally speaking, adhered to and little more needs to be said in this regard. The WHCA<sup>213</sup> provides for the proposed model and for regulations to be issued in terms of the act for the functioning and management of a WHS. It must, however, be emphasised that it entails that the managing authority and everyone involved in WHS, adhere to the laws of the land as underpinned by the Constitution and the broader legal framework. Where transgressions occur, a speedy and effective justice system must ensure that they be remedied. The management authority must therefore have a thorough knowledge of the law, and enough personnel to ensure compliance with the laws of the land by landowners, inhabitants, employees, visitors, researchers and other people in the WHS. The officials of the management authority themselves must also operate within the four corners of the law. In particular, just administrative action as required by the Constitution and PAJA must at all times emanate from the authority's actions. In essence a culture of compliance with and respect for the law by everyone must be nurtured in a WHS.

Second, openness and transparency are specifically provided for in section 4(1)(j) of the act which states that decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with applicable law. This must also be read with the requirements of the PAIA and those of NEMA relating to public participation, access to information and transparent decision-making. Transparency can further be ensured and enhanced where the more important role players are represented on the board, in particular where private land owners and local communities are involved.

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212 The rule of law is defined by Carothers as follows: "The rule of law can be defined as a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding." Carothers *Rule of Law* 4.

213 *World Heritage Convention Act* 49 of 1999.

This will improve communication and ensure that stakeholders take ownership of the notion of a WHS and the success thereof. The act, save for the framework set out above, does not have detailed provisions pertaining to openness and transparency. However, ordinary legislation relating to obtaining of information apply to management authorities of WHS.<sup>214</sup> In the IMP and the regulations issued in terms of the act, provisions to ensure openness and transparency in practice can be incorporated. As a practical measure, it is suggested the management authority ought to have its offices on the site itself. All relevant information pertaining to the WHS should be available at this office. Proper communication between the authority and stakeholders should be ensured. Information should be sent to stakeholders on a regular basis. The availability of a comprehensive legal register together with the legislation itself, all guidelines and policy decisions from all relevant state departments will also assist in creating a transparent and informative environment. Electronic communication tools can further be utilised to ensure openness and transparency. With modern technology it is possible to have all relevant information available pertaining to most aspects of a WHS. This includes all decisions made, the reasons therefore, and also information with regard to any particular property in the WHS. Typically it is possible, with, for instance a geographical information system (GIS) database,<sup>215</sup> to overlay all relevant information regarding a specific property. It can, for example, include information with regard to environmental, cultural, legal, developmental and other aspects.

Third, fairness and equity in dealing with citizens, including mechanisms for consultation and participation, are provided in the fundamental principles enumerated in section 4 of the act. It is provided that the participation of all interested and affected parties in the governance of cultural and natural heritage must be promoted.<sup>216</sup> Decisions must take into account the interests,

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214 See in particular the PAIA *supra* n 168.

215 A computer system capable of capturing, storing, analysing, and displaying geographically referenced information; ie, data identified according to location. Practitioners also define a GIS as including the procedures, operating personnel, and spatial data that go into the system. For more information on GIS see USGS <http://erg.usgs.gov/> 20 Oct.

216 S 4(d).

needs and values of all interested and affected parties.<sup>217</sup> Fairness and equity will in practise be enhanced by affording stakeholders sitting on the board. Proper channels must be put in place to enable stakeholders to participate in the decision-making process. The public participation process must be such that notice is not only given through advertisements in newspapers but in appropriate circumstances stakeholders must be individually requested to give inputs. Independence must be ensured when decisions are made, in particular when members of the board deal with matters where they may have a personal interest. The principles of administrative justice need to be applied in practise by all members of the board and the executive staff component. All stakeholders should be treated equally. It must be ensured that the benefits and negative impacts are shared in an equitable way by all involved, also people outside of the WHS. This is especially important when decisions, which have an impact on, *inter alia*, development, job creation and economic activities, are made.

