
SECTION 1: BACKGROUND AND CONTEXT

1. INTRODUCTION

In his opening address to Parliament, the President committed to improving national competitiveness through liberalising the transport sector with the objective of lowering costs and enabling technological advances and innovation throughout industry. Cabinet confirmed the President's views at a 'Lekgotla' in January 2001 when Action Plans for the Economic Cluster were approved. These Action Plans highlight the transport sector as a key contributor to South Africa's competitiveness on the global markets and also acknowledge various export sectors as a major thrust for growing the economy. Infrastructure development, which clearly includes seaports, is also considered as an essential component of the Integrated Framework approved by Cabinet. Clearly, therefore, this Ports Policy supports this commitment in laying out a broad but decisive policy for the future governance of commercial ports in South Africa.

The South African government is committed to building the economy. The basis for pursuing a national commercial ports policy is the recognition that trade, distribution, transport and logistics are among the most vital facets of the South African economy and should play a crucial role in the realization of sustainable economic development, both as a link in the value chain of businesses and because of their own economic significance.

Ports are integrated and crucial nodal points in a transport system, and play a strategic role in the country's economic growth and social development. By virtue of being part of the transport network, port activity facilitates the meeting of the demand of the international market with means of production available in the country. In other words, the ports system, by virtue of being nodal points in the transport system, facilitates trade, which in turn fosters greater national economic activity. To maximise the benefits alluded to above, the aspects of efficiency and effective management have to be introduced to the transport system.

2. POLICY ENVIRONMENT

This section describes the policy environment underpinning the formulation of this national policy on ports. This policy has to be consistent with, and, complement the Government's broad developmental, strategic, economic and social objectives. For this reason, it is necessary to consider the broad policy framework within which this policy has been formulated. Broad government policy is contained in various policy documents, and implemented through various Acts of Parliament.

The following four policies had a major impact on the formulation of this policy these were:

- Constitutional policies;
- Social and economic policies of Government;
- The national transport policy; and
- The restructuring policy of the Department of Public Enterprises.

The Government's policies on social and economic aspects are contained in a number of documents, some of the more salient being:

- Reconstruction and Development Programme (RDP), 1994;
- Development Facilitation Act, 1995 (Act No. 67 of 1995);
- Discussion Document by the Government of National Unity on the Consultative and Implementation Framework for the Restructuring of State Assets, July 1995;
- Proposal for a National Spatial Development Framework, August 1995;
- National Framework Agreement, February 1996;
- White Paper on the Development and Promotion of Tourism in South Africa, June 1996;
- Growth, Employment and Redistribution: A Macro-economic Strategy (GEAR), June 1996;
- National Strategic Vision, 1996;
- Towards a National Growth and Development Strategy, 1996;
- White Paper on National Defence, 1997;
- White Paper on the Environment, August 1997;
- Competition Act, 1998 (Act No. 89 of 1998);
- Skills Development Act, 1998 (Act No. 97 of 1998);
- Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

The White Paper on National Policy reflects the Government's transport priorities in the context of its broad social and economic policies. Ports are critical and integral key nodes in any transport system; and, to this end, a more detailed summary of transport policy objectives and principles is presented later in this section. The recently passed National Land Transport Transition Act, 22 of 2000, is also an important document, especially in the context of integrating land transport planning processes.

The following transport related legislation has also been taken into consideration during the drafting of this policy:

- Merchant Shipping Act 57 of 1951;
- Sea Fishery Act 12 of 1988;
- Legal Succession to the South African Transport Services Act, 9 of 1989; and
- South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).

Due to this importance, relevant provisions in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), are discussed in more detail in the following section.

The Constitution of the Republic of South Africa

The Constitution of South Africa, which came into effect on 4 February 1997, provides for the supremacy of the Constitution and states that any law or act inconsistent with its provisions of the Constitution shall be of no force and effect to the extent of such inconsistency. Attention is given to the provisions of the Constitution as far as it has an effect on this policy. The Constitution specially refers to shipping matters when allocating functions to national, provincial and local governments. Furthermore, some of the other functions allocated to the various spheres of government, in terms of the Constitution, also impact on commercial ports.

Provisions of the Constitution

Schedule 4 of the Constitution lists functional areas of concurrent national and provincial legislative competence. The functions which impact on ports include environmental management; industrial promotion; pollution control; disaster management; nature conservation; policing; public transport; regional planning and development; road traffic regulation; tourism; trade, urban and rural development.

In terms of the Constitution of the Republic of South Africa, commercial ports fall within the exclusive competence of National Government and its structures. Commercial ports also do not fall under the concurrent national and provincial legislative competence. The power to control commercial ports is excluded from the jurisdiction or powers of local authorities.

Nevertheless, there are indeed aspects in the administration of commercial ports that impact on both the Provincial and Local Government spheres, and it is obviously in the public interest and in accordance with both the letter and spirit of co-operative government that these aspects be meaningfully addressed. The constitution stipulates that all spheres and all organs of Government must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, informing one another of, and consulting one another on matters of common interests.

Chapter 11 of the Constitution refers to the role of the security services. In particular, the South African National Defence Force (SANDF) is tasked to defend and protect the Republic. This role of the SANDF affects this policy and needs to be considered.

Social and economic policies of Government

The Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution strategy (GEAR) are government's primary policy and strategic frameworks outlining its socio-economic plans. The RDP is an integrated, coherent socio-economic policy framework. It seeks to mobilise all the people and resources of South Africa and represents a vision of fundamental transformation. Five key programmes underpin the RDP, namely:

1. meeting basic needs;
2. developing human resources;
3. building the economy;
4. democratising the State; and
5. implementing the RDP.

In support of the RDP, the GEAR strategy seeks to place the South African economy onto a higher growth path that will ensure a competitive and fast growing economy that promotes exports and investment. GEAR also intends to promote redistribution by creating employment opportunities and reallocating resources through the budget.

This ports policy seeks to contribute to the attainment of the objectives of both the RDP and GEAR, particularly those that relate to building the economy, promoting exports and investments and developing human resources.

The National Transport policy

The vision for the South African transport system in the White Paper on National Transport Policy is that of system which will:

“Provide safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable.”

The following strategic transport goals were identified as prerequisites to the realisation of the above-mentioned vision:

1. Support for the Reconstruction and Development Programme for meeting basic needs, growing the economy, developing human resources, and democratising decision making;
2. Enabling customers requiring transport for people or goods to access the transport system in ways which best satisfy their chosen criteria;
3. Improving the safety, security, reliability, quality, and speed of transporting goods and people;
4. Improving South Africa’s competitiveness and that of its transport infrastructure and operations through greater effectiveness and efficiency to better meet the needs of different customer groups, both locally and globally;
5. Investing in infrastructure or transport systems in ways which satisfy social, economic, or strategic investment criteria; and
6. Achieving the above objectives in a manner that is economically and environmentally sustainable, and minimises negative side effects.

Of particular pertinence to this policy, is the mission for transport infrastructure, which is:

“To provide an integrated, well-managed, viable and sustainable transport infrastructure meeting national and regional goals into the 21st century, in order to establish a coherent base to promote accessibility and the safe, reliable, effective and efficient movement of people, goods and services.”

The Restructuring Policy of the Department of Public Enterprises

The Policy Framework for an Accelerated Agenda for the Restructuring of State-Owned Enterprises reflects Government’s vision and objectives in the restructuring of state-owned enterprises. It outlines the importance of the developmental role of the state and the need to create sustainable economic and social development. At the level of the industry, restructuring aims at enhancing the efficiency and effectiveness of state-owned enterprises. The promotion of competition in the economy is strongly supported. Restructuring also supports Government’s broader economic objectives like reducing state debt and attracting foreign direct investment. Government also aims at promoting wider ownership and participation in the economy, improving service delivery and promoting human resource development.