

PARTNERS IN POLLUTION

VOLUNTARY AGREEMENTS AND CORPORATE GREENWASH



SOUTH AFRICAN PEOPLE AND ENVIRONMENTS IN THE GLOBAL MARKET

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Series edited by Mark Butler and David Hallowes of
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Layout by Gillian Watkins

Front page illustration by Zapiro

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Contact groundWork at
P.O. Box 2375
Pietermaritzburg 3200
Tel: +27 -33-342 5662
Fax: +27-33-342 5665
Email: team@groundwork.org.za
www.groundwork.org.za

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With the World Summit on Sustainable Development (WSSD) opening in Johannesburg, this series of five booklets gives an environmental justice perspective on key challenges for sustainable development in South Africa. Development largely defines people's relationship with their environments. Governance is about who decides that relationship. It is a means through which a global contest for control of resources, including environmental and labour resources, is fought out. The booklets report from several 'fronts' of the struggle we call development. They look at how South Africa has adopted critical aspects of international governance, at whose interests are served and at the impacts on people and their environments. They indicate that, while another world is possible, it is not being built in South Africa.

1. The invisible fist: Development policy meets the world

by David Hallowes

Booklet 1 focuses on South Africa's approach to development in relation to the global order defined by the neo-liberal agenda of the 'Washington consensus'.

2. Partners in pollution: Voluntary agreements and corporate greenwash

by Chris Albertyn and Gillian Watkins

The corporate push for self-regulation is part of the neo-liberal agenda. Booklet 2 looks at what advances they have made in South Africa.

3. The cost of living: How selling basic services excludes the poor

by Mark Butler

Booklet 3 picks up on the democratic promise to provide people with services, such as clean water and energy, in relation to global injunctions for cost recovery and privatisation.

4. The seeds of neo-colonialism: Genetic engineering in food and farming

by Elfrieda Pschorn-Strauss and Rachel Wynberg

Booklet 4 looks at the role of South Africa in the global battle over the introduction of Genetically Modified Organisms.

5. Ground-zero in the carbon economy: people on the petrochemical fence-line

by Rory O'Connor and David Hallowes

Booklet 5 touches on climate change, another point of conflict between the northern powers, so as to relate it to the local impacts of South Africa's oil refineries.

"The economic realities of today's world are such that, when the captains of industry speak, governments fail to listen at their peril" (Smith, A: 2001).

1. Engineering change to stay the same

Following apartheid's official demise in 1994, South African society has been pre-occupied with designing and trying to implement fundamental social, political and economic change. The fledgling democracy faced destabilising threats in the pervasive legacies of apartheid and persistent and worsening poverty, unemployment and social inequality. Greatest resistance to change has come from those who benefited most from the apartheid status quo. This booklet describes how a group of transnational corporations have together frustrated effective regulation of pollution which threatens impoverished black communities.

Global companies like Shell, BP, Caltex, Total, Sasol and Petronas have used greenwash tactics to deflect, delay and undermine efforts to introduce laws and standards that would hold corporations accountable and liable for their ongoing pollution abuses. At various moments in that process, the camouflage of spin and public relations has been removed to reveal how the chemicals and refineries sectors have manipulated a complex change process in the pursuit of bigger business as usual.

Collectively, the refineries and chemicals sectors are responsible for 25% of South Africa's globally significant greenhouse gas emissions. Under the apartheid government these industries polluted with impunity. The 1965 Atmospheric Pollution

Prevention Act did not prescribe any emission standards and government legal action on industrial pollution has been exceptionally rare.

In addition to the uncertainties of international climate change negotiations, recent years have also seen growing public concern about pollution in South Africa. Civil society, including black township-based leadership, has increasingly articulated this concern and industries have become nervous. In response, they have drawn on the international corporate agenda to develop a coherent strategy to counter the perceived threat of environmental regulation to their profit bottom line: they have systematically greenwashed their public image while pushing for a voluntary system of 'self-regulation' in environmental policy negotiations. Effectively, they have engineered a situation where they continue to pollute as freely as they did in the bad old days.

The chemicals and refinery industries have been leading exponents of self-regulation. In 1999, these industries promised the South African government, and the government then promised the public, that government and industry would formulate voluntary agreements to address the growing problem of industrial pollution in South Africa. The process of developing the agreements was led by the corporations and, three years and lots of

"The original Earth Summit in Rio de Janeiro in 1992 was a significant victory for corporations. It was the first major international conference on environment and development where business successfully mobilised to engineer certain outcomes. Although governments made some positive commitments, corporations and their lobby groups succeeded in countering many demands that conflicted with the interests of business, including dismissing any notion of binding regulation of transnational corporations and substituting their own 'voluntary' agenda" (Girona Declaration, 2002).

Like many other countries, South Africa's options for addressing the challenge of sustainable development appear increasingly limited as sovereignty and regulatory influence over capital has been eroded through the actions of powerful global financial interests and their allied multi-lateral institutions like the International Monetary Fund, the World Bank and the World Trade Organisation.

negotiations later, they put two framework agreements - one for the refineries and one for other chemicals industries - on the table. The documents are embarrassingly weak and reveal no original intent to reduce pollution. The process is now in a state of suspension. Government has not accepted the agreements and has given up on its original intentions of showcasing signed agreements as a positive partnership at the World Summit for Sustainable Development. But the effect of the process has been to deflect public criticism, absorb the energy of civil society, distract limited government capacity away from legislative priorities, and so ultimately delay the promulgation of legally binding pollution standards.