Fourth, measures to facilitate accountability are provided for in chapter VI of the act. This chapter specifically provides for annual financial plans,<sup>218</sup> five year strategic plans,<sup>219</sup> financial regulations,<sup>220</sup> accounting,<sup>221</sup> auditing,<sup>222</sup> a report by the auditor general,<sup>223</sup> and an annual report to the relevant minister.<sup>224</sup> Accountability can further be ensured if members of the board are brought to task by those they represent. Proper criteria should be set, in particular in the case of stakeholders other than government, for appointment to the board. Time limits should be set for service-delivery tasks. It should be made compulsory that reports be furnished on a regular basis by the board to those that they represent as well as to all stakeholders. The management authority

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217 S 4(g).

218 S 36.

219 S 37.

220 S 38.

221 S 39.

222 S 40.

223 S 41.

224 S 42 provides that an annual report be furnished to the Minister of Environmental Affairs and Tourism.

should be audited on all its environmental activities on a regular basis and in this regard ISO14001 accreditation is advisable.<sup>225</sup>

Fifth, efficient and effective services are of the utmost importance to ensure good governance. This issue is not specifically dealt with in the act. One of the objectives of the act, as set out in section 3(ii)(b), however, is to create a framework to ensure that the convention and the operational guidelines of UNESCO are effectively implemented in the Republic. Efficient and effective services will only be attainable if a professional executive staff component is appointed which is held accountable by the board. Such an executive staff component needs to ensure a proper administrative office be in place. Records of all developments, activities, applications, decisions and similar administrative issues need to be meticulously kept. Capacity should be built and lines of decision and implementation streamlined. The proper utilisation of the provisions of section 13(n) will assist with the provision of efficient and effective services.<sup>226</sup>

Sixth, the laws governing WHS should be clear, available and consistent. The principle of clear, transparent and applicable laws and regulations is not a real issue. The fragmented and diverse environmental legal reality is, however, one of the main concerns. This can be addressed by the management authority by having a legal register at its offices, containing all relevant legislation which may be applicable to, or influence the WHS, available and up to date. It is not so much the laws in themselves that create the problem but the lack of a comprehensive knowledge thereof and a holistic and integrated implementation and enforcement strategy.

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225 ISO 14001 is the international specification for an EMS. More information thereon is available at ISO <http://www.iso.org/> 8 May.

226 In terms of this section the management authority may with the consent of the minister, perform any function, on contractually agreed terms that are fair in relation to the obligations imposed on an authority, at the request of: a national government department; an institution or statutory body; another country; a province; a regional council; a local government; or any other entity or person approved by the minister.

Seventh, consistency and coherence in policy formation is necessary to ensure good governance. The act provides for co-ordination with planning authorities,<sup>227</sup> the initiation, assisting, commenting on or facilitation of any application under the Development Facilitation Act,<sup>228</sup> or other applicable development, planning or management law relating to or affecting a WHS.<sup>229</sup> It will, however, only be achieved if the management authority liaises properly with all authorities on national, provincial and local government level. In this regard, as far as is practical, the minister should, as provided for in section 13(n), give his or her consent to the management authority to perform as many functions of national government departments, institutions or statutory bodies, a province, a regional council or a local government as possible.

Eighth, high standards of ethical behaviour can only be realised if such a culture is instilled in the management authority and all stakeholders. To this effect a code of conduct for all board members and the executive staff component is advisable. This is, however, a culture that needs to be nurtured. The mere fact that the other good and cooperative governance principles are applied in practise will create a fertile environment for such a culture to be instilled, not only in officials but also private individuals dealing with the management authority.

Generally speaking, it will be possible, if the model above is used properly, to ensure a better integration of the different spheres of government and line functionaries at international, intra-regional and intra-governmental level. A well functioning management authority with a professional staff component can achieve co-operation between individual government officials in each sphere/line functionary. It will also assist to attain co-operation between government officials in different spheres/line functionaries in that the functionary of the management authority will deal with all the different functionaries of other departments and build expertise and knowledge of the

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227 S 13(1)(l).

