

# Sustainable development in South African environmental law and its relationship with the National Development Plan

**JH Coetzee**  
**22745114**

Mini-dissertation submitted for the partial fulfilment of the degree *Master of Law* in Environmental Law and Governance at the Potchefstroom Campus of the North-West University

Supervisor: Prof LJ Kotzé

November 2016

## **ABSTRACT**

Sustainable development has emerged as one of the fundamental principles of environmental law; internationally, regionally and nationally. In South Africa, sustainable development requires the integration of socio-economic concerns and environmental protection into the decision-making process, so that any development would ultimately be beneficial to present and future generations. Development in South Africa is furthermore generally guided by development policies. These policies contain certain objectives and generalised steps that must be taken to meet these objectives. The National Development Plan of 2013 is South Africa's latest development policy and has as its primary aims the elimination of poverty and reduction of inequality by 2030. The fact that development is inherently dependent on the environment is undisputable, yet until the introduction of the National Development Plan none of South Africa's previous development policies had considered the effect of social development and economic growth on the environment. The National Development Plan requires of development to be environmentally sustainable. This is where sustainable development comes into play: established in environmental law, sustainable development is a yardstick against which development ought to be measured, since it provides for socio-economic development inside environmental boundaries in the interests of present and future generations. In this study I will explain the link between sustainable development, as it exists in environmental law, and the National Development Plan; specifically how the war against poverty and inequality cannot be won if the environment is destroyed in the process. I will achieve the research goal primarily by means of a desktop study, including a review of relevant legislation, policies and court decisions pertaining to sustainable development, as well as expert scholarly work in the fields of environmental law and sustainability.

**KEY WORDS:** sustainable development, environmental law, development policies, National Development Plan

## **ABSTRAK**

Volhoubare ontwikkeling is een van die grondbeginsels van internasionale omgewingsreg. Volhoubare ontwikkeling vereis, in Suid-Afrika, die integrasie van sosio-ekonomiese sake met omgewingsbewaring in besluitnemingsprosesse, sodat enige ontwikkeling voordelig is vir huidige en toekomstige generasies. In Suid-Afrika word die algemene koers van ontwikkeling deur ontwikkelingsbeleide bepaal. Die land se ontwikkelingsdoelwitte, sowel as stappe wat geneem moet word om hierdie doelwitte te bereik, word in die ontwikkelingsbeleide uiteengesit. Die Nasionale Ontwikkelingsplan van 2013 is Suid-Afrika se nuutste ontwikkelingsbeleid. Die hoofdoelwit van die Nasionale Ontwikkelingsplan is die gesamentlike oorkoming van armoede en die verminderinding van ongelykhede teen die jaar 2030. Die afhanklikheid van ontwikkeling op die natuurlike omgewing kan nie bevestig word nie. Ten spyte van die feit dat ontwikkeling inherent afhanklik is van die natuurlike omgewing, het geen van Suid-Afrika se ontwikkelingsbeleide voor die Nasionale Ontwikkelingsplan van 2013, aansienlike aandag aan die effek van sosiale ontwikkeling en ekonomiese groei op die natuurlike omgewing gegee nie. Die Nasionale Ontwikkelingsplan vereis egter dat ontwikkeling omgewingsvolhoubaar moet wees. Dit is waar volhoubare ontwikkeling na vore kom: verskans in omgewingsreg, is volhoubare ontwikkeling 'n maatstaf waarteen ontwikkeling gemeet moet word, aangesien dit voorsiening maak vir aanvaarbare sosio-ekonomiese ontwikkeling binne die vermoë van die omgewing om sulke ontwikkeling te ondersteun, sodat ontwikkeling voordelig is vir huidige en toekomstige generasies. Met hierdie studie gaan ek die skakel tussen volhoubare ontwikkeling – soos wat dit in omgewingsreg verskans is – en die Nasionale Ontwikkelingsplan verduidelik; spesifiek hoe die oorlog teen armoede en ongelykhede nie oorwin kan word nie as die omgewing in die proses vernietig word. Ek gaan die navorsingsdoel van hierdie studie bereik hoofsaaklik deur middel van 'n literatuurstudie. Relevante wetgewing, beleide en regspraak met betrekking tot volhoubare ontwikkeling en omgewingsreg sal ondersoek word om die bogenoemde skakel beter te verduidelik.

**SLEUTELWOORDE:** volhoubare ontwikkeling, omgewingsreg, ontwikkelingsbeleide, Nasionale Ontwikkelingsplan

## TABLE OF CONTENTS

|            |                                                                                     |                  |
|------------|-------------------------------------------------------------------------------------|------------------|
| <b>1</b>   | <b>Introduction .....</b>                                                           | <b>1</b>         |
| <b>1.1</b> | <b><i>Problem statement .....</i></b>                                               | <b><i>1</i></b>  |
| <b>1.2</b> | <b><i>Research questions and aims .....</i></b>                                     | <b><i>4</i></b>  |
| <b>1.3</b> | <b><i>Research outline .....</i></b>                                                | <b><i>4</i></b>  |
| <b>1.4</b> | <b><i>Methodology .....</i></b>                                                     | <b><i>5</i></b>  |
| <b>1.5</b> | <b><i>Scope and limitations.....</i></b>                                            | <b><i>6</i></b>  |
| <b>2</b>   | <b>Sustainable development .....</b>                                                | <b>7</b>         |
| <b>2.1</b> | <b><i>Introduction.....</i></b>                                                     | <b><i>7</i></b>  |
| <b>2.2</b> | <b><i>Meaning of sustainable development.....</i></b>                               | <b><i>7</i></b>  |
| 2.2.1      | <i>Lexical definition of sustainable development .....</i>                          | <i>8</i>         |
| 2.2.1.1    | Meaning of sustainable development in international environmental<br>law .....      | 10               |
| 2.2.1.2    | Meaning of sustainable development in regional (African)<br>environmental law ..... | 11               |
| 2.2.1.3    | Meaning of sustainable development in South Africa .....                            | 13               |
| 2.2.1.3.1  | The Constitution of the Republic of South Africa, 1996.....                         | 13               |
| 2.2.1.3.2  | The National Environmental Management Act 107 of 1998.....                          | 15               |
| 2.2.1.3.3  | Specific environmental management acts.....                                         | 17               |
| 2.2.1.3.4  | Case law .....                                                                      | 18               |
| <b>2.3</b> | <b><i>Conclusion.....</i></b>                                                       | <b><i>22</i></b> |

|            |                                                                              |           |
|------------|------------------------------------------------------------------------------|-----------|
| <b>3</b>   | <b>Development policies preceding the NDP .....</b>                          | <b>24</b> |
| <b>3.1</b> | <b><i>Introduction.....</i></b>                                              | <b>24</b> |
| <b>3.2</b> | <b><i>The Reconstruction and Development Programme.....</i></b>              | <b>24</b> |
| <b>3.3</b> | <b><i>The Growth, Employment and Redistribution Strategy .....</i></b>       | <b>27</b> |
| <b>3.4</b> | <b><i>Accelerated and Shared Growth Initiative for South Africa.....</i></b> | <b>29</b> |
| <b>3.5</b> | <b><i>Conclusion.....</i></b>                                                | <b>30</b> |
| <b>4</b>   | <b>The NDP .....</b>                                                         | <b>33</b> |
| <b>4.1</b> | <b><i>Introduction.....</i></b>                                              | <b>33</b> |
| <b>4.2</b> | <b><i>The National Development Plan .....</i></b>                            | <b>33</b> |
| <b>4.3</b> | <b><i>Conclusion.....</i></b>                                                | <b>39</b> |
| <b>5</b>   | <b>Conclusion.....</b>                                                       | <b>41</b> |
|            | <b>BIBLIOGRAPHY .....</b>                                                    | <b>45</b> |
|            | <b>LIST OF ABBREVIATIONS .....</b>                                           | <b>52</b> |

# CHAPTER 1

## Introduction

### 1 Introduction

#### 1.1 Problem statement

The impact of 19<sup>th</sup> and 20<sup>th</sup> century economic development on socio-ecological well-being<sup>1</sup> was made clear only in the last quarter of the 20<sup>th</sup> century. This led to the establishment of what we today know as environmental law. Environmental law quickly grew in prominence and with the end of the Cold War, drew the attention of the world to a new global concern: unsustainable economic development at the expense of socio-ecological well-being. Since its inception, environmental law has supported the necessity of a paradigm shift in developmental thinking to prevent environmental destruction. Sustainable development as a concept symbolises this paradigm shift in modern-day environmental law. In essence, sustainable development entails the imperative balancing of social, economic and environmental values during the entire life-cycle of all development.<sup>2</sup>

During international environmental law's formative years, South Africa was politically isolated as a result of apartheid. South Africa, however, broke free from its apartheid shackles in the 1990s and opened its doors to socio-economic development for the benefit of all South Africans with the national democratisation of the 1990s.<sup>3</sup> Yet, as an active role player in the global community with a heavy developmental burden, South Africa now also has to consider the dangers of unconstrained socio-economic growth on ecological constraints and the developmental potential of present and future generations. With a revolutionary constitution, South Africa explicitly put international environmental

---

<sup>1</sup> See Ostrom 2009 *Science* 419-421 where the author links all humanly used resources with socio-ecological systems, which signifies the inter-relationship between the human and non-human world. Socio-ecological well-being could be described as the maintenance of socio-ecological systems in such a way that they complement, instead of contrast with, each other.

<sup>2</sup> Chapter 3, paras 27-29 of the *Report of the World Commission on Environment and Development: Our Common Future* (1987); *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) para 45.

<sup>3</sup> Department of Environmental Affairs (and Tourism) 2009 *Fifteen Years: A Review of the Department of Environmental Affairs and Tourism* 24.

law's novel concept of sustainable development in the frame of national development planning by entrenching it in the Bill of Rights as a part of people's right to an environment that is not harmful to their health or well-being.<sup>4</sup>

Humanity's reliance on the environment for life and development necessitates that development's normative goal must be to secure intra- and intergenerational equity and a sustainable environment.<sup>5</sup> In South Africa, however, this goal is juxtaposed with other domestic economic and particularly, social developmental issues such as sluggish economic growth, widespread poverty and various social injustices.<sup>6</sup> Because of these conflicting objectives the pursuit of sustainable development in general and the implementation of the constitutional environmental right in particular has not been, and still is not, unproblematic. Since 1994, South Africa's developmental strategies have always envisaged the eradication of social inequalities and poverty.<sup>7</sup> Unfortunately, these socio-economic issues (social inequalities and poverty) remain rife 22 years on, and continue to thwart South Africa's developmental ambitions and its efforts to ensure a more just society.<sup>8</sup> Many disadvantaged South Africans lack the capacity to lift themselves out of poverty, and have as a result placed their hopes for socio-economic development in the hands of government.

After making unsatisfactory progress in the elimination of poverty and social inequalities, and in view of contemporary developmental needs and discrepancies, national government implemented the National Development Plan (NDP) in 2013. The NDP offers an optimistic long-term perspective on, and a roadmap for the country's developmental ambitions. The NDP applies to government and to society at large, as it "identifies the role different sectors of society (including government) need to play"<sup>9</sup> in implementing its developmental ambitions. The NDP symbolises a holistic, multidimensional national developmental strategy with the primary focus on the elimination of poverty and social

---

<sup>4</sup> Section 24 of the *Constitution of the Republic of South Africa*, 1996.

<sup>5</sup> *The Declaration of the United Nations Conference on the Human Environment* (1972) paras 6-7.

<sup>6</sup> *The National Development Plan: Vision for 2030* 1-6; *The Declaration of the United Nations Conference on the Human Environment* (1972) para 4; Giddings, Hopwood and O'Brien 2002 *Sustainable Development* 188-190.

<sup>7</sup> See chapter 3 below.

<sup>8</sup> *The National Development Plan: Vision for 2030* 1-2.

<sup>9</sup> Government of South Africa 2016 <http://www.gov.za/issues/national-development-plan-2030>; the *National Development Plan: Vision for 2030* 3; the *National Development Plan 2030: Our future – make it work* 26-27.

inequalities. Medium-term socio-economic development, with an eye on the future, takes centre stage.