The strategy employed in South Africa is entirely consistent with the objectives of the global business lobby group, Business Action for Sustainable Development (BASD). According to the Corporate Europe Observatory (Corporate Europe Observer, number 11) a BASD meeting in Paris in 2001 was told that the central objectives of BASD revolved around avoiding new restrictive regulations and promoting voluntary measures and self regulation instead.

Growing transnational corporate influence over the governance priorities of individual countries is a global phenomenon. The increasing influence and formal role of transnational corporations within the United Nations - dubbed 'bluewash' - is further limiting the options for meaningful global rules and mechanisms by which citizens can hold

transnational corporations accountable and liable for abuses.

South Africa's post-apartheid process of transformation has been shaped by these and other trends of globalisation. Like many other countries, South Africa's options for addressing the challenge of sustainable development appear increasingly limited as sovereignty and regulatory influence over capital has been eroded through the actions of powerful global financial interests and their allied multi-lateral institutions like the International Monetary Fund, the World Bank and the World Trade Organisation.

This booklet begins by situating environmental governance issues in the broader context of some key challenges of development, transformation and governance facing South Africa. The main body recounts how the corporate agenda of voluntary self-regulation was contested but ultimately recognised in South Africa's new environmental law, and was then prioritised by corporations as the key response to mounting public anger over a series of pollution incidents. It argues that the process of developing sector-specific voluntary agreements has been driven by corporations and that it reveals a greenwash agenda. In the light of the South African experience of voluntary agreements so far, the conclusion outlines what pre-conditions are necessary if voluntary agreements are ever to play a positive role in addressing the pollution challenges facing developing countries like South Africa.

2. Environment and development in post-apartheid South Africa

There are many in South Africa who believe environmental protection should not be a priority and the country does indeed face a variety of immediate threats to sustainable development. In just nine months during 2001, one million jobs were lost to the South African economy. Including people who have given up looking for jobs, the government's statistics department announced that unemployment in March 2002 stood at 41.5%. Levels of inequality in income distribution are amongst the highest in the world, as are the levels of violent crime. Approximately five million South Africans out of a population of 43 million are HIV-positive, with 1,500 new infections everyday.

Not only has government had to respond to and manage these social threats, but it has also had to change the structure, function, mission and racial composition of the Public Service. In addition, the Constitution of 1996 created nine entirely new provinces as well as new institutions and shared governance responsibilities that had first to be defined and then funded and established.

The 'honeymoon' period of South Africa's transition to democracy held the promise of participatory development directed and managed to address pressing social priorities. In 1994, the first democratic government was elected on the promise of the Reconstruction and Development Programme

(RDP) which envisaged an economy harnessed in the service of the people. However, the international dictates of neo-liberal, corporate-led globalisation soon led to a rethink. Government's macro-economic strategy, the Growth Employment and Redistribution (GEAR) policy adopted in 1996, harnessed policy-making and governance in the primary service of growing the economy.

Following current international economic orthodoxy, government chose to address poverty alleviation through doing all it could to facilitate rapid economic growth and so create jobs. The shift from the RDP to GEAR thus redefined the developmental role of both the public and private sectors. With the benefits expected to trickle down, government would promote economic growth by creating favourable conditions for private investors and global capitalism (see booklet one). And the corporate sector, once scorned by the anti-apartheid movement as 'racial capital', achieved official recognition as having a leading role in actually delivering development. Rehearsing this role, corporations project positive images through social responsibility programmes and even seconding corporate executives to high levels of government.

On taking over South Africa's Presidency from Nelson Mandela, Thabo Mbeki established an International Foreign Direct Investment Advisory

Pollution control is a luxury African communities cannot afford

"If you have a finite amount of money, it's important to prioritise (corporate social responsibility) expenditure into the most important social and environmental issues,' said Johan du Preez (Group Environmental Manager of Billiton in South Africa).

'In the US, social investment criteria rankings handsomely reward companies that invest in sophisticated machinery and internal audit systems aimed at limiting emissions of pollution. Energy efficiency is also highly rated in Europe.

'But for many developing communities, European and US levels of emission control are a luxury which these communities cannot afford. In Africa, local communities rely on corporate social investment being spent on programmes that prevent life threatening diseases such as malaria and Aids' said du Preez"(Business Report, October 2000).

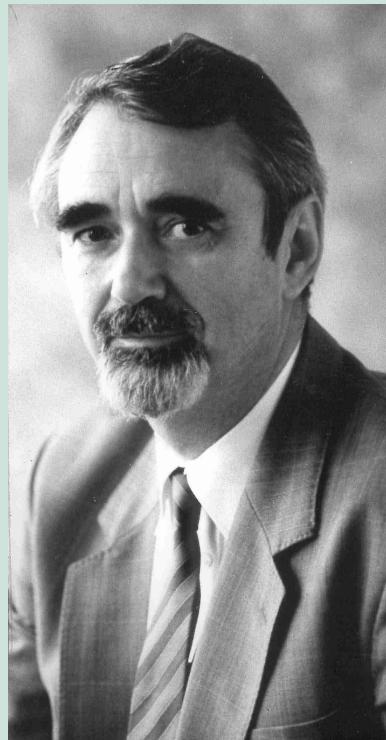


Membership of Thabo Mbeki's International Foreign Direct Investment Advisory Council comprises executive officers of some of the world's most powerful transnational corporations, including Commerze Bank AG; ABB; Unilever PLC; Daimler Chrysler AG; Citigroup Inc.; Alliance Capital Management International; Mitsubishi Corporation; Petronas; and Independent News and Media PLC.