228 *Development Facilitation Act* 15 of 1994.

229 S 13(1)(m).



different functionalities which are of relevance to the particular WHS. Integration of policy, regulation methods and tools, service provision and scrutiny can be achieved if the provisions of the act is fully utilised and the different departments are serious to achieve GG of WHS. Co-operation with industry and the public in order to achieve the principles of sustainability will ensue in an environment of good and cooperative governance where the public administration adheres to the principles of service-delivery, independence, responsibility, accountability, efficiency and transparency as set out in the European Commission's White Paper on Administrative Reform – in short, all those principles and components espoused by good governance.

All of the above considerations should be incorporated in the IMP.<sup>230</sup> The IMP, if properly drafted, could ensure that all the above requirements are met. It will have to contain detailed provisions of how the above mentioned principles should be attained in practise. It will not be of much help if only the principles themselves are mentioned. With regard to each aspect affecting WHS, detailed provisions should be set out which will ensure that the principles of good and cooperative governance will be attained. The IMP should also contain a practical user-guide detailing all relevant aspects so as to ensure that these principles do not remain mere ideals but are implemented in practise.

#### **4 Conclusion**

The management of WHS in South Africa is regulated not only by the WHCA which was specifically promulgated to incorporate the WHC into South African law, but also by diverse legislation on national, provincial and local government level. This fragmented situation is exacerbated by the fact that different government departments are responsible for the implementation of these divergent pieces of legislation. In practise there is, generally speaking, a lack of CEG and GG in South Africa which can pose a threat to the proper governance of WHS. To ensure that the objectives of the WHC are complied with, it is

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230 The IMP is provided for in ch IV of the WHCA *supra* n 2.

necessary to ensure that these diverse pieces of legislation are utilised in a holistic and co-ordinated way. One way of ensuring that WHS in South Africa realise the mentioned objectives of the WHC, and do not become in danger of delisting is to ensure good and cooperative governance of such WHS.

In the case of WHS which are not exclusively state owned, we propose that a management authority, comprising of a board and an executive staff component, as provided for in chapter III of the WHCA, be utilised. The provisions of the act are such that good and cooperative governance can be achieved in WHS. We do not propose that the above model will be a magic cure for the present confusion and disarray with regard to the legislative and governance aspects of WHS in South Africa. It can however assist to a large extent to address many of the current challenges caused by the fragmented governance effort and ensure improved governance of WHS, for the benefit of all interested and affected parties.

We do not need to reinvent the wheel to promote the good and stop the ugly from happening because of bad governance practices. We must merely utilise existing tools and optimise our governance performance in terms of these mechanisms. The act, together with supporting legislation, provides the necessary mechanisms – they should merely be used properly.

## Bibliography

Bakker *et al Vredefort Dome*

Bakker K *et al Vredefort Dome Cultural Heritage Survey and Conservation Management Plan* (SAHRA Cape Town 2004)

Bosman C, Kotzé LJ and Du Plessis W "The failure of the Constitution to ensure integrated environmental management from a co-operative governance perspective" 2004 (19) *SA Public Law* 411-421

Carothers *Rule of Law*

Carothers T *Promoting the Rule of Law Abroad: In Search of Knowledge* 4 (Carnegie Endowment for International Peace Washington DC 2006)

CGG *Our Global Neighbourhood*

Commission for Global Governance *Our Global Neighbourhood* (Oxford University Press Oxford 1995)

Courrier (ed) *Global Biodiversity Strategy*

Courrier K (ed) *The Global Biodiversity Strategy: Guidelines for action to save, study and use earth's biotic wealth sustainably and equitably* (World Resources Institute UCN, UENP 1992) 117-132

Curtin and Dekker *Good Governance*

Curtin D and Dekker I "Good Governance: The Concept and its Application by the European Union" in Curtin D and Ramses AW *Good Governance and the European Union* (Intersentia Antwerp 2005)

EC *White Paper 200*

European Commission *White Paper on Administrative Reform, March 2000* volume I and II COM (2000) 200

Glazewski *Environmental Law*

Glazewski J *Environmental Law in South Africa* 2<sup>nd</sup> rev ed (Butterworths Durban 2005)

Kotzé Environmental Governance Perspectives

Kotzé LJ "Environmental Governance Perspectives on Compliance and Enforcement in South Africa" in Paterson A and Kotzé LJ (eds) *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Cape Town 2008)

Kotzé *et al* 2008 SAJELP

Kotzé LJ *et al* "Strategies to Integrate Environmental Policy at the Operational Level: Towards an Integrated Framework for Environmental Authorisations" 2008 SAJELP (in print)

Kotzé *Legal Framework*

Kotzé LJ *A Legal Framework for Integrated Environmental Governance in South Africa and the North West Province* (Wolf Legal Publishers Nijmegen 2006)

Labadi (ed) *World Heritage*

Labadi S (ed) *World Heritage: Challenge for the Millennium* (UNESCO, Paris 2007)

Miller *Balancing the Scales*

Miller KR *Balancing the Scales: Guidelines for increasing Biodiversity's Chances through Bioregional Management* (World Resources Institute Washington 1996)

Nel and Du Plessis 2001 SAJELP

Nel JG and Du Plessis W "An Evaluation of NEMA based on a Generic Framework for Environmental Framework Legislation" 2001(8) SAJELP 1-37

*Scheepers Practical guide*

*Scheepers T A Practical guide to law and development in South Africa an introduction to the law applicable to development and the development management process in South Africa* (Juta Kenwyn 2000)

*Thompson Water Law 417-447*

*Thompson H Water Law: A Practical Approach to Resource Management and the Provision of Services* (Juta Kenwyn 2006)

*World Bank Sub-Sahara Africa*

*World Bank Sub-Sahara Africa: From Crisis to sustainable Growth* (World Bank Washington 1989)

*Wouters and Ruyngaert Working Paper*

*Wouters J and Ruyngaert C Working Paper no 54* Institute for International Law (Katholieke Universiteit Leuven 2004)

***Register of legislation***

*Advertising on Roads and Ribbon Development Act 21 of 1940*

*Agricultural Pests Act 36 of 1983*

*Animal Improvement Act 62 of 1998*

*Atmospheric Pollution Prevention Act 45 of 1965*

*Communal Property Associations Act 28 of 1996*

*Conservation of Agricultural Resources Act 43 of 1983*

*Constitution of the Republic of South Africa 1996*

*Development Facilitation Act 15 of 1994*

*Development Facilitation Act 67 of 1995*

*Division of Land Ordinance (Transvaal) Ordinance 20 of 1986*

*Environment Conservation Act 73 of 1989*

*Extension of Security of Tenure Act 62 of 1997*

*Fencing Act 31 of 1963*

*Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972*

*Genetically Modified Organisms Act 15 of 1997*

*GN R1061 in Government Gazette 28181 of 28 October 2005*

GN R1193 in *Government Gazette* 21779 of 24 November 2000  
*Health Act* 63 of 1977  
*Housing Act* 107 of 1997  
*Intergovernmental Relations Framework Act* 13 of 2005  
*Interim Protection of Informal Land Rights Act* 31 of 1996  
*Interim Protection of Informal Rights Act* 76 of 1995  
*Land Transport Transition Act* 22 of 2000  
*Less Formal Township Establishment Act* 113 of 1991  
*Local Government Municipal Structures Act* 117 of 1998  
*Local Government Ordinance (Free State) Ordinance* 8 of 1962  
*Local Government Transition Act* 209 of 1993  
*Local Government: Municipal Systems Act* 32 of 2000  
*Marine Living Resources Act* 18 of 1998  
*Mine Health and Safety Act* 29 of 1996  
*Minerals Act* 50 of 1991  
*Mountain Catchment Areas Act* 63 of 1970  
*Municipal Finance Management Act* 56 of 2003  
*Municipal Structures Act* 117 of 1998  
*Municipal Systems Act* 32 of 2000  
*National Building Regulations and Building Standards Act* 103 of 1977  
*National Environmental Management Act* 107 of 1998  
*National Environmental Management: Air Quality Act* 39 of 2004  
*National Environmental Management: Biodiversity Act* 10 of 2004  
*National Environmental Management: Protected Areas Act* 57 of 2003  
*National Forests Act* 84 of 1998  
*National Heritage Resources Act* 25 of 1999  
*National Land Transport Interim Arrangements Act* 45 of 1998  
*National Nuclear Regulator Act* 47 of 1999  
*National Road Traffic Act* 93 of 1996  
*National Transport Transition Act* 22 of 2000  
*National Veld and Forest Fire Act* 101 of 1998  
*National Water Act* 36 of 1998  
*Occupational Health and Safety Act* 85 of 1993  
*Physical Planning Act* 125 of 1991

*Plant Breeders' Rights Act 15 of 1976*  
*Plant Improvement Act 53 of 1976*  
*Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998*  
*Promotion of Access to Information Act 2 of 2000*  
*Promotion of Administrative Justice Act 3 of 2000*  
*Provincial Ordinance on Town Planning and Townships (Free State) 9 of 1969*  
*Provincial Ordinance on Town Planning and Townships (Transvaal) 15 of 1986*  
*Provision of Land and Assistance Act 126 of 1993*  
*Reconstruction and Development Programme Act 79 of 1998*  
Regulations on Municipal Planning and Performance 2001 R796  
*Removal of Restrictions Act 84 of 1967*  
*Restitution of Land Rights Act 22 of 1994*  
*South African National Roads Agency Limited and National Roads Act 7 of 1998*  
*Subdivision of Agricultural Land Act 70 of 1970*  
*Urban Transport Act 78 of 1977*  
*Water Act 54 of 1956*  
*Water Services Act 108 of 1997*  
*World Heritage Convention Act 49 of 1999*

### **Register of court cases**

*Camps Bay Ratepayers and Residents Association and Others v The Minister of Planning, Culture and Administration (Western Cape) and Others 2001 4 SA 301 (CPD)*

### **Register of internet sources**

50/50 <http://www.5050.co.za/> 8 May

50/50 *Greater St Lucia Wetland Park* [Found on internet]

<http://www.5050.co.za/inserts.asp?ID=4868> [Date of use 8 May 2008]

African EPA <http://www.vredefortdomewhs.co.za/> 17 Apr

African EPA *The Strategic Environmental Assessment: Vredefort Dome*

June 2006 [Found on internet] <http://www.vredefortdomewhs.co.za/> [Date of use 17 April 2008]

Commission of the European Communities <http://eur-lex.europa.eu/> 24 Jun  
Commission of the European Communities *European Governance: A White Paper* COM 2001 428 [Found on internet] [http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0428en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf) [Date of use 24 June 2008]

Commission on Human Rights <http://www.unhchr.ch/> 21 Feb  
Commission on Human Rights *The role of good governance in the promotion of human rights* Resolution 2000/64 [Found on internet] [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.64.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.64.En?Opendocument) [Date of use 21 February 2008]

Draft IMP *Air Quality Management* <http://www.vredefortdomewhs.co.za/> 17 Jul  
Draft Integrated Management Plan *Air Quality Management Plan 2007* [Found on internet] [http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Air\\_Quality\\_Management\\_plan.pdf](http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Air_Quality_Management_plan.pdf) [Date of use 17 July 2008]

Draft IMP *Biodiversity Management Plan* <http://www.vredefortdomewhs.co.za/>  
17 Jul  
Draft Integrated Management Plan *Vredefort Dome: Executive Summary – Agriculture and Biodiversity Management Plan* [Found on internet] [http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Executive\\_Summary\\_Agric.pdf](http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Executive_Summary_Agric.pdf) [Date of use 17 July 2008]

