The duty of municipal councillors to realise South Africa's constitutional environmental right

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ABSTRACT

The world faces an environmental crisis threatening human existence and survival. Critical issues include resource depletion, ecosystem destruction, biodiversity decline, climate change, waste accumulation, and pollution of soil, water, and air. Environmental problems reach beyond national borders and require concerted efforts. Global actors have come together to respond to these environmental challenges; the participants include scientific communities, international and transnational institutions, non-governmental organisations, the private sector, as well as national and sub-national authorities.

Cities contribute to environmental issues due to urbanisation, industrial production, and trade. Consequently, cities are assuming responsibility for addressing environmental concerns through self-initiative and, at times, in partnership with international organisations, city networks, or NGOs. South African cities are no exception. The *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) enables municipalities to help solve the global environmental crisis through local solutions. Section 24 of the *Constitution* guarantees everyone the right to a healthy environment safeguarded for the well-being of current and future generations. Municipalities can therefore use their legislative and executive authority to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development. Local government and environmental law aid municipalities to help realise the constitutional environmental right.

However, the country's law also determines the extent of power and responsibility of each structure in a municipality for environmental management. Nevertheless, as the highest authority in the local government design, *municipal councils* ultimately make decisions concerning the exercise and performance of all functions of municipalities, including those related to the environment. This makes a municipal council an indispensable structure in the clockwork of government's environmental protection project and councillors the highest decision-makers in their municipalities.

The main research question addressed in this study is: what is the duty of municipal councillors to realise South Africa's constitutional environmental right? The study involved a desktop-based literature review and semi-structured interviews with municipal councillors and leaders of political parties. It concludes with a proposed framework that translates local councils' environmental law functions, duties, and mandates into a conceptual map of how municipal councillors and the political parties they represent can meaningfully contribute towards realising the right to a safe and healthy environment in South Africa.

Keywords:

Councillors; constitutional environmental right; party politics; local government and environmental law; South Africa

LIST OF ABBREVIATIONS

ANC	African National Congress
ATM	African Transformation Movement
AU	African Union
CAP	Climate Action Plan
CMAs	Catchment Management Agencies
CONNEP	Consultative National Environmental Policy Process
COP	Conference of the Parties
CSR	Corporate Social Responsibility
DA	Democratic Alliance
DWS	Department of Water and Sanitation
EFF	Economic Freedom Fighters
ENGO	Environmental Non-governmental Organisation
ERA	Electricity Regulation Act 4 of 2006
EU	European Union
FCCC	Framework Convention on Climate Change
FoE	Friends of the Earth
GHG	Greenhouse gases
IEA	International Environmental Agreement
IEC	Electoral Commission of South Africa
IEP	International Environmental Politics

IFP	Inkatha Freedom Party
IMF	International Monetary Fund
INGO	International Non-governmental Organisation
IPPs	Independent Power Producers
IR	International Relations
IT	International Technology
KZN	KwaZulu-Natal
MEA	Multilateral Environmental Agreement
MEC	Member of the Executive Committee
MNC	Multinational Corporation
NA	National Assembly
NCOP	National Council of Provinces
NCCAS	National Climate Change Adaptation Strategy
NCCRP	Climate Change Response White Paper
NDP	National Development Plan
NEMA	National Environmental Management Act 107 of 1998
NERSA	National Energy Regulator of South Africa
NGO	Non-Governmental Organisation
NFP	New Freedom Party
NWA	National Water Act 36 of 1998
PA	Patriotic Alliance

PAC	Pan-Africanist Congress of Azania
RDP	Reconstruction and Development Plan
SAHRC	South African Human Rights Commission
SAJELP	South African Journal of Environmental Law and Policy
SALGA	South African Local Government Association
SDG	Sustainable Development Goal
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UISP	Upgrading of Informal Settlements Programmes
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHRC	United Nations Human Rights Council
USA	United States of America
VF Plus	Freedom Front Plus
VOC	*Verenigde Oostindische Compagnie*
WSA	Water Services Act 108 of 1997
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWF	World-Wide Fund

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CHAPTER 1 INTRODUCTION

1.1 Background

The world currently faces an environmental crisis threatening human existence and survival.[1] The critical global problems underpinning this crisis include resource depletion; destruction of ecosystems; biodiversity decline; climate change; mounting waste; and other manifestations of soil, water, and air pollution.[2] These problems are expected to become even more pressing due to unprecedented urbanisation and population growth in critical areas of the world.[3]

Environmental problems reach beyond national borders and require concerted efforts.[4] As such, environmental protection is a shared responsibility of all human beings, requiring global participation.[5] Therefore, to strengthen environmental protection at the international level, a series of conventions and declarations have been adopted since the 1960s.[6] For example, the United Nations Framework Convention on Climate Change (UNFCCC) states that the nature of climate change,[7]

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1 United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1 par 14.

2 United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1 par 14; Bos, Düwell and van Steenbergen 'Introduction' 1.

3 Bos, Düwell and van Steenbergen 'Introduction' 1; Fox and Goodfellow *Cities and Development* 2.

4 Jianping *et al* 'Global Environmental Issues and Human Wellbeing' 3-21.

5 Jianping *et al* 'Global Environmental Issues and Human Wellbeing' 3-21; Principle 2 of the *Rio Declaration on Environment and Development* UN Doc A/CONF 151/26 (1992).

6 See United Nations *Conference on the Human Environment* (Stockholm) A/CONF.48/14/Rev.1; United Nations *Vienna Convention for the Protection of the Ozone Layer* (1985); United Nations *Montreal Protocol on Substances that Deplete the Ozone Layer* (1987); United Nations *Framework Convention on Climate Change* (1992); *Kyoto Protocol to the Framework Convention on Climate Change* (1998); United Nations *Rio Declaration on Environment and Development* (1992) A/CONF.151/26(Vol.i); United *Nations Basil Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*.

7 Climate change is a long-term shift in temperatures and weather patterns. Although this is a natural process, human activities have been the main drivers of rapid climate change. The effects of climate change bring about an increase in carbon dioxide and other gases that ultimately bring sunlight to the surface of the earth while creating a barrier that prevents infrared or heat radiation from escaping. Climate change is manifesting in rising temperature levels, threats to agricultural productivity caused by droughts and floods, and the decline in the marine ecosystem due to warming waters and ocean acidification. Climate change is complex and involves several factors, significant of which is human activity. A particular concern of

amongst other things, "calls for the widest possible cooperation of all countries, and their participation in an effective and appropriate international response".[8] The 2030 Agenda for Sustainable Development adopted in 2015 by the United Nations (UN) requires Member States to protect the planet from degradation by promoting sustainable consumption and production, sustainable management of natural resources, and taking urgent action on climate change so that the environment can support the needs of present and future generations.[9] The UNs Human Rights Council (HRC) recently recognised that having a clean, healthy, and sustainable environment is a human right.[10]

While bilateral and multilateral conventions and treaties are negotiated and adopted by national governments, implementing such agreements often happens at the sub-national level.[11] For instance, in a joint statement made by C40 mayors[12] on the adoption of the Paris Climate Agreement,[13] city authorities of this network committed themselves to bold city-level carbon emission reduction targets and inclusive local climate change actions.[14] Such actions include, for example, the rollout of fleets of electronic buses in China and South Africa and banning the most

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climate change is the emission of carbon dioxide through the combustion of fossil fuels. As an important source of energy for economic development, fossil fuels are the chief anthropogenic (human) source of carbon emissions that alter the natural balance of the Earth's carbon cycle and cause global warming. It is because of this activity that more recently, climate change has been linked to issues of energy in the political discourse. Dyer argues that the issues have always been linked, however, they have typically been treated separately. See for instance, Harris 'Introduction: delineating global environmental politics' 1; Satgar 'The Climate Crisis and Systematic Alternatives' 1; Van der Bank and Karsten 2020 *Air, Soil and Water Research* 1 and Dyer 'Energy and climate change' 361. See Paterson 'IR theory' 65-67 on climate change and international politics.

8 See article 3 of the United Nations *Framework Convention on Climate Change* UN Doc A/RES 48/189 (1992).

9 See articles 12 and 13 of the United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1.

10 United Nations Environment Programme 2021 https://www.unep.org/news-and-stories/story/landmark-un-resolution-confirms-healthy-environment-human-right.

11 See for instance Heijden et al 2019 *Journal of Environmental Planning and Management* 367. This study uses cities, local government, local authorities, subnational government, and municipalities interchangeably.

12 https://www.c40.org/about-c40/.

13 Framework Convention on Climate Change FCCC/CP/2015/10 (FCCC).

14 C40 Cities 2021 https://www.c40.org/news/cop26-joint-statement-from-global-mayors-and-young-climate-leaders/. Also see Bouteligier *Cities, Networks, and Global Environmental Governance* 1.

polluting cars from city centres in Europe, South America, and India.[15] The Paris Agreement recognises the role of sub-national governments in addressing climate change as part of the commitment to greater environmental governance.[16] The agreement states that adaptation to climate change is a global challenge faced by all countries and that cities are a vital component of — and contribute to — the long-term global response to climate change to protect people, livelihoods, and ecosystems.[17] In addition to the C40 commitment and recognition of the Paris Agreement above, there is growing confidence in the positive role of cities in global environmental governance.[18]

Kotzé defines governance as a process used by different actors to formulate and implement strategies for regulating human impact on the environment.[19] By including the law in the definition of the environment, the author suggests governing bodies can actively control people's actions for the betterment of the environment.[20] According to this definition, governance occurs when government, local institutions, civil-based organisations (CBOs), and the private sector work together in implementing decisions and agreements, as well as using the law to regulate human activities concerning the environment.[21] In the context of this study, environmental governance in the local government space occurs when cities and other local role players collectively take and implement environmentally related decisions, agreements, and actions.

Cities are further deemed important actors in implementing international development agendas and as prominent change agents in global environmental

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15 C40 Cities 2021 https://www.c40.org/news/cop26-joint-statement-from-global-mayors-and-young-climate-leaders/; City of Cape Town Statement by the City's Executive Mayor, Patricia De Lille 2.

16 Preamble of the Framework Convention on Climate Change FCCC/CP/2015/.

17 Article 7 of the Framework Convention on Climate Change FCCC/CP/2015/.

18 Betsill and Bulkeley 2007 *Local Environment* 449; Aust 2015 *The European Journal of International Law* 255-278; Fox and Goodfellow *Cities and Development* 2; Du Plessis and Nel 'An Introduction' 1-4; Bouteligier *Cities, Networks, and Global Environmental Governance* 2; De Visser 'City Regions in Pursuit of SDG 11' 186.

19 Kotzé 'Environmental Governance' 107.

20 Kotzé 'Environmental Governance' 108.

21 Mngoma, Pilay and Reddy 2011 *African Journal of Public Affairs* 106.

governance.[22] In this context, there is a shared understanding that cities are both spaces of innovation and places of leadership.[23] For practical reasons related to proximity and participation, cities are well-positioned to address environmental problems like air and water pollution, energy consumption, inadequate sanitation, drainage, and solid waste.[24] They are thus regarded as crucial to combating climate change and improving living conditions.[25]

However, while cities can take action independently, collaboration with other role players is essential.[26] They need the support of national governments, financial institutions, the private sector, and non-governmental organisations.[27] The fairly recent waves of decentralisation in many parts of the world have made political parties an even more significant role-player in local environmental governance.[28] This role includes, amongst other things, political parties developing and implementing city-level projects and policies and ensuring public participation in local government matters.[29] The role of political parties suggests that, in principle, a governing party is in a position to help address environmental problems through strategic planning, project visualisation, budgeting, and policy implementation.

1.2 Politics and global ecological crisis

Before 1970, environmental issues were decidedly a minority interest.[30] The situation changed around the time of the United Nations Conference on the Human

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22 Du Plessis and Nel 'An Introduction' 1-4; Pieterse 2019 *The Vienna Journal on International Constitutional Law* 119-120; Aust and Nijman 'The emerging roles of cities in international law' 1.

23 Bouteligier *Cities, Networks, and Global Environmental Governance* 1-2. See also Heijden et al 2019 *Journal of Environmental Planning and Management* 366.

24 Bouteligier *Cities, Networks, and Global Environmental Governance* 9-10.

25 Bouteligier *Cities, Networks, and Global Environmental Governance* 1-2; Du Plessis 'Climate change law and sustainable development' 189-200.

26 Bouteligier *Cities, Networks, and Global Environmental Governance* 1-2. Also see Na and Hiesler 2009 *International Association for Urban Climate* 1-5.

27 Bouteligier *Cities, Networks, and Global Environmental Governance* 9-10.

28 Bénit-Gbaffou *et al* 'Exploring the Role of party politics in the governance of African cities' 19.

29 Bénit-Gbaffou *et al* 'Exploring the Role of party politics in the governance of African cities' 19.

30 Clark *Technocracy, Democracy, and the Role of Scientists in Natural Resources Policy* 15-24; Steel et al 2004 *Environmental Science and Policy* 1-13; Steel and Weber 2001 *Global Environmental Change* 119-131; Dalby 'Environment and International Politics: Linking Humanity and Nature' 44.

Environment,[31] held in Stockholm in 1972 (the Stockholm Conference).[32] Contemporaneously, so-called green politics emerged in the developed world to respond to various environmental disasters and created public awareness of the scope of the problems.[33] Some international relations (IR) scholars believe that existing IR theories can aid international cooperation in addressing novel environmental issues.[34] They have proposed realism and liberalism as central traditional theories for studying environmental problems at an international level.[35]

In this context, realism "claims to explain the 'reality' of politics" where states are correctly seen as important and powerful actors in international relations.[36] According to realists, conflict is inevitable amongst states in international relations because states are ultimately self-serving actors.[37] As such, states will only concern themselves with global ecological issues, amongst other things, if doing so will benefit their countries and territories.[38] Realism captures the political thought of mainstream political parties.[39] Mainstream political parties, also known as conservative/traditional parties, focus on the ecological crisis on a short-term dominant basis, often driven by political pressure from green political parties.[40]

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31 A/CONF.48/14/Rev.1 (1972).

32 Dalby 'Environment and International Politics: Linking Humanity and Nature' 44; Dyer 'Green Theory' 84; Vogler 'Mainstream theories: Realism, rationalism and revolutionalism' 30; United Nations Department of Economic and Social Affairs (2017) https:// bit.ly/3viwE44; Dalton 2005 *Environmental Politics* 441; Carroll 2009 *Environmental Politics* 258.

33 See Lefevere, Tresch and Walgrave 2015 *West European Politics* 755; Heywood *Politics* 16, 50 and 51; Belchior 2010 *European Societies* 469-470.

34 Vogler 'Mainstream theories: Realism, rationalism and revolutionalism' 30; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 12; Saurin 'International relations, social ecology, and the globalisation of environmental change' 84.

35 Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 11-33; Khan 'Climate Change, Adaptation and International Relations Theory' 14-28; Vogler 'Mainstream theories: Realism, rationalism, and revolutionalism' 30-41.

36 McGlinchey, Walters and Gold 'Getting Started with International Relations Theory' 5; Antunes and Camisão 'Realism' 15; Nel 'Theories of International Relations' 28-31; Biermann and Rakhyun 'Architectures of Earth System Governance: Setting the Stage' 7; Du Plessis 'Climate change law and sustainable development' 189; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 18.

37 Nel 'Theories of International Relations' 28; McGlinchey, Walters and Gold 'Getting Started with International Relations Theory' 5; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 18.

38 Nel 'Theories of International Relations' 28-31; Khan 'Climate Change, Adaptation and International Relations Theory' 15; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 18.

39 See Carter 2013 *Environmental Politics* 73-94; Carter 2009 *Political Quarterly* 233.

40 See Carter 2013 *Environmental Politics* 73-94; Carter 2009 *Political Quarterly* 233.

Thus, mainstream political parties that subscribe to realism will likely focus on global or local ecological issues if doing so maximises their voter base.[41]

Conversely, liberalism captures the belief that international institutions, behaviours, economic connections, and individuals mitigate the power of individual states.[42] According to liberalists, humans are essential actors both at a national and international level.[43] As such, ensuring an individual's right to life, liberty, and prosperity should be the highest goal of any government.[44] Liberals agree with realists that states will try to work towards their national interests. However, liberals argue that cooperating with international institutions and individuals is in each country's interest.[45] Arguably, the liberal theory best explains the rationale behind the efforts made by the international community to regulate global environmental issues. Likewise, a liberal way of political thinking can influence how political parties active in the local government sphere may cooperate with individuals and other multi-level actors to help mitigate global environmental problems.

Although the above suggests states and individuals are responsible for environmental integrity on a global scale, green political theorists argue that these individuals and states are the very causes of the present ecological problems.[46] According to green political theorists, humans and nation-states have over-consumed natural resources to satisfy immediate human needs and desires.[47] According to green theorists, healthy ecosystems are essential for human life.[48] Therefore, moving forward requires a radical approach to mitigate the environmental harm caused by humans and their leaders (states).[49] Green theorists'

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41 Carter 2013 *Environmental Politics* 73-94; Carter 2009 *Political Quarterly* 233.

42 Nel 'Theories of International Relations' 32; Meiser 'Liberalism' 22; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 18 and 19.

43 Nel 'Theories of International Relations' 34; Meiser 'Liberalism' 22.

44 Meiser 'Liberalism' 22.

45 Nel 'Theories of International Relations' 32; Meiser 'Liberalism' 22; Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 18 and 19; Bernstein 2020 *European Journal of International Relations* 14 and 15.

46 Dyer 'Green Theory' 84; Kotzé 2019 *Journal of Human Rights and the Environment* 63; Kotzé 2014 *The Anthropocene Review* 254.

47 Dyer 'Green Theory' 86.

48 Dyer 'Green Theory' 86.

49 Vogler 'Mainstream theories: Realism, rationalism and revolutionalism' 30.

approach places ecology or green politics at the centre of any theoretical endeavour.[50] Thus, green political thought provides a glimpse of the political narrative that exists globally and at sub-national government levels. Green political theory has influenced the environmental stances of both green and mainstream parties.[51] Thus, even mainstream political parties are progressively adopting green stances in their decisions, policies, and programmes.[52] There is competition among mainstream political parties in some regions to be environmentally conscious by integrating environmental concerns into their policies.[53] Therefore, when political parties move closer to the green agenda, more environmental policies stand a chance of being adopted at the government level.[54]

1.3 Environmental protection in pre-democratic South Africa

The politics of apartheid in South Africa limited the majority population's access to resources and the environment.[55] The consequences of these apartheid policies have intensified the environmental problems experienced today.[56] The South African government's isolation due to apartheid affected their environmental management efforts.[57] The international community began to devote serious attention to environmental issues at the time of South Africa's isolation.[58] This isolation meant that South Africa did not actively participate in the preparatory processes of key international conventions and agreements such as the United Nations Conference on the Human Environment (Stockholm, 1972).[59] South Africa was also not invited as a member of the Governing Council of the United Nations Environment

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50 Vogler 'Mainstream theories: Realism, rationalism and revolutionalism' 30.
51 Wall *The No-Nonsense Guide to Green Politics* 25.
52 Schwörer 2023 *European Journal of Political Research* 1-23 and Pollex and Berker 2022 *German Journal of Comparative Politics* 571-591.
53 See Carter 2013 *Environmental Politics* 73-94 and Carter 2009 *Political Quarterly* 233.
54 Carter 2013 *Environmental Politics* 73-94 and Carter 2009 *Political Quarterly* 233.
55 Venter *et al* 2020 *Landscape and Urban Planning* 1-12; Jegede and Shikwambane 2021 *Water* 1-14.
56 Steyn 2005 *Globalizations* 392; Khan 2000 *Environmental History in South Africa* 156-157.
57 Steyn 2005 *Globalizations* 392.
58 Steyn 2005 *Globalizations* 392.
59 Steyn 2001 *Historia* 28; Steyn *Globalizations* 2005 392; Steyn 2002 *Historia* 125; *Globalizations* 392; Kidd *Environmental Law* 13; United Nations Conference on the Human Environment (1972) United Nations *Conference on the Human Environment* (Stockholm) A/CONF.48/INF.5/rev.1 (1972) *Lists of Participants*.

Programme (UNEP, 1973).[60] In fact, the country did not play an active role in UNEP before 1994.[61] South Africa's isolation meant that global political thinking around the environment and concomitant threats did not necessarily influence what was happening in the country.[62]

At a domestic level, the efforts to conserve the environment date as far back as 1652, marking Jan van Riebeeck's arrival in the Cape.[63] The apartheid government never lost this momentum, which enacted environmental laws such as the *Atmospheric Pollution Prevention Act* 100 of 1982, the *Water Act* 54 of 1956, and the *Environmental Conservation Act* 100 of 1982.[64] However, Kidd reasons that conserving the environment was incidental to the primary objectives of apartheid environmental legislation, which was to protect natural resources for the use and enjoyment of the privileged classes.[65] For instance, the apartheid government enacted a plethora of wildlife laws enabling the rich to hunt and kill wildlife,[66] an activity that was initially restricted by Dutch settlers soon after they arrived in 1652.[67] The apartheid system thus involved the manipulation of racial groups and natural resources.[68]

Evident from the laws identified above was that the apartheid government enacted legislation focused on conservation. This meant the government had a somewhat narrow focus on 'inclusive environmental management'. For example, the disenfranchisement of certain racial groups under the policy of separate development meant that the government neglected the environmental interests of

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60 Steyn 2001 *Historia* 30; United Nations Environment Programme (1973) *Report of the Governing Council*.
61 Steyn 2005 *Globalizations* 393.
62 Steyn and Wessels 2000 *South African Historical Journal* 211; Steyn 2005 *Globalizations* 393.
63 Steyn 2001 *Historia* 25-26; Steyn and Wessel 2000 *South African Historical Journal* 210; Kidd *Environmental Law* 12.
64 Steyn 2001 *Historia* 26; Steyn and Wessel 2000 *South African Historical Journal* 210; Kidd *Environmental Law* 12.
65 Kidd *Environmental Law* 12.
66 Kidd *Environmental Law* 12; Khan *Contemporary South African Environmental Response* 23.
67 Khan *Contemporary South African Environmental Response* 20; Müller 'Environmental Governance in South Africa' 69.
68 Steyn and Wessel 2000 *South African Historical Journal* 224.

black people.[69] This resulted in the disproportionate exposure of black people to several environmental problems, including air pollution caused by the unsustainable use of natural resources such as coal and wood.[70] Over-population in rural homelands also led to overstocking of livestock, overgrazing, and over-cultivation of land.[71] Today, this is understood to be manifestations of environmental injustice.[72]

The aforementioned socio-economic factors caused negative environmental perceptions amongst black communities.[73] For these communities, conservation meant that the government alienated them from environmental issues.[74] They were restricted from accessing natural resources and exposed to environmental hazards such as water and air pollution.[75] For this reason, political parties such as the African National Congress (ANC) and the Pan-Africanist Congress of Azania (PAC) argued that widespread overgrazing, soil erosion and deterioration of land, amongst other things, were a consequence of apartheid.[76] The parties argued that to address the country's environmental issues, South Africa would need to adopt constitutional democracy as its governing system.[77]

The ANC has shown sensitivity towards the country's environmental problems since 1992.[78] For example, this is documented in its policy documents issued between

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69 See generally Part B para 1 of the White Paper on Local Government of 1998 (The White Paper); and Bekink *The restructuring (systemization) of local government* 46; *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458 para 2; Steytler and De Visser *Local Government Law of South Africa* 7-8.

70 Department of Environmental Affairs 3rd South Africa Environment Outlook Report "Pressures" 37; Uhunamure, Nethengwe and Musyoki 2017 *Journal of Energy in Southern Africa* 26 and Shackleton and Shackleton 2004 *South African Journal of Science* 658.

71 Khan *Contemporary South African Environmental Response* 53; Khan 1994 *Journal of Southern African Studies* 499-516; Steyn and Wessels 2000 *South African Historical Journal* 224; Daly 1996 *African Journal of Political Science* 59.

72 Environmental injustice arises where there is unequal access to the environment and its resources or where there is an uneven spread of environmental harm. See Schlosberg and Collins 2014 *Journal of Wiley interdisciplinary Review* 360-361; Molaiwa *Municipal Courts and environmental justice in South African local government* 8; Molaiwa 2021 *PELJ* 6.

73 Steyn and Wessels 2000 *South African Historical Journal* 225; Khan *Contemporary South African Environmental Response* 47.

74 Steyn and Wessels 2000 *South African Historical Journal* 224.

75 Steyn and Wessels 2000 *South African Historical Journal* 224.

76 Steyn and Wessels 2000 *South African Historical Journal* 224; Khan *Contemporary South African Environmental Response* 70-71.

77 Steyn and Wessels 2000 *South African Historical Journal* 224; Khan *Contemporary South African Environmental Response* 70-71.

78 Steyn 2005 *Globalizations* 397; Khan *Contemporary South African Environmental Response* 69.

1990 and 1994. In 1992, the ANC committed itself in its policy, *Ready to Govern,* to improve the majority-black community's living and working conditions by ensuring a more just and equitable society in South Africa.[79] The ANC mentioned several aspects of the environment in this policy, including giving due regard to the environment in implementing its economic policy.[80] The environment was further included as one of the ten basic needs in the pre-election Reconstruction and Development Policy (RDP).[81] The RDP expressed that poverty and environmental degradation were intertwined.[82] To improve the lives of the poor, the government would need to reduce negative environmental pressures on South Africa's natural resources.[83] However, the chapter on the environment was omitted from the 1994 Reconstruction and Development Policy White Paper of 1994.[84] This may suggest that the Party left its strong pro-environmental stance after the 1994 national elections.[85]

The ANC established the Consultative National Environmental Policy Process of 1995 (CONNEP), which the Party considered its most significant step towards effective environmental governance.[86] CONNEP was tasked with the radical overhaul of environmental-related legislation.[87] This task formed part of the national overhaul of apartheid laws.[88] A significant legal development to come out of CONNEP was a recommendation for government to include an environmental right in the Bill of Rights in the *Constitution of the Republic of South Africa, Act* 200 of 1993 (the Interim Constitution). The Interim Constitution guaranteed that every person shall

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79 ANC https://www.anc1912.org.za/policy-documents-1992-ready-to-govern-anc-policy-guidelines-for-a-democratic-south-africa/. Also see Steyn 2005 *Globalizations* 397.

80 ANC https://www.anc1912.org.za/policy-documents-1992-ready-to-govern-anc-policy-guidelines-for-a-democratic-south-africa/.

81 ANC *Reconstruction and Development Policy-A Policy Framework* para and 2.10.

82 ANC *Reconstruction and Development Policy-A Policy Framework* para 2.10.1. Also see Steyn 2005 *Globalizations* 397.

83 ANC *Reconstruction and Development Policy-A Policy Framework* para 2.10.2.1.

84 See White Paper on Reconstruction and Development GenNot 1954 in GG 16085 of 23 November 1994.

85 Steyn 2005 *Globalizations* 397.

86 White Paper on Environmental Management Policy (1997); Steyn 2005 *Globalizations* 398.

87 White Paper on Environmental Management Policy (1997); Steyn 2005 *Globalizations* 398.

88 These environmental statutes include the *Irrigation and Conservation of Water Act* 8 of 1912, the *Environmental Conservation Act* 100 of 1982, and the *Environmental Conservation Act* 73 of 1989.

have the right to an environment that is not detrimental to their health or well-being.[89] The most significant legislation to have come out of CONNEP was the *National Environmental Management Act* 107 of 1998 (NEMA).

1.4 Environmental protection in democratic South Africa

The history of environmental governance in South Africa is characterised by a lack of a framework for environmental law that is rooted in a national constitution.[90] This, however, changed with the inception of the Interim Constitution and the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*).[91] The Interim Constitution, promulgated as an Act of parliament, was the first legal instrument in the country to have made provision for an 'environmental right'. Section 29 of the Interim Constitution stated that every person has a right to an environment that is not detrimental to their health or well-being.[92] There was consensus on the need to maintain constitutional protection of environmental rights, which led to the inclusion of section 24 in the final *Constitution*.[93]

Section 24 of the *Constitution* addresses the global concern regarding the degradation of the environment and the legal implications it holds for the present and future generations.[94] The scope of section 24's protection is twofold. Firstly, section 24(a) of the *Constitution* guarantees everyone the fundamental right to an environment that is not harmful to their health or well-being.[95] Section 24(a), read with sections 7(2) and 8(1) of the *Constitution,* further creates an obligation for all spheres of government to respect, protect, promote, and fulfil the environmental

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89 Section 29 of the Interim Constitution.

90 Kotzé 2007 *Doutrina Estrangeira* 37.

91 Kotzé 2007 *Doutrina Estrangeira* 37; Paterson and Kotzé 'Introduction' 1; also see generally Venter 2012 *McGill Law Journal* 723; Venter 2018 *South African Journal on Human Rights* 144.

92 The Nationalist government of South Africa entered negotiations with the African National Congress (ANC) in 1990. It is these negotiations that led to the formation of the interim Constitution. The democratically elected government negotiated and finalised the *Constitution*. Muir *An Interpretation of the South African Constitutional 'Environmental Right'* 12.

93 See Muir *An Interpretation of the South African Constitutional 'Environmental Right'* 12 and Feris 'Environmental rights protected in the Constitution' 3-4.

94 Feris and Fuo 'Environmental Rights protected in the Constitution' 6-3 to 6-4.

95 Kidd 'Environment' 518; Feris 2008 *South African Public Law* 198; Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 243; Du Plessis 2018 *South African Journal on Human Rights* 8.

right.[96] The Bill of Rights also applies horizontally and vertically.[97] This application of the Bill of Rights creates positive and negative duties for everyone to refrain from infringing on the right of people to enjoy the entrenched right and to use legislative and other measures to realise section 24 of the *Constitution*.[98]

Secondly, section 24(b) of the *Constitution* imposes a programmatic and positive obligation on the state.[99] According to Kidd, section 24(b) takes the form of a directive principle that requires the state to take positive steps towards attaining the right.[100] The section empowers and commands competent authorities to take steps to prevent pollution and ecological degradation and promote conservation.[101] Competent authorities are employed to ensure the above through reasonable legislative and other measures.[102] Arguably, sections 24(b)(i) and (ii) are grammatically clear in their construct.[103] The *Constitution* expressly incorporates the concept of sustainable development.[104] The section states that government must put legislative and other measures in place to secure *ecologically* sustainable development.[105] Section 24(b)(ii) further implies that economic and social development co-exists with an ecologically sustainable environment.[106] This means

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96 Feris and Fuo 'Environmental Rights protected in the Constitution' 6-4 to 6-6; Du Plessis 2010 *African Human Rights Law Journal* 363; Du Plessis 2018 *South African Journal on Human Rights* 10. In South Africa, government is constituted as national, provincial, and local spheres of government, which are distinctive, interdependent, and interrelated. See section 40(1) of the *Constitution*.

97 Section 8 of the *Constitution*. Also see generally Bhana 2013 *South African Journal on Human Rights* 351-375.

98 Section 8 of the *Constitution*. Also see generally Bhana 2013 *South African Journal on Human Rights* 351-375.

99 Feris 2008 *South African Public Law* 198; Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 243; Du Plessis 2008 *Potchefstroom Electronic Law Journal (PELJ)* 16.

100 Kidd 'Environment' 518.

101 Feris 2008 *South African Public Law* 198; De Wet and Du Plessis 2010 *African Human Rights Law Journal* 354.

102 Kidd 'Environment' 523; Feris 2008 *South African Public Law* 198.

103 Kidd 'Environment' 523; Muir *An Interpretation of the South African Constitutional 'Environmental Right'* 8.

104 Section 24(b)(iii) of the *Constitution*. See *Fuel Retailers Association of South Africa v Director* General 2007 10 BCLR 1059 (CC) para 44; Muir *An Interpretation of the South African Constitutional 'Environmental Right'* 8; Murombo 2008 *The South African Law Journal* 494.

105 Murombo 2008 *The South African Law Journal* 494.

106 Murombo 2008 *The South African Law Journal* 494 *and Fuel Retailers Association of South Africa v Director General* 2007 10 BCLR 1059 (CC) para 58.

that development cannot survive in a deteriorating environment.[107] It follows, therefore, that section 24(b)(iii) aims to protect the environment while allowing justifiable social and economic development.[108] Thus, as expressly stated in the *Constitution*, sustainable development aims to strike a balance between economic development and environmental protection.[109]

This study captures the stance of historical political parties in South Africa,[110] whereafter it juxtaposes their environmental governance stances with the outlook of contemporary political parties active in the local government sphere.[111] This then leads to an analysis of how municipal councillors and their political parties can contribute to realising the environmental right in South Africa's *Constitution*.

1.5 Municipalities as local environmental governance agents

The local sphere of government in South Africa comprises 257 municipalities.[112] According to the *Local Government: Municipal Systems Act* (*Municipal Systems Act*),[113] a municipality is defined as an organ of state within the local sphere of government exercising legislative and executive authority within a determined area.[114] A municipality comprises political structures, the administration, and the community.[115] The relationship between the political structures (Council), the administration and the community is regulated by law, including environmental law.[116] The political structures, administration, and the communities within a

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107 *Fuel Retailers Association of South Africa v Director General* 2007 10 BCLR 1059 (CC) para 44.

108 *Fuel Retailers Association of South Africa v Director General* 2007 10 BCLR 1059 (CC) para 45; Du Plessis 'An Introduction' 6-7; Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 243. Also see generally Du Plessis 2010 *African Human Rights Law Journal* 345-376; Du Plessis 2018 *South African Journal on Human Rights* 11-16.

109 Murombo 2008 *The South African Law Journal* 491 and *Fuel Retailers Association of South Africa v Director General* 2007 10 BCLR 1059 (CC) para 45.

110 See para 3.3.1 below.

111 See para 3.3.2 below.

112 Section 151 (1) of the *Constitution.* Also see Du Plessis and Nel 'An Introduction' 1-26.

113 32 of 2000.

114 Section 2(a) of the *Municipal Systems Act*. Also see Du Plessis and Nel 'An Introduction' 1-26.

115 Section 2(b) of the *Municipal Systems Act*. Also see Du Plessis and Nel 'An Introduction' 1-26.

116 See section 2(2)(b) of the *Municipal Systems Act*. Also see Du Plessis and Nel 'An Introduction' 1-26.

particular area each have constitutional and legislative rights and duties.[117] There are three categories of municipalities in South Africa: A, B, and C. Each municipality, irrespective of the category, has a municipal council.[118] The *Constitution* affirms the relative autonomous status of local government. Every municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation that complies with the *Constitution*.[119] Every municipality's democratically elected municipal council is vested with legislative and executive (local) authority.[120] Section 151 is an empowering provision as it invites every municipality to be innovative and govern within its jurisdiction as best as it deems fit.[121]

The legislative powers of a municipality include making, implementing, revising, and enforcing by-laws.[122] This allows municipal councils to create and manage by-laws for matters under their jurisdiction.[123] These matters include, for example, municipal health services; stormwater management systems; water and sanitation services; domestic wastewater and sewage disposal systems; air and noise pollution; and refuse removal, dumps and waste disposal.[124]

A municipality's political structures and administrative officials are responsible for local environmental governance. The *Constitution* and framework legislation, including the *Local Government: Municipal Structures Act* (*Municipal Structures Act*) and the *Municipal Systems Act,* determine the extent of power or duty each structure has regarding environmental management. However, municipal councils,

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117 These rights and duties are set out in sections 4, 5 and 6 of the *Municipal Systems Act* and sections 151(1) and (2) of the *Constitution*.

118 Section 18(1) of the *Municipal Structures Act*.

119 Section 151(3) of the *Constitution*.

120 Section 151(2) of the *Constitution*.

121 Du Plessis and Nel 'An Introduction' 1-34.

122 Nel, Du Plessis and Retief 'Key elements for municipal action' 2-6.

123 Section 156(2) of the *Constitution*.

124 Also see *Marius Nel v Hessequa Local Municipality* (unreported) case number 12576/2013 of 14 December 2015 para 13; Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 4.

as the highest authority in local government, make decisions about the exercise and performance of all functions of municipalities, including environmental matters.[125]

1.6 Environmental accountability of municipal councillors

Considering the general scope of their constitutional and legislative powers and duties as indicated above, municipal councils are important in respecting and realising South Africa's constitutional environmental right.[126] The failure of a municipal council to carry out its duties effectively can compromise the ability of a municipality to govern environmental affairs in its jurisdiction effectively.[127] This includes adopting policies and by-laws, appointing senior managers into strategic positions, or adopting an environmentally sensitive budget.[128] The inability to perform such functions ultimately compromises the ability of a municipal administration to deliver services to local communities, promote a safe and healthy environment, and realise the constitutional environmental right.

Councillors are both members of municipal councils and representatives of their political parties.[129] On the one hand, councillors act as functionaries of the local government systems. Under this role, councillors act as representatives of the community.[130] This means that councillors, *inter alia,* play an oversight role in the work of public servants in local government on behalf of the community.[131] This function entails receiving mandates from the community and frequently reporting back to such communities, especially on the municipality's performance regarding established environmental sustainability indicators.[132]

On the other hand, councillors act as politically affiliated persons. As directly elected politicians in the South African political system, they are expected to advance the

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125 Section 160(1)(a) of the *Constitution*. Also see section E para 2.1.1 of the White Paper.
126 Section 160 of the *Constitution*.
127 SALGA *A Framework for Coalitions in Local Government* 4.
128 SALGA *A Framework for Coalitions in Local Government* 4.
129 Section 2(b)(i) of the *Municipal Systems Act* and section 1 of the *Municipal Structures Act*.
130 Preamble Schedule 1 of *Municipal Systems Act*.
131 Preamble Schedule 1 of *Municipal Systems Act*.
132 Preamble Schedule 1 of *Municipal Systems Act*.

mandate of their political parties.[133] The Code of Conduct for Councillors (Code of Conduct) in Schedule 1 of the *Municipal Systems Act* acknowledges that councillors are representatives of political parties and legal functionaries of local government.[134] It states that councillors are political beings elected to represent local communities in the municipal council.[135] As such, the Code of Conduct envisages that councillors act in the interest of their municipality,[136] thus providing a political linkage between the municipal council and the community.[137]

1.7 Research question

Against the above background, this study addresses the following question:

What is the duty of municipal councillors to realise South Africa's constitutional environmental right?

1.8 Objectives of the study

The study's primary objective is to investigate the scope of the duty of municipal councillors as political office bearers in realising the constitutional environmental right in South African local government.

The secondary objectives of the study are:

- To reflect briefly on the fit of politics in the causes of, and responses to, the global environmental crisis at the international and domestic level, generally;

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133 See Schedule 1 of the *Municipal Systems Act* and Department of Cooperative Governance and Traditional Affairs *Everything you need to know about being a councillor* 55-56.

134 Preamble of Schedule 1 of the *Municipal Systems Act*. On the constitutional importance of the Code of Conduct, see *Democratic Alliance v Oudtshoorn Municipality In Re: Democratic Alliance v Oudtshoorn Municipality* 2014 ZAWCHC 132; *Lili v Independent Electoral Commission: Chief Electoral Officer* 2013 ZAWCHC 196.

135 Preamble of Schedule 1 of the *Municipal Systems Act*.

136 Section 2(b) of Schedule 1 of the *Municipal Systems Act*.

137 See Schedule 1 of the *Municipal Systems Act* and Department of Cooperative Governance and Traditional Affairs *Everything you need to know about being a councillor* 56; South African Local Government Association (SALGA) *Guideline Document on the Roles and Responsibilities of Councillors, Political Structures and Officials* 45.

- To explore in-depth and evaluate the historical and contemporary intersection between party politics and environmental governance in the South African context;
- To establish the explicit environmental powers and duties of councillors in terms of the *Constitution* as further manifested in local government and environmental legislation;
- To determine municipal councillors' perspectives on the scope of their role in realising section 24 of the *Constitution*; and
- To conclude the study with a proposed framework that translates local councils' environmental law functions, duties, and mandates into a map reflecting on how municipal councillors and the political parties they represent can contribute towards realising the right to a healthy environment in South Africa.

1.9 Research methodology

This study involved both a desktop-based literature review and semi-structured interviews with municipal councillors and leaders of political parties. The study traversed different scholarly disciplines, such as political science, environmental law, local government law, constitutional law, public administration, and local environmental governance. The study was conducted using primary and secondary sources of law, which were used to evaluate the status, powers, functions, and duties of municipal councils concerning the constitutional environmental right in South Africa. The primary sources of law include the *Constitution*, case law and legislation (with regulations). Secondary sources of law include academic publications, as well as the constitutions, policies, strategies, and manifestos of political parties active in the local government sphere and represented in the national results of the 2021 local government elections. The examination done on these political parties was also used to create a proposed framework that translates the environmental law functions, duties, and mandates of local councils into a map detailing how municipal councillors and the political parties they represent can contribute towards realising the right to a healthy environment in South Africa. The framework is intended to assist councillors in fulfilling their duties toward enhancing ecologically sustainable development as a constitutional imperative.

The empirical research component investigated the role of politics and, specifically, municipal councillors as political office bearers in advancing the constitutional environmental right. This added research was necessary since current literature has not yet explored nor ascertained the stances of municipal councillors regarding environmental governance in the local government sphere. The researcher selected six municipalities as case studies for interviews with municipal councillors, namely, eThekwini and City of Tshwane metropolitan municipalities (Category A municipalities); Sedibeng and Bojanala Platinum district municipalities (Category C municipalities); and Emfuleni and Rustenburg local municipalities (Category B municipalities). The selection was made considering the differences in size, structure, political dynamics, and unique challenges, like industrial and water pollution, that these municipalities face at various scales.[138] The interviews were designed to generate councillor feedback on their understanding of the state of the environment within their municipalities, their interpretation of the constitutional environmental right, the environmental stance of the political parties these councillors represent, and the priority given to matters of environmental protection within the context of the socio-economic pressures confronting local government across the country. The councillors' feedback on their legislative environmental duties (as opposed to their duties in terms of the *Constitution*), was not ascertained in these interviews because the questions for the participants were developed and approved before the time of the actual interviews.[139]

In the end, only the councillors of four of the six municipalities were available for semi-structured interviews, namely eThekwini Metropolitan Municipality; Bojanala District Municipality; and Emfuleni and Rustenburg local municipalities. Although the researcher had written permission from the relevant gatekeepers at Tshwane, the councillors and their secretaries were unresponsive to calls and emails. This is despite numerous calls and emails to the councillors and, where applicable, their

138 See for instance Pieterse 2021 *Urban Forum* 2.

139 As a result, chapter 4 of the thesis was added after the interviews with the councillors.

secretaries. Interviews were also not secured at Sedibeng Local Municipality. Again, this was despite numerous attempts to establish contact.[140]

1.10 Framework

Chapter two of the study explores how politics contribute to and address the global environmental crisis at an international and domestic level. The chapter gives a historical account of international environmental politics (IEP) and the different perspectives of IR scholars on the global ecological crisis. Thereafter, the chapter discusses the role of city-level politics in global environmental governance. Additionally, the chapter considers how South Africa and its politics fit into IEP to create a contextual canvas for the South African analysis to follow.

Chapter three explores and evaluates the historical and contemporary intersection between party politics and environmental governance in the South African context. The chapter charts historical and contemporary perspectives on party politics and environmental governance in South Africa, focusing on transforming the political landscape, local party politics, and its role in environmental governance. This systematic evaluation of historical and contemporary intersections includes an analysis of the nature of environmental governance in relation to the overhaul of environmental law after 1996. The chapter is general, allowing for an analysis of the constitutional environmental right within the country's cooperative governance system.

Chapter four details specific environmental law powers and duties of councillors in South African municipalities, and establishes their explicit environmental powers and duties in terms of the *Constitution* and local government and environmental legislation.

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[140] The researcher later learned that the Municipality's landlines are restricted from receiving calls outside the municipal buildings.

Chapter five provides some insights into the perceived role of councillors in the promotion and realisation of section 24 of the *Constitution*. This chapter unpacks the findings of the empirical research explained above.

Chapter six translates local councils' environmental law functions, duties, and mandates into a conceptual framework on how municipal councillors and the political parties they represent can potentially contribute towards realising the constitutional environmental right.

CHAPTER 2 THE INTERSECTION BETWEEN POLITICS AND THE GLOBAL ENVIRONMENTAL CRISIS AFFECTING SOUTH AFRICAN CITIES

2.1 Introduction

The global environmental crisis has sparked different reactions from politicians globally. While the overwhelming majority have recognised the severity of the crisis, a few deniers still exist. The overwhelming recognition of this crisis has altered the environmental agenda in international politics and law. On the 28th of July 2022, the UN General Assembly declared the right to a clean and healthy environment a fundamental human right.[141] Although the declaration is soft law, it requires states to give effect to it in their domestic laws. The UN envisages that this right will be enshrined in the constitutions of Member States, making it recognisable and enforceable in terms of legislation.[142] As indicated in the previous chapter, the right to a healthy environment in South Africa was not recognised until the inception of the Interim Constitution and the *Constitution*.[143] The objective of this chapter is to briefly reflect on the fit of politics in the causes of and responses to the global environmental crisis at an international and domestic level. The first part of the chapter discusses the fit of environmental politics in the global environmental crisis. This part defines international environmental politics (IEP) and identifies key events in global history that gave rise to IEP. This study uses IEP as a political theme describing the interplay between international politics and global environmental crisis. The part also discusses international relations (IR) theories relevant to how different political actors seemingly view IEP. The second part of the chapter discusses the role of cities and other political players as important actors in IEP. This part discusses the influence each role player has in IEP. The third part of the chapter looks at IEP and how it informs the recognition of the environmental right in South Africa. It does so by briefly detailing how the country moved from an

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141 161 assembly members voted in favour, and 8 abstained. See UN Development Programme *What is the Right to a Healthy Environment* 7; UNEP 2022 https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right. Also see UN General Assembly A/RES/76/300 (2022).

142 UNEP 2022 https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right.

143 See para 1.3 above.

oppressive system of apartheid to a constitutional democracy that recognises the right under discussion.

2.2 Environmental politics in the global environmental crisis

Although global environmental issues have been a concern for international policy-makers since the 19th century,[144] until the 20th century — a period of European global expansion and the industrial revolution — there was relatively little effort to resolve the issues.[145] This century marked a period where it became apparent that humans have an increased effect on the planet's ecosystems.[146] Human activities are causing environmental changes overriding the earth's natural dynamism.[147] Despite this, humans still pursue activities that perpetuate the problem.[148] These activities include rapid economic growth, the proliferation of new technologies that result in excessive energy use, carbon footprint, and waste. Population growth is also driving increased energy and natural resource consumption.[149] Other relevant environmental issues include pollution, acid rain, biodiversity loss, enhanced greenhouse effect, ozone depletion, and atmospheric turbidity.[150] Kemp argues that, as diverse as these issues might seem, they have several features in common.[151] Firstly, the issues are global or at least atmospheric in magnitude.[152] Secondly, they involve human interference in environmental systems.[153] Thirdly, they reflect on a society's ever-increasing ability to disrupt environmental systems on a large scale.[154] All states contribute to global commons' environmental problems

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144 Harris 'Introduction: delineating global environmental politics' 3; Eckersley 'Green Theory' 267; Kemp *Global Environmental Issues* 1; Dauvergne 'Research in global environmental politics: history and trends' 11; Chasek and Brown *Global Environmental Politics* 1.

145 Eckersley 'Green Theory' 267.

146 Harris 'Introduction: delineating global environmental politics' 3; Bently 2013 *Social and Behavioural Sciences* 108-115; UN *Global Resources Outlook* (2019) 7.

147 Dibie 'Introduction' 2 and Harris 'Introduction: delineating global environmental politics' 3.

148 Dibie 'Introduction' 2 and Harris 'Introduction: delineating global environmental politics' 3; UN *Global Resources Outlook* (2019) 7.

149 Eckersley 'Green Theory' 267; Bently 2013 *Social and Behavioural Sciences* 108-115; Chasek and Brown *Global Environmental Politics* 2.

150 Kemp *Global Environmental Issues* 1.

151 Kemp *Global Environmental Issues* 1.

152 Kemp *Global Environmental Issues* 1.

153 Kemp *Global Environmental Issues* 1.

154 Kemp *Global Environmental Issues* 1.

and suffer the consequences.[155] What is often different in these global environmental crisis is the capability of a country to cause a particular environmental problem, and how much a particular country is vulnerable to the effect of the environmental crisis.[156]

Harper and Snowden argue that ecological changes are a normal state of affairs.[157] However, what is worrisome is the pace at which change is occurring at present. The pace of global environmental change has drastically accelerated, with the most significant changes being more anthropogenic.[158] Kotzé identifies the Anthropocene as suggesting an era where the Earth has left the Holocene epoch (a relatively harmonious interglacial state) because of pervasive human activities.[159] Like Kotzé, Steffen *et al* suggest that the Anthropocene consists of two elements. Firstly, a shift in the Earth's geological order known as the Holocene.[160] Secondly, human activities are responsible for the exit from the Holocene, thus making humankind a global geological force in its own right.[161] According to Kotzé, if recent scientific evidence is anything to go by, the ecological, and, as a result, "the socio-legal, political and economic problems that arise in the Anthropocene will steadily become more severe, unpredictable, complex, and of a magnitude hitherto unseen".[162]

The role politics plays in these challenges, whether within or amongst different countries, cannot be underestimated.[163] This is because the continuing decline in the environment can largely be attributed to the failure of governments and other actors to respond in time.[164] Where there are successes in preventing and responding to adverse environmental challenges, these can be attributed to the willingness of government and other political actors, including NGOs and businesses,

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155 Carter *The Politics of the Environment* 248.
156 Carter *The Politics of the Environment* 248.
157 Harper and Snowden *Environment and Society* 36.
158 Harper and Snowden *Environment and Society* 36.
159 Kotzé 2019 *Human Rights and the Environment* 62-63 and Kotzé 2014 *The Anthropocene Review* 253.
160 Steffen et al 2011 *Philosophical Transactions of the Royal Society* 843.
161 Steffen et al' 2011 *Philosophical Transactions of the Royal Society* 843.
162 Kotzé 2014 *The Anthropocene Review* 253.
163 Harris 'Delineating global environmental politics' 1.
164 Harris 'Delineating global environmental politics' 1.

to negotiate and implement policies prioritising environmental protection over economic gains.[165] This has remained true for a long time. For example, the willingness of the world to respond to the environmental crisis in the 1960s and the early 1970s led to the first global environmental conference, namely, the Stockholm Conference.[166] The Stockholm Conference marked the start of a debate about the environment in international politics.[167] Put differently, the Stockholm Conference made it clear to governments across the globe that the environmental crisis was and continues to be a political issue, more specifically, a political issue at the international scale.[168] This Conference also led several states to establish UNEP and environmental departments. The Conference has also been credited with ushering in the modern era of environmental studies.[169] According to the United Nations Conference on the Human Environment (UNCHE), protecting and improving the environment is an urgent desire and duty of all governments because its deterioration affects human well-being and economic development.[170] Twenty years after the Stockholm Conference, the Rio Earth summit pushed environmental issues to the centre-stage by being the then-largest gathering of world leaders to attend and deliberate on burning environmental issues[171] To date, the rising tide of international environmental co-operation has produced more than 250 Multilateral Environmental Agreements (MEAs) and spawned several institutional structures to monitor, enforce, and strengthen them.[172] MEAs existed before 1972, covering issues such as wildlife conservation and maritime pollution.[173]

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165 Harris 'Delineating global environmental politics' 1 and Carter *The Politics of the Environment* 248.
166 Vogler 'Environmental issues' 389 and Cass 'The discipline of global environmental politics' 17.
167 Carter *The Politics of the Environment* 248.
168 Vogler 'Environmental issues' 389.
169 Kemp *Global Environmental Issues* 1.
170 Art 1 of the Declaration of the United Nations *Conference on the Human Environment* (1972).
171 Carter *The Politics of the Environment* 248.
172 See World Trade Organization (WTO) 2022 https://bit.ly/3xFivk7 and Carter *The Politics of the Environment* 248.
173 Carter *The Politics of the Environment* 248.

The practice and study of IEP have expanded dramatically in numerous dimensions since the 1960s.[174] IEP is both an activity and a field of research and study.[175] As a study, global environmental politics is partly grounded in the discipline of political sciences.[176] More specifically, IEP is grounded in analysing the role of states, global institutions, the global political economy, global power, norms, ideologies, and the theories of international relations.[177]

2.2.2 Definitions of IEP

Several scholars have defined IEP differently, with common themes permeating through these definitions. According to Andonva and Mitchell, IEP refers to a realm where actors pursue their interests through contestations, collaborations, and discourses using power, authority, and organisational abilities.[178] Harris states that IEP is, above all, about activities including policies, actions — or the lack thereof — and behaviours that affect the environment, whether negatively (such as causing pollution or deliberate harm to the environment) or positively (such as reducing or preventing pollution or using natural resources sustainably).[179] Simply put by Harris, IEP is about how governments, diplomats, and other actors influence policies and laws dealing with the environment.[180] Harris adds that IEP, in the plural sense, can be interpreted as the various ways in which politics is practised in different parts of the world to alter or protect the environment.[181] Stevis narrows the definition of

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174 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256; Dauvergne 'Research in global environmental politics: history and trends' 8 and Stevis 'The trajectory of international environmental politics' 16; Zürn 1998 *World Politics* 617.

175 Harris 'Introduction: Delineating global environmental politics' 3.

176 Dauvergne 'Research in global environmental politics: history and trends' 8; Cass 'The discipline of global environmental politics' 17.

177 Dauvergne 'Research in global environmental politics: history and trends' 8. Scholars of IEP also reveal the full scale, depth, and complexity of the environmental crisis, revealing and weighing evidence and debunking rhetorics of political and non-political role players. See Dauvergne 'The Sustainability Story' 387.

178 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256. See also Mitchell *International Environmental Politics* 2; Balsiger and Prys 2016 *International Environmental Agreement* 240.

179 Harris 'Introduction: Delineating global environmental politics' 5. See also, Downie and Brown *Global Environmental Politics* 1.

180 Harris 'Introduction: Delineating global environmental politics' 3; Mitchell *International Politics and the Environment* 1.

181 Harris 'Introduction: Delineating global environmental politics' 3.

IEP, stating that it is both about nature and people.[182] Stevis views the IEP in two ways, focusing primarily on the allocation of the environment. The first is that environmental resources should be allocated to people and used by the people.[183] The other view is that when tension on the allocation and use of the environment arises, the people must solve this tension.[184] Although this definition narrowly informs IEP, it does widen the role of people as authorities over the environment. Dauvergne broadens the definition of IEP as an analysis of the role of the state, global institutions, the global political economy, global powers, norms, ideologies, and theories of international relations in the environment.[185] Thus, as the term implies, IEP is about the politics of the environment that occur on a global scale.[186]

Environmental challenges occur at all geographic and social levels.[187] This means that, on the one hand, environmental challenges can occur locally.[188] An example is when domestic sewage or industrial effluents pollute water supplies. On the other hand, environmental challenges can happen globally, as is the case with climate change.[189] The varying levels of environmental challenges, coupled with the various levels of causality, impact, and response, can trigger different political responses across various levels of society and institutions at a sub-national, national, and international sphere.[190] For example, local action can address some local environmental challenges. Other environmental challenges are regional or transnational, crossing national boundaries, thus requiring, and sometimes receiving, policy responses from several communities or national governments.[191] The 'global', however, in global environmental crisis speaks to the bigger scale at

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182 Stevis 'The trajectory of international environmental politics' 15.
183 Stevis 'The trajectory of international environmental politics' 15.
184 Stevis 'The trajectory of international environmental politics' 15.
185 Dauvergne 'Research in global environmental politics: history and trends' 8. Also see Hochstether and Lauturi ' Methods in International Environmental Politics' 78-104.
186 Harris 'Introduction: Delineating global environmental politics' 3.
187 National Research Council *Rediscovering Geography: New Relevance for Science and Society* 20; Whittlesey 'Earmarks of Political Geography' 29-33; Harris 'Introduction: Delineating global environmental politics' 3.
188 Harris 'Introduction: Delineating global environmental politics' 3.
189 Harris 'Introduction: Delineating global environmental politics' 3.
190 Harris 'Introduction: Delineating global environmental politics' 3.
191 Harris 'Introduction: Delineating global environmental politics' 3.

which the environmental challenges are responded to.[192] In this regard, IEP encompasses all levels of politics (and policy) related to the environment.[193] Put differently, IEP encompasses sub-national, national, transnational, regional, and global environmental issues at all levels and related political activity.[194] This means that politics is the common theme that has come out of the above definitions, which shows that environmental crisis are a political problem.[195]

However, the political solution to environmental crises does not yield straightforward answers from politicians. For example, even if politicians agree that climate change is important and action must be taken, it does not mean they will necessarily agree on the range of actions that must be implemented. For instance, Stevenson states that there are no evident solutions to the global environmental crisis and its varients because people disagree on the nature of the problem, its seriousness, its priority when compared to other challenges, the division of responsibilities for purposes of taking action, and the type of intervention needed to solve the problem.[196] This does not mean that a global political solution is not possible.[197] Pereira warns in this regard that environmental issues are perhaps the most global, both in essence and scale of action, and consequently, the future of humanity depends on the ability to create effective webs of multilateral governance.[198] According to Pareira, the world will inevitably move towards a new global order or disorder based on environmental challenges and the ability or inability of the globe to deal with them.[199]

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192 Harris 'Introduction: Delineating global environmental politics' 3and Perciasepe 'The Political Environment' 3.

193 Harris 'Introduction: Delineating global environmental politics' 3.

194 This is also at the heart of the fast-escalating research done on 'earth system governance' and 'earth system law'. See Harris 'Introduction: Delineating global environmental politics' 3; See Dauvergne 'The Sustainability Story' 389; Biermann et al' 2010 *International Environmental Agreements* 277-298; Dellas, Pattberg and Betsill 2011 *International Environmental Agreements* 85-98; Biermann *Earth System Governance: World Politics in the Anthropocene* 1.

195 Stevenson Global *Environmental Politics: Politics, Policy and Practice* 7.

196 Stevenson Global *Environmental Politics: Politics, Policy and Practice* 7.

197 Stevenson Global *Environmental Politics: Politics, Policy and Practice* 7 and 8.

198 Pereira 2015 *Revista Brasileira de Política Internacional* 191.

199 Pereira 2015 *Revista Brasileira de Política Internacional* 192.

2.2.3 Global politics and international relations of environmental relevance

Hundreds of environmental problems have been identified and addressed at the international level.[200] This is because these problems are increasingly understood as entailing flows and connections, both among ecological components and between the ecosphere and the anthroposphere, coupled with the human-natural sphere.[201] Scholars increasingly see global environmental issues, previously seen as independent of each other as having multiple interdependent causes and needing coordinated and integrated forms of social organisations and institutions for effective resolution.[202] Simply put, various actors are involved in the political process that aims to improve environmental conditions including nation-states, scientists, civil society, and businesses.[203]

For the longest time, the global sphere had been dominated by interactions among nation-states. This meant that the state was seen as the only meaningful actor in global politics and international relations.[204] This has rapidly been replaced by a sphere in which international organisations, substate governments, scientists, non-governmental organisations (NGOs), and multinational organisations play a major role in global environmental politics. Andonva and Mitchell refer to this phenomenon as horizontal and vertical rescaling.[205] That is, global governance scaling away from nation-states in multiple directions, including vertically down toward subnational governments, vertically up toward supranational regimes,[206] and horizontally across regional and sectoral organisations and networks. [207]

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200 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256.
201 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256.
202 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256.
203 Stevenson *Global Environmental Politics: Politics, Policy and Practice* 2.
204 See Thomson 1995 *International Studies Quarterly* 213-233.
205 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 255-282.
206 International environmental regimes refer to distinct types of institutions that deal with issue-specific environmental concerns at the international level. See generally De Vos *et al* 2013 *Environmental Modelling and Software* 102 and Hasenclever, Mayer and Rittberger *Theories of international regimes* 9-10.
207 Andonva and Mitchell 2010 *Annual Review of Environment Resources* 256; Saurine 'International relations, social ecology and the globalisation of environmental change' 84.

This study narrows its political focus to IR theories and how these theories inform global, national, and sub-national environmental politics. The study of IR has classically focused on analysing the causes of war and conditions of peace.[208] To date, the study of the use of force continues to motivate scholars of IR even now when the world has entered the second decade of the twenty-first century.[209] However, the causes of war and its justifications are not the only questions that concern IR scholars and researchers.[210] Different questions puzzle contemporary IR scholars, such as, 'What role can international organisations play in altering the preferences of powerful actors?', 'How are global power relations identified?', and 'Where, and with whom, does power lie in world politics?'.[211] Theories in IR offer accounts of why things happened and continue to happen in global environmental politics.[212] These theories offer a wide range of reasons for the different reactions by political and non-political role players in IEP at an international, national, and sub-national level, thus reflecting very different assumptions.[213] This section reviews the way IR theories engage with IEP.

2.2.3.1 Realism

Although realism is a dominant theory in the study of IR, it has had a limited impact on IEP.[214] This is because realism has often neglected the existence of IEP.[215] This means that for realists, global environmental governance issues are not a priority

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208 Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 1.

209 Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 1; Cudworth and Hobben *Posthuman International Relations* 9; Corry and Stevenson 'IR and the Earth' 7.

210 Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 1.

211 Kaufman *Introduction to International Relations: Theory and Practice* 1-2; Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 2.

212 Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 3; Paterson 'Theoretical Perspectives on International Politics' 45-77. See Betsill, Hotchstetler and Stevis 'General Introduction' 1, who argue that IR is a field of political studies that have always accounted for the behaviour and reactions of politicians to the global environmental crisis.

213 Smith 'Introduction: Diversity and Disciplinarity in International Relations Theory' 3.

214 The principal theoretical logic behind realism and resource exploitation is espoused in the theory of 'tragedy of the common', which is famously articulated by Hardin 1968 *Science* 1243-1248. Also see Feeny *et al* 1990 *Human Ecology* 1-19; Young 'Tragedy of the Commons' 601-602; Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 31; Chasek and Brown *Global Environmental Politics* 13; Jordan and O'Riordan 2004 *Global Environmental Change* 189; Paterson 'IR theory' 64-65.

215 Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 31; Corry and Stevenson 'IR and the Earth' 7.

for state actors and that individual countries focus on statecraft, war, and peace.[216] According to realists, the primary and most important IR actor is the state that will always pursue its national interests.[217] The state, as seen by IR scholars following this theory, is a controlling organisation or entity of a specific territory with fully-fledged powers over its space.[218] As such, pursuing power, protecting territorial integrity, and achieving economic security will always be the central objectives of states.[219] Realists argue that it would be foolish of nation-states to pursue any policy that would compromise their interests for them to adhere to some indeterminate notion of ethical conduct.[220] Of course, this translates into realists' belief that natural resources are significant not in themselves, but because their importance is seen concerning resource competition between states.[221]

Realists have always believed that sovereign states exist in an anarchic world.[222] A place where there is no higher authority other than nation-states. As such, the natural resource competition that realists espouse takes place in a self-help system where any action by nation-states is possible, including resorting to violence.[223] Therefore, the preoccupation of realists has always been on balancing power relations in a world of conflict.[224]

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216 Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 31; Swatuk 'Environmental Security' 213; Laferrière and Stoett *International Relations Theory and Ecological Thought* 75. See Duit *et al* 2016 *Environmental Politics* 1-23 where the authors argued that scholars of political sciences need to redirect greater attention to the traditional object of all political inquiries- the contemporary state.

217 Griveaud 'Is the anarchical international system the cause of war?' 1; Chasek and Brown *Global Environmental Politics* 51; Saurin 'International relations, social ecology and the globalisation of environmental change' 84.

218 Schlichte 'A historical-sociological perspective on statehood' 49.

219 Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 31.

220 Centre for Geopolitics & Security in Realism Studies *What do realists think about climate change?* 3.

221 Chasek and Brown *Global Environmental Politics* 13.

222 Griveaud 'Is the anarchical international system the cause of war?' 1; Swatuk 'Environmental Security' 213; Paterson 'Theoretical Perspectives on International Politics' 47; Waltz *Theory of International Politics* 102-128.

223 Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 32; Swatuk 'Environmental Security' 213. See Ophus *Ecology and the Politics of Scarcity* 8-9, who argues that in an anarchic world, common resources will be overused.

224 Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 32.

To that extent, only one hypothesis has been provided by realists that would be relevant to explaining IEP. That is the "hegemonic stability theory".[225] The hegemonic stability theory is grounded on an argument that imbalanced power produces peace.[226] This means that the self-interested states in the world will subject themselves to some form of international rule if a dominant "hegemon" enforces it.[227] Thus, there will be peace when there is a strong and dominant power.[228] However, even with a hegemon in place, war will always be inevitable if and when a strong power begins to slip and a new challenger emerges.[229] The occupant of the hegemonic role for much of the 20th century was the United States of America (USA).[230] As stated before, even this hegemonic role played by the USA has changed, given the emergence of other powerful actors in the international governance arena, making it difficult to determine present power relations.[231]

Vogler argues that while the hegemonic stability theory might have been a plausible mechanism for global environmental governance for much of the 20th century, it is no longer tenable.[232] This is because climate change and its threat to energy production and economic growth, for example, are now close to national interests, making this the new cause for international environmental cooperation. This means that the ability of the effects of climate change to permeate national borders has forced national states to prioritise the environment as "high politics" as opposed to "low politics" it has always been subjected to being.

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225 See Vogler 'Mainstream theories: Realism, rationalism and revolutionism' 32; Nelson *Oil, Hard Power and U.S. Hegemony* 35; Gavris 2021 *Review of International Political Economy* 739.

226 Nye *Understanding International Conflict: An Introduction to Theory and History* 46. Also see generally Grundy *What is the Difference Between a Realist and a Gramscian Understanding of Hegemony?* 1.

227 Gavris 2021 *Review of International Political Economy* 739.

228 Grundy *What is the Difference Between a Realist and a Gramscian Understanding of Hegemony?* 1.

229 Grundy *What is the Difference Between a Realist and a Gramscian Understanding of Hegemony?* 1. Also see Chasek and Brown *Global Environmental Politics* 15, who illustrate how veto powers by nation-states can also affect the stability of hegemons.

230 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 32; Nelson *Oil, Hard Power and U.S. Hegemony* 35.

231 Pereira 2015 *Revista Brasileira de Política Internacional* 191; Dale and Robertson 2004 *Globalisation, Societies and Education* 151.

232 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 32.

2.2.3.2 Rationalism

Rationalists, as the name suggests, believe that they have a reasoned approach to IR that contrasts the brutality of power politics espoused by realists and the idealism of overturning existing governing systems subscribed to by idealists.[233] According to rationalists, states do not exist in perpetual Hobbesian "war for all against all",[234] as suggested by realists. They can develop norms and standards that help sovereign states to improve their international relations and develop the quality of rights of their citizens.[235] Much like realists, classic rationalists in IR were, for the longest time, preoccupied with the problems of war. However, their preconceived idea of IR could generally be used to understand their approach to IEP. Thus, the notion of the ability of states to cooperate for a good cause would mean that rationalists believe that different nations could work together to improve global environmental problems to provide some form of a "world ecological government."[236]

Simply put, rationalists believe that it is rational for states to cooperate on global environmental issues if they will benefit the globe.[237] Rationalists do not expect that a revolutionary transformation of the international system should occur to get the reaction of nation-states.[238] They simply hold that rational cooperation is possible in a war-prone system.[239] Scholars in the rationalist category include liberalists.[240]

2.2.1.2.1 Liberalism

Liberalism, sometimes called liberal institutionalism, is associated with scholars such as John Locke, Hugo Grotius, and Immanuel Kant.[241] Perhaps the biggest proponent

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233 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33; O'Niell *Ecology, Policy and Politics* 81-82.

234 The Hobbesian theory proposes that what people want above all is to preserve their lives and goods, and what they fear above all is violence at the hands of others. The Foundation for Constitutional Government Inc (2022) https://thegreatthinkers.org/hobbes /introduction/ and see generally Tuck *Hobbes A Very Short Introduction*.

235 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33.

236 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33.

237 Dauvergne 'Research in Global Environmental Politics: History and Trends' 17.

238 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33.

239 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33.

240 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33.

241 See generally Franke 1995 *Alternatives* 279-322; Kleingeld *Towards Perpetual Peace*; Williams *International Relations and the Limits of Political Theory*.

of liberalism is Kant, who argued that three characteristics could provide for sustained peace within and among liberal nation-states: republic constitutions, free-market exchange, and a system of international law within domestic countries primarily governed through the rule of law.[242] For Kant, a self-interested state can be an agent of people if its people, including its governors, act rationally.[243] Therefore, with rationality, states could act with care and thought of their future and that of other nations until such a time that a federation of independent republics can be established.[244] Kant's hypothesis of state behaviour rests on the belief that humans, despite their inherent self-interest, can cooperate and construct a harmonious society.[245] Therefore, if an individual or a person's way of thinking can be transformed at a local level, this can be replicated at a broader governance level.[246]

To explain the rise of transnational governance and its influence on IEP, it merits acknowledging the theory of neoliberalism.[247] Neoliberalism became a dominant thought in the 1990s.[248] The theory holds that governments and their institutions are ineffective and stifle innovation.[249] As such, they must be given a minimal regulatory role.[250] This means that at a national level, neoliberalism advocates for the privatisation of state-owned enterprises.[251] Globally, neoliberalism has given rise to private and public-private institutions, the development of free-market

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242 Russett 'Liberalism' 95 and Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 33; Johnson and Joseph 2023 *International Journal of Humanities, Social Sciences and Management* 85.

243 Russett 'Liberalism' 95.

244 Russett 'Liberalism' 95; O'Niell *Ecology, Policy and Politics* 81.

245 Russett 'Liberalism' 95.

246 Russett 'Liberalism' 95.

247 For scholarship on neoliberalism, see generally Keohane and Nye *Power and Independence: World Politics in Transition*; Krasner *International Regimes; Strange Cave! Hic Dragones: A Critique of Regime Analysis*; Paterson 'IR Theory' 67.

248 Stevenson *Global environmental politics: problems, policy, and practice* 143.

249 Stevenson *Global environmental politics: problems, policy, and practice* 143; Saurin 'International relations, social ecology and the globalisation of environmental change' 93.

250 Harper and Snowden *Environment and Society* 230; Dale and Robertson 2004 *Globalisation, Societies and Education* 151; Deyermon 2009 *Review of International Studies* 151-173; Webster and Ivanon 2015 *Journal of Tourism Futures* 58-68.

251 Stevenson *Global environmental politics: problems, policy, and practice* 143; Narsiah 2002 *GeoJournal* 29; Jupe and Funnell 2015 *Critical Perspectives on Accounting* 65-85.

mechanisms, and the adoption of multilateral agreements among states.[252] Therefore, neoliberals account for why transnational corporations (TNCs) and international non-governmental organisations (INGOs) believe they can govern the global environment better than any government department internationally, nationally or sub-nationally.

Liberalism has always been a dominant theory in economics and politics but rarely featured in IEP.[253] Despite this, its idea that international organisations and law can yield global cooperation can be applied to IEP.[254] This approach can be seen where, for instance, countries voluntarily cede their powers to international organisations such as the UN in the belief that international organisations can act in the best interest of everyone.[255] Therefore, in an anarchic state, countries can voluntarily cede powers to international organisations to make decisions regarding the use and regulation of the environment and its resources. This approach is coupled with the belief that less interference from sovereign states can lead to the efficacy of free trade, specifically on environmental resources.[256] Vogler points out that liberal economics and their support for consumer capitalism are responsible for environmental exploitation and degradation.[257] Under capitalism, the environment is not a natural domain where humans must co-exist with other species.[258] Rather, it is seen as a domain to be developed in the ever-expanding process of economic development.[259] The response of the liberals to the concern of unguarded capitalism is that free markets can provide for:

> an optimal allocation of resources in terms of efficacy and sustainability only if environmental costs to human activities are property considered during transactions.[260]

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252 Stevenson *Global environmental politics: problems, policy, and practice* 143; Paterson 'IR theory' 69-70.
253 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.
254 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.
255 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.
256 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.
257 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.
258 Jaiping *Report on Global Environmental Competitiveness (2013)* 10.
259 Jaiping *Report on Global Environmental Competitiveness (2013)* 10.
260 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 34.

This means that, according to liberals, environmental degradation occurred because markets had failed to place appropriate value on natural resource endowments.[261] Under a market-based approach, for instance, the government can establish standards for the amount of pollution a particular environment can assimilate and the allocation rights to those emissions while also allowing market players to determine the price of these rights.[262] Additionally, this approach enables the government to establish financial incentives so that the costs imposed on businesses can drive market players to reduce their aggregate pollution level to the desired level.[263] Regrettably, it has been noted that the use of market-based instruments is less common than that of command-and-control instruments.[264] This is because market-based instruments are often used to raise revenue instead of being a deterrent for behaviour that causes harm to the environment.[265]

Liberalism and liberal societies also account for the development of human rights, including the rights of people to an environment that is safe for their health and well-being.[266] As stated before, the belief in the rational qualities of people, faith in the feasibility of progress in social life, and the conviction that humans can cooperate and construct a peaceful and harmonious society have driven liberals to advocate for the protection of human rights.[267] Kant believes that individuals desire to be free and to prosper, and that where nation-states promote these desires, they will inevitably lead to the expansion of democracy and trade.[268] Subsequently, the growth of democracy and trade would naturally lead to the growth of international law and organisations that will facilitate democracy and the recognition of human

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261 Cutting and Cahoon 2005 *Pace Environmental Law Review* 55.

262 Stavins 1998 *Journal of Economic Perspectives* 96-88.

263 Stavins and Whitehead 1992 *Environment* 9 and Holly, Gunningham and Shearing *The New Environmental Governance* 3.

264 A recent study by McGarth, Bernauer and Prakesh concluded that the increase in fuel taxes in Beijing and Delhi led to a significant decline in policy support. See McGarth, Bernauer and Prakesh 2023 *Environmental Politics* 588. Also see Dechezlepretre and Sato 2017 *Review of Environmental Economics and Policy* 181-203.

265 McGarth, Bernauer and Prakesh 2023 *Environmental Politics* 586-618. See Tsai and Liao 2017 *Business Strategy and the Environment* 426-437 and Nazaheri et al' 2022 *Journal of Cleaner Production* 373, who still believe that market-based measures are efficient in encouraging sustainable development.

266 See generally Epstein et al' 2022 *Law, Culture and the Humanities* 1-23.

267 Russett 'Liberalism' 95.

268 Russett 'Liberalism' 95.

rights generally, including environmental rights.[269] This means global institutions, including the UN, are arguably founded largely on liberalism.[270] As such, one of their functions is facilitating states' adoption of fundamental rights.[271] Zakaria affirms this chain of thought by stating that liberalism is the philosophical stance in which the rights and perspectives of people are protected, or at least tolerated, and given personal, political and institutional recognition by states and civil society.[272]

It follows that most of the thinking about contemporary global environmental governance issues stems from liberalism. For instance, environmental issues are universal in nature. They require institutional reforms through international laws and organisations such as the UN and UNEP. Furthermore, recognising a clean and healthy environment as a human right in most liberal democracies also means that individuals can at least be protected from governments' and businesses' environmentally destructive activities, such as air pollution and resource extraction. Additionally, while the pessimists of liberalism have argued that the relationship between liberals and capitalists is the root cause of environmental destruction, this argument has also been countered by liberals who believe that a market-regulated system is better than unchecked state power.

2.2.3.3 Revolutionalism

Revolutionism emerged alongside realism and rationalism.[273] Some theories of revolutionism include Marxism and Socialism.[274] One of the leading proponents of revolutionalism was Martin Wight.[275] Revolutionism is a distinct school of thought because its scholars argue that the IEP system ought to be dismantled, while realists and rationalists focus on the powers of sovereign states and the reform of basic

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269 Russett 'Liberalism' 95.
270 Sonnenfeld and Leigh Taylor 2018 *Society and Natural Resources: An International Journal* 515.
271 Sonnenfeld and Leigh Taylor 2018 *Society and Natural Resources: An International Journal* 515.
272 Zakaria 1997 *Foreign Affairs* 26 and Sonnenfeld and Leigh Taylor 2018 *Society and Natural Resources: An International Journal* 515.
273 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.
274 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.
275 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38 and Falkner *Environmentalism and Global International Society* 17.

structures.[276] However, a unifying strand across all these scholars was the rejection of the status quo that realists accepted as inevitable and that rationalists sought to reform.[277] Revolutionists typically believe that states are the primary cause of environmental degradation rather than potential promoters of an ecologically sustainable world.[278] This study discusses the most important revolutionists of the twentieth century, namely, Marxists and the belief by Marxists that the current governing systems will not solve the global environmental crisis because they cause the problem in the first place.[279]

2.2.3.3.1 Marxism

Cox distinguishes between problem-solving theorists, specifically realists, rationalists, and revolutionists, which the author terms critical theorists.[280] Marxism is known for its critical or radical thoughts. Marxism, as a theory, starts with the assumption that the world is politically organised in terms of structural inequality, specifically, classism, which Marxists contend is the root cause of conflict.[281] It is this conflict that suppresses all attempts to resolve global environmental problems.[282] Marxists believe that the state, far from being the centre of focus, is a mere agent of the ruling class they term "the executive committee of the bourgeoisie".[283] According to Marxists, classism is fundamentally created by the global capitalist system.[284] As such, any attempt to understand world politics must begin with understanding how capitalism works.[285] Marxism essentially believes that global capitalism and its effects have created a global system that ensures that the

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276 Dunne 'The English School' 133; Rupert 'Marxism' 153; Hobden and Wyn Jones 'Marxists theories of international relations' 117.
277 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.
278 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.
279 Paterson 'Theoretical Perspectives on International Environmental Politics' 51.
280 Cox 1981 *Millennium-Journal of International Studies* 128-129.
281 Paterson 'Theoretical Perspectives on International Environmental Politics' 60; Merchant 'Introduction' 16.
282 Paterson 'Theoretical Perspectives on International Environmental Politics' 60.
283 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.
284 Hobden and Wyn Jones 'Marxism theories of international relations' 118; Newell 2011 *Global Environmental Change* 4-6; Parson 'Marx and Engels on Ecology' 52-54; Baradat and Phillips *Political Ideologies: The Origins and Impact* 175; Mielants *The Origins of Capitalism* 2.
285 Hobden and Wyn Jones 'Marxism theories of international relations' 118.

powerful and wealthy (the bourgeoisie) prosper at the expense of the powerless and poor (the proletariats).[286]

Like the other theories in IR, Marxism paid little attention to the environment until the late twentieth century.[287] Its focus on environmental issues only began to crystallise when the consequences of capital accumulation began to cause irreversible environmental damage.[288] Globalisation and degradation became evident to many. As such, because Marxism aimed to 'expose' the pervasive nature of capitalism, it provided an account for the ecological predicament in which the world found itself.[289] It states in this regard that the ever-changing system of capital accumulation that determines economic activities is fundamentally responsible for excessive resource use, the loss of natural habitat and rising pollution levels.[290]

According to Marxists, the manner in which capitalism has contributed to ecological degradation can be outlined in four general dimensions. Firstly, capitalism is dependent on growth for its survival.[291] This means that the lack of economic growth in a capitalistic system spells a crisis, which is known as a recession in market or business terms.[292] This inevitably results in companies competing to remain viable under this system.[293] Unfortunately, this means that growth in the capital system can occur at the expense of nature and its resources.[294] The second dimension concerns the notion of commodification. Two types of commodities can be identified in Marxism. The first is treating cheap labour as a commodity that

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286 Hobden and Wyn Jones 'Marxism theories of international relations' 118; Saurin 'International relations, social ecology and the globalisation of environmental change' 92; Laferrière and Stoett *International Relations Theory and Ecological Thought* 67.

287 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.

288 Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38; Paterson *Understanding Global Environmental Politics* 47.

289 Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 45-50; Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.

290 Paterson *Understanding Global Environmental Politics* 45-50; Vogler 'Mainstream theories: realism, rationalism and revolutionalism' 38.

291 Paterson *Understanding Global Environmental Politics* 45.

292 Paterson *Understanding Global Environmental Politics* 45.

293 Paterson *Understanding Global Environmental Politics* 45.

294 Paterson *Understanding Global Environmental Politics* 45.

capitalists can exchange.[295] The second, which is the focus of this discussion, is using natural resources as mere objects of exploitation.[296] Commodification, in this instance, is defined as an action or process of treating something as a mere product that can be sold in a market.[297] Marx, the founder of the Marxist theory, defined commodities as objects outside of humans and which are used to satisfy their wants.[298] The ecological consequence has been the ability of the system to turn 'nature' into natural resources of a monetary value.[299] Paterson argues in this regard that humans have broken down the "complex ecological system into constituent parts in search of economically profitable resources for production".[300] Simply put, everything that is 'nature' has been broken down or separated from each other and given a monetary value, including humans and their need for the environment and *vice versa*. The third dimension holds that capitalism generates environmental problems.[301] This dimension argues that businesses have subordinated environmental concerns to the primary goal of profit maximisation, thereby resulting in global ecological issues.[302] The fourth dimension of capitalism concerns inequality. As previously stated, the cornerstone of capitalism has always been to develop one sector of society at the expense of another. Marxism holds that this development is not generic and depends on capitalists' deliberate action to manufacture this inequality.[303] Marx argued, for instance, that industrialisation in the global West was made possible through the coloniser's deliberate acts of extracting natural resources from their colonies using cheap labour practices.[304] Paterson adds to this argument by stating that capitalism's sustained growth is still

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295 Heller *The Birth of Capitalism: A 21st Century Perspective* 1; Bernstein 1989 *The International Journal of Anthropology* 11-28; Tomich *Through the Prism of Slavery: Labor, Capital, and World Economy* 1-31; Patel and Moore *A History of the World in Seven Cheap Things* 91-110; Buchanan 1979 *Canadian Journal of Philosophy* 123.

296 Heller *The Birth of Capitalism: A 21st Century Perspective* 1; Buchanan 1979 *Canadian Journal of Philosophy* 121; Sharma 1979 *The Indian Journal of Political Sciences* 339-366.

297 Heller *The Birth of Capitalism: A 21st Century Perspective* 13.

298 Marx *Capitalism* vol 1.

299 Paterson *Understanding Global Environmental Politics* 47.

300 Paterson *Understanding Global Environmental Politics* 47.

301 Paterson *Understanding Global Environmental Politics* 47.

302 Paterson *Understanding Global Environmental Politics* 47.

303 Paterson *Understanding Global Environmental Politics* 48.

304 See for instance Heller *The Birth of Capitalism: A 21st Century Perspective* 179; Elster *An Introduction to Karl Marx* 53-54.

dependent on the ability of markets to ensure sharply differing standards of living for nations across the globe.[305] It can be deduced from Marx and Patersons' arguments that inequality in capitalism has ensured that the natural resources of less-developed states continue to be exploited by capitalists decades after colonialism.

It follows, therefore, that Marxists would be sceptical of the role of markets or industry in environmental protection as advocated for by liberals. For Marxists, the primary cause of political, social, and environmental problems in the globe is capitalism. An interesting challenge that liberals could potentially raise to the assumption of capitalism as a social ill is that changing human behaviour can influence how capitalism operates. Meaning that if humans could stop their pervasive behaviour of exploiting resources and manipulating systems, then even the environmental ills of capitalism could be a thing of the past. Thus, capitalism as a system is not the primary cause of environmental problems; rather, it is humans and their behaviour.[306]

2.2.3.4 Green/ ecology theory

The green theory emerged as a direct response to environmental degradation.[307] Some scholars in the political science discipline believe that environmental problems are just a social issue fought over by various political ideologies.[308] Other scholars argue, however, that environmentalism is a political ideology that deserves the attention of IR theorists, hence green theory or ecologism.[309] Green theory, also known as green ecology, is a school of thought in the critical theory discourse.[310] Green theorists are classified in the critical theory discourse because environmental issues raise questions regarding the relationships between and among humans in

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305 Paterson *Understanding Global Environmental Politics* 49.
306 See the argument of the Anthropocene in para 2.2 above.
307 Ecologism extends from the critique of the dominance of humans on nature by Marx. See Merchant 'Introduction' 20 and Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305.
308 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305.
309 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305.
310 Dyer 'Green Theory' 84.

community and collective decision-making.[311] Furthermore, green theorists question the boundaries of political communities by asking what type of governing systems the world needs to adopt to solve the global environmental crisis.[312] Their answers are found in radical alternative ideas of a political community with a healthy relationship with its ecology.[313] The ideals of a politically viable world envisaged by green theorists' rest on ecological security,[314] sustainable development,[315] and the principle of environmental justice.[316]

Green theorists challenge anthropocentrism, which is the idea that humans are at the apex of evolution, at the centre of value and the meaning of life, and the only species with moral worth.[317] They focus on the interest of nature itself as opposed to that of humans in the natural world.[318] For this reason, green theorists embrace an ecologically-centred or ecocentric philosophy that respects all forms of life, including the environment, as a distinct mode of being and not merely an instrument of value to humans.[319] Therefore, environmental governance from an ecocentric perspective protects humans and their well-being and the larger web of life comprising multiple ecological communities.[320] The most radical green theorists go as far as to demand that people must see themselves as mere creatures of the earth who, like all species in the ecosystem, must subordinate themselves to the world's interest.[321] Furthermore, the most radical green theorists are willing to use violence

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311 Newell *et al"* 2014 *Annual Review of Environment and Resources* 444-467; Palmer, McShane and Sandler 2014 *Annual Review of Environment and Resources* 419-442; Dyer 'Green Theory' 84; Laferrière and Stoett *International Relations Theory and Ecological Thought* 25.

312 Dyer 'Green Theory' 84.

313 Dyer 'Green Theory' 84; Baradat and Phillips *Political Ideologies: Their Origins and Impact* 320; O'Niell *Ecology, Policy and Politics* 2.

314 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 330.

315 See para 4.2.2.1 below.

316 Environmental justice advocates for developing policies that elevate material and environmental circumstances of vulnerable, communities — particularly in the global South — ensuring that they have access to a clean environment. See Eckersley 'Green Theory' 267 and Paterson *Understanding Global Environmental Politics: Domination, Accumulation, Resistance* 38; Baradat and Phillips *Political Ideologies: Their Origins and Impact* 330-331.

317 Eckersley 'Green Theory' 269 and Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305.

318 Dyer 'Green Theory' 84; O'Niell *Ecology, Policy and Politics* 2.

319 Eckersley 'Green Theory' 269.

320 Eckersley 'Green Theory' 269.

321 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305; Laferrière and Stoett *International Relations Theory and Ecological Thought* 16.

against humans to achieve their environmental goals.[322] Green theorists also caution humans and their exploratory knowledge of the environment by arguing that people possibly know less about ecology than they think.[323] Therefore, their technological and scientific interventions and practices are invariably causing more social and ecological costs.[324]

Ecologism is a critical theory because it challenges the status quo and advocates for a fundamental change in the governing systems, such as Western capitalism and Soviet-style communism.[325] This is because both these governing systems are regarded as "different versions of the same overarching ideology of industrialism".[326] It also questions humanity's relationship with non-human nature and the practice of subjugating indigenous people and traditional forms of agriculture.[327] The alternative offered by ecologists is a radically different society to the current. The ideal ecologists' transformation requires more than what parliamentary parties and mobilisation groups currently offer.[328] According to ecologists, it is not enough for governments to commit to sustainable development, which some nation-states are currently doing; rather, countries need to place ecologism at the centre of all their governing policies and its execution.[329]

The radical views of ecologists led to the formation of green parties. With the first of these parties founded in 1970, the greens emerged into the political scene as "idealists, impractical and radicals".[330] This is because green parties, such as the one first formed in Germany,[331] demanded significant reductions in the use of fossil

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322 Giorgetti 1998 *Colorado Journal of International Environmental Law and Policy* 120; Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 49.

323 Eckersley 'Green Theory' 269-270.

324 Eckersley 'Green Theory' 270 and Baradat and Phillips *Political Ideologies: Their Origins and Impact* 305.

325 Eckersley 'Green Theory' 269 and Baradat and Phillips *Political Ideologies: Their Origins and Impact* 320. Also see generally Kirchhof and McNiell *Nature and the Iron Curtain*.

326 Eckersley 'Green Theory' 269 and Baradat and Phillips *Political Ideologies: Their Origins and Impact* 320.

327 Eckersley 'Green Theory' 269.

328 Dobson *Green Political Thought* 104.

329 Dobson *Green Political Thought* 104.

330 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 330.

331 See Britancica 2023 https://www.britannica.com/topic/environmentalism/Biocentric-schools-of-thought.

fuels and the immediate closure of nuclear power plants.[332] Jungjohann states in this regard that green parties had "neither a common identity nor a coherent ideology in their formation".[333] Arguably, this made green parties more driven by post-materialistic values and interests, such as human rights and environmental protection, not so much by political philosophies and rules.

There are several IR theories that, in part, resonate with the green theory, including liberalism and Marxism. Liberals have become more committed to environmentalism.[334] For instance, they advocate for people's right to a clean environment that is good for their health and well-being.[335] Marxism reacts to the pervasive nature of capitalism and its exploitation of natