

Environmental & Sustainability Studies (ESS) 122

Lecture 2 THE CONSTITUTION AND THE ENVIRONMENT

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The Constitution of the RSA 1996 (s 24)

- SA's legal system was brought into a new era in 1994 with the enactment of a Constitution, which included a bill of fundamental human rights.
- The Constitution is the highest law of the land – First point of reference. Contains all 'Basic' / 'fundamental' law of the land
- Bill of Rights
- Establishes spheres of government: National, provincial, local
- Division of legislative competences
- Division / allocation of administrative responsibilities



'Environmental right'

- Kind of right
 - Human right (Basic) – The rights of humans to a safe and healthy environment
 - Right of environment itself (only partly addressed) – The rights of the environment itself not to be degraded.
 - Categories of rights
 - Blue (1st Generation: Civil & Political rights of individuals) equality, life, freedoms
 - Red (2nd Generation: Social, Economic, Cultural) right to work, food, housing etc.
 - Green / brown (3rd: Solidarity, Environmental) peace, environmental and to development.
- Environmental Right? – Categorized differently: Some confer an environmental human right and some require the government to protect natural resources and the environment. Some require the citizens of a country to protect the environment.



The 'environmental right' (section 24) (1)

- Section 24: Everyone has the right –
 - (a) to an environment that is not harmful to their health or wellbeing and
 - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measure that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



The 'environmental right' (section 24) (2)

- There are TWO parts to this right:
- Subsection (a) is a fundamental human right while,
- subsection (b) is more in the nature of directing the State to take positive steps towards the attainment of the right.



The 'environmental right' (section 24)

(3)

- Paragraph (a): Fundamental (human) right
 - 'Health' (well established personal right under common law)
 - Each person has a right to an environment that is not detrimental to his/her health.
 - Environment must be conducive and promote the well-being of the human being.

Environment - defined in NEMA
Health - preventing human injury
and illness and promoting well-
being



Well-being: state of being
comfortable, healthy, or happy.

The 'environmental right' (section 24)

(4)

– 'Well-being': meaning of?

- *HTF Developers v The Minister of Environmental Affairs and Tourism Case 2006 (T)*: open-ended & incapable of precise meaning...
- The words nevertheless encompass the essence of environmental concern, provides a sense of environmental integrity and that we need to utilise the environment in a morally responsible and ethical manner.
- *Hichange Investments v Cape Produce Co Case 2004 (E)*: exposure to a 'stench' was regarded as being adverse to one's health and well-being.
- Also, well-being is not something that directly affects an individual per se. Thus, a person's well-being can be affected if the environment is being affected in a place that is different to where he/she finds him/herself.



The 'environmental right' (section 24) (5)

- Paragraph (b): Directive principle – imposing a constitutional imperative on the state
 - Reasonable measures aimed at objectives in paragraph (b)
 - *Grootboom* Case 2001 (CC) (Based on use of the word Environment Protected, for Present and Future Generations) – The State is required to take reasonable legislative and other measures in order to ensure the directive.
 - – Creating laws is not enough, must implement policies as well.

Government vs Grootboom: State is required take reasonable legislative and other measures.



The 'environmental right' (section 24) (6)

- (i) **prevent pollution and ecological degradation** - Policies must be put into place to sustain the environment we have today so that there can be one for generations to come – obligation placed on the State.
- (ii) **promote conservation** - Prevention of decay or loss, ensuring preservation (again, for future generations)
- (iii) **secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development** – First mention of the concept of Sustainable Development

Fuel Retailers v Director General: Environmental Management Case – The Constitution integrates environmental protection and socio-economic development. It envisages that environmental protection will be balanced with socio-economic considerations through the ideal of SD.



Other rights relevant to environmental management

- *Locus standi* clause (section 38) – Anyone who fits the requirements of s38 can approach a court if his/her environmental right is infringed.
- Just administrative action clause (section 33)
- Access to information clause (section 32) – Can use this Constitutional provision to require factory owners to disclose information about air pollution levels etc.
- Property clause (section 25)
- Limitations clause (section 36)
- Interpretation clause (section 39)