Draft IMP *Cultural Heritage* <http://www.vredefortdomewhs.co.za/> 17 Jul  
Draft Integrated Management Plan *Cultural Heritage Plan 2007* [Found on internet] <http://www.vredefortdomewhs.co.za/Documentation/IMP%20Development%20February%202007%20Progress%20Report%20by%20A.GES.pdf> [Date of use 17 July 2008]

Draft IMP *Geology Management* <http://www.vredefortdomewhs.co.za/> 17 Jul  
Draft integrated Management Plan *Geology Management Plan 2007*



[Found on internet] [http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Final\\_georeport.pdf](http://www.vredefortdomewhs.co.za/Documents/2007-04-12/Final_georeport.pdf) [Date of use 17 July 2008]

Draft IMP *Land Use* <http://www.vredefortdomewhs.co.za/> 17 Jul

Draft Integrated management Plan *Vredefort Dome: Land Use and Infrastructure Management Plan 2007* [Found on internet] [http://www.vredefortdomewhs.co.za/Documents/2007-04-16/Land Use and Infrastructure Exec Sum.pdf](http://www.vredefortdomewhs.co.za/Documents/2007-04-16/Land_Use_and_Infrastructure_Exec_Sum.pdf) [Date of use 17 July 2008]

Draft IMP *Waste Management* <http://www.vredefortdomewhs.co.za/> 17 Jul

Draft Integrated Management Plan *Waste Management Plan 2007* [Found on internet] [http://www.vredefortdomewhs.co.za/Documents/2007-06-19/20070619-Waste\\_management\\_8.pdf](http://www.vredefortdomewhs.co.za/Documents/2007-06-19/20070619-Waste_management_8.pdf) [Date of use 17 July 2008]

ISO <http://www.iso.org/> 8 May

International Standards Organisation *ISO 14000 essentials* [Found on internet] [http://www.iso.org/iso/iso\\_14000\\_essentials](http://www.iso.org/iso/iso_14000_essentials) [Date of use 8 May 2008]

IUCN <http://cmsdata.iucn.org/> 15 Apr

IUCN *Management effectiveness of protected areas* [Found on internet] [http://cmsdata.iucn.org/downloads/avspecial\\_management\\_effective.pdf](http://cmsdata.iucn.org/downloads/avspecial_management_effective.pdf) [Date of use 15 April 2008]

Karst [http://www.iucnsa.org.za/our\\_work/initiatives/karst.htm](http://www.iucnsa.org.za/our_work/initiatives/karst.htm) 11 Jul

Karst *IUCN Karst Working Group* [Found on internet] [http://www.iucnsa.org.za/our\\_work/initiatives/karst.htm](http://www.iucnsa.org.za/our_work/initiatives/karst.htm) [Date of use 11 July 2008]

OECD <http://www.oecd.org/> 20 Oct

Organisation for Economic Development *About Public Governance and Management* [Found on internet] [http://www.oecd.org/about/0,2337,en\\_2649\\_37405\\_1\\_1\\_1\\_1\\_37405,00.html](http://www.oecd.org/about/0,2337,en_2649_37405_1_1_1_1_37405,00.html) [Date of use 20 October 2006]

UNESCAP <http://www.unescap.org/> 20 Oct

United Nations Economic and Social Commission for Asia and the Pacific  
*What is Good Governance?* [Found on internet]

<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>  
[Date of use 20 October 2006]

UNESCO <http://portal.unesco.org/> 15 Apr

United Nations Educational, Scientific and Cultural Organisation *What is it? What does it do? About UNESCO* [Found on internet]

[http://portal.unesco.org/en/ev.php-URL\\_ID=3328&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=3328&URL_DO=DO_TOPIC&URL_SECTION=201.html) [Date of use 15 April 2008]

UNESCO <http://whc.unesco.org/en/danger/> 15 Apr

United Nations Educational, Scientific and Cultural Organisation *List of World Heritage in Danger* [Found on internet]

