Article

Questioning the Merit of Streamlining the Regulation of Activities in the Kruger National Park Through the Use of Environmental Management Instruments and Environmental Impact Assessment Exclusions

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Abstract

The South African government has recently proposed a streamlined environmental impact assessment (EIA) process to fast-track decision-making and expedite a broad range of activities linked to the construction and upgrading of tourism infrastructure, maintenance, conservation and rehabilitation in the Kruger National Park (KNP). This proposal is founded on the adoption of the KNP's Management Plan and a Generic Environmental Management Programme as environmental management instruments (EMIs) under the National Environmental Management Act 107 of 1998. The intention is to exclude South African National Parks (SANParks), the management authority for the KNP, from having to undertake any form of EIA and from having to secure an environmental authorisation from the competent authority prior to undertaking these activities. This article critically explores the merits of implementing such an approach in a state-owned national park established to protect the area's sensitive and vulnerable ecosystem and species, viewscapes

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and sense of place. It highlights an array of issues and risks associated with the proposal which, if implemented, hold the potential to undermine the effective management and conservation of the KNP. These risks include a perceived fundamental misunderstanding of the role of management plans, EMIs and EIAs; the potential broad scope of the exclusion; the extent to which the exclusion potentially undermines key constitutionally entrenched principles of administrative justice; and anomalies in the array of proposed conditions built into the exclusion that may undermine the operation of these conditions as satisfactory safeguards.

Keywords: EIA streamlining; environmental impact assessment (EIA); environmental management instruments; exclusion; Kruger National Park; management plans; protected areas; public trust

Introduction*

Globally, countries are striving to realise their commitments under the Convention on Biological Diversity's[1] Kunming–Montreal Global Biodiversity Framework.[2] Agreed to in December 2022, this framework contains a range of targets, the most relevant of which, in the context of protected areas, is Target 3. This target commits countries to 'ensure and enable that by 2030 at least 30 per cent of terrestrial and inland water areas, and of marine and coastal areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed' through protected areas and other effective area-based conservation measures.[3]

Reaching this target may be challenging globally, and specifically in the eastern and southern regions of Africa, for several reasons, which include financing constraints. Recent studies have highlighted that protected areas in this region face significant funding challenges. These areas are increasingly under pressure to become financially self-sustainable in the face of decreasing government funding.[4] One response to this pressure is to increase tourism opportunities and construct additional relevant infrastructure in pursuit of higher revenues to offset reduced financial support from the

* The ideas, arguments and opinions expressed in this article are the authors' own and do not necessarily represent those of the affiliated institutions. This article reflects the state of the law as at 15 May 2024.

1 Convention on Biological Diversity 31 *ILM* 818 (1992).

2 Kunming–Montreal Global Biodiversity Framework CBD/COP 15 Decision XV/4 (19 December 2022).

3 ibid 9.

4 See generally: IUCN East and Southern Africa Regional Office (ESARO), *Closing the Gap. The Financing and Resourcing of Protected and Conserved Areas in Eastern and Southern Africa* (IUCN ESARO BIOPAMA 2020). See further: P Lindsey, J Allan, P Brehony and others, 'Conserving Africa's Wildlife and Wildlands Through the COVID-19 Crisis and Beyond' (2020) 4(10) Nature Ecology & Evolution 1300; and H Clements, MF Child, L Lindeque and others, 'Lessons from COVID-19 for Wildlife Ranching in a Changing World' (2022) 5 Nature Sustainability 1040.

central fiscus.[5] At the same time, governments across the world, including those in the eastern and southern regions of Africa, have begun to streamline environmental impact assessment (EIA) processes to fast-track decision-making and expedite development.[6] But these two trends can collide. The recent proposed amendments to the regulation of activities undertaken within the Kruger National Park (KNP) serve as a staging ground for such a collision.

In South Africa, only approximately 0.05% of the national budget is allocated to biodiversity conservation, with an associated decreased allocation to the direct management of existing statutory protected areas, including national parks.[7] As a result, many of these protected areas face staffing, skills and operational budget constraints. The government recently re-emphasised the need to explore options to generate and unlock additional resources to ensure the ongoing effective management and expansion of these areas.[8] As in the international context, one option could be through upgrading or constructing new infrastructure to generate increased tourism revenue.

In the KNP, South Africa's flagship national park, moves are afoot to remove EIAs as a requirement for most forms of infrastructure development undertaken within the park's borders. These moves take the form of a draft notice (Exclusion Notice) published by the Minister of Forestry, Fisheries and the Environment (the Minister) in February 2024.[9] It reflects the Minister's intention to adopt the KNP's Management Plan (2018–2028)[10] (KNP Management Plan), together with a Generic Environmental Management Programme for the KNP (2023)[11] (Generic EM Programme), as environmental management instruments (EMIs). South African National Parks (SANParks), the management authority for the KNP, would then not need to obtain an environmental authorisation under the National Environmental Management Act 107 of 1998 (NEMA) before undertaking a broad range of activities in the KNP. These

5 IUCN ESARO (n 4) 30–40.

6 T Fischer, A Fonseca, G Geißler and others, 'Simplification of Environmental and Other Impact Assessments – Results from an International Online Survey' 2023 41(3) Impact Assessment and Project Appraisal 181.

7 Department of Forestry, Fisheries and the Environment, 'Synthesis Workshop Outputs' (30x30 Implementation Workshop, 6–8 June 2023) 18 <https://www.dffe.gov.za/sites/default/files/docs/synthesis_30x30 implementationworkshopreport.pdf> accessed 12 April 2024.

8 ibid.

9 Notice of the Intention to Adopt Environmental Management Instruments for the Purpose of Excluding in Terms of Section 24(2)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), Identified Activities from the Requirement to Obtain Environmental Authorisation (GN 4386 (5 February 2024) in GG 50138).

10 South African National Parks, 'Kruger National Park Management Plan (2018–2028)' (*SANParks*, 2018) <https://www.sanparks.org/wp-content/uploads/2021/06/knp-approved-plan.pdf> accessed 12 April 2024 (KNP Management Plan).

11 Department of Forestry, Fisheries and the Environment, 'Generic Environmental Management Programme for the Kruger National Park' (*DFFE*, 2024) <https://www.dffe.gov.za/sites/default/files/docs/genericEMPR krugernationalpark2023draft.pdf> accessed 12 April 2024> (Generic EM Programme).

activities include most of the listed activities reflected in Listing Notices 1–3.[12] Listed activities would ordinarily trigger the need for the project proponent to undertake either a basic assessment or a scoping and environmental impact assessment report,[13] and to secure an environmental authorisation before commencing with the listed activity.[14]

The origin of the Exclusion Notice dates back to various amendments made to NEMA in 2013[15] and 2022.[16] The cumulative impact of these amendments is that the Minister can exclude from the requirements to obtain an environmental authorisation, certain listed activities if they are specified in an EMI.[17] The term EMI is defined in NEMA to include a diverse array of current and potential future mechanisms, such as environmental management frameworks; strategic environmental assessments; spatial tools; environmental management programmes; environmental risk assessments; environmental feasibility assessments; norms and standards; minimum information requirements; or any other relevant environmental management instrument, as may be developed in time.[18]

Regulations laying down the procedure to be followed in adopting EMIs (EMI Regulations) were initially published in 2019[19] and amended recently in 2024.[20] During the presentation of the then proposed EMI Regulations to Parliament in 2018, representatives from the erstwhile Department of Environmental Affairs indicated that the regulations were being introduced in response to criticism about the EIA system. In particular, there had been calls to reduce red (or green) tape and the cost of implementing environmental legislation.[21] Parliamentary representatives raised concerns about the perceived relaxation of environmental standards or requirements should these EMIs replace the need for undertaking an EIA.[22] Departmental representatives sought to allay these concerns, arguing that the EMIs did not amount to a 'relaxation' of legal requirements but were simply an 'alternative' legal requirement.[23]

12 EIA Regulations Listing Notices 1–3 (GN 983–985 (4 December 2014) in GG 38282).
13 EIA Regulations (GNR 982 (4 December 2014) in GG 38282).
14 Section 24(1) read with s 24(2)(a) of NEMA.
15 National Environmental Management Laws Second Amendment Act 30 of 2013.
16 National Environmental Management Laws Amendment Act 2 of 2022.
17 Section 24(2)(c) read with s 24(2)(e), as amended, of NEMA.
18 Section 1 of NEMA.
19 Regulations Laying Down the Procedure to be Followed for the Adoption of Spatial Tools or Environmental Management Instruments Contemplated in Terms of Section 24(4)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (GN 542 (5 April 2019) in GG 42380).
20 Amendments to the Regulations Laying Down the Procedure to be Followed for the Adoption of Spatial Tools or Environmental Management Instruments (GN 4494 (13 March 2024) in GG 50289).
21 Parliamentary Monitoring Group, Report of Meeting of National Council of Provinces Land Reform, Environment, Mineral Resources and Energy Select Committee Report, 13 November 2018 <https://pmg.org.za/committee-meeting/27487/> accessed 12 April 2024.
22 ibid.
23 ibid.

The world over, EIAs are recognised as an instrument of choice in pursuit of, among other things, conservation and more sustainable outcomes.[24] The recent publication of the Exclusion Notice raises many questions why, in South Africa, EIAs are soon to be deemed an inappropriate or unnecessary proactive instrument to support decision-making in regulating almost all activities in the country's premier protected area. One of the overarching aims of EIAs is proactively to protect both the environment and the public from the negative consequences associated with clandestine, untransparent, reckless, baseless and biased decision-making at the project level.[25] EIAs have been adopted as South Africa's main instrument in pursuit of the country's constitutional environmental right,[26] while simultaneously realising additional procedural rights, notably the right to just administrative action.

In protected areas, EIAs are widely recognised as a key instrument for ensuring that unique and irreplaceable areas, such as national parks, are developed responsibly amid increasing calls for development.[27] Although the effectiveness of EIAs in South Africa's protected areas has been criticised by some scholars,[28] these scholars did not call for the exclusion of the application of EIAs in protected areas. Rather, they advocated for improved and more robust assessment, promoting coherent long-term conservation objectives. It is acknowledged that streamlining EIA processes for certain clearly identified projects could be beneficial in some contexts, possibly including protected areas.[29] However, various questions arise relating to the form and content of the Exclusion Notice. Does the exceptional breadth of the Exclusion Notice and vagaries in

24 A Bond, J Pope, M Fundingsland and others, 'Explaining the Political Nature of Environmental Impact Assessment (EIA): A Neo-Gramscian Perspective' (2020) 244 Journal of Cleaner Production 118694.

25 LK Caldwell, 'Environmental Impact Analysis (EIA): Origins, Evolution, and Future Directions' (1988) 6(3–4) Impact Assessment 75; T Murombo, 'Beyond Public Participation: The Disjunction Between South Africa's Environmental Impact Assessment (EIA) Law and Sustainable Development' (2008) 11 PELJ 1; R Alberts, FP Retief, J Arts and others 'EIA Decision-making and Administrative Justice: The Substance of Just Decisions' (2022) 40(4) Impact Assessment and Project Appraisal 296; R Alberts, FP Retief, C Roos and others, 'EIA Decision-Making and Administrative Justice: An Empirical Analysis' (2022) 65(10) Journal of Environmental Planning and Management 1914; and T Maphanga, K Shale, B Gqomfa and another, 'The State of Public Participation in the EIA Process and its Role in South Africa: A Case of Xolobeni' (2023) 105(3) South African Geographical Journal 277.

26 M Kidd, F Retief and R Alberts, 'Integrated Environmental Impact Assessment and Management' in H Strydom, N King and F Retief (eds), *Environmental Management in South Africa* (Juta 2018) 1213. The environmental right is enshrined in s 24 of the Constitution of the Republic of South Africa, 1996.

27 R Alberts, FP Retief, DP Cilliers and others, 'Environmental Impact Assessment (EIA) Effectiveness in Protected Areas' (2021) 39(4) Impact Assessment and Project Appraisal 290; and L Sandham, C Huysamen, FP Retief and others, 'Evaluating Environmental Impact Assessment Report Quality in South African National Parks' (2020) 62(1) Koedoe: African Protected Area Conservation and Science 1.

28 ibid.

29 R Alberts, FP Retief, C Roos and another, 'Three Decades of EIA Streamlining: Lessons from South Africa' (2023) 41(3) Impact Assessment and Project Appraisal 205; and Alberts and others (n 27).

its applicable conditions outweigh any expected benefits associated with EIA streamlining? Does the Exclusion Notice reflect a fundamental misunderstanding of the EIA instrument and its benefits in protected areas, or a wilful abandonment of it in pursuit of aims that are not apparent at this time?

In this context, this article critically analyses the merits of the Exclusion Notice to determine whether, as initially indicated by its drafters, it amounts to an equivalently rigorous 'alternative' legal requirement to EIAs, or a significant 'relaxation' of the legal requirements when regulating listed activities in the KNP. The critique is divided into four broad parts. The first considers the extent to which the Exclusion Notice reflects a fundamental misunderstanding of the role of protected area management plans, EMIs and EIAs. The second reflects on the vague way in which the scope of the Exclusion Notice is defined. The third examines the extent to which it undermines the key constitutionally entrenched principles of administrative justice, notably public participation, independent and unbiased decision-making, and access to justice. The fourth and final part explores whether the conditions built into the Exclusion Notice provide the necessary safeguards to overcome the above-mentioned potential concerns.

Misunderstanding the Role of Protected Area Management Plans, EMIs and EIAs

It is generally accepted that sound environmental governance depends on developing and implementing policies, plans, programmes and projects that aim to achieve specific goals or objectives. A 'policy' may be considered as the inspiration and guidance for action; a 'plan' as a set of coordinated and timed objectives for implementing the policy; and a 'programme' as a set of projects in a particular area.[30] This tiered system of instruments can apply at different scales, from national through to local. It can, as in the case of this discussion, apply to sectoral actions and to physical planning actions.[31] In practice, policies, plans and programmes effectively set the context for decisions relating to specific projects.[32] This basic understanding of tiered levels of decision-making and of the need for different information requirements at different levels of decision-making (from policy to plan to project) is not controversial or disputed and is well supported in academic literature.[33]

30 C Wood and M Dejeddour, 'Strategic Environmental Assessment: EA of Policies, Plans and Programmes' (1992) 10(1) Impact Assessment Bulletin 3.

31 See generally P Wathern (ed), *Environmental Impact Assessment: Theory and Practice* (Unwin Hyman London 1988); and specifically, C Wood, 'EIA in Plan Making' in P Wathern (ed), *Environmental Impact Assessment: Theory and Practice* (Unwin Hyman London 1988).

32 ibid.

33 See, for example: Wood and Dejeddour (n 30); N Lee and F Walsh, 'Strategic Environmental Assessment: An Overview' (1992) 7(3) Project Appraisal 126; L Kornov and W Thiesen, 'Rationality in Decision- and Policy-making: Implications for Strategic Environmental Assessment' (2000) 18(3) Impact Assessment and Project Appraisal 191; S Nooteboom, 'Environmental

In the context of environmental governance and decision-making, there are four main differences that distinguish policies, plans and programmes on the one hand, and projects on the other.[34] First, the precision with which spatial implications can be defined differs. Whereas projects are usually precisely located, the geographical impacts of policies, plans and programmes are often much less clearly defined. Second, the details relating to physical development differ. There is often an absence of detail about specific physical developments proposed in policies, plans and, to a lesser extent, programmes when compared to projects. Third, the lead time differs. A project is generally carried out within a shorter time span than a policy, plan or programme, which makes its impacts less complex to assess. The lead time of a policy, plan or programme may span several years or even decades. Fourth, the decision-making procedures and the range of institutions involved may differ. A project generally has both a project proponent (who proposes the idea to initiate the project) and a competent authority (which determines whether permission should be granted for it to proceed). In most cases, the project proponent and competent authority differ, which should facilitate impartial and balanced decision-making. Furthermore, projects generally concern only one sector of activity and, therefore, there is often only one project proponent. As a result, coordination is not a major issue. In contrast, formulating, adopting and implementing policies, plans and programmes often involve multiple stakeholders with different sectoral mandates and interests. Building and reaching consensus across the broad range of stakeholders is essential in both formulating and implementing the policy, plan and programme.

The efficacy of any environmental governance regime arguably hinges on the correct and effective use and integration of tiered instruments at the appropriate policy, plan, programme and project level. The Exclusion Notice apparently rejects some of this fundamental tiering theory and highlights confusion between planning and project-level instruments.

When considering the four differences above, the confused thinking in relation to the KNP Management Plan, the Exclusion Notice and an EIA becomes apparent. First, the assumption is made that the KNP Management Plan is akin to an EIA in terms of its ability to inform decision-making at the project level, as contemplated by section 24 of NEMA. Based on this assumption, the need for an EIA is excluded for most listed activities in accordance with section 24(2)(c) and (e) of NEMA. This implied similarity is not so in practice. The KNP Management Plan provides the 'broad strategic and

Assessments of Strategic Decisions and Project Decisions: Interactions and Benefits' (2000) 18(2) Impact Assessment and Project Appraisal 151; F Retief, 'Effectiveness of Strategic Environmental Assessment (SEA) in South Africa' (2007) 9(1) Journal of Environmental Assessment, Policy and Management 83; and A Bond, J Pope, A Morrison-Saunders and others, 'Impact Assessment: Eroding Benefits Through Streamlining?' (2014) 45 Environmental Impact Assessment Review 46; and Alberts and others (n 25).

34 See Wood and Dejeddour (n 30). By implication these are also the fundamental differences between project level EIA and the Management Plan as a planning instrument.

operational framework for the management of the park.'[35] It is a ten-year plan, providing information on the biophysical context, desired state, programmes at strategic and operational levels and costs relevant to the management of the KNP. It is by its very design a planning instrument. It is thus difficult to argue that the KNP Management Plan was designed and envisaged to operate as a project-level instrument (such as an EIA); its level of precision, detail, timeframes and decision-making procedures fundamentally differ from those of an EIA as set out in NEMA. The KNP Management Plan is not theoretically an appropriate substitute for the type of project-level environmental information and decision-making criteria that would otherwise be available in an EIA.

Although the KNP Management Plan recognises that environmental impacts associated with some activities may occur, this recognition is high level, as to be expected from a planning instrument. The merit of relying on this high-level information to regulate and guide specific projects and project-level decisions, respectively, is debatable. The validity and efficacy of using broad spatial information in planning instruments, such as the KNP Management Plan, to effectively screen out and exclude the need for EIAs, has been questioned in South Africa, given doubts about the accuracy and scale of this spatial information.[36] Furthermore, the Exclusion Notice appears to anticipate that all developments in the KNP will be approved by the managing executive or the relevant delegated official in the park.[37] Collapsing the ordinary separation of authority between the planning institution and the implementing institution and between the project proponent and the competent authority may undermine one of the key governance benefits associated with tiering, namely the pursuit of impartial and balanced decision-making.[38] One is, therefore, hard pressed to see how the use of the KNP Management Plan, which is fundamentally a broad-scale planning instrument, can be considered a suitable substitute for the use of a project-level EIA.