Pressure to meet socio-economic demands has, nevertheless, often forced government to relegate development to being a short-term political issue. The NDP, however, recognises that national development with the aim of lifting South Africa out of critical unemployment and poverty cannot be achieved when domestic development is limited to a short-term political agenda: The NDP's *Vision for 2030* instead confirms that such reformation requires a consistent long-term socially, economically, and environmentally-sustainable developmental strategy.<sup>10</sup>

It becomes evident from a reading of the NDP that government prefers a socio-economic growth-centred variation of sustainable development,<sup>11</sup> as all the NDP's developmental objectives are founded on socio-economic values that are meant to actively combat poverty and unemployment. Because of development's inevitable impact on the natural environment, environmental protection is considered the other side of the socio-economic developmental coin.<sup>12</sup> Environmental law generally provides for the regulation of development so it respects environmental values.

For the purposes of this study, sustainable development's manifestation in environmental law must be compared to its manifestation in the NDP. This comparison is necessary to determine how sustainable development, as it exists in South African environmental law, could contribute to the realisation of the NDP's objectives, and implicitly, whether environmental law could act as a counterbalance to/ -supporter of the developmental ambitions of the NDP. From here the central thesis of this research emerges: the realisation of the elaborate socio-economic objectives of the NDP will only offer real long-term benefits if the NDP's role-players also recognise and prioritise environmental

---

<sup>10</sup> Chapter 1 of the *National Development Plan: Vision for 2030* 49-70.

<sup>11</sup> See Feris 2010 *PER* at 88-89 where the author suggests that there are variations of integration for sustainable development which affect the application of sustainable development in practice. The specific variation of integration is determined by the preferred value of sustainable development (social, economic or environmental). This means, for example, that where economic growth is the preferred value of integration, that sustainable development will revolve around strong economic growth, and that social and environmental values will only be integrated into sustainable development after such economic growth is secured.

<sup>12</sup> See Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 19, where it is suggested that conservation of the natural environment and economic development should rather be seen as being on the same side of the development coin.

considerations; a process that must be guided by the concept of sustainable development as it has been established in South African environmental law.

## **1.2 Research questions and aims**

The general research question of this study accordingly is:

*How does sustainable development, as it is conceptualised in South African environmental law and policy, correspond with the notion of sustainable development in the NDP and how can sustainable development as it is conceptualised in environmental law contribute to the achievement of the objectives of the NDP?*

In order to answer this question, the following sub-questions are posed; each forming the central focus of a subsequent chapter:

- What does sustainable development mean in South African environmental law?
- How does sustainable development feature in South Africa's dominant development policies, notably those that preceded the NDP and the NDP itself?
- What are the sustainable developmental objectives of the NDP and how could an understanding of sustainable development, as it is conceptualised in South African environmental law, contribute to their realisation?

## **1.3 Research outline**

In chapter 2 of this study I discuss the concept of sustainable development in detail. Sustainable development's manifestation in South African environmental law is analysed by referring to relevant legislation, case law and scholarly work. Before analysing sustainable development in the South African context, however, I provide a brief international and regional perspective thereof, since these perspectives are important to more fully understand sustainable development in South African law and policy.

Chapter 3 serves as a background against which chapter 4 must be read. In chapter 3, I look at South Africa's dominant post-apartheid development policies which preceded the NDP. A description is provided of sustainable development's role in every one of these development policies, as well as some of their successes and the reasons for the failure

to achieve their ultimate developmental goals. This is done to contrast and understand the gradual development of sustainable development as an integral part of South Africa's contemporary development policies. In chapter 4, I analyse the NDP; specifically how it differs from the previous development policies and how sustainable development features in it.

Chapter 5 brings the discussion together: here I will discuss how sustainable development, as it is conceptualised in environmental law, correspond with the developmental aims of the NDP. Through comparing sustainable development's manifestation in both, I will determine sustainable development's potential role in the realisation of the objectives of the NDP. To date, no such comparison exists; even though, as will be seen, environmental law is now firmly established in the South African legal system and despite the NDP's importance in guiding domestic development over the next fourteen years.

#### **1.4 Methodology**

This study is primarily a desk-based theoretical analysis of sustainable development and its role in the realisation of developmental policy aims. This dissertation will be structured according to an extensive review of South African environmental law and policy, with specific emphasis on the *Constitution of the Republic of South Africa*, 1996 (the Constitution) and the *National Environmental Management Act* (NEMA),<sup>13</sup> and the specific environmental management acts (SEMAS)<sup>14</sup> to a lesser extent. In addition, I will turn to international and regional law, as well as review relevant literature to further determine the meaning of sustainable development in South Africa. I will also rely on international and domestic case law in support of my determination of the current meaning of sustainable development in South Africa.

---

<sup>13</sup> 107 of 1998.

<sup>14</sup> Including the *National Environmental Management: Protected Areas Act* 57 of 2003; the *National Environmental Management: Biodiversity Act* 10 of 2004; the *National Environmental Management: Air Quality Act* 39 of 2004; the *National Environmental Management: Integrated Coastal Management Act* 24 of 2008; and, the *National Environmental Management: Waste Act* 59 of 2008.

### ***1.5 Scope and limitations***

The concept of sustainable development has permeated other branches of law in South Africa, but this dissertation's scope is limited to South African environmental law. In this study I focus primarily on the Constitution and NEMA, and to a more limited extent the SEMAs.

This study is limited mainly in terms of length requirements.

## CHAPTER 2

### Sustainable development in South African environmental law and policy

## 2 Sustainable development

### 2.1 Introduction

In this dissertation I focus on sustainable development as a concept in South African environmental law, and its role in South Africa's long-term developmental strategy as set out in the NDP. In this chapter I aim to firstly evaluate the meaning of sustainable development as a concept in order to illustrate its legal context/ -meaning for this study. In doing so, I will briefly look at how sustainable development is defined in the international and regional environmental law contexts, after which I will then critically analyse sustainable development's place in South African environmental law.

### 2.2 Meaning of sustainable development

Sustainable development as a concept formally entered policy discourse around 1987<sup>15</sup> with the publication of the *Brundtland Report*;<sup>16</sup> after the initial recognition in 1972 in Stockholm that human-driven development has the potential to cause unprecedented harm to the environment.<sup>17</sup> The concept then gradually started pervading everyday discourse in 1992 in the wake of the Rio Earth Summit.<sup>18</sup> South Africa was, as a result of the apartheid system, politically isolated during these formative years of sustainable development, and somewhat ignorantly regarded the fragmentary conservation of wild animals and natural resources as the most important national environmental issues.<sup>19</sup> After its reintegration into the international political arena in 1994, South Africa not only acceded to and ratified many multilateral environmental agreements which enabled it to

---

<sup>15</sup> Redclift 2005 *Sustainable Development* 212.

<sup>16</sup> *Report of the World Commission on Environment and Development: Our Common Future* (1987).

<sup>17</sup> *Declaration of the United Nations Conference on the Human Environment* (1972) paras 1, 3, 6.

<sup>18</sup> Department of Environmental Affairs (and Tourism) 1997 *White Paper on Environmental Management Policy* foreword.

<sup>19</sup> Department of Environmental Affairs (and Tourism) 2009 *Fifteen Years: A Review of the Department of Environmental Affairs and Tourism* 25; Department of Environmental Affairs (and Tourism) 1997 *White Paper on Environmental Management Policy* foreword.

promote the global sustainable development agenda at a national level,<sup>20</sup> but also reformed the fundamental law of the country with the 1996 Constitution which provided the basis for a new domestic environmental law regime.

Chapter 2 of the Constitution<sup>21</sup> contains the fundamental rights of all people in South Africa.<sup>22</sup> According to section 24 everyone in South Africa now has the fundamental right to a healthy environment.<sup>23</sup> As part of the right to a healthy environment, section 24(b)(iii) of the Constitution binds the state to the concept of sustainable development through the obligation to take reasonable legislative and other measures in order to “secure ecologically sustainable development” while simultaneously “promoting justifiable economic and social development”.

In what follows, I will derive the stipulative meaning of sustainable development for the purpose of this dissertation from its lexical and legal definitions and its analogous objectives.<sup>24</sup> I will describe how these manifest in South Africa’s framework environmental legislation, symbolised by the Constitution and NEMA.<sup>25</sup>

### *2.2.1 Lexical definition of sustainable development*

Lexically, ‘sustainable development’ could simply be said to mean development that is sustainable. “Development” in this guise refers to any and all processes of qualitative change and improvement, while ‘sustainable’ denotes maintainability or continuity.<sup>26</sup> Together, the concept ‘sustainable development’ therefore implies positive change or the improvement of a situation that is capable of being maintained indefinitely.<sup>27</sup> With

---

<sup>20</sup> Department of Environmental Affairs (and Tourism) 2009 *Fifteen Years: A Review of the Department of Environmental Affairs and Tourism* 25.

<sup>21</sup> Sections 7 – 39.

<sup>22</sup> Section 7(1) of the *Constitution of the Republic of South Africa*, 1996.

<sup>23</sup> See para 2.2.1.3 below.

<sup>24</sup> As interpreted by the Constitutional Court in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC).

<sup>25</sup> Kidd maintains that, whilst not being typical legislation, the Constitution operates alongside NEMA as South Africa’s framework environmental legislation to serve as an umbrella under which to consider the greater part of environmental law, which consists of more specific environmental legislation. See Kidd *Environmental Law* 20.

<sup>26</sup> Collins Concise Dictionary 400, 1518-1519.

<sup>27</sup> *Report of the World Commission on Environment and Development: Our Common Future* (1987) Chapter 2 para 15 describes “sustainable development” as a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet

increasing environmental consciousness, the concept of sustainable development has been fine-tuned to imply development that considers and conserves the ecological balance in the interest of the developmental needs of posterity by avoiding the depletion of available natural capital upon which development is essentially based.<sup>28</sup> Sustainable development as a concept has for this reason become synonymous with environmental governance<sup>29</sup> and consequently environmental law; first in international law, but now also in regional and national legal systems worldwide.

The relationship between international law and domestic law is exemplified by section 39(1)(b) of the Constitution, which obliges the judiciary to consider international law when interpreting the Bill of Rights, of which section 24 forms part. In addition, section 231 of the Constitution confirms the enforceability of international agreements in South Africa under certain circumstances,<sup>30</sup> and section 233 compels the judiciary to prefer any reasonable interpretation of any domestic legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law. Because sustainable development is an established principle of international law,<sup>31</sup> it is relevant in determining how national law relating to sustainable development is to be interpreted in domestic courts. It is therefore necessary to determine sustainable development's

---

human needs and aspirations. The Preamble to the *Declaration on the Right to Development* (1986) refers to development as a comprehensive process which aims at the constant improvement and well-being of the entire population and of all individuals.

<sup>28</sup> Bosselmann *The Principle of Sustainability* 16-25.

<sup>29</sup> Governance in this sense is more than just public administration. Müller K "Environmental Governance in South Africa" in *Fuggle and Rabie's Environmental Management in South Africa* describes governance as entailing a (1) pluricentric approach within (2) inter- and intra-organisational networks, (3) emphasising processes and functions of government as opposed to the structures of government, with the aim of (4) working co-operatively (5) to achieve a normative ideal such as 'good governance'.

<sup>30</sup> Sub-sections (2)-(5) read as follows:

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

<sup>31</sup> See para 2.2.1.1 below.

manifestation in international environmental law before scrutinising the concept in its South African context.

#### 2.2.1.1 Meaning of sustainable development in international environmental law

The term 'sustainable development' was formally coined by the Brundtland Commission in 1987.<sup>32</sup> It defined the concept as:

development that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>33</sup>

Sustainable development has since 1987 grown both in significance and prominence and although today the concept still has no absolute and generally accepted meaning,<sup>34</sup> its application is recognised around the world in "international instruments of an environmental, economic and social character".<sup>35</sup>

The legal characteristic of the concept comprises four recurring elements,<sup>36</sup> namely the principles of intergenerational equity,<sup>37</sup> intra-generational equity,<sup>38</sup> sustainable use<sup>39</sup> and integration.<sup>40</sup>

Sustainable development is, according to Bosselmann,<sup>41</sup> a legal principle of international environmental law with legal effect because it meets the standards of a legal principle by providing us with an ascertainable standard in its reflection of respect for the ecological integrity of the environment, and the requirement of protecting and restoring the environment based on this integrity. Former Vice-President of the International Court of Justice, Judge Weeramantry, also argues in his separate opinion in *Gabčíkovo-Nagymaros*

---

<sup>32</sup> Sands and Peel *Principles of International Environmental Law* 206.

<sup>33</sup> *Report of the World Commission on Environment and Development: Our Common Future* (1987) Chapter 2 para 1.

<sup>34</sup> This should not be interpreted to imply that sustainable development is in any way meaningless. See Bosselmann *The Principle of Sustainability* 23, 51-56; Bodansky *The Art and Craft of International Environmental Law* 33, footnote 39.

<sup>35</sup> Sands and Peel *Principles of International Environmental Law* 206-217.

<sup>36</sup> Sands and Peel *Principles of International Environmental Law* 207.

<sup>37</sup> The need to preserve natural resources for the benefit of future generations.

<sup>38</sup> The equitable use of natural resources by states.

<sup>39</sup> Exploiting natural resources in a "sustainable", "prudent", "rational", "wise" or "appropriate" manner, thereby, relatively speaking, limiting the rate of use or manner of exploitation of natural resources.

<sup>40</sup> Ensuring that environmental considerations are integrated into development plans, programmes and projects, and that development needs are taken into account in applying environmental objectives.

<sup>41</sup> Bosselmann *The Principle of Sustainability* 53. In chapters 3-6 of his book, *The Principle of Sustainability*, Bosselmann unravels, *inter alia*, the principle of sustainability's (and as a product thereof, sustainable development's) importance for the legal concept of justice.

*Project (Hungary v Slovakia)* that sustainable development is indeed a crucially important principle of international law with normative value.<sup>42</sup> In this opinion, Weeramantry regards sustainable development as resembling the desirable course between developmental considerations on the one hand, and environmental protection on the other. Bosselmann<sup>43</sup> encapsulates the holistic formula of sustainable development as a potential developmental norm in saying that:

(Sustainable development) can be formulated as the obligation to promote long-term economic prosperity and social justice within the limits of ecological sustainability.

#### 2.2.1.2 Meaning of sustainable development in regional (African) environmental law

Codified manifestations of sustainable development in African regional instruments are extremely rare. Packer and Rukare<sup>44</sup> are nonetheless of the opinion that sustainable development is the “*raison d’être* of the entire African Economic Community”. *The Constitutive Act of the African Union* (Constitutive Act), adopted in 2000 at the Lome Summit in Togo and which established the African Union (AU),<sup>45</sup> has sustainable development as one of its objectives. Article 3(j) obliges the AU to “promote sustainable development at the economic, social and cultural levels as well as [promoting] the integration of African economies”. The Constitutive Act’s conception of sustainable development is fundamentally anthropocentric in that it explicitly restricts sustainable development to economic, social and cultural concerns while seemingly ignoring ecological concerns. Apart from sustainable development’s appearance in article 3(j), it is not referred to in the Constitutive Act again.

Economic development is seen as the motive power behind Africa’s drive towards joining the ranks of the developed world.<sup>46</sup> Economic development could hence be said to be the developmental value underlying sustainable development in Africa. This means that sustainable development revolves around maintaining strong economic growth, and that

---

<sup>42</sup> *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* 1997, Separate Opinion of Vice-President Weeramantry 85-86, 95.

<sup>43</sup> Bosselmann *The Principle of Sustainability* 53.

<sup>44</sup> Packer and Rukare 2002 *The American Journal of International Law* 372.

<sup>45</sup> Article 2 of *The Constitutive Act of the African Union*.

<sup>46</sup> See aspiration 1 of the African Union Commission *Agenda 2063: The Africa We Want* at 2-4.

social and environmental values will likely only be actively integrated into sustainable development planning after such economic growth has been secured.

The *African Charter on Human and Peoples' Rights* (African Charter) serves to promote and protect human rights and basic freedoms of people in Africa. Sustainable development as such does not feature in the African Charter, but in conjunction with other socio-economic and civil and political rights and freedoms, section 24 of the African Charter does provide that "(a)ll peoples shall have the right to a general satisfactory environment favourable to their development". Van der Linde and Louw<sup>47</sup> emphasise the ambiguity of this provision by noting that:

No clear indication is given by the African Charter as to what the terms 'satisfactory' and 'environment' entail. This allowed for different interpretations as to the exact meaning of this right by human rights scholars and environmentalists.

*Prima facie*, the anthropocentric nature of this right is undeniable, as environmental protection under its aegis need only be pursued if environmental impacts become detrimental to development.<sup>48</sup> Somewhat disconcerting is the fact that this continental environmental right contains no explicit or implicit reference to intergenerational equity; a critical component of sustainable development generally,<sup>49</sup> and the concept of environmental justice specifically.<sup>50</sup> It also does not contain any reference to ecological integrity or the crucial need for a respect of ecological limits during development.

Neither the Constitutive Act nor the African Charter contains an explicit basis for sustainable development similar to that of the concept's recognition in international environmental law. Sustainable development is nevertheless present in these instruments and it could be said that it is couched in anthropocentric terms.

---

<sup>47</sup> Van der Linde and Louw 2003 *African Human Rights Law Journal* 174.

<sup>48</sup> See Van der Linde and Louw 2003 *African Human Rights Law Journal* 175 where the authors note that this right runs the risk of being negatively balanced by the right to development.

<sup>49</sup> Bodansky *The Art and Craft of International Environmental Law* 34-35; Bosselmann *The Principle of Sustainability* 11.

<sup>50</sup> "Environmental justice" is the fair treatment and meaningful involvement of all people in the development-, implementation-, and enforcement processes of environmental laws, regulations, and policies. See Cutter 1995 *Progress in Human Geography* 112 and Bosselmann *The Principle of Sustainability* 97-98.

### 2.2.1.3 Meaning of sustainable development in South Africa

#### 2.2.1.3.1 The Constitution of the Republic of South Africa, 1996

The only reference in the entire Constitution to sustainable development is to be found in sub-section (b)(iii) of the environmental right. The environmental right contained in section 24 of the Constitution binds the state to the objective of sustainable development, stating that:

Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures 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 *National Framework for Sustainable Development in South Africa* 2008 (NFSD), which created a coherent and overarching national strategy for sustainable development,<sup>51</sup> approves the Brundtland Commission's definition of sustainable development.<sup>52</sup> The High Court, in *BP Southern Africa*,<sup>53</sup> confirmed the applicability of the four recurring elements of sustainable development in international law – intergenerational equity; intra-generational equity;<sup>54</sup> sustainable use; and, integration – to development in South Africa.

It follows then that the constitutional directive of section 24, which binds the state to the objective of sustainable development, must be read with the Brundtland Commission's definition of sustainable development. The Brundtland Commission's, as well as the Constitution's, definition of sustainable development has three main components: the

---

<sup>51</sup> Department of Environmental Affairs (and Tourism) 2008 *People – Planet – Prosperity: A National Framework for Sustainable Development in South Africa* 6.

<sup>52</sup> See para 2.2.1.1 above.

<sup>53</sup> *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (03/16337) 2004 ZAGPHC 18 at paras 24-25.

<sup>54</sup> Referring in its South African context to the equitable use of natural resources to the reasonable benefit of all people living.

environment ("ability"), development ("needs"), and equity. Central to both the Brundtland Commission and the Constitution's definitions of sustainable development is the notion of an ecologically healthy environment, capable of fostering development at no cost to future generations' developmental needs.

The *National Strategy for Sustainable Development and Action Plan* 2011 (NSSD 1) is based on the NFSD and explains the route that South Africa is taking in its quest for sustainable development.<sup>55</sup> It reiterates the notion that development is sustainable when it promotes justifiable social and economic goals of present and future generations, without compromising the ability of the environment on which it is based to accommodate such development.<sup>56</sup>

The administrative legality of all developmental decisions taken in South Africa, including any decision and action taken in pursuit of sustainable development, are subject to the Constitution; as every action taken under the auspices of any law must be consistent with the Constitution's provisions.<sup>57</sup> Section 24(b)(iii) of the Constitution seemingly implies that environmental (ecological) values must guide sustainable development in South Africa, as it seems from a literal interpretation of section 24(b)(iii) that the state must prioritise ecological sustainable development over immediate socio-economic development.<sup>58</sup> Du Plessis and Nel,<sup>59</sup> however, contend that such a literal interpretation of section 24(b)(iii) would depreciate the full extent of the interconnectedness between the different spheres of sustainable development,<sup>60</sup> since section 24(b)(iii) clearly also obliges the state to promote justifiable economic and social development.

---

<sup>55</sup> Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 6.

<sup>56</sup> Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 8.

<sup>57</sup> The Constitutional Court stated in *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: in re Hyundai Motor Distributors (Pty) Ltd v Smit* NO 2001 1 SA 545 (CC) at para 21 that all statutes must be interpreted through the prism of the Bill of Rights and that all law-making authority must be exercised in accordance with the Constitution.

<sup>58</sup> "Ecological sustainable development" is the process that is followed to achieve ecological sustainability, which implies that the maintenance of healthy ecosystems and natural resources are preconditions for human well-being. See Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 8.

<sup>59</sup> Du Plessis and Nel "An introduction" 9, footnote 39.

<sup>60</sup> The internationally recognised spheres of sustainable development comprise proportional social, economic and environmental considerations. The Constitutional Court has affirmed these considerations as the pillars of sustainable development in *Fuel Retailers Association of Southern Africa*

What is clear from section 24(b)(iii) is the link between sustainable development and intergenerational environmental protection through the idea of generational equity;<sup>61</sup> as well as a positive duty on the state to promote economic and social development.<sup>62</sup>

#### 2.2.1.3.2 The National Environmental Management Act 107 of 1998

A factual matter in a developing country such as South Africa, as in Africa as a whole,<sup>63</sup> is that ecological concerns are often compromised by the need to promote immediate economic growth and social development in order to combat poverty; a demand which renders most socio-economic development projects crucially necessary and thus justifiable. The above-mentioned ambiguity of the exact meaning of sustainable development, similar to that of a "satisfactory environment" in the African Charter,<sup>64</sup> had to be clarified in order to avoid trivialising the concept. To give effect to section 24 of the Constitution, Parliament enacted NEMA in 1998.<sup>65</sup> With this, South Africa has formalised an integrated interpretation of sustainable development so as to mean:

*the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations.*<sup>66</sup>

Sustainable development in this guise is the cornerstone of environmental governance in South Africa.<sup>67</sup> With its integrated definition of sustainable development, NEMA connects social, economic and environmental factors to the developmental needs of present and future generations. This is, however, quite a broad definition, and consequently it becomes necessary to determine the nature of this definition of sustainable development to better understand it.

---

*v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) at paras 53 and 55.

<sup>61</sup> This means that the environment must be protected to the extent that, intra-generationally, it is to the equal benefit of everyone and not limited to a select few, and, inter-generationally, future generations could also draw approximate developmental benefits from the environment.

<sup>62</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 93.

<sup>63</sup> See para 2.2.1.2 above.

<sup>64</sup> See para 2.2.1.2 above.

<sup>65</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) paras 40 and 59.

<sup>66</sup> Section 1 of NEMA [emphasis added].

<sup>67</sup> Sections 2(3), (4)(a) and 23(2) of NEMA.

It is also critical for answering the general research question of this study to determine the nature of sustainable development in South African environmental law. By reflecting the preferred variation of sustainable development,<sup>68</sup> the nature of sustainable development accentuates the specific value by which sustainable development is driven in practice.<sup>69</sup>

The nature of sustainable development in the context of this dissertation refers to either a weak or a strong conception of sustainable development. In his in-depth review of the weak and strong conceptions of sustainable development, Neumayer<sup>70</sup> suggests that these two conceptions “are the most influential paradigms within debates and policy discussions about sustainable development”, because of them highlighting the value by which sustainable development is driven in practice. It must be understood from the outset that sustainable development in this context is “unashamedly anthropocentric”,<sup>71</sup> since, and despite its comprising social, economic and environmental considerations, it is fundamentally a concept in the interest of human progress.<sup>72</sup> The nature of sustainable development would determine whether sustainable development in this context is either strong anthropocentric,<sup>73</sup> or weak anthropocentric.<sup>74</sup>

A weak conception of sustainable development implies the justifiability of the substitution of natural capital by manufactured capital for the expansion of human, social and financial capital;<sup>75</sup> in other words, the justifiable depletion of the natural environment for the promotion of socio-economic development. A strong conception of sustainable development on the other hand, prescribes the non-substitutability of natural capital because of certain critical life-supporting functions thereof.<sup>76</sup>

---

<sup>68</sup> See footnote 11 above.

<sup>69</sup> See Bodansky *The Art and Craft of International Environmental Law* 33, footnote 39.

<sup>70</sup> Neumayer *Weak Versus Strong Sustainability* 7.

<sup>71</sup> Lee, McNeill and Holland *Global Sustainable Development in the Twenty-first Century* 32.

<sup>72</sup> Hopwood, Mellor and O'Brien 2005 *Sustainable Development* 39.

<sup>73</sup> Implying that all and only humans have moral standing or intrinsic value, and that non-human entities are only instruments to human benefit.

<sup>74</sup> Implying that humans are at the centre of morality and therefore matter *more* than non-human entities.

<sup>75</sup> The concept of capital – whether it be natural capital, manufactured capital, human capital, social capital or human capital – is central to sustainable development's nature. “Capital” in this sense implies a stock that provides utility to humanity.

<sup>76</sup> Neumayer *Weak Versus Strong Sustainability* 20-27.

The question that must now be answered is whether NEMA envisages a strong or a weak conception of sustainable development. It has been shown above that NEMA's definition of sustainable development necessitates the integration of social, economic and environmental factors into decision-making processes in order for the decision to benefit present and future generations' developmental needs. Based on this definition, one can find support for a weak conception of sustainable development: as long as the material value of natural capital is integrated into socio-economic developments, and any subsequent development advances developmental needs, such substitution of natural capital by manufactured or produced capital can presumably be justified. Under a weak conception of sustainable development, it would be justifiable, for example, to permit marine phosphate mining in precious ecosystems and habitats for the sake of job-creation and export benefits, provided that fish-farms are established to secure fish as a food source for future generations.

#### 2.2.1.3.3 Specific environmental management acts

Whereas the Constitution and NEMA have been shown to serve as framework environmental legislation,<sup>77</sup> the SEMAs regulate sector-specific environmental concerns, including: protected areas,<sup>78</sup> biodiversity,<sup>79</sup> air quality,<sup>80</sup> coastal management<sup>81</sup> and waste.<sup>82</sup>

All the SEMAs' objectives echo the requirements to protect the environment<sup>83</sup> while simultaneously promoting justifiable socio-economic development.<sup>84</sup> The SEMAs cannot be read in isolation, however, but must be read within the framework of NEMA.<sup>85</sup> Through such an inclusive reading it is evident that the environment must be protected against

---

<sup>77</sup> See footnote 25 above.

<sup>78</sup> The *National Environmental Management: Protected Areas Act* 57 of 2003.

<sup>79</sup> The *National Environmental Management: Biodiversity Act* 10 of 2004.

<sup>80</sup> The *National Environmental Management: Air Quality Act* 39 of 2004.

<sup>81</sup> The *National Environmental Management: Integrated Coastal Management Act* 24 of 2008.

<sup>82</sup> The *National Environmental Management: Waste Act* 59 of 2008.

<sup>83</sup> Section 2(c) and (e) of NEM:PA; s 2(a)(i)-(iA) of NEM:BA; s 2(a) of NEM:AQA; s 2(c) of NEM:ICMA; s 2(a) of NEM:WA.

<sup>84</sup> Section 2(e) of NEM:PA qualifies the sustainable utilisation of protected areas by requiring of it to be for the benefit of the people; s 2(a)(ii)-(iii) of NEM:BA; s 2(a)(iii) and (b) of NEM:AQA; s 2(d) of NEM:ICMA; s 2(2)(vi) and (d) of NEM:WA.

<sup>85</sup> Section 2(1)(e) of the *National Environmental Management Act* 107 of 1998; ss 5 of NEM:PA, NEM:AQA, NEM:ICMA and NEM:WA; s 7 of NEM:BA.

inappropriate socio-economic development – especially against identified ‘restricted activities’ – and the negative effects of any such inappropriate developments.

Seemingly inappropriate developments could nonetheless be deemed appropriate in some circumstances.<sup>86</sup> The Constitutional Court, for example, in *Government of the Republic of South Africa v Grootboom*,<sup>87</sup> emphasises the state’s obligation to take reasonable positive action to meet the socio-economic needs of impoverished people. In a country where almost 22% of the population lives in extreme poverty,<sup>88</sup> some environmental sacrifices would have to be made if poverty and inequality are to be combated. Through NEMA, people’s needs are put in the forefront of environmental management.<sup>89</sup> Sectoral environmental concerns should as a result promote, rather than obstruct, socio-economic development in cases where people’s fundamental human rights are threatened. Any environmental impact must, however, be reasonable in that it should not compromise the ability of the environment to accommodate socio-economic development in the future. Contemporary development must enable future generations to draw developmental benefits from concurrent economic, social and environmental circumstances.

#### 2.2.1.3.4 Case law

The South African courts have been left to give meaning to the concept on account of the *prima facie* confusion over the prioritisation of values and exact meaning of sustainable development in environmental law.

The Constitutional Court highlighted the critical importance of the environment to the enjoyment of the other fundamental rights and indeed to life itself.<sup>90</sup> The same court, on the other hand, held in *Government of the Republic of South Africa v Grootboom* that “the state is obliged to take *positive* [socio-economic] *action* to meet the needs of those

---

<sup>86</sup> NEMA, for example, provides in section 24(G) for the *ex post facto* authorisation of otherwise explicitly restricted activities.

<sup>87</sup> At para 24.

<sup>88</sup> Daily Maverick 2015 [http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V\\_UK3OB96hc](http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V_UK3OB96hc).

<sup>89</sup> Section 2(2) of the *National Environmental Management Act* 107 of 1998.

<sup>90</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) para 102.

living in extreme conditions of poverty”.<sup>91</sup> The environment, as important as it is to the enjoyment of the other fundamental human rights, would have to bear the burden of socio-economic development. NEMA advocates sustainable development, but it clearly considers a weak (anthropocentric) conception of sustainable development by placing “people and their needs at the forefront” of environmental management;<sup>92</sup> an approach which seems to be supported by the courts, especially in socio-economic rights disputes.

In *Fuel Retailers*,<sup>93</sup> the Constitutional Court had the opportunity to elaborate on the meaning of sustainable development in the context of section 24(b)(iii) of the Constitution and section 2 of NEMA. In this case the Constitutional Court confirmed the rigid link between the environment and development. The court explained this link by noting that “unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development”.<sup>94</sup> The Court furthermore referred to sustainable development as an ideal which envisages the integration of environmental protection and socio-economic development; echoing the High Court’s reasoning in *BP Southern Africa* that:<sup>95</sup>

Development ... will in [the] future be balanced by its environmental impact ... in order to arrive at an integrated management of the environment, sustainable development and socio-economic concerns.

Whilst the essential needs of posterity will in all likelihood correspond to the essential needs of people living today – ie access to water, food, sanitation and shelter – socio-economic growth and technological development mean that future societies’ needs beyond the essentials may, and in all probability will, differ from society’s contemporary needs. The fulfilment of these needs rests on qualitative development. Any such development, now and in the future, will, by virtue of its inherent dependence on the environment, leave an environmental footprint. The Constitutional Court, in *Fuel Retailers*, has emphatically stated that:

---

<sup>91</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 24.

<sup>92</sup> Section 2(2) of the *National Environmental Management Act* 107 of 1998.

<sup>93</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC).

<sup>94</sup> At para 44.

<sup>95</sup> *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (03/16337) 2004 ZAGPHC 18 at 25.

Sustainable development does not require the cessation of socio-economic development, but seeks to regulate the manner in which it takes place.<sup>96</sup>

The apparent conflict between economic development and environmental protection should at no point obfuscate the importance of social justice to sustainable development; especially in South Africa with its notoriously unequal and unjust socio-political past. Intra-generational and intergenerational equity and equality are fundamental to environmental justice, and should always guide the course of economic development and environmental protection in South Africa.<sup>97</sup> Since generational justice in this form could justify both economic development and environmental protection based on the needs of society, it ought to be recognised as a key balancing factor when deciding what course to follow on the road towards sustainable development;<sup>98</sup> or in other words, when deciding what variation of sustainable development to apply.<sup>99</sup> The chosen course must ensure that social justice prevails.<sup>100</sup>

The High Court, in *BP Southern Africa*,<sup>101</sup> has made it clear that socio-economic factors form an integral part of government's environmental responsibility. And in *Fuel Retailers*,<sup>102</sup> the Constitutional Court identified the general objective of sustainable development as the integration of socio-economic considerations with environmental protection in the process of satisfying people's developmental needs.

Despite our ability to ascertain economic growth by means of a GDP analysis and notwithstanding social justice's considerable weight as a steering factor for development, it is accepted that economic and social development depend inherently on the natural resource base.<sup>103</sup> All three spheres of sustainable development are furthermore,

---

<sup>96</sup> At para 58.

<sup>97</sup> Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 13.

<sup>98</sup> Section 2(2), read with s (3), of NEMA explicitly places people and their needs at the centre of sustainable development. The *United Nations Sustainable Development Goals 2015-2030* uses predominantly social justice indicators to legitimise sustainable development.

<sup>99</sup> See footnote 11 above.

<sup>100</sup> Feris 2010 *PER* 75-77.

<sup>101</sup> *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (03/16337) 2004 ZAGPHC 18 At para 36.

<sup>102</sup> At para 45.

<sup>103</sup> Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 12; it is also established at para 44 of *Fuel Retailers* that no development can subsist upon a deteriorating environmental base. The Constitutional Court furthermore states, at para 102, that the protection of the environment is vital to the enjoyment of the other rights contained in the Bill of Rights.

individually and collectively, held together in a legitimate regulatory framework by the governance system.<sup>104</sup> This fact puts the state at the centre of implementing sustainable development. The Constitutional Court, in *Fuel Retailers*, explained that decision-makers should be guided by the concept of sustainable development to:

ensure that socio-economic developments remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support future socio-economic developments.<sup>105</sup>

This interpretation of the Constitutional Court clearly requires of the state – comprising all three spheres of government –<sup>106</sup> to be guided by the concept of sustainable development when making any decision with developmental significance. This burden signifies the underlying importance of governance to securing sustainable development. The fact that the implementation of sustainable development rests on government and organs-of-state, is furthermore highlighted in sections 1 and 2 of NEMA: social, economic and environmental factors are integrated by definition into decision-making (whereof organs of state are decision-makers), while section 2 requires sustainable development to be applied to the actions of all organs of state that may have a significant effect on the environment.<sup>107</sup>

Heard in the Constitutional Court, *Fuel Retailers* is the leading precedent on sustainable development in South Africa and the court's interpretation of sustainable development therein should therefore be recognised as establishing the exact meaning of sustainable development in its South African context. Section 24(b)(iii) of the Constitution must as a result not be literally interpreted as to prescribe the prioritisation of ecological protection over socio-economic development. It must rather be interpreted in line with the

---

<sup>104</sup> Department of Environmental Affairs (and Tourism) 2008 *People – Planet – Prosperity: A National Framework for Sustainable Development in South Africa* 14-15; Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 9; Du Plessis and Nel "An introduction" 8-10.

<sup>105</sup> At para 58.

<sup>106</sup> In other words, the national, provincial and local spheres of government.

<sup>107</sup> A significant effect is defined in GN R982 in GG 38282 of 4 December 2014 as an impact with a *notable effect* on one or more aspects of the environment determined through rating the positive and negative effects of an impact on the environment based on criteria such as duration, magnitude, intensity and probability of occurrence, or an impact that may result in non-compliance with any accepted environmental quality standards, thresholds or targets (emphasis added). Note that the Constitutional Court in *Fuel Retailers*, at para 95, held that the environmental management principles – including sustainable development – apply *to all decisions of state that may affect the environment* (emphasis added); excluding, potentially with no consequential significance, the qualification of a *significant* effect.

integrated conceptualisation of sustainable development as set out in section 1 of NEMA; thus implying that sustainable development is guided by the developmental needs of present and future generations. In effect, sustainable development hence requires the balancing of socio-economic development against environmental concerns in order for development to equally benefit present and future generations. The objectives of sustainable development, for example, might well now revolve around economic development, but not to the extent that future generations are left without a similar choice about which developmental value to prioritise. The sustainability of the chosen developmental value without destroying the other values is the end product of sustainable development.<sup>108</sup>

### **2.3 Conclusion**

In this chapter I established the legal context within which the concept of sustainable development is analysed throughout this dissertation. I have shown that sustainable development is a broad, comprehensive and internationally recognised concept of environmental law. I then answered the first part of the general research question of this study<sup>109</sup> by evaluating the meaning of sustainable development in South African environmental law. This meaning was established through analysing sustainable development's definition and its analogous objectives in South Africa's framework and sectoral environmental legislation, and how the courts interpreted these in practice.

In answering the first sub-question of this study,<sup>110</sup> I have shown that South African environmental law generally advocates weak sustainable development; implying that development must be undertaken for the ultimate benefit of the people, but not to the extent that it causes unreasonable harm to the environment by unreasonably compromising the environment on which such development is based. An unreasonable compromise would be one that negatively affects the ability of the environment to accommodate socio-economic development in the future. Further determining the reasonableness of environmental harm will require weighing the concerned people's need

---

<sup>108</sup> Department of Environmental Affairs 2011 *National Strategy for Sustainable Development and Action Plan* (NSSD 1) 8.

<sup>109</sup> The question as to how sustainable development is conceptualised in South African environmental law and policy.

<sup>110</sup> See para 1.2 above.

for socio-economic development against future generations' opportunity to benefit from any such development.

In the next chapter I discuss the Reconstruction and Development Programme (RDP), the Growth, Employment and Redistribution macro-economic strategy (GEAR), and the accelerated and Shared Growth Initiative for South Africa (ASGISA) to determine how sustainable development featured in the development policies that preceded the NDP, and what effect this has had on the environment in the course of implementing these development policies.

## CHAPTER 3

### A lead-up to the NDP: The RDP, GEAR and ASGISA

#### 3 Development policies preceding the NDP

##### 3.1 Introduction

Of the three sub-questions of this study, I aim to answer the second sub-question in this chapter.<sup>111</sup> I will focus on the three dominant development policies preceding the NDP: the RDP, GEAR and ASGISA. The aim of this chapter is to establish a contextual background against which chapter 4 must be read. Alongside the general developmental accomplishments and failures of these three development policies, I will also look at the state of the environment during the time of each policy.

##### 3.2 The Reconstruction and Development Programme

The RDP is a people-centred,<sup>112</sup> socio-economic development policy framework.<sup>113</sup> It was drawn up by a African National Congress-led coalition and implemented in 1994 to guide all development in post-democratic South Africa.<sup>114</sup> The RDP was the first comprehensive development policy in the 'new' South Africa, and had as its principal concern the eradication of apartheid injustices;<sup>115</sup> including the deficient distribution and delivery of basic services,<sup>116</sup> segregated development of human resources,<sup>117</sup> and unsatisfactory economic growth based on pro-apartheid policies.<sup>118</sup>

The necessity of the RDP's socio-economic focus cannot be questioned when viewed against apartheid's socio-political and economic malpractices, if not downright atrocities. During apartheid,<sup>119</sup> the majority of South Africans were politically excluded by coercive means from actively participating in, or benefitting from developmental initiatives. Faced

---

<sup>111</sup> See para 1.2 above.

<sup>112</sup> Blumenfeld 1997 *Development Policy Review* 76, footnote 26; *The Reconstruction and Development Programme: Policy Framework* paras 1.3.3, 1.3.8 and 1.4.4.

<sup>113</sup> *White Paper on Reconstruction and Development* para 1.1.1.

<sup>114</sup> Blumenfeld 1997 *Development Policy Review* 65.

<sup>115</sup> *The Reconstruction and Development Programme: Policy Framework* paras 1.3.5 and 1.3.7.

<sup>116</sup> *The Reconstruction and Development Programme: Policy Framework* para 2.

<sup>117</sup> *The Reconstruction and Development Programme: Policy Framework* para 3.

<sup>118</sup> *The Reconstruction and Development Programme: Policy Framework* para 4.

<sup>119</sup> Between 1948 and 1994.

with a constrained economic climate founded on social exploitation, the first democratic government set out its remedying developmental strategy in the RDP. Hitherto unparalleled in scope and clothed with unprecedented political value, the RDP was fundamentally idealistic and contained numerous overly ambitious goals;<sup>120</sup> many of which have still not been fully realised.

In the entire RDP, “sustainable development” is only once explicitly mentioned. Paragraph 2.2.1 of the RDP, which introduces the RDP’s vision and objectives, states that:

The RDP is committed to a programme of sustainable development which addresses the needs of our people without compromising the interests of future generations.

It would be interesting to know what is meant by “interests” in this paragraph. Nevertheless, the idea of development that is sustainable is referred to about 20 times. In the RDP, ‘sustainable’ does not always mean the balancing of socio-economic development against environmental concerns,<sup>121</sup> but often refers to the maintainability of socio-economic development so as to avoid the recurrence of apartheid injustices.<sup>122</sup> It must be kept in mind that the RDP was introduced before the Constitution was promulgated in 1996,<sup>123</sup> and long before the Constitutional Court considered the meaning of sustainable development in *Fuel Retailers* in 2007. Under the RDP’s conceptualisation of sustainable development, environmental factors receive scant consideration. In the 3 pages of the RDP reserved for environmental policy,<sup>124</sup> paragraph 2.10.4 is the only paragraph concerned with environmental considerations *per se*; requiring of development strategies to “incorporate environmental consequences in the course of planning” and furthermore that these must “ultimately reduce pressure on the natural environment”.

---

<sup>120</sup> The *National Development Plan: Vision for 2030* 4; chapter 2 of the RDP, for example, envisaged for the five years after its implementation, the redistribution of 30% of agricultural land to landless people; the building of 1 million houses; the provision of clean water and sanitation to all, and access to telecommunications for all; and the electrification of 2.5 million new homes. See *The Reconstruction and Development Programme: Policy Framework* paras 2.4.14, 2.5.2, 2.6.6, 2.7.7 and 2.8.4 respectively.

<sup>121</sup> In some cases, however, the concept ‘sustainable’ does indeed keep its original meaning of achieving a balance between socio-economic development and environmental concerns; see paras 1.2.10, 1.3.6, 2.2.1, 2.5.6, 2.6.1, 2.6.3, 2.7.1, 2.10.2, and 2.10.7.

<sup>122</sup> See *The Reconstruction and Development Programme: Policy Framework* paras 2.8.4, 4.2.1, 4.2.8, 4.3.6, 4.3.19, 4.5.2.3, 4.5.4.2, and 4.9.1.

<sup>123</sup> Sustainable development never featured in the interim constitution of 1993.

<sup>124</sup> Paragraph 2.10.

Over these three pages, 'sustainable' is referred to only twice,<sup>125</sup> and in neither of these does 'sustainable' indicate a balancing or integration of environmental and socio-economic considerations. A plain reading suggests that 'sustainable' in the RDP's context should rather be seen as meaning any development that is capable of being maintained – infrastructurally and financially – so as to cater for the needs of present and future generations.

The lack of environmental considerations in the idea of 'development that is sustainable' is somewhat surprising, given that the world had made a decision at the Rio Earth Summit to actively promote sustainable development only two years prior to the RDP's introduction.<sup>126</sup> The RDP, on the other hand, was produced amidst widespread social and economic unrest as part of the ANC's election campaign.<sup>127</sup> The socio-political climate of the time dictated the focus of the RDP. Writing on the RDP and the *White Paper on Reconstruction and Development*<sup>128</sup> respectively, Blumenfeld<sup>129</sup> and Nattrass<sup>130</sup> acknowledge that in a climate such as the one in which the RDP was produced, one cannot please everyone and still come up with a sound developmental strategy. This suggests that the drafters of the RDP had had to make a sacrificial compromise. In the immediate post-apartheid developmental context, government was seemingly willing to sacrifice immediate environmental concerns to meet the majority's desperate need for socio-economic reform. This sacrifice is not unjustifiable in view of the lack of access to the benefits of socio-economic development for many people during apartheid.

The RDP initially emphasised the importance of integrating economic growth with development generally.<sup>131</sup> Economic growth is described in the RDP as "the measurable increase in the output of the modern industrial economy".<sup>132</sup> The RDP acknowledged that economic growth "is of course a basic goal" preceding development, but parted from the

---

<sup>125</sup> In paras 2.10.2 and 2.10.7.

<sup>126</sup> Department of Environmental Affairs (and Tourism) 1997 *White Paper on Environmental Management Policy* foreword.

<sup>127</sup> Nattrass 1994 *Indicator SA* 36.

<sup>128</sup> In Gen Not 1954 in GG 16085 of 23 November 1994.

<sup>129</sup> Blumenfeld 1997 *Development Policy Review* 88.

<sup>130</sup> Nattrass 1994 *Indicator SA* 37.

<sup>131</sup> *The Reconstruction and Development Programme: Policy Framework* para 1.3.6; Nattrass 1994 *Indicator SA* 36.

<sup>132</sup> *The Reconstruction and Development Programme: Policy Framework* para 1.3.6.

notion that economic growth and development are contradictory processes.<sup>133</sup> Instead, the RDP sought to integrate economic growth, development, reconstruction and redistribution into one unified programme to ensure the maintainability of the “basic goal” that is socio-economic growth. This integration is thought necessary to ensure that the benefits of economic growth are equally distributed, that economic growth contributes to building long-term productive capacity and human resource development, and is justifiable when measured against subsequent environmental impacts.<sup>134</sup> The RDP’s socio-economic developmental disposition could well be praised, but institutional and political failures resulted in it being scorned at as embodying empty promises<sup>135</sup> – something the RDP wanted to avoid in the first place.<sup>136</sup> The Department of Finance released GEAR in an effort to achieve the RDP’s socio-economic developmental goals.

There is not a coherent report on the state of the environment covering the time period when the RDP was the only applicable development policy. Because GEAR was introduced shortly after the RDP’s introduction in 1994,<sup>137</sup> the state of the environment for the rest of the RDP’s time is collectively discussed with that of GEAR below.

### ***3.3 The Growth, Employment and Redistribution Strategy***

Failure to achieve the RDP’s ambitious goals is mostly attributed to fiscal and more general economic constraints.<sup>138</sup> As a result, GEAR was introduced in 1996 to fast-track economic growth with the exclusive aim of overcoming these fiscal constraints which prevented the realisation of socio-economic reformation under the RDP.

GEAR was not intended to replace the RDP *per se*, but was only introduced to reform the economy so the RDP’s goals could still be met. GEAR describes a strategy for the rebuilding and restructuring of the economy through higher levels of growth, development and employment, with the eye on implementing the RDP in all its facets.<sup>139</sup> Clearly, GEAR’s aim is just as ambitious as the RDP’s: GEAR envisaged the building of the

---

<sup>133</sup> *The Reconstruction and Development Programme: Policy Framework* para 1.3.6.

<sup>134</sup> *The Reconstruction and Development Programme: Policy Framework* para 1.3.6.

<sup>135</sup> Blumenfeld 1997 *Development Policy Review* 78-79, 85-88.

<sup>136</sup> *The Reconstruction and Development Programme: Policy Framework* paras 1.2.10-1.2.11.

<sup>137</sup> See para 3.3 below.

<sup>138</sup> South African History Online 2014 <http://www.sahistory.org.za/article/south-africa%E2%80%99s-key-economic-policies-changes-1994-2013>.

<sup>139</sup> Department of Finance *Growth, Employment and Redistribution: A Macroeconomic Strategy* 1-2.

economy around the RDP, not the building of the RDP around existing economic growth trends. GEAR focused on improving the overall macroeconomic environment, but surprisingly makes no mention whatsoever of sustainable development in its foundational document.<sup>140</sup> The usage of 'sustainable' in the context of GEAR is furthermore exclusively associated with economic growth trends and has little to no environmental dimension. GEAR's only reference to the environment is in paragraph 6, where it refers without any details to the RDP's policy on the protection of the environment.<sup>141</sup> This is proof of government's apparent willingness to sacrifice immediate environmental concerns for tangible economic results, despite the reciprocal effect of environmental degradation on long-term development,<sup>142</sup> and notwithstanding government's pledge to rethink economic development by aligning it with social and, particularly, environmental concerns at the Rio Earth Summit four years prior to GEAR's introduction.

Four years after GEAR's introduction, greater macro-economic stability was achieved, but private investment, job creation and GDP growth indicators remained disappointing.<sup>143</sup> Insufficient economic growth<sup>144</sup> meant that the RDP's socio-economic developmental goals of poverty eradication and wealth redistribution remained unattained.

Although it cannot be attributed to either the RDP or GEAR, it must be noted that one of only a few great environmental successes was unfolding during these policies' time; namely, the successful phasing out of almost all ozone-depleting substances, in South Africa and the rest of the world. It is nevertheless acknowledged in the Second Report on the State of the Environment in South Africa<sup>145</sup> that the environment was in 2006 "still at the periphery of (and overridden by) socio-economic development", although there has been a notable increase in the budget allocation for environmental management.<sup>146</sup>

---

<sup>140</sup> Not including any of its appendices.

<sup>141</sup> See para 3.2 above.

<sup>142</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) para 44.

<sup>143</sup> South African History Online 2014 <http://www.sahistory.org.za/article/south-africa%E2%80%99s-key-economic-policies-changes-1994-2013>.

<sup>144</sup> GEAR envisaged a GDP growth rate of 6% by the year 2000, but this was not achieved. See Trading Economics 2016 <http://www.tradingeconomics.com/south-africa/gdp-growth> for statistics.

<sup>145</sup> Department of Environmental Affairs (and Tourism) *South Africa Environment Outlook: A report on the state of the environment* xviii.

<sup>146</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 10.

It was also noted that because of the energetic push in development policy for socio-economic reformation without due consideration for its impact on the environment at the time, South Africa exceeded its ecological carrying capacity, and that the future for the environment based on a business-as-usual approach looked “rather grim”.<sup>147</sup> The synthesis on sustainability in the Second Report on the State of the Environment in South Africa concludes by stressing the importance of an understanding of the dependence of the economy and human well-being on the natural environment. This intricate understanding of the interdependence between economic, social and environmental considerations was earmarked as a major challenge in the process of accelerating economic growth under the ASGISA.<sup>148</sup>

### **3.4 Accelerated and Shared Growth Initiative for South Africa**

Ten years after the RDP was introduced, government introduced ASGISA to replace GEAR, with the hopes of halving poverty and reducing unemployment to below 15% by the year 2014.<sup>149</sup> ASGISA’s success depended on a growth rate averaging 5% between 2004 and 2014 and effective partnerships between government and the public sector, including especially the labour and business sectors.<sup>150</sup> The Background Document of ASGISA,<sup>151</sup> and indeed ASGISA itself, recognise that the state of the environment must be improved if ASGISA’s objectives were to be met. The important recognition of environmental health to development is in stark contrast with Deputy-President Mlambo-Ngcuka’s<sup>152</sup> remark in the Background Document that Environmental Impact Assessments (EIAs) – which *inter alia* require of development to be guided by the principle of sustainable development –<sup>153</sup> often obstruct economic developmental projects. This

<sup>147</sup> Department of Environmental Affairs (and Tourism) *South Africa Environment Outlook: A report on the state of the environment* xxii.

<sup>148</sup> Department of Environmental Affairs (and Tourism) *South Africa Environment Outlook: A report on the state of the environment* xviii.

<sup>149</sup> National government’s mandate to *halve* poverty and reducing unemployment to below 15% by 2014 was a more feasible response to the RDP’s aims of poverty *elimination* and indefinite unemployment reduction.

<sup>150</sup> *The Presidency Accelerated and Shared Growth Initiative – South Africa (ASGISA): A Summary* 3.

<sup>151</sup> Deputy President Mlambo-Ngcuka 2006  
<http://www.sahistory.org.za/sites/default/files/asgibackground.pdf> 1.

<sup>152</sup> Deputy President Mlambo-Ngcuka 2006  
<http://www.sahistory.org.za/sites/default/files/asgibackground.pdf> 12.

<sup>153</sup> EIAs are an environmental management tool in terms of chapter 5 of NEMA, and are used to consider the effect of development on the environment and to prescribe steps that must be taken in accordance with these effects in order to promote the principles of environmental management, including sustainable development, as set out in section 2 of NEMA.

remark of Deputy-President Mlambo-Ngcuka's highlights the political nature of environmental protection in socio-economic development policies. On top of even fewer environmental considerations than that of GEAR,<sup>154</sup> sustainable development does not feature at all in ASGISA. The absence of sustainable development in ASGISA is even more remarkable in light of the fact that South Africa hosted the World Summit on Sustainable Development in 2002, only two years before ASGISA's introduction, where South Africa unequivocally committed itself to sustainable development in bringing about poverty eradication and human development.<sup>155</sup>

Although ASGISA's desired growth rate of 5% was sustained between 2004 and 2007, the unforeseeable global financial crisis of 2008 meant that South Africa's average growth rate between 2008 and 2014 nose-dived to below 2%.<sup>156</sup> This depressed growth rate meant that ASGISA's developmental ambitions had to be relinquished. The Second Report on the State of the Environment in South Africa identifies the existing environmental governance framework as being "adequate and progressive", but notes that there remain significant challenges concerning its implementation and enforcement.<sup>157</sup> Most of the SEMAs, and case law pertaining to sustainable development, was promulgated and decided during the time of ASGISA;<sup>158</sup> thus paving the way for future developmental policies/ -strategies like the NDP to consider more clearly sustainable development's role in development generally. Government threw ASGISA to the wind in the light of the global financial crisis and under Jacob Zuma's ANC unveiled the NDP in 2013.

### **3.5 Conclusion**

In this chapter I created a brief contextual background against which chapter 4 must be viewed, by looking specifically at sustainable development's manifestation in South

---

<sup>154</sup> See para 3.3 above.

<sup>155</sup> *Johannesburg Declaration for Sustainable Development for the World Summit on Sustainable Development* UN doc A/conf.199/20 at paras 7, 16-30.

<sup>156</sup> Trading Economics 2016 <http://www.tradingeconomics.com/south-africa/gdp-growth-annual>.

<sup>157</sup> At xix.

<sup>158</sup> Including NEM:BA; NEM:AQA; NEM:ICMA; and, NEM:WA. See also *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC); *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (03/16337) 2004 ZAGPHC 18; *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC); *Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd* 2011 (4) SA 113 (CC).

Africa's dominant development policies preceding the NDP; symbolised by the RDP, GEAR and ASGISA, and how these appear to have affected the state of the environment.

The RDP was introduced immediately after democratisation in 1994. It was an ambitious development policy which compelled the state to eradicate apartheid's manifold socio-economic injustices, specifically including the deficient distribution and delivery of basic services, segregated development of human resources and unsatisfactory economic growth. The over-estimation of the enormous effort this would have required is exemplified by the fact that the RDP had originally set a mere five-year target for the eradication of these and other injustices. Before the turn of the millennium, none of the RDP's objectives could have been ticked off as wholly accomplished. Although partially achieving some of its objectives, insufficient progress had been made to eradicate poverty and reduce inequality. This failure was mostly attributed to fiscal and more general economic constraints.

To overcome the financial constraints that prevented the achievement of the RDP's goals, government introduced GEAR in 1996, only two years after the RDP was unveiled. GEAR focused on increasing economic growth, with the intention of eradicating poverty and eliminating social inequality by 2005. Under GEAR, greater macro-economic stability was achieved, but not to the extent required for the complete eradication of apartheid's socio-economic injustices and the realisation of the RDP's goals.

Government introduced ASGISA on the back of the RDP and GEAR's failures in 2006, with the aim of halving poverty and unemployment by 2014. Owing to the global financial crisis of 2008, government quickly discarded ASGISA. It is said that to continue with business-as-usual would mean that the environment would not be capable of supporting socio-economic development for much longer. Most of the specific environmental management acts were promulgated during ASGISA's time, and so also were many of the court cases concerning sustainable development decided in the period from 2004 to 2008. This paved the way for improved consideration of environmental factors in future development policies. The New Growth Path for development of 2011 culminated in the introduction of the NDP in 2013. We are currently in the NDP's third year, and it remains to be seen if this development policy could bring about the desired reformation of reigning

socio-economic injustices in a way that is environmentally sustainable; an issue which is returned to in chapter 4 below.

## CHAPTER 4

### The National Development Plan 2013

#### 4 The NDP

##### 4.1 Introduction

The NDP is South Africa's fourth major attempt at a practicable, coherent and coordinated development policy following the RDP, GEAR and ASGISA. In this chapter I aim to answer the third sub-question of this study.<sup>159</sup> I will look at how the NDP differs from the previously discussed development policies, how it addresses environmental concerns in the context of socio-economic development, and what role sustainable development plays in the realisation of the NDP's developmental vision for South Africa.

##### 4.2 The National Development Plan

The NDP's *Vision for 2030* is frank in its assessment that South Africa has made insufficient progress towards eliminating poverty and reducing inequality since the end of apartheid. In 2011 the National Planning Commission (NPC) identified the failure to implement the RDP and GEAR as the main reasons for South Africa's slow progress towards eliminating poverty and reducing inequality.<sup>160</sup> The NDP's *Vision for 2030* is, nevertheless, optimistic in supposing that South Africa possesses the potential to still achieve its post-democratic developmental aim of eliminating poverty and reducing inequality.<sup>161</sup> The key to unlocking this developmental potential is the NDP, which is built upon the remnants of the RDP, GEAR and ASGISA. Specifically, the NDP is a strategic, multi-dimensional and holistic, long-term developmental framework that represents South Africa's optimistic approach to eliminating poverty and reducing inequality over the next four years.

Nineteen years ago, the *White Paper on Environmental Management Policy*<sup>162</sup> noted that:

---

<sup>159</sup> See para 1.2 above.

<sup>160</sup> *The National Development Plan 2030: Our future – make it work* 25.

<sup>161</sup> *The National Development Plan: Vision for 2030* 1-6.

<sup>162</sup> In Gen Not 748 in GG 18894 of 15 May 1998.

... the process of democratisation and establishing good governance can only be guaranteed *if it is based on a sound economic and socio-economic framework that is environmentally sustainable*.<sup>163</sup>

The NDP represents such a framework. The NDP, introduced sixteen years after the promulgation of the *White Paper on Environmental Management Policy*, acknowledges that “failure to act (again) will threaten democratic gains”.<sup>164</sup> It also recognises that the critical capabilities required for socio-economic transformation will not transpire if South Africa continues on the RDP, GEAR and ASGISA’s developmental trajectory.<sup>165</sup> Accordingly, the NDP advocates a different approach to achieve its complex developmental ambitions: instead of concentrating on governmental capacity-building and intervention alone, the NDP stresses the importance of developing people’s capabilities and the active role civil society must play in development collectively.<sup>166</sup> Government is, however, not exempt from its duty to drive development. A system of good governance still underpins the effectiveness of an active citizenry towards eliminating poverty.<sup>167</sup> The two are mutually reinforcing, and the NDP identifies this interactive relationship between good governance and an active citizenry in the war against poverty and inequality.

The emphasis on securing real long-term benefits sets the NDP apart from the previously mentioned development policies.<sup>168</sup> The NDP does offer short-term solutions to reduce the effects of unemployment and poverty on impoverished people, but importantly realises that developmental strategies “will take time to have a large-scale effect on poverty”.<sup>169</sup> In doing so, the NDP echoes the pragmatic significance of a long-term objective throughout.<sup>170</sup> The NPC has earmarked 2030 as the year by which the NDP’s objectives must be realised. If the RDP and GEAR signified short and medium terms respectively, then the NDP could be seen as symbolising a long-term developmental

---

<sup>163</sup> Department of Environmental Affairs (and Tourism) 1997 *White Paper on Environmental Management Policy* foreword (emphasis added).

<sup>164</sup> *The National Development Plan 2030: Our future – make it work* 26.

<sup>165</sup> *The National Development Plan 2030: Our future – make it work* 26.

<sup>166</sup> *The National Development Plan: Vision for 2030* 1; *The National Development Plan 2030: Our future – make it work* 26-28, 37.

<sup>167</sup> *The National Development Plan 2030: Our future – make it work* 37, 203; Grindle 2004 *Governance: An International Journal of Policy, Administration, and Institutions*.

<sup>168</sup> Whereas the RDP and GEAR had set 5-year and 10-year targets respectively for the attainment of their development goals, the NDP has earmarked 17 years for the realisation of its objectives.

<sup>169</sup> *The National Development Plan 2030: Our future – make it work* 28.

<sup>170</sup> In the Overview of *The National Development Plan 2030: Our future – make it work* at 28, 39-40, 43, 45, 47, 51, 58-60.

strategy.<sup>171</sup> Yet, in reality – and as it now stands – this leaves the NDP with only little over thirteen years to accomplish its ambitious developmental objectives.

Besides differing from its preceding development policies through its emphasis on securing long-term developmental benefits, the NDP surpasses even the RDP in scope. It is a colossal, 484-page document comprising nineteen chapters, covering almost every aspect of domestic socio-economic policy.<sup>172</sup> The bulk of the NDP is reserved for elaborating on its long-term objectives. These objectives are divided into thirteen programmes of action, namely: economy and employment; economic infrastructure; environmental sustainability and resilience; inclusive rural economy; South Africa in the region and the world; transforming human settlements; improving education, training and innovation; health care for all; social protection; building safer communities; building a capable and developmental state; fighting corruption; and nation-building and social cohesion.

Given the primacy of socio-economic development in the NDP, all the objectives, and programmes of action to realise them, are fundamentally anthropocentric. This anthropocentric nature is further accentuated by the fact that employment, economic growth and capacity building are unequivocally prioritised and underlie every facet of the entire NDP.<sup>173</sup> As a result of development, all the NDP's programmes of action could have knock-on effects on the environment; although some, like the programme of action for economic infrastructure, could have more direct and visible environmental impacts than others, such as the programme of action for fighting corruption. It is in the light of global concerns over the undesirable consequences of development on the ability of the natural environment to support such development, that the NDP must integrate environmental sustainability through the concept of sustainable development into decision-making under its aegis.<sup>174</sup>

Ineffective environmental governance and the lack of environmental considerations in previous economic development policies have resulted in a significant worsening of the

---

<sup>171</sup> See footnote 166 above.

<sup>172</sup> Alloggio and Thomas 2013 *Social Dynamics* 108.

<sup>173</sup> *The National Development Plan 2030: Our future – make it work* 27.

<sup>174</sup> The correlation between the NDP's anthropocentric nature and sustainable development (as it is entrenched in environmental law), and the effect this correlation could have on the success of the NDP is discussed below, as well as in chapter 5 below.

invidious impact of mining in particular on the natural environment over the past few years.<sup>175</sup> The Third Report on the State of the Environment in South Africa determined that as of 2012 all major ecosystems were under threat in one way or another, and that the environmental services provided by these ecosystems were insecure.<sup>176</sup> The hitherto emissions-intensive and carbon-dependent nature of the economy places further strain on the sustainability of development and consequently the war against poverty and inequality.<sup>177</sup> The Third Report on the State of the Environment in South Africa makes it clear that by protecting the natural environment we (government and civil society) “will ensure that economic development and the satisfying of human needs and desires can continue into the future”.<sup>178</sup>

Chapter 5 of the NDP is the only chapter dealing explicitly with the effects of socio-economic development on the environment.<sup>179</sup> In comparison with the RDP, GEAR and ASGISA, all of which were not explicitly concerned with such effects,<sup>180</sup> the NPC’s inclusion of this chapter in the NDP is laudable. This chapter does not, however, advocate environmental protection for the sake of the environment, but resorts to an anthropocentric justification of environmental protection by referring to the consequences of climate change on socio-economic development. In addition, the NDP prescribes the uncoupling of the economy from the environment in the drive towards sustainably eradicating poverty and reducing inequality.<sup>181</sup> A complete uncoupling of the economy from the environment is, however, fundamentally unrealistic, since “all human activity (*as well as the successful functioning of our economic system*) is dependent on material resources being extracted from the natural environment”.<sup>182</sup> The NDP’s aim of

---

<sup>175</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 7.

<sup>176</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 10.

<sup>177</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 7-8.

<sup>178</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 6.

<sup>179</sup> *The National Development Plan 2030: Our future – make it work* 197-216.

<sup>180</sup> The RDP did confirm the close link between poverty and environmental degradation at para 2.10.1, but it was in general much more concerned with the procedural correctness of mainstreaming environmental consciousness, than with the substantial protection of the environment. See para 3.2 above.

<sup>181</sup> *The National Development Plan 2030: Our future – make it work* 198.

<sup>182</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 20 (emphasis added).

transitioning away from environmentally detrimental economic practices is more realisable than uncoupling the economy from the environment. Echoing the importance of an active citizenry to the fulfilment of the NDP's objectives, it is recognised that ordinary South Africans play a significant role in the transition away from environmentally detrimental practices.<sup>183</sup> Government is given the role of policy creator and enforcer to further this social transition towards socio-economic development that is environmentally sustainable.<sup>184</sup>

Concerning sustainable development, the NDP recognises that human well-being is dependent on a healthy natural environment.<sup>185</sup> In the only chapter touching on sustainable development, the NDP advocates 'environmental sustainability and resilience' primarily in the context of South Africa's carbon emissions-intensive energy sector, and through the leveraging of renewable energy sources and the responsible exploitation of non-renewable energy sources. Considering the NDP's aim of reforming socio-economic development by 2030, "environmental sustainability" in this context should be understood as the maintenance of an environment conducive to socio-economic development.<sup>186</sup> 'Environment' in this sense comprises several constituents and means, as defined in section 1 of NEMA:

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

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

The all-encompassing nature of NEMA's definition of 'environment', alongside chapter 5 of the NDP's anthropocentric reasoning towards environmental protection, points to weak environmental sustainable development. Weak environmental sustainable development implies that contemporary development must not jeopardize future developmental

---

<sup>183</sup> *The National Development Plan 2030: Our future – make it work* 200, 205.

<sup>184</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 19.

<sup>185</sup> *The National Development Plan 2030: Our future – make it work* 200.

<sup>186</sup> *The National Development Plan 2030: Our future – make it work* 199.

potential by over-exploiting any of the environment's constituents, but that these constituents may nonetheless be substituted, or in other words, manufactured/ produced/ -bred to maintain developmental expectations. In the NDP only 'biodiversity and ecosystems in conservation areas' are explicitly seen as "national (wild environmental) assets".<sup>187</sup> Biodiversity and ecosystems in designated conservation areas should therefore be seen as being a non-substitutable element of the larger environment, worthy of protection for their integral state of being. According to the Third Report on the State of the Environment in South Africa, less than six per cent of all land in South Africa is protected in this way. This is especially alarming since it is accepted as fact in the Third Report on the State of the Environment in South Africa that no economic or social development would be possible "without the ability of ecosystems to continue to provide vital (inherent) services".<sup>188</sup>

Sustainable development's manifestation in chapter 5 of the NDP nevertheless indicates that government – as primary driver of development – realises that socio-economic development at the cost of a healthy environment would negate contemporary developmental benefits in the long run. Sustainable development in the NDP is still built on the socio-economic values of eliminating poverty and reducing inequality.<sup>189</sup> This means that development must first and foremost address poverty and inequality issues. This is not, however, anymore an 'at-all-costs' aim: the NDP accepts that development must further economic competitiveness and social well-being, but more importantly notes that such development must also be environmentally sustainable in order to ensure that development is to the long-term benefit of the people, and not merely a quick fix.<sup>190</sup> Indeed, the NDP repeats the critical importance of inherent ecosystem services to achieving its social and economic developmental objectives.<sup>191</sup> Development that addresses poverty and inequality issues while degrading the environment in the process and thereby diminishing future generations' chances to live in an environment that is not harmful to their health or well-being, would not be reconcilable with the objectives of the NDP. The NDP's long-term focus could be seen as an implicit test for sustainable

---

<sup>187</sup> *The National Development Plan 2030: Our future – make it work* 201.

<sup>188</sup> Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed 18.

<sup>189</sup> *The National Development Plan 2030: Our future – make it work* 24.

<sup>190</sup> *The National Development Plan 2030: Our future – make it work* 198-199.

<sup>191</sup> *The National Development Plan 2030: Our future – make it work* 201.

development: development in the interests of eliminating poverty and reducing inequality that is, by 2030, not economically, socially, *and* environmentally sustainable, cannot be seen as a victory in the war against poverty and inequality. Such development would then only leave the NDP with a legacy similar to that of the RDP and GEAR.

The 2016 Environmental Performance Index indicates that South Africa's environmental management status has improved over the last decade,<sup>192</sup> with quite a significant improvement over the last four years;<sup>193</sup> proving that efforts to secure sustainable development are yielding positive results. Contemporary developments in the energy sector specifically, however, threaten to undermine these positive steps taken in pursuit of socio-economic development that is environmentally sustainable.<sup>194</sup> It now remains to be seen if we can balance economic growth and social concerns with environmental improvement and protection so as to eradicate poverty and reduce inequality and to prevent these injustices from sprouting up again.

### **4.3 Conclusion**

The NDP is the third post-apartheid development strategy that envisages the elimination of poverty and social inequalities. The NDP was preceded by ASGISA, GEAR and the RDP, all of which failed to achieve the developmental goals of eliminating poverty and reducing inequality. The fact that 20 years later the new NDP's focus has in essence not changed from that of the RDP, is an indication of these development policies' failure to bring about socio-economic reform.

After the dust of the 2008 global financial crisis had settled, the NPC unveiled South Africa's new developmental strategy to combat unsatisfactory socio-economic development: the NDP. The NDP breaks away from the notion that government is the sole role-player in eliminating poverty and unemployment, as it focuses on developing and embracing everyone's capabilities and an active citizenry. The NDP is furthermore distinguishable from the RDP and GEAR by the seventeen years it has earmarked for the

---

<sup>192</sup> Yale University 2016 <http://epi.yale.edu/country-rankings>.

<sup>193</sup> Knoema 2016 <https://knoema.com/EPI2016/environmental-performance-index-2016?location=1002350-south-africa>.

<sup>194</sup> For example, the proposed fracking projects in the Karoo; the controversial nuclear-power deal; the commissioning of new large coal-fired power stations and the threat to renewable energy projects because of financial constraints inside Eskom.

realisation of its developmental objectives; this being a more plausible target than the five and ten years of the previous developmental policies. It is noteworthy, however, that little growth has been made during the first three years of the NDP's existence. Starting next year, the NDP will be left with only fourteen years to achieve its objectives of eliminating poverty and reducing inequality.

Despite its importance to contemporary and future developments in every sector of society, sustainable development only features in chapter 5 of the NDP, which deals explicitly with environmental sustainability. In answering the second sub-question of this study, I have shown that the NDP – although without calling it so, and recognising the importance of environmental sustainability to the realisation of its objectives and to future development – advocates weak sustainable development. The NDP rightfully links sustainable development to the elimination of poverty and the reduction of inequality in South Africa by highlighting the importance of a capable environment to economic growth and general socio-economic development.

In the following concluding chapter, I examine the link between sustainable development as it is conceptualised in environmental law and the process of realising the NDP's overwhelming socio-economic objectives.

## CHAPTER 5

### Conclusion

#### 5 Conclusion

Sustainable development is an established principle of environmental law throughout the world. In short, sustainable development necessitates the balancing of socio-economic development against environmental concerns in order for development to equally benefit both present and future generations. It is a concept of the utmost importance both in legal theory and practice; especially in this day and age where it is universally accepted that every developmental decision has a corresponding environmental impact to consider. This is, however, a reciprocal consideration, since it is thought necessary because “unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development”.<sup>195</sup> In South Africa, environmental impacts are adequately to be considered the obverse side of the developmental coin, but the reason for this juxtaposition is its collective impact on the people: the effect of development on the environment must be considered so that such development would not only be to the equal benefit of people living today, but also that such development does not jeopardise future generations’ right to live in an environment that is not harmful to their health or well-being.

Development policies describe developmental objectives and suggest steps that must be taken to achieve these objectives, with an eye on a better future for all. For this reason, I have determined how sustainable development manifests in South Africa’s development policies; identifying that in South Africa, we have seen three such development policies glide by – the RDP, GEAR and ASGISA – without fully achieving their desired objectives. We are currently in the third year of the fourth such development policy – the NDP. In case of failure to successfully achieve developmental ambitions, research is required to determine what caused these failures, and how to prevent these from reoccurring. In this dissertation, I have focused on the sustainable developmental achievements and failures

---

<sup>195</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) para 44.

of South Africa's development policies. It is imperative to be proactive in the aforementioned research endeavour, for continuous failure to implement development policies that are environmentally sustainable today would arguably have irreversible consequences for future generations' well-being.

We cannot afford to fail again in implementing the national development policy as set out in the NDP, especially considering the precarious state of the natural environment in the light of global climate change and unprecedented domestic environmental phenomena such as the drought of the last two years. It is indeed recognised in the NDP itself that failure to implement its development policy would undermine the socio-economic progress South Africa has made since the end of apartheid.

In chapter 2 of this study I answered the first sub research question of this study, which is what sustainable development means in South African environmental law. I explained sustainable development's place in South African environmental law by reviewing its manifestation in the Constitution and environmental legislation, and how the courts have interpreted the concept in practice. I have showed that sustainable development really only infiltrated South African law after democratisation when South Africa successfully re-entered the international political arena and acceded to and ratified many multilateral environmental agreements in which sustainable development was already firmly established. Sustainable development essentially means the balancing of socio-economic development against environmental concerns in order for development to equally benefit both present and future generations.

In chapter 3 I identified the three dominant post-apartheid development policies – the RDP, GEAR, and ASGISA. This was done in order to answer the second sub-research question of this study, namely how sustainable development features in South Africa's development policies that preceded the NDP. I have shown that all three development policies that preceded the NDP advocated economic growth, with the ultimate aim of eliminating poverty and reducing apartheid related inequalities. Surprisingly, none of these development policies considered the integration of their socio-economic objectives with environmental concerns as required by the concept of sustainable development, or the importance thereof to long-term socio-economic development. I have thus shown that sustainable developmental thinking was absent from the RDP, GEAR and ASGISA.

Owing to various over-ambitious goals and time limits, and unpredictable economic trends, these development policies could not have been implemented successfully and as a result they failed to sufficiently combat poverty and social inequalities. Consequently, government introduced the NDP in 2013.

The NDP, discussed in chapter 4, symbolises South Africa's latest development policy. It still has as its ultimate aims the eradication of poverty and the reduction of social inequalities. It differs from the previous development policies in three major ways: It set aside seventeen years for the fulfilment of its targets, thus prioritising long-term benefits over temporary short-term gains; it seeks to actively involve the citizenry in the process of eliminating poverty and reducing inequality; and, importantly for the purpose of this study, advocates environmentally sustainable development. The NDP recognises that it will not be possible to benefit from socio-economic development in the long run if such development comes at the cost of a healthy environment. I hereby answered the third sub-research question of this study by showing that the sustainable developmental objectives of the NDP are essentially the sustainable eradication of poverty and the reducing of inequalities in such a manner that the environment is not destroyed in the process.

The Constitutional Court has numerous times confirmed sustainable development's role as a guiding principle for any decision with environmental significance. Sustainable development, as it exists in South African environmental law, is said to be of a weak anthropocentric nature, since it puts people and their needs at the forefront of developmental concerns, but not to the extent that socio-economically beneficial development may unjustifiably deteriorate the natural environment. It is therefore fully in line with the NDP's objectives of eliminating poverty and reducing inequality in an environmentally sustainable manner.

Of particular significance to long-term development is the NDP's provisions relating to environmental sustainable development. As was shown, not one of the NDP's preceding development policies explicitly advocated development that is environmentally sustainable. The Constitution requires of all development to be justifiable against its environmental impacts, and the NDP provides a long-term programme of action for the promotion of development that is environmentally sustainable; with specific emphasis on

reforming the carbon emissions-intensive energy sector in view of the impact of climate change on long-term well-being if development were to be undertaken without regard to its environmental sustainability.

Through this study I have made it clear that it is crucially important to actively enforce sustainable development in the process of eliminating poverty and reducing inequality; a process which would inevitably leave an environmental footprint. Whether this footprint will guide the way for future generations towards sustainability or ecological suicide, however, depends on our implementation of sustainable development today. We have a comprehensive regulatory system in place which accords us the means to achieve long-term prosperity, but much more could be done than what has been done up to this point. The recognition of invidious past failures to implement development policies makes of the NDP a poultry farmer scurrying on its own chickens' eggs: the spotlight is focused on seeing whether the NDP is nimble-footed and capable of generating the will – politically in government institutions, and socially amongst the people – required to fulfil its developmental ambitions in a sustainable manner by 2030, or whether it is just another heavy-footed egg-stomper, with the potential to be stifled by its own failures.

## **BIBLIOGRAPHY**

### ***Literature***

Alberts "Solid waste management"

Alberts R "Solid waste management" in du Plessis A (ed) *Environmental Law and Local Government in South Africa* (Juta Cape Town 2015)

Alloggio and Thomas 2013 *Social Dynamics*

Alloggio S and Thomas K "Resisting the lure of deferral: realising the South African National Development Plan" 2013 *Social Dynamics* 108-110

Blumenfeld 1997 *Development Policy Review*

Blumenfeld J "From Icon to Scapegoat: The Experience of South Africa's Reconstruction and Development Programme" 1997 *Development Policy Review* 65-91

Bodansky *The Art and Craft of International Environmental Law*

Bodansky D *The Art and Craft of International Environmental Law* (Harvard University Press Massachusetts 2010)

Bosselmann *The Principle of Sustainability*

Bosselmann K *The Principle of Sustainability* (Ashgate Publishing Limited Farnham 2008)

Cutter 1995 *Progress in Human Geography*

Cutter SL "Race, class and environmental justice" 1995 *Progress in Human Geography* 111-122

Du Plessis and Nel "An introduction"

Du Plessis A and Nel J "An introduction" in du Plessis A (ed) *Environmental Law and Local Government in South Africa* (Juta Cape Town 2015)

Engelbrecht and Kornelius "Air quality management"

Engelbrecht K and Kornelius G "Air quality management" in du Plessis A (ed)  
*Environmental Law and Local Government in South Africa* (Juta Cape Town 2015)

Feris 2010 *PER*

Feris LA "The role of good environmental governance in the sustainable development of South Africa" 2010 *PER* 73-99

Grindle 2004 *Governance: An International Journal of Policy, Administration, and Institutions*

Grindle MS "Good Enough Governance: Poverty Reduction and Reform in Developing Countries" 2004 *Governance: An International Journal of Policy, Administration, and Institutions* 525-548

Hopwood, Mellor and O'Brien 2005 *Sustainable Development*

Hopwood B, Mellor M and O'Brien G "Sustainable Development: Mapping Different Approaches" 2005 *Sustainable Development* 38-52

Kidd *Environmental Law*

Kidd M *Environmental Law* 2<sup>nd</sup> ed (Juta Cape Town 2011)

Kotzé 2003 *Potchefstroom Electronic Law Journal*

Kotzé LJ "The Constitutional Court's Contribution to Sustainable Development in South Africa" 2003 *Potchefstroom Electronic Law Journal* 81-95

Lee, McNeill and Holland *Global Sustainable Development in the Twenty-first Century*

Lee L, McNeil DI and Holland A *Global Sustainable Development in the Twenty-first Century* (Edinburgh University Press 2000)

Müller K "Environmental Governance in South Africa"

- Müller K "Environmental Governance in South Africa" in Strydom HA and King ND (eds) *Fuggle and Rabie's Environmental Management in South Africa* (Juta 2009)
- Nattrass 1994 *Indicator SA*
- Nattrass N "The RDP White Paper: A Cocktail of Confusion" 1994 *Indicator SA* 36-39
- Neumayer *Weak versus Strong Sustainability*
- Neumayer E *Weak versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* 3<sup>rd</sup> ed (Edward Elgar 2010)
- Ostrom 2009 *Science*
- Ostrom E "A General Framework for Analyzing Sustainability of Socio-Ecological Systems" 2009 *Science* 419-422
- Packer and Rukare 2002 *The American Journal of International Law*
- Packer CAA and Rukare D "The New African Union and Its Constitutive Act" 2002 *The American Journal of International Law* 365-379
- Parramon-Gurney "Marine and coastal management"
- Parramon-Gurney "Marine and coastal management" in du Plessis A (ed) *Environmental Law and Local Government in South Africa* (Juta Cape Town 2015)
- Redclift 2005 *Sustainable Development*
- Redclift M "Sustainable Development (1987-2005): An Oxymoron Comes of Age" 2005 *Sustainable Development* 212-227
- Rushton 2003 *British Medical Bulletin*
- Rushton L "Health hazards and waste management" 2003 *British Medical Bulletin* 183-197
- Sands and Peel *Principles of International Environmental Law*

Sands P, Peel J, Fabra A and MacKenzie R *Principles of International Environmental Law* 3<sup>rd</sup> ed (Cambridge University Press New York 2012)

Van der Linde and Louw 2003 *African Human Rights Law Journal*

Van der Linde M and Louw L "Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication" 2003 *African Human Rights Law Journal* 167-187

### ***Legislation***

*Constitution of the Republic of South Africa*, 1996

*National Environmental Management Act* 107 of 1998

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

*National Environmental Management: Biodiversity Act* 10 of 2004

*National Environmental Management: Integrated Coastal Management Act* 24 of 2008

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

*National Environmental Management: Waste Act* 59 of 2008

### ***Case law***

*Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC)

*Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd* 2011 (4) SA 113 (CC)

*BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (03/16337) 2004 ZAGPHC 18

*Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC)

*Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* 1997

*Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC)

*Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: in re Hyundai Motor Distributors (Pty) Ltd v Smit* NO 2001 1 SA 545 (CC)

### ***Government publications***

Department of Environmental Affairs (and Tourism) 2009 *Fifteen Years: A Review of the Department of Environmental Affairs and Tourism*

Department of Environmental Affairs (and Tourism) 2006 *South Africa Environment Outlook: A report on the state of the environment*

Department of Environmental Affairs *South Africa Environment Outlook: A report on the state of the environment* 2<sup>nd</sup> ed

The *National Development Plan 2030: Our future – make it work*

The *National Development Plan: Vision for 2030*

*The Reconstruction and Development Programme: Policy Framework*

*White Paper on Environmental Management Policy* Gen Not 748 in GG 18894 of 15 May 1998

*White Paper on Reconstruction and Development* Gen Not 1954 in GG 16085 of 23 November 1994

### ***International instruments***

*African Charter on Human and Peoples' Rights*

African Union Commission *Agenda 2063: The Africa We Want*

*The Constitutive Act of the African Union* (2000)

*Declaration on the Right to Development* (1986)

*The Declaration of the United Nations Conference on the Human Environment* (1972)

*Johannesburg Declaration for Sustainable Development for the World Summit on Sustainable Development* UN doc A/conf.199/20

*Report of the World Commission on Environment and Development: Our Common Future* (1987)

### ***Internet sources***

Daily Maverick 2015 [http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V\\_UK3OB96hc](http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V_UK3OB96hc)

Daily Maverick 2015 *South Africa: Where 12 million live in extreme poverty*  
[http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V\\_UK3OB96hc](http://www.dailymaverick.co.za/article/2015-02-03-south-africa-where-12-million-live-in-extreme-poverty/#.V_UK3OB96hc) accessed 05 October 2016

Deputy President Mlambo-Ngcuka 2006  
<http://www.sahistory.org.za/sites/default/files/asgibackground.pdf>

Deputy President Mlambo-Ngcuka P 2006 *Background Document: A Catalyst for Accelerated and Shared Growth South Africa (ASGISA): A Summary*  
<http://www.sahistory.org.za/sites/default/files/asgibackground.pdf> accessed 25 October 2016

Government of South Africa 2016 <http://www.gov.za/issues/national-development-plan-2030>

Government of South Africa 2016 *National Development Plan 2030*  
<http://www.gov.za/issues/national-development-plan-2030> accessed 29 March 2016

Knoema 2016 <https://knoema.com/EPI2016/environmental-performance-index-2016?location=1002350-south-africa>

Knoema 2016 *Environmental Performance Index, 2016*  
<https://knoema.com/EPI2016/environmental-performance-index-2016?location=1002350-south-africa> accessed 28 October 2016

South African History Online 2014 <http://www.sahistory.org.za/article/south-africa%E2%80%99s-key-economic-policies-changes-1994-2013>

South African History Online 2014 *South Africa's Key economic policies changes since 1994-2013* <http://www.sahistory.org.za/article/south-africa%E2%80%99s-key-economic-policies-changes-1994-2013> accessed 05 September 2016

Trading Economics 2016 <http://www.tradingeconomics.com/south-africa/gdp-growth-annual>

Trading Economics 2016 *South Africa GDP Annual Growth Rate* <http://www.tradingeconomics.com/south-africa/gdp-growth-annual>

Trading Economics 2016 <http://www.tradingeconomics.com/south-africa/gdp-growth>

Trading Economics 2016 *South Africa GDP Growth Rate* <http://www.tradingeconomics.com/south-africa/gdp-growth> accessed 05 September 2016

Yale University 2016 <http://epi.yale.edu/country-rankings>

Yale University 2016 *Country Rankings* <http://epi.yale.edu/country-rankings> accessed 28 October 2016

## **LIST OF ABBREVIATIONS**

|          |                                                                      |
|----------|----------------------------------------------------------------------|
| ANC      | African National Congress                                            |
| ASGISA   | Accelerated and Shared Growth Initiative for South Africa            |
| AU       | African Union                                                        |
| CC       | Constitutional Court                                                 |
| GDP      | Gross Domestic Product                                               |
| GEAR     | Growth, Employment and Redistribution Strategy                       |
| ICJ      | International Court of Justice                                       |
| NDP      | National Development Plan                                            |
| NEMA     | National Environmental Management Act 107 of 1998                    |
| NEM:AQA  | National Environmental Management: Air Quality Act                   |
| NEM:BA   | National Environmental Management: Biodiversity Act                  |
| NEM:ICMA | National Environmental Management: Integrated Coastal Management Act |
| NEM:PA   | National Environmental Management: Protected Areas Act               |
| NEM:WA   | National Environmental Management: Waste Act                         |
| NFSD     | National Framework for Sustainable Development in South Africa       |
| NPC      | National Planning Commission                                         |
| NSSD 1   | National Strategy for Sustainable Development and Action Plan        |
| RDP      | Reconstruction and Development Programme                             |

SEMA

Specific environmental management acts