<http://whc.unesco.org/en/danger/> [Date of use 15 April 2008]

UNESCO <http://whc.unesco.org/en/decisions/466> 17 Jul

UNESCO *Decision 29COM 8B.4 - Nominations of Natural Properties to the World Heritage List (Vredefort Dome)* [Found on internet]

<http://whc.unesco.org/en/decisions/466> [Date of use 17 July 2008]

UNESCO <http://whc.unesco.org/en/list/1156> 15 Apr

United Nations Educational, Scientific and Cultural Organisation *Dresden Elbe Valley* [Found on internet] <http://whc.unesco.org/en/list/1156> [Date of

use 15 April 2008]

UNESCO <http://whc.unesco.org/en/news/357> 15 Apr

United Nations Educational, Scientific and Cultural Organisation *Galápagos and Niokolo-Koba National Park inscribed on UNESCO's List of World*

*Heritage in Danger* [Found on internet] <http://whc.unesco.org/en/news/357>

[Date of use 15 April 2008]

UNESCO <http://whc.unesco.org/en/news/71> 15 Apr

United Nations Educational, Scientific and Cultural Organisation *World Heritage Committee sounds the alarm for Cologne Cathedral* [Found on internet] <http://whc.unesco.org/en/news/71> [Date of use 15 April 2008]

USGS <http://erg.usgs.gov/> 20 Oct

USGS *Geographic Information Systems* [Found on internet] [http://erg.usgs.gov/isb/pubs/gis\\_poster/](http://erg.usgs.gov/isb/pubs/gis_poster/) [Date of use 20 October 2006]

WHE <http://www.whc.unesco.org/> 15 Apr

World Heritage Evaluation *IUCN Technical Evaluation Vredefort Dome (South Africa)* ID no N1162 May 2005 [Found on internet]

[http://www.whc.unesco.org/archive/advisory\\_body\\_evaluation/1162.pdf](http://www.whc.unesco.org/archive/advisory_body_evaluation/1162.pdf) [Date of use 15 April 2008]

### ***Register of international treaties***

*World Heritage Convention 1972*

### ***List of abbreviations***

APPA	Atmospheric Pollution Prevention Act
art	article(s)
CBOs	community-based organisations
CDG	Carletonville Dolomite Grassland
CEG	cooperative environmental governance
ch	chapter(s)
DA	Department of Agriculture
DEAT	Department of Environmental Affairs and Tourism
DME	Department of Minerals and Energy
DWAF	Department of Water Affairs and Forestry
EC	European Commission
EFL	environmental framework legislation
EG	environmental governance
EIA	environmental impact assessment

EMCAs	environmental management co-operation agreements
EMS	environmental management system
GG	good governance
GG	government gazette
GIS	geographical information system
ia	inter alia
IDPs	integrated development plans
IMP	Integrated Management Plan
ISO	International Standards Organisation
IUCN	International Union for Conservation of Nature and Natural Resources
MPRDA	Mineral and Petroleum Resources Development Act
NEM:AQA	National Environmental Management: Air Quality Act
NEM:BA	National Environmental Management: Biodiversity Act
NEM:PAA	National Environmental Management: Protected Areas Act
NEMA	National Environmental Management Act
NGOs	non-governmental organisations
NHRA	National Heritage Resources Act
NWA	National Water Act
OECD	Organisation for Economic Development
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
par	paragraph(s)
reg	regulation(s)
RHG	Rand Highveld Grassland
s	section(s)
subs	sub-section
SAHRA	South African Heritage Resource Agency
SAHRA	South African Heritage Resources Authority
SANBI	South African National Biodiversity Institute
UN	United Nations
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organisation

VDWHS	Vredefort Dome World Heritage Site
VDGG	Vredefort Dome Granitic Grassland
WHC	World Heritage Convention
WHE	World Heritage Evaluation
WHCA	World Heritage Convention Act
WHS	World Heritage Sites
WSA	Water Services Act