Elevating the KNP Management Plan and Generic EM Programme to the level of EMIs (akin to EIAs) that should act as the sole informants of project-level decision-making in the KNP, disposes of the core facets and benefits associated with an EIA as a project-level instrument. The result is that decisions relating to infrastructure, maintenance and conservation developments may fail to take into consideration project-specific attributes associated with an EIA as a project-level instrument. Neither the KNP Management Plan nor the Generic EM Programme addresses fundamental project-specific issues and impacts such as alternatives (including alternative sites and the no-go option), site layout and design. Relying on these broadly framed documents removes the anticipatory and predictive benefits associated with the EIA process. Ordinarily, this process enables project-specific issues and impacts to be proactively and properly scoped and studied

35 KNP Management Plan (n 10) 15.

36 D Cilliers, FP Retief, AJ Bond and others, 'The Validity of Spatial Data-based EIA Screening Decisions' (2022) 93 Environmental Impact Assessment Review 106729.

37 Exclusion Notice (n 9) para 5.5, read with the Generic EM Programme (n 11) 4.

38 The implications of this in the context of promoting just administrative action are explored more fully below in this article.

so that mitigation options and alternatives can be placed before the decision-maker prior to the activity being approved and undertaken. Conversely, the expected use of the KNP Management Plan, which contains generic and already outdated information, and the Generic EM Programme to exclude the need for an EIA, cannot be seen as an acceptable alternate instrument. These documents do not contain the specific project-level information generated through an EIA process, which is required to ensure the form of environmental decision-making envisaged in terms of NEMA's environmental management principles[39] and its general objectives of integrated environmental management.[40]

The accepted intention of EIA exclusions, through the use of other instruments, is to streamline the process in instances where impacts from activities are well known and easily predictable in areas that are not particularly sensitive. The application of this thinking to the highly sensitive environment of a national park, where impacts are not generic and are bound to be significant, is clearly a contortion of the concept beyond its original and conceived intent.

Scope of the Exclusion Notice

The above concerns are exacerbated by the scope of the Exclusion Notice. While its geographical scope is clear and logically limited to activities undertaken within the boundaries of the KNP, the range of activities falling within its remit is potentially vast.

The Exclusion Notice broadly covers all activities identified in terms of section 24(2)(a) and (b) of NEMA,[41] but for the following two:[42] energy-related activities requiring atmospheric emission licences under the National Environmental Management: Air Quality Act 39 of 2004; and waste management activities requiring waste management licences under the National Environmental Management: Waste Act 59 of 2008. As a result, the range of activities falling within its scope include not only generally small-scale activities reflected in Listing Notice 1[43] and 3[44] ordinarily requiring compliance with the basic assessment process, but also larger-scale activities reflected in Listing Notice 2[45] ordinarily requiring compliance with the scoping and environmental impact assessment process. A vague attempt is made to narrow the range of activities to those 'contemplated in paragraph 4.1' of the Exclusion Notice. Three broad types of activities are identified in this paragraph, namely activities that (a) are listed in the Annual

39 Section 2 of NEMA.
40 Section 23 of NEMA.
41 Exclusion Notice (n 9) para 4.
42 ibid para 4.2.
43 GN 983 (4 December 2014) in GG 38282.
44 GN 985 (4 December 2014) in GG 38282.
45 GN 984 (4 December 2014) in GG 38282.

Infrastructure Project Implementation Plan (AIPIP); (b) relate to maintenance; and (c) relate to conservation projects or rehabilitation.

The AIPIP is defined in the Exclusion Notice as 'the yearly plan detailing the tasks, financial, and personnel resources to undertake specific tasks that will lead to the achievement of the objectives of the Kruger National Park as reflected in the approved Park Management Plan', which is accessible at the weblink provided.[46] The weblink provides access to a range of documents, none apparently constituting the AIPIP. One document available on the weblink is titled 'Infrastructure Project Implementation Plan 2022/2023–2025/2026'. It is unclear why access is provided to this document as it does not seem to match the definition of the AIPIP referred to in the Exclusion Notice. This document's duration spans four years, and it contains only a list of activities broadly associated with upgrading, replacing and renovating existing infrastructure and constructing new infrastructure at certain camps. It contains no annual plan, does not provide any precise detail on the scale of the activities listed in it or of the financial and personnel resources required to undertake these activities or to mitigate their impacts, or how undertaking them aligns with the KNP Management Plan. This creates significant uncertainty regarding the scale and range of activities falling within the remit of the Exclusion Notice.

The Exclusion Notice later anticipates the annual preparation of a list of proposed projects falling within the remit of the exclusion being prepared and signed off by the KNP's managing executive or relevant designated official, as part of the AIPIP, to commence within twelve months of the implementation of the Exclusion Notice.[47] Linking the scope of the exclusion to yet-to-be-determined lists of activities reflected in some future AIPIP, developed at the sole discretion of the very institution undertaking these activities, perpetuates confusion and fosters a lack of transparency or accountability. It calls into question the legal validity of using this vague yet-to-be-determined plan as a basis for clarifying the scope of activities falling within the exclusion.

Furthermore, the terms 'maintenance', 'conservation projects' and 'rehabilitation' are undefined in the Exclusion Notice. Accordingly, the scale and range of activities falling under these terms are vague and unclear. They could include both large-scale and small-scale activities with multiple potential impacts. The South African judiciary has, in the past, struck down the validity of vaguely defined terms linked to activities contained in past EIA listing notices.[48] If challenged, those reflected in this Exclusion Notice may well face a similar fate.

46 Exclusion Notice (n 9) para 1.

47 Exclusion Notice (n 9) para 5.2.

48 See, for example: *HTF Developers (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2007 (5) SA 438 (SCA), paras 5–8.

Undermining Administrative Justice

The concept of natural justice is a central component of South African law. As recently highlighted by the judiciary, it is founded upon 'fundamental ideas of fairness and the inter-related concept of good administration' and helps to 'ensure objectivity and impartiality' by enabling interested parties to participate in decision-making processes.[49] The concept is firmly entrenched in the Constitution of the Republic of South Africa, 1996, which accords citizens the right to administrative action that is lawful, reasonable and procedurally fair.[50] The realisation of the right is effected through the Promotion of Administrative Justice Act 3 of 2000 (PAJA), which outlines what constitutes administrative action[51] and procedural fairness.[52] It further details the grounds for review, which, importantly in the context of this article, include procedurally unfair action[53] and bias (or a reasonable suspicion of bias),[54] and the procedure and remedies for judicial review.[55] With environmental law having been described as 'administrative law in action',[56] natural justice and the constitutional dispensation that has been enacted to realise it are of central relevance to most forms of decision-making undertaken under environmental legislation.

Natural justice principles have, in turn, been embedded in both NEMA and the National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA). In the context of NEMA, public participation and open and transparent decision-making are recognised national environmental management principles[57] and general objectives of integrated environmental management,[58] given effect through detailed public participation procedures embedded in the EIA Regulations.[59] This is mimicked in the context of NEMPAA, which outlines a mandatory public participation process for various transactions undertaken within the borders of protected areas.[60] The public participation process has been included to partly fulfil the trusteeship the government

49 *Minister of Water and Sanitation v The Public Protector of the Republic of South Africa & Others* (unreported judgement in High Court of South Africa, Gauteng Division, Pretoria, Case No. 27609/2019) paras 28–29.
50 Section 33 of the Constitution.
51 Section 1 of PAJA.
52 Sections 3–4 of PAJA.
53 Section 6(2)(c) of PAJA.
54 Section 6(2)(a)(iii) of PAJA.
55 Sections 7–8 of PAJA.
56 J Glazewski, 'The Bill of Rights and Environmental Law' in J Glazewski and L du Toit (eds), *Environmental Law in South Africa* (LexisNexis SA October 2023 – SI 11) 5–27.
57 Section 2(4)(f), (g) and (k) of NEMA.
58 Section 24(2)(d) of NEMA.
59 Regulations 39–44 of the EIA Regulations (n 12).
60 Section 33 of NEMPAA.

exercises over all protected areas and in recognition of its obligation to implement NEMPAA in partnership with the people.[61]

As will be highlighted below, the legal and practical effect of the Exclusion Notice holds the potential to undermine the legal framework aimed at promoting natural justice, in three ways by: (a) failing to provide for adequate public participation; (b) facilitating potentially biased decision-making; and (c) removing forms of redress that would ordinarily be available to the public.

Public Participation

Public participation is recognised as an 'essential component of any country's democratic architecture and of realising the environmental rule of law'.[62] It contributes to promoting effective resource management and to improving oversight and accountability in the context of decision-making.[63] It is also recognised as an essential element of an EIA process.[64] The government's own EIA guidelines on public participation indicates that it (a) provides clear, accurate and understandable information about the impacts of an activity or the implications of a decision; (b) provides an opportunity for various interested and affected parties to suggest ways to reduce and optimise negative and positive impacts respectively; (c) offers an opportunity for resolving misunderstanding and reconciling conflicts; and (d) encourages transparency, accountability and a healthy democracy.[65] Public participation is a constitutional dictate that is embedded as a mandatory component in most decision-making processes reflected in the country's environmental laws. Yet, the South African judiciary has, in recent times, frequently been called upon to hold various branches of the government to account for their failure to provide for public participation in various contexts.[66] This highlights an apparent disjunct between lofty constitutional ideals and government practice. The formulation of the Exclusion Notice provides further evidence of the erosion of the benefits associated with public

61 Section 3 of NEMPAA. See generally on public trusteeship in the context of protected areas: A Blackmore, 'The Interplay Between the Public Trust Doctrine and Biodiversity and Cultural Resource Legislation in South Africa: The Case of the Shembe Church Worship Site in Tembe Elephant Park in KwaZulu-Natal' (2014) 10(1) Law, Environment and Development Journal 1.

62 J Hall and P Lukey, 'Public Participation as an Essential Requirement of the Environmental Rule of Law: Reflections on South Africa's Approach in Policy and Practice' (2023) 23 African Human Rights LJ 303.

63 A du Plessis, 'Public Participation, Good Environmental Governance and Fulfilment of Environmental Rights' (2008) 11(2) PELJ 194.

64 Murombo (n 25) 109.

65 Department of Environmental Affairs, *Public Participation Guideline in terms of NEMA EIA Regulations* (DEA 2017) 6–7.

66 The recent jurisprudence is canvassed in Hall and Lukey (n 62) 323–33; and J Hall, 'Environmental Judgements in the Last Year – A Barometer of the State of Environmental Democracy' (2022) 4 TSAR 689–716.

participation and its centrality to realising the environmental rule of law in South Africa's protected areas.

Excluding the requirement for SANParks to obtain an environmental authorisation under NEMA for those activities reflected in the Exclusion Notice effectively eliminates the parallel regulatory requirement for SANParks to conduct an EIA under NEMA's EIA Regulations before undertaking those activities. This, in turn, eliminates both the need and the benefits associated with complying with the public participation procedures embedded in NEMA's EIA Regulations. The Exclusion Notice itself does not anticipate any form of public participation procedure before SANParks undertakes activities falling within its remit. Decisions made by SANParks to undertake a range of activities in terms of the Exclusion Notice clearly constitute 'administrative action' as defined in PAJA.[67] The failure to provide for any form of public participation would appear to undermine the constitutional dictate of procedurally fair administrative action.

It is acknowledged that the Exclusion Notice is linked to the KNP Management Plan, with NEMPAA prescribing that the management authority must 'consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area' when preparing the latter.[68] The Act is silent on whether any form of public consultation process must precede the adoption of the associated AIPIP. Some may argue that the public consultation process linked to preparing the KNP Management Plan provides an adequate substitute for the public participation process built into NEMA and its EIA Regulations. However, this argument is flawed given the vast differences outlined above between the purpose, scope, form and nature of the information reflected in the KNP Management Plan and the associated AIPIP compared to that of a project-level EIA process. Respective distinct opportunities for public participation should accordingly be provided for developing the KNP Management Plan and for the project-level EIA process. Arguments discounting the need for public participation in the EIA context strongly contrast with recent research highlighting the importance of public participation in the EIA process for South Africa's protected areas.[69] Public participation can sometimes be the only governance mechanism to objectively inform decision-making. Also, it can allow for public input and a degree of oversight and promote transparency in decision-making by management authorities in

67 Section 1 of PAJA. This is owing to the fact that the decision would be made by an organ of state (SANParks), exercising power in terms of legislation enacted under the Constitution (NEMA and NEMPAA), that has the potential to adversely affect the rights of any person (citizens of South Africa on whose behalf the government exercises trusteeship over the country's protected areas), and which has direct legal effect (will effectively result in the approval of activities being undertaken in the KNP).

68 Section 39(3) of NEMPAA.

69 Alberts and others (n 27) 299–300; K Malepe, A Gonzales and F Retief, 'Evaluating the Quality of Environmental Impact Assessment Reports (EIARs) for Tourism Developments in Protected Areas: The Kruger to Canyons Biosphere Case Study' (2022) 40(5) Impact Assessment and Project Appraisal 395.

protected areas.[70] The eschewing of EIAs to inform and control change in the KNP directly undermines the essential characteristic of participatory environmental governance that the EIA process entails—the 'ideal and practice of deliberation' aimed at pursuing better environmental decisions and outcomes.[71]

Independence and Bias

The rules of natural justice and procedural fairness require that an administrative decision-maker must act without bias or an appearance of bias.[72] To avoid offending the rule against bias, the decision-maker must objectively be considered to have an impartial and unprejudiced mind.[73] An apprehension or perception of bias arises where a reasonable person might reasonably suspect that the decision-maker was not impartial.[74] PAJA, for the most part, codifies this rule, requiring administrative decision-makers to be unbiased and free from any reasonable suspicion of bias.[75] NEMA's EIA regime seeks to promote impartiality by clearly distinguishing between the project proponent (the applicant) and the competent authority.[76] The latter is a government authority that is theoretically an impartial and independent decision-maker with no vested interest in the project being undertaken by the project proponent.

The Exclusion Notice, read together with the associated Generic EM Programme, recognises SANParks as the project proponent of all development activities undertaken in the KNP.[77] Every year, the KNP's managing executive or relevant designated official must prepare and approve a list of proposed projects falling within the remit of the Exclusion Notice.[78] Overseeing the implementation of these projects, ensuring compliance with the Generic EM Programme and conducting the anticipated annual environmental audit of projects all fall to SANParks officials or external persons employed by SANParks.[79]

The cumulative impact of the above is that SANParks operates as the project proponent, the authority tasked with approving projects falling within the exclusion, and the

70 ibid.

71 J Holder, *Environmental Assessment – The Regulation of Decision-Making* (Oxford University Press 2004) 235.

72 See generally on the rule against bias: C Hoexter and G Penhold, *Administrative Law in South Africa* (3rd edn, Juta 2021) 616–625.

73 ibid.

74 The test for bias in South African law has been set out in *S v Roberts* 1999 (4) SA 915, paras 32–34.

75 Section 6(2)(a)(iii) of PAJA.

76 The applicant is defined in NEMA as the 'person who has submitted an application for an environmental authorisation to the competentauthority…' (s 1). The competent authority is defined in NEMA as the 'organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity' (s 1).

77 Generic EM Programme (n 11) 3.

78 Exclusion Notice (n 9) para 5.2.

79 Exclusion Notice (n 9) paras 5.3–5.6; and Generic EM Programme (n 11) 4–6 and 10–12.

authority tasked with monitoring compliance. With almost no external oversight from another government authority or the public at large, some degree of financial or institutional bias or a reasonable apprehension of such bias by SANParks are a reasonable possibility. It seems a significant stretch to argue that any institution can exercise an impartial mind regarding projects it proposes, approves, undertakes and monitors. The approach reflected in the Exclusion Notice accordingly seems to undermine the constitutional dictate of impartial, open and transparent decision-making, as further enunciated in PAJA and NEMA.

Legal Remedies

The Exclusion Notice dispenses with the requirement to obtain an environmental authorisation. In practice, a related legal consequence of this is that it removes both internal (administrative) and external (judicial) remedies that ordinarily operate as a safeguard for and a form of control of administrative action. The application of the Exclusion Notice deprives members of the public of the internal administrative appeal remedy that would otherwise be available to them in terms of NEMA,[80] read together with its National Appeal Regulations.[81] This, in turn, removes the possibility of judicial oversight in the form of judicial review under PAJA, owing to the absence of both an initial decision under the Exclusion Notice and a subsequent decision following an internal administrative appeal. This further waters down the tenets of natural justice entrenched in the Constitution, PAJA and NEMA, which cumulatively promote public participation in decision-making and an opportunity to challenge such decision-making where it falls foul of the tenets of natural justice.

Inadequate Safeguards

With a view to improving the regulatory rigour of the Exclusion Notice and its potential abuse by the key project proponent that it governs, namely SANParks, a range of safeguards have been embedded in the exclusion in the form of conditions. These conditions predominantly relate to zoning, a site-sensitivity verification process, implementation of a Generic EM Programme and compliance monitoring. Various anomalies plague the potential of each of these proposed safeguards to achieve their anticipated end. This is discussed below.

Zoning

The Exclusion Notice prescribes that each proposed project must be located in the appropriate zone as reflected in the zoning scheme contained in the KNP Management Plan.[82] While aligning proposed projects with the KNP's zoning scheme makes sense, this would ordinarily be the case and this condition accordingly adds no additional form

80 Section 43 of NEMA.

81 National Appeal Regulations (GNR 993 (8 December 2014) in GG 38303).

82 Exclusion Notice (n 9) para 5.1.1.

of safeguard.[83] Furthermore, as stated in the KNP Management Plan itself, the zoning scheme aims to 'establish a coherent spatial framework' to 'guide and co-ordinate conservation, tourism and visitor experience initiatives.'[84] Its level of detail and regulatory rigour differs substantially from that characterising an EIA and the associated permitting requirement (in the form of an environmental authorisation). It is therefore questionable to regard it as an adequate substitute for the latter (namely an EIA and the associated permitting requirement).

The zoning scheme indicates that it is 'extracted from the full Conservation Development Framework that will be prepared as an outcome of the 2018 Park Management Plan'.[85] Strangely, no express reference or link is provided in the Exclusion Notice to this Conservation Development Framework, which, according to the KNP Management Plan, 'sets out the rationale for the use zones and development nodes in more detail, describing these and providing management guidelines for each of the zones and sites.'[86] Given the Conservation Development Framework's apparent deeper level of detail when compared to the zoning scheme embedded in the KNP Management Plan, its omission from the conditions reflected in the Exclusion Notice is strange.

The condition relating to zoning also indicates that a 'site plan must be provided for each project site where the exclusion will be applied'.[87] Again, preparing and approving a site plan provides an important potential regulatory safeguard. This potential is, however, undermined as the Exclusion Notice itself provides no clarity on its form, what content it must contain,[88] to whom it must 'be provided', whether this amounts to a form of advance approval or simple notification, and if the former, whether the person or institution to whom it must be 'provided' is of a nature to exercise any form of independent oversight.

The Generic EM Programme gives a little more clarity about the content to be included in a site plan. It highlights four minimum content requirements: (a) a detailed description of the site; (b) a site locality; (c) a site layout map (indicating the project site, areas of sensitivity and, if applicable, no-go areas); and (d) the position of proposed activities on the site.[89] It also details a range of information that must be contained in the Generic

83 NEMPAA provides that the management authority must manage the protected area in accordance with the management plan, with the management plan having to include zoning (s 40(1)(b)(ii)) read with s 41(2)(g)).

84 KNP Management Plan (n 10) 54.

85 ibid.

86 ibid.

87 Exclusion Notice (n 9) para 5.1.1.

88 Some detail is provided in the Generic EM Programme, with the implications associated with the vague nature of this additional detail addressed below.

89 Generic EM Programme (n 11) 10.

EM Programme project file[90] and method statements.[91] However, this information pales in significance to what project proponents are required to provide for the normal basic assessment and scoping and environmental impact assessment report process. It is accordingly clear that the condition relating to the site plan cannot constitute a meaningful safeguard.

Site-sensitivity Verification Process

It is expected that a site-sensitivity verification of proposed development sites will be undertaken regarding all activities that are subject to the Exclusion Notice.[92] Site-sensitivity verification constitutes a potentially useful safeguard, but the manner in which the condition is framed in the KNP Exclusion Notice again undermines this potential. First, very little detail is provided regarding the expected form, nature and rigour of the site-sensitivity verification.

Second, as its name implies, a verification process should aim to determine whether something or a state of affairs is true or accurate. This would logically anticipate there being an initial baseline assessment of a site's sensitivity, with its accuracy then to be confirmed or refuted through a subsequent verification process. In the absence of an initial baseline assessment, a subsequent verification process would be nonsensical. This would appear to be the case in the context of the Exclusion Notice as it does not provide for an initial baseline assessment of the site. The development of the site plan cannot be regarded as the baseline assessment, as the Exclusion Notice prescribes that the site-sensitivity verification must be undertaken during the preparation of the site plan.

Third, verification implies an independent and objective subsequent assessment and, accordingly, a degree of separation and independence between the entity undertaking the initial assessment and the one subsequently verifying it. This is absent in the Exclusion Notice: representatives of the project proponent, SANParks, are expected to undertake the verification process. A huge degree of discretion is also placed in the hands of these representatives as they will effectively determine what is 'relevant' to include in the verification process and, seemingly, what form it will take.

Fourth, the scientific rigour of the anticipated verification process is questionable: it will comprise a 'walkthrough' of the 'proposed development site' during the 'preparation of

90 Generic EM Programme (n 11) 9. It is envisaged that the Generic EM Programme Project File will contain a range of information for each project forming part of the exclusion, including: a register of sites; site plans for each site; photographic records of the development sites; baseline reports and photologs (with no further detail on what these amount to); an up-to-date environmental incident log; a complaints register; and copies of any applicable permits or authorisations.

91 Generic EM Programme (n 11) 10. The method statement will set out the plant, materials, labour and methods that the contractor will use to carry out the activity.

92 Exclusion Notice (n 9) para 5.1.2.

the site plan'.[93] What would amount to a satisfactory walkthrough is unclear. What those undertaking the walkthrough are required to verify is unclear. The expected outcome of the walkthrough is unclear. This lack of clarity is exacerbated because, as mentioned above, the Exclusion Notice and associated Generic EM Programme provide little clarity about the form and content of the anticipated site development plan. A site development plan is integrally linked to the site-sensitivity verification process.

Finally, the breadth of the anticipated site-sensitivity verification process is limited to the development site, with no consideration seemingly being given to assessing or verifying cumulative impacts or impacts on the area adjacent to the proposed site.

All the above frailties characterising the site-sensitivity verification process undermine the next associated safeguards in the Exclusion Notice, namely the cordoning off of areas identified as of high environmental sensitivity, and the relocation of any species of conservation concern or special value.[94]

Implementing the Generic Environmental Management Programme

As highlighted above, the Exclusion Notice anticipates that the proposed Generic EM Programme be adopted as an EMI. The Generic EM Programme is divided into two parts: (a) the background, purpose, roles and responsibilities and key environmental documentation (Part A); and (b) a range of generic impacts, impact management outcomes and actions (Part B). The stated objective of the Generic EM Programme is to 'prescribe and pre-approve' a set of generally accepted impact management outcomes and actions that can 'commonly and repeatedly be used' to avoid, manage and mitigate the impacts and risks associated with the implementation of projects falling within the exclusion.[95] The Exclusion Notice compels the 'Kruger National Park', presumably SANParks, to comply with the Generic EM Programme when undertaking any projects falling within the scope of the exclusion.[96]

The preparation and adoption of generic environmental management programmes as a safeguard to manage impacts can have merit where the nature of the activity, its impacts, the site and surrounding environment and effective mitigation measures are clearly understood, and there are low levels of uncertainty. In the context of the KNP, clarity on several of these issues may be absent. First, as highlighted above, there is a lack of clarity regarding the nature and scale of activities falling within the scope of the exclusion. As a result, the impact associated with these activities may not be properly understood. Second, as a broad site, the entire KNP is a highly sensitive area. Therefore, the nature of each proposed development site and its surrounding environment may warrant careful advanced assessment and consideration. Third, only by having carefully understood the nature of the activity and its impacts on both the site and the surrounding

93 ibid.
94 Exclusion Notice (n 9) para 5.1.3.
95 Generic EM Programme (n 11) 1.
96 Exclusion Notice (n 9) paras 5.1.3–5.1.4.

environment can appropriate mitigation measures be determined. As a result, the merit of adopting and compelling compliance with generic mitigation measures reflected in the Generic EM Programme is flawed.

Compliance Monitoring

Compliance monitoring is an integral component of the regulatory cycle, and regulatory frameworks are 'largely meaningless without compliance'.[97] The Exclusion Notice seeks to build in compliance monitoring as an additional safeguard. It cross-refers to two potentially important compliance monitoring components embedded in the Generic EM Programme, namely: ensuring compliance with Part B of the programme itself, and conducting an annual environmental audit.

The task of monitoring compliance with Part B of the Generic EM Programme is accorded to the Park environmental control officer (Park ECO), who is a SANParks employee; or the environmental compliance officer (ECO), who is an employee of the contractor employed or contracted by the management authority (SANParks) to undertake the project within the KNP. Where no ECO is appointed for a project, compliance monitoring falls to the Park ECO or relevant section ranger of the area in which the project is to be undertaken.[98] If they encounter incidents of non-compliance, they must record these in a register. These incidents must be resolved by the relevant Park ECO or ECO in discussion with the contractor.[99]

The independence of the person fulfilling the compliance monitoring function is questionable given that SANParks employees, or contractors employed by SANParks, will be exercising the function in respect of projects in which SANParks is effectively the project proponent. No provision is made for the appointment of an external entity to verify the outcome of the compliance inspections and the resolution of incidents of non-compliance. This includes compliance with internal regulatory instruments, such as policies and standard operation practices. In addition, vast discretion regarding the timing and frequency of the compliance monitoring is placed in the hands of the Park ECO or ECO.[100] The Generic EM Programme indicates that the competent authority will also monitor compliance 'as required'. However, no clarity is provided regarding when this may be required, or the form or frequency of this form of monitoring.

The Exclusion Notice compels SANParks to conduct an annual environmental audit to determine compliance with the conditions reflected in the exclusion and in the Generic

97 F Craigie, P Snyman and M Fourie, 'Dissecting Environmental Compliance and Enforcement' in A Paterson and L Kotze, *Environmental Compliance and Enforcement in South Africa* (Juta 2009) 41 and 50.

98 Exclusion Notice (n 9) para 5.5, read with Generic EM Programme (n 11) 10.

99 Generic EM Programme (n 11) 11.

100 The frequency of compliance inspections is left to the discretion of the Park ECO or ECO (Exclusion Notice (n 9) para 5.5).

EM Programme.[101] The outcome of the audit must be submitted to the Department of Forestry, Fisheries and the Environment's (DFFE) compliance monitoring unit within two months of its completion.[102] The Generic EM Programme indicates that the annual audit must span all projects implemented under the exclusion and include details on the general state of compliance with the programme itself, any complaints received, environmental incidents recorded and corrective actions taken.[103] It seems that incidents of non-compliance will then fall to the DFFE to prosecute as an offence under NEMA.[104] While closing the enforcement loop, it must be remembered that SANParks itself, or the contractors it employs, will invariably be the project proponent.

The above process thus effectively tasks the project proponent with monitoring its own compliance and then reporting instances of its own non-compliance to the DFFE. With possible criminal sanctions following incidents of non-compliance, there is undoubtedly a potential for incidents of non-compliance being omitted from the annual audit. Furthermore, given the annual auditing cycle, it may be too late for the DFFE to proactively or retrospectively intervene to halt or remedy substantial damage caused by projects undertaken in the previous annual cycle.

Conclusion

Although streamlining EIA processes may be warranted in certain contexts, the above analysis highlights that the anticipated approach the government intends using in the context of the KNP appears highly problematic in several respects. First, it reflects a clear fundamental misunderstanding of the different roles played by management plans, EMIs and EIAs. Second, the potential scope of the Exclusion Notice is exceptionally broad owing to the vague manner in which the array of activities falling within its remit is defined. Third, the approach reflected in the Exclusion Notice undermines key constitutionally entrenched principles of administrative justice. Finally, anomalies in the array of proposed conditions built into the exclusion appear to undermine their operation as satisfactory safeguards.

Given the above, the merit of the EIA streamlining approach reflected in the Exclusion Notice must be deeply questioned. If implemented in its current form, the exclusion may pose significant challenges to the future effective conservation and management of the KNP. The negative ramifications of adopting it may be contagious should the current approach in the Exclusion Notice be seen as a blueprint for implementation in other protected areas.

101 Exclusion Notice (n 9) para 5.6.
102 ibid.
103 Generic EM Programme (n 11) 11.
104 Exclusion Notice (n 9) para 5.7, read with the Generic EM Programme (n 11) 3.

Domestic protected area scholars have in the past sounded warnings based on evidence of regressive trends in the domestic regulatory framework governing other forms of potentially deleterious activities undertaken in current protected areas and areas earmarked for future inclusion in protected areas.[105] Global protected area scholars are increasingly raising concern over trends promoting protected area downgrading, downsizing and degazettement (PADDD).[106] The proposed EIA streamlining approach in the Exclusion Notice appears to clearly show further regression and PADDD, potentially significantly downgrading a key component of the regulatory framework central to conserving protected areas in South Africa.

PADDD has recently been included as an indicator in the monitoring framework for measuring progress towards realising Target 3 of the Convention on Biological Diversity's Kunming–Montreal Global Biodiversity Framework.[107] The South African government will accordingly be required to report on its efforts to prevent PADDD events. How it will seek to justify its current approach to streamlining EIA requirements in South Africa's largest and globally renowned protected area remains to be seen if the Exclusion Notice in its current form becomes law.

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Amendments to the Regulations Laying Down the Procedure to be Followed for the Adoption of Spatial Tools or Environmental Management Instruments (GN 4494 (13 March 2024) in GG 50289) <https://doi.org/10.2307/jj.9377908.7>

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National Appeal Regulations (GRR 99 (8 December 2014) in GG 38303).

Notice of the Intention to Adopt Environmental Management Instruments for the Purpose of Excluding in Terms of Section 24(2)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), Identified Activities from the Requirement to Obtain Environmental Authorisation (GN 4386 (5 February 2024) in GG 50138).

Regulations Laying Down the Procedure to be Followed for the Adoption of Spatial Tools or Environmental Management Instruments Contemplated in Terms of Section 24(4)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (GN 542 (5 April 2019) in GG 42380).

International Instruments

Convention on Biological Diversity 31 *ILM* 818 (1992) <https://doi.org/10.1017/S0020782900014728>

Kunming–Montreal Global Biodiversity Framework CBD/COP 15 Decision XV/4 (19 December 2022).