What sort of advice?

Until recently Percy Barnevnik was the CEO of ABB. When he retired in 2001 year he took a package of \$80 million U.S. His company recorded a \$691 million U.S. loss in that same year. As a representative on President Mbeki's advisory council, Mr Barnevnik holds the following views on the meaning of globalization for the corporate world.

"I would define globalisation as the freedom for my group to invest where it pleases, when it pleases, in order to produce what it wants, by getting supplies and selling wherever it wants, supporting as few constraints as possible regarding workers' rights and social conventions" (quoted in Transnational Corporations Observatory, 2002).



Percy Barnevnik. Picture: Sunday Times

Council which meets regularly to advise him. This council is loaded with top people associated with Business Action for Sustainable Development (see box). They have repeatedly stressed the importance of economic growth above all else in South Africa. They have also advised on how best to achieve this. A newspaper article headlined "Go for Growth, World Businessmen urge Mbeki" (Sapa, 25 February 2001) describes how a two-day meeting

had discussed secret measures to promote economic growth: "The government had agreed on a range of practical measures it would undertake in the interim with the council. Because they had to do with South Africa's international competitiveness, they could not be discussed openly."

BASD defines the role of the public and private sectors in much the way that GEAR does and BASD

Chairman, Mark Moody-Stuart, believes that business can play a key role in helping to build good national governance. Speaking at the Globe 2002 conference in South Africa, he argued that good governance is needed to help develop "regulatory frameworks within which the market can operate". The former Shell boss blamed the lack of effective governance structures for creating world poverty, arguing that if it weren't for corruption in Southern governments and the lack of business opportunities in some sectors, society would have the resources to eliminate poverty. The role of states would then be not to control corporate excesses, but to create the "enabling environments" whereby business can operate freely (Corporate Europe Observer, Number 11).

This shining corporate image, however, has a dark side which hinders the achievement of South Africa's development priorities. For example, every year white collar crime is estimated to be increasing at a rate of 20 percent and costing the economy at least R40 billion (Business Report, 2002) and less than seven percent of the more than 60,000 annual cases of reported commercial crime ever lead to conviction. Corporate corruption needs willing partners and, according to Deloitte and Touche's forensic auditing services, (Coutts, 1999) government officials in many areas are also corrupt, "simply selling licences or permits. Poor internal controls, frozen posts, coupled with inadequate internal audit resources, create a climate for corruption in many government departments".

South Africa's 1996 Constitution grants South Africans the right:

- * to an environment that is not harmful to their health and well-being;
- * 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.

3. The environmental regulatory regime

Apartheid's unforgettable environmental contribution was to forcibly remove black people from their land to create conservation parks reserved for the leisure pursuits of whites only. The environment thus became equated with dispossession, white privilege and inequity. Environmental protection in South Africa is still haunted by the perception of its being a first-world, white middle-class concern that is ultimately a threat to the achievement of economic growth and, by inference, social stability and poverty alleviation. With little pollution monitoring happening, there is insufficient information available to quantify the unjust health and productivity costs to poor black people who still live in apartheid's highly polluted townships. The corporate view that environmental legislation should not be "too idealistic" (Orkin et al 1994: 38) thus finds some resonance within government and has been reinforced with the shift to GEAR.

South Africa's new Constitution shared environmental responsibility between the national, provincial and local levels of government and required significant changes in the institutional, policy and legislative approach to environmental management in South Africa. The National Environmental Management Act (NEMA) of 1998 defined the national Department of Environmental Affairs and Tourism (DEAT) as the 'lead agent' on environment within a system of 'cooperative government'. It must coordinate environmental functions across a range of national departments as well as the other tiers of government.

In the context of GEAR, all departments are required to prioritise those actions which will best meet the national priorities of economic growth, job creation, poverty-relief and black economic empowerment



With little pollution monitoring happening, there is insufficient information available to quantify the unjust health and productivity costs to poor black people who still live in apartheid's highly polluted townships, as seen here in Zandela in Sasolburg. Picture: Heeten Kalan

and to budget and plan accordingly. This has led to an interpretation of the Constitution which subordinates environmental protection functions to "justifiable economic development" (see box). The DEAT itself has reduced its budget for pollution control while increasing its tourism budget. A number of other national departments have contradictory mandates. Thus, the department responsible for promoting industrial agriculture must also regulate pesticides, fertilizers and genetically modified organisms (see booklet four). Similarly,

A sleeping partner?

Industry has lobbied to convince government that self-regulation through voluntary negotiated agreements is the most cost-effective and flexible means of achieving environmental improvements in the industrial sector. This implies that voluntary agreements will make little demand on the administrative capacity of the state. But if the proposed chemicals and oil refineries voluntary agreements were to be implemented, their administrative demands would most likely overwhelm and collapse what little provincial and local government capacity exists. Instead of having one national agreement with targets, they propose that each separate factory negotiate with all the relevant local and provincial government officials to set up locally appropriate targets. The argument for cost-effective administration can only be valid if it is assumed that government will be a sleeping partner to the agreements.

the department responsible for promoting mining and cheaper energy production is responsible for regulating and minimising their environmental impacts.

Provincial government has taken on the responsibility for administering environmental impact assessments (EIAs). One of the better resourced provinces, KwaZulu-Natal, recently expressed concern that industrial expansion was being delayed due to a backlog of more than 1000 EIAs. A number of the provinces have no environmental management capacity. Anecdotal evidence suggests that EIA requirements are pervasively ignored in much of the country.

The Constitution gives local government a specific responsibility for delivering people's right to a clean environment. Apartheid restricted local government to white areas and it was less than two years ago in December 2000 when local government elections heralded the final institutional transition to a non-racial democracy following a major process of restructuring.

Central Government expects it to take ten years before the new local government system is able to generate sufficient income to manage and deliver basic services. South Africa also faces a backlog of infrastructure maintenance, with outstanding repairs mounting at a rate of US\$1 billion per year. Government has chosen to respond to these

challenges with an accelerated programme of privatisation through public-private partnerships (see Booklet 3) including environmental services involving waste, water and electricity.

With very limited revenue bases, and more than eighty-five percent of allocated budgets going on salaries, very few local governments have the resources to address issues of pollution control or environmental protection.

Government's weak capacity was anticipated in the participatory process of drafting a new national environmental policy. It was agreed that the law should allow citizens to have legal standing to prosecute without threat of costs in the event that government was unable to ensure their protection. The NEMA enables pollution-affected communities to take legal action if they have evidence of a company breaking the law, and if government has failed to act. However, there have been ongoing delays in sufficiently defining laws, regulations and standards with which communities can protect themselves.

Despite serious pollution problems adversely affecting mostly poor black communities, South Africa remains without legally binding air pollution standards. The entire country is serviced by the grand total of five air pollution control officers empowered to administer the scheduled parts of an Act nearly forty years old.

4. The contested path to self-regulation

It is instructive to locate industry's push for self-regulation through 'partnerships' in the context of democratic South Africa's formulation of environmental policy. In the honeymoon period following South Africa's first democratic elections, and with the support and encouragement of foreign donor governments, government launched an extraordinary multi-stakeholder consultative process to develop new policy. During the process known as CONNEPP (Consultative National Environmental Policy Process), more than one-hundred thousand citizens participated in nation-wide meetings which ultimately informed the promulgation of the NEMA in 1998.

The consultative process was jointly managed by government and delegated representatives of NGOs, trade unions, business and industry, and communities. Throughout the two-year-long process business representatives persistently kept the matter of voluntary agreements on the agenda. They were even prepared to have the new Act enable communities to hold polluters liable, as long as the Act would also officially recognise and approve voluntary negotiated 'Environmental Management Cooperation Agreements' (EMCAs).

Civil society stakeholders, including labour, eventually acceded to the inclusion of voluntary agreements in the Act with the explicit

understanding and reassurance that these would be supplementary instruments to take industries beyond compliance with national legislation and standards. Thus, voluntary agreements could logically only take shape once the foundation of appropriate standards and legislation, and industry compliance thereto, was in place and secured.

Government's 1997 White Paper on Environmental Management Policy reflected this: "Government may enter into transparent agreements to promote performance that exceeds minimum standards by encouraging innovation and the development of best practice".

While some representatives of business associations were diligent in their participation, leaders of corporate South Africa were noticeably absent throughout the CONNEPP process. But when negotiations became critical, the corporate sector used its contacts at higher levels to have other government departments and ministers bring pressure to bear on the drafting process.

It seemed, however, that government had resisted this pressure. In the national conference closing CONNEPP in January 1997, then Minister of Environmental Affairs, Pallo Jordan, told business and industry to read his lips: history had shown business incapable of properly regulating itself, and

The key role-players pushing for self-regulation

The Refineries Manager's Environmental Forum (RMEF) and Chemical and Allied Industries Associations (CAIA) represent the environmental interests of companies collectively responsible for more than twenty-five percent of South Africa's greenhouse gas emissions. These two bodies, supported by their international business lobby counterparts, have aggressively pushed a particular framework and approach to the development of voluntary environmental management cooperation agreements in South Africa. RMEF and CAIA represent the interests of companies such as: Shell; BP; Total; Sasol; Caltex; and Petronas. All of these organisations are contributors to the international business lobby, BASD, which is pushing a global agenda of voluntary agreements and self regulation in the name of sustainable development.

government was not about to give them a blank cheque to do so. The draft Act recognised the role of voluntary agreements but stipulated that every agreement had to have very clear requirements for:

- * multistakeholder participation in design;
- * quantifiable targets and indicators of compliance;
- * independent monitoring and auditing;
- * sanctions mechanisms.

In the space of three months between May and July 1998, following extraordinary behind-the-scenes pressure and lobbying from the corporate sector, final drafts of the Act were quietly changed to remove these prescriptions. The corporate sector waited until all the talking was over and then quietly got its way. When the Act was published in November 1998, all that was left on voluntary agreements was a short chapter comprising twenty-five ill-defined lines to enable the establishment of EMCAs. The purpose of EMCAs, according to the new formulation was not - as agreed in negotiations - to improve on standards as laid down by law, but simply to effect any partnership that would promote compliance with any of the broad principles underpinning the Act.

Upon promulgating NEMA in November 1998, Minister Jordan informed Parliament that he was preparing new laws on clean air and integrated pollution and waste management for approval by parliament in 1999. South Africa was experiencing

Profits before peoples' prosperity

In the rhetoric of self-regulation, businesses are corporate citizens who will bring market-driven development to the people and are worthy of their trust. Moreover, the market itself is the best guarantee of responsible corporate behaviour. However, two recent incidents in South Africa suggest that the market values corporate welfare above human rights, labour and environmental concerns.

In November 2001 Nokuthula Hlatshwayo, a night-shift worker in the town of Newcastle went into labour and experienced birth complications. As a theft-prevention measure, it was standard for her foreign employers to lock the entire workforce in over night. Unable to access help, Nokuthula's twins died on the factory floor.

Municipal Secretary of Newcastle, Gerhard Scheepers, explained to the press that government needed to strike a balance between enforcement of employees' rights and job creation: "The difficulty is that if we do not strike

a balance, investors might pull out of the town leaving thousands of people unemployed" (Green 2002). The town council convened a special meeting to address the tragedy and issued a statement saying: "Exco views the matter in a very serious light, especially in view of the negative publicity given to the matter and the consequences it might have for existing investors and potential investors from abroad" (Ibid). Six months later, there have been no official inquiries, no charges laid, and Nokuthula continues to work for the same employer (Personal Communication with Green).



Nokuthula Hlatshwayo
Picture: Independent Newspapers

A year earlier ten women and a man were trapped and burnt to death when a fire broke out on the night-shift at Johannesburg factory, ESS Chemicals. All exits were locked, and even the telephone was locked away. Three months before the fatal fire three workers submitted written complaints about their conditions to the relevant government agency. Their complaints were never investigated. One whistle-blower was fired for her actions, while the other two died in the blaze. No prosecution of the factory owners has been reported.

increasing numbers of scandalous pollution incidents but, because there were no applicable laws and standards, companies were not prosecuted. There was public pressure on both industry and government to do something.

A year later in 1999 the new Minister of Environmental Affairs, Valli Moosa, again promised parliament swift action on developing binding pollution and waste management laws. These utterances were clearly of great concern to polluting companies who began to mobilise their self-regulatory voluntary agreement plans. Industry held a series of urgent meetings with Deputy Minister Rejoice Mabudaphasi and top government bureaucrats where industry proposed to initiate voluntary agreements that would address the problem.

A Sasol document written by the company's environmental law advisor acknowledges that setting up EMCAs was a priority "due in some part to the pressure being exerted by various non-governmental and community-based organisations for improvement of South Africa's air quality" (Farina 2001).

The Deputy Minister of environment agreed to an industry proposal that a government-industry bilateral committee be established to develop such an agreement. During the three-year process that followed, industry convened regular meetings and took and recorded key decisions - even in the

absence of any government officials. This industry-driven process of designing and defining the nuts and bolts of voluntary agreements (based upon the Dutch Covenant system) completely excluded trade unions, NGOs and pollution-affected communities.

All the while industry representatives were openly criticising government's environment department for incompetence and poor governance. Industry also sought to unduly complicate the environmental law reform work of an under-capacitated government department.

Further serious national pollution incidents in 2000 provoked growing media coverage and public disquiet and added to the pressure on both government and industry. The credibility of government and industry on pollution issues was being questioned on the front pages of the press. But despite repeated public commitments, government was still unable to deliver binding and appropriate pollution control laws and standards.

Following a series of chlorine gas leaks from a Sasol Polymers plant which resulted in hundreds of Durban school children being taken to hospital, the Minister and Deputy Minister issued a number of public statements again announcing their initiative for the development of negotiated voluntary agreements with industry. Speaking at a public function shortly after the Sasol chlorine leaks, Minister Valli Moosa said:

"It is pertinent to ask whether voluntary initiatives, which are largely Western led, comprise a diversion from the real issues of legislative reform" (Kemp, 2001).



Mounting public and media pressure led to as yet unfulfilled commitments.

On our part we have announced steps that we are taking to combat the scourge of pollution that seems to be taking root due to a number of irresponsible corporate citizens who are bent on ignoring every rule in the book. It is simply unacceptable there are industries and businesses that are endangering the health and livelihoods of poor communities through pollution. ... we have agreed to start negotiations with the refineries on putting in place co-operative agreements in terms of the National Environment Management Act which will entail the operation of ambient and emission monitoring, independent auditing of monitoring results and agreeing on emission reduction programmes. These negotiations do not preclude more drastic action against the major polluters in this country (Minister Valli Moosa Addressing a function during which ABB was celebrating ISO 14001 Certification, 30 May, 2000).

The same speech was repeated twice in parliament and the message was reinforced with media releases. Government and industry were going to use the new law to develop an agreement which would manage and reduce industrial pollution. But by entering into negotiations for voluntary agreements before addressing the foundations of the regulatory system in terms of laws and standards, the Ministry had inevitably undermined

the logic of the negotiated policy. As a result, polluting industries were presented by government as eager 'volunteers' trying to fix the problem when in fact there were no guarantees that this would be the outcome.

In effect, the South African Government gave these polluting corporations the kind of public image boost that big corporations in industrialised countries pay public relations companies very large amounts of money to try and achieve. The stock market value of companies is now significantly affected by public perceptions of the corporate brand. But instead of changing a criticised environmental or labour practise, corporate public relations strategies aim to convince enough members of the public that the company cares about the environment and its workers. Government's response effectively bought into such strategies.

Following rising concern among NGOs and pollution-affected communities over the exclusive voluntary agreement process that was being promoted by the national ministers, industry began holding a series of individual dialogues with community leaders and trade unions. The Chemical and Allied Industries Association (CAIA) established a Voluntary Advisory Forum while the refineries invited civil society representatives to selected meetings. For its part, the DEAT issued a first set of externally written industry-guided draft guidelines for the development of EMCAs.

Following rising concern among NGOs and pollution-affected communities over the exclusive voluntary agreement process that was being promoted by the national ministers, industry began holding a series of individual dialogues with community leaders and trade unions. The Chemical and Allied Industries Association (CAIA) established a Voluntary Advisory Forum while the refineries invited civil society representatives to selected meetings.

Greenwash (n):

1. Disinformation disseminated by an organisation so as to present an environmentally responsible public image. (Tenth Edition of the Concise Oxford English Dictionary).
2. The phenomenon of socially and environmentally destructive corporations attempting to preserve and expand their markets by posing as friends of the environment and leaders in the struggle to eradicate poverty.
(Corpwatch)



STEP TWO: THE P.R. FIRM PROCEEDS TO MANIPULATE PUBLIC OPINION IN A VARIETY OF DEvious, UNDERHANDED WAYS-- SUCH AS ANONYMOUSLY PLANTING OP-ED PIECES IN THE NATION'S NEWSPAPERS...



STEP THREE: PUBLIC OPINION IS SWAYED BY THIS ONSLAUGHT OF MEDIA MANIPULATION MASQUERADE AS NEWS...SINCE, AS P.R. FIRMS WELL UNDERSTAND, ANY LIE REPEATED OFTEN ENOUGH BECOMES TRUE...



"We put as much into the community as we do into our petrol".



Sasol billboard in Sasolburg. Picture: Bobby Peek

Yes they do, including unacceptable levels of benzene, vinyl chloride, and methylene chloride. Sasol's reports admit to annual air pollution in Sasolburg alone amounting to over 42,000 tons of volatile organic compounds (VOCs), 22,000

tons of hydrogen sulphide and 26,000 tons of sulphur dioxide. Sasol's impact on poor black communities extends beyond Sasolburg. In the notoriously polluted South Durban industrial area, the Sasol polymers plant had three serious

chlorine gas leaks during 2000 alone - resulting in hundreds of schoolchildren being taken to hospital. Investigations in the area reveal an incidence of childhood leukaemia 24 times higher than the national average. The costs of Sasol's pollution are not borne by Sasol, but are externalised onto mostly poor black communities who pay with their health.

Sasol was a creation of the apartheid government but is now a top-fifty transnational chemicals company with an operating profit of \$2.5 million U.S. per day. Originally established to counter international sanctions against apartheid, Sasol has been instrumental in pushing voluntary environmental agreements to delay and dilute any legally enforceable standards that polluted communities could use to hold them liable.

Sasol describes "the voluntary approach as ... ultimately a substitute for the traditional regulatory ... approach. ... EMCAs should not be a tool to put industry out of business", but rather a means "which will ensure economic growth" (Farina 2001: 2). Sasol is a signatory to the United Nations Global Compact.



Pollution in Sasolburg. Picture: Denny Larson

Government did eventually host a two-day multi-stakeholder dialogue in September 2001 to discuss the possible development of a second set of more detailed guidelines for designing EMCAs. A coalition of civil society groupings presented substantial evidence and constructive criticism of the model and of government's stated intentions. The coalition of organisations told government that, in principle, they accepted the potential value of voluntary agreements as a supplement to established regulations, standards and basic enforcement. They therefore requested government to prioritise expediting the delayed environmental law reform process and to deliver the long-awaited enforceable pollution standards before they proceeded any further in developing voluntary agreements. In this respect, civil society indicated that they would consider further discussion on voluntary agreements if they could be given written undertakings of timeframes and milestones for the promulgation of promised legislation and standards that had been delayed for more than three years. Failing this, civil society considered the publication of voluntary agreement guidelines as inappropriate and premature.

Since the September 2001 "dialogue", the DEAT appears to have cut off communication with civil society on EMCAs. It has not provided a written response to three formal letters from a coalition of civil society organisations seeking to communicate on the matter of EMCAs. At a meeting of the

Refineries Managers Environmental Forum on 12 December 2001, the DEAT Director responsible for EMCAs, Mark Gordon, "expressed his concern that the broader public had" access to the proposed EMCA agreement between government and the refineries. (Minutes of Refineries Managers Environmental Forum Meeting, 12 December 2001). The DEAT has subsequently refused to release the full text of a March 2002 set of new guidelines for the development of EMCAs to civil society.

DEAT however report that in the light of unspecified difficulties with the proposed refineries and chemicals agreements, they have decided to put the entire voluntary agreements process on hold until after the World Summit for Sustainable Development (Mark Gordon, personal communication 13 May 2002). While DEAT may have suspended further negotiations of voluntary agreements under pressure of seconding staff to work on preparations for the World Summit, it acknowledges that other national and provincial government departments are proceeding with the development of other voluntary agreements with industry.

It is not entirely clear why the process of formalising these government-industry partnerships has stalled just before they were meant to be showcased at the World Summit for Sustainable Development. While DEAT is still committed to the concept of EMCAs (Personal communication with Mark Gordon, 13th

May 2002), this delay may:

- * be the result of government incapacity due to staff being seconded to work on the priority of the World Summit;
- * be that government and industry have agreed to formulate and showcase other kinds of partnerships that are even less demanding than the EMCAs;
- * be because DEAT or other government departments are unhappy with the quality of the particular EMCAs that have been proposed;
- * be that DEAT has recognised that voluntary agreements are inappropriate until an effective regulatory system is established, including revised laws and binding standards;
- * be due to differences within the industry associations - perhaps CAIA realised it could not deliver a critical mass of its members to make the agreement worthwhile;
- * be due to a backlash from sufficient numbers of local and provincial governments who see the particular model and agreements as unworkable and a further onerous burden on their limited resources.

Whatever the reasons, the result is that, as it prepares to host the WSSD, South Africa still does not have any new laws or standards concerning pollution control and nor has it concluded any voluntary agreement with industry to reduce pollution. A great deal of time and effort has however been wasted.

5. Minimum conditions for voluntary agreements

While government and industry pause, it is important to review what minimum conditions are necessary for these types of voluntary partnerships to be effective instruments for environmental protection. A number of these conditions, drawn from the international experience, are summarised in Tables 1.a. and 1.b. Voluntary agreements have the greatest chance of success when they have the potential to achieve public interest goals as well as generate private sector benefits. An example of this is in countries where environmentally conscious consumers support companies advertising their positive voluntary behaviour - an unlikely situation in South Africa or elsewhere in the developing world.

Voluntary agreements in pollution control do not work in the absence of other related regulatory mechanisms. International experience shows clearly that effective and consistent enforcement of pollution control laws and standards is required for voluntary agreements to be taken seriously by industry. The co-existence of green taxes or financial incentives and disincentives also contribute to making voluntary agreements effective. South Africa does not have integrated pollution control laws and standards. South Africa also does not provide economic incentives to reduce pollution.

In fact it can be argued that poor enforcement provides economic incentives that encourage continued pollution. Companies in industrialised countries also know that if they do not participate in a voluntary agreement, they will be subject to greater scrutiny by the pollution control authorities. Given the incapacity of South Africa's pollution control authorities, there is little chance of dirty industries deciding to implement EMCAs in order to avoid negative attention from government.

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Table 1.a.
Ideal conditions for voluntary agreements to be effective

Ideal condition	South African conditions
Environmental protection enjoys political priority.	Not a priority.
There is a high degree of environmental awareness and action in society.	Few active groups. Limited public action. Green consumerism not a significant force in society.
Sophisticated environmental laws already in place with enforceable standards.	Fragmented and weak environmental governance. Legally enforceable pollution standards rare or absent.
Voluntary agreements are supplementary to legislation and do not replace it.	Voluntary agreements being promoted as substitute for absent laws.
There is the capacity for enforcement of legislation.	Inadequate enforcement capacity. Prosecutions or sanctions for industrial pollution are rare.
Government departments have budget, authority and technical capacity to lead on developing and implementing agreement.	Environment departments under-resourced and without independent authority.



As it prepares to host the WSSD, South Africa still does not have any new laws or standards concerning pollution control.

Picture: Chris Albertyn

Table 1.b Successful voluntary agreements contain the following

Ideal Conditions	South African Refineries and Chemicals Proposals
Agreement goes beyond existing legally enforceable standards.	There are currently no enforceable standards to go beyond. Agreement to collect pollution data so that standards can be developed. Industry seeking to capture standards development process.
Baseline data exists from which targets are developed.	Due to minimal pollution monitoring, no baseline data exists. The agreement is really about spending years collecting data.
Clearly defined targets that are ambitious but achievable, quantified and unambiguous; with milestone targets and an implementation table with deadline dates.	Proposed agreements contain neither baselines nor targets. The refineries EMCA states that environmental targets will “eventually be included as addenda to the Agreement” (2001:12). In the chemical EMCA targets are not specified. “The environmental objectives will not include numerical targets,” rather targets will be established at individual sites (CAIA EMCA:2001:18).
Commitments are clear and enforceable.	Commitments to actual pollution reduction are absent.
Sanctions for non-compliance are clear and enforceable.	The refineries specify no penalties, but agree to respect the law. The chemical sector specifies incentives such as government subsidies and tax breaks for participation in the agreement, but caution against formal penalties for non-compliance. The chemical sector has proposed first signing an agreement and then discussing incentives and disincentives.
Provisions are made for accountability to affected communities.	Community involvement managed at site level only after signing of agreements. Agreement will prescribe how community may engage.
Formal provision is made for monitoring and evaluating performance.	Refineries specify data collection and verification methods to be determined after signature of agreement. Chemical sector proposes seven years before any evaluation. Monitoring and verification procedures to be finalised after signature.
Provisions for dispute resolution.	Dispute resolution provisions only between bilateral signatories (no reference to disputes with other stakeholders).
Agreement will not result in the removal or denial of rights to third parties.	EMCAS will be private agreements between government and industry. This makes it difficult for citizens and groups to challenge breaches or amendments to agreements that are not being honoured. Agreements can further exclude affected communities and bypass parliamentary oversight of corporate behaviour.

6. The best and worst of voluntary agreements

A recent ten-year review of industry and sustainable development by the United Nations Environment Programme suggests that only a small number of businesses are seriously striving for sustainability. The report also suggests that globally manufacturing is relocating to those countries less able to manage the accompanying environmental, health and safety impacts. The review of 22 industry sectors worldwide was not complimentary on the role of voluntary agreements thus far.

Most voluntary initiatives are still characterized by problems of effective implementation, monitoring, transparency, and free-riders. ... Few voluntary initiatives are directly linked with government policy and regulatory frameworks in a way that would complement the strengths and weaknesses of both. ... All sector reports highlight the crucial role of governments, combining regulatory, economic, and voluntary instruments, in spurring social and technological innovation, and in ensuring that laggard or negligent companies do not benefit at the expense of those investing in best practices (Griffin 2002).

An earlier 1999 Organisation for Economic Cooperation and Development (OECD) study "suggests that the environmental effectiveness of

negotiated agreements is largely unproved" (Shaw 2001). The study found that negotiated voluntary agreements appear to have been compromised by weak target setting, free riding, and the uncertainty of regulatory threats. Implementation had been poor because of hard-to-enforce commitments, poor monitoring and a lack of transparency. "In terms of administrative costs, it is unclear whether negotiated agreements are better or worse than other instruments, but they can result in the redistribution of administrative costs and the creation of new types of cost, such as those for negotiation" (Ibid).

Kemp (2001) looks at the Indonesian experience and notes that agreements there have bypassed workers and affected communities and served to place the behaviour of corporations outside of parliamentary oversight and the national regulatory system in general.

The South African experience so far has shown the partners to have made all the recognised big mistakes:

- * wrong timing, trying to use voluntary agreements ahead of any legal certainty;
- * wrong process, an industry-driven process that has excluded affected communities;
- * wrong content, agreements to effect voluntary behaviour that should be required by law.

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Ostriches and pollution, Secunda. Picture: Bobby Peek

It is clear that voluntary agreements require a number of basic social, legal and political fundamentals to be present if they are going to have any chance of succeeding. The South African experience and international research suggests that many developing countries do not meet these requirements.

In the South African context it is therefore likely that these agreements are being pushed as a powerful means to greenwash industries whose pollution is

responsible for killing and maiming workers and community members. If these EMCAs are implemented in the current South African context the process will also enable effective capture of the regulatory regime by corporate interests.

But even as things stand, without concluding and implementing the agreements, the whole protracted experience has bought time for business as usual. In buying this time, the conclusion of the envisaged voluntary agreements between government and the

chemicals and refineries sectors would contribute to:

- * Further delaying the development of legally binding standards and enable corporations to maximise profit by polluting as usual;
- * Consequently disabling communities from taking legal action as there are no pollution standards which any single industry can be shown to have broken;
- * Allowing those free-riders not interested in voluntary agreements to continue polluting without any means of legal sanction against them;
- * Giving corporations unchecked control in beginning to selectively collect, compile and analyse data on their own pollution streams;
- * Assisting corporate greenwash during pollution crises and incidents by providing "evidence" of concern and cooperative agreements with government to address pollution;
- * Allowing corporations to dictate future pollution standards through providing highly technical analysis of their own selected pollution data to poorly paid, incapacitated and sometimes corrupt government officials;
- * Blaming the ultimate failure of the EMCA on the inability of government to meet what were unrealistic demands on their limited resources in the first place - and thereby strengthen corporate arguments for further self regulation.

7. Conclusion

The last decade has seen voluntary self-regulation promoted by the business lobby as a flexible and effective means to promote sustainable development. Institutions such as the World Business Council for Sustainable Development have been successful in convincing some governments and international organisations that these agreements were a viable alternative to regulations that are alleged to stifle business growth.

According to Perry and Singh (2001), "there are reasons to believe that interest in voluntary action will decline as companies fail to obtain the extent of economic or public relations benefits that may have been expected. Much of the case for voluntary action has been based on exaggerated comparison with traditional forms of regulation, overlooking, for example, how these can be enforced with differing degrees of coercion and flexibility".

Nonetheless, negotiations around the World Summit for Sustainable Development, and the proliferation of voluntary agreements such as "Codes of Conduct," "Guidelines," and the Global Compact, suggest the voluntary agenda remains very much alive, especially in a new form, as "type II" partnerships.

If it is true, as the OECD study suggests, that the environmental effectiveness of voluntary agreements is largely unproven, explaining the longevity and persistence of this concept requires an understanding of the incentives and motivations beyond the objective of environmental effectiveness. In the context of the World Summit for Sustainable Development the corporate lobby places high value on the public relations benefits of having partnerships and voluntary agreements. Just having a partnership (or voluntary agreement) appears more important than having any substance to the agreement. To the contrary, it appears that the less substance there is to the agreement the better. The World Business Council for Sustainable Development emphasises that "partnerships must be flexible, include a range of views, and adopt "step-by-step" and 'learning-by-doing' approaches" (Earth Negotiations Bulletin, On the Side, 10 June 2002).

The past five years have witnessed the global phenomenon of increasing mass protest against unaccountable corporate-led globalisation. In this view, the solution to the problem of lack of corporate accountability does not lie in "flexible, step-by-step" voluntary agreements. Rather it lies in first mobilising the political will to create a legally-binding mechanism that can call errant corporations to account.

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"Corporations must be made legally accountable to citizens: their customers, the communities where they operate, their workers, and to the wider society which is affected by their operations. Strong and effective sanctions must be available to punish and deter corporate abuses" (McLaren 2001:1). Enforceable national and international rules to control corporations and empower adversely affected local communities are the prerequisite for ensuring the credibility of voluntary agreements and partnerships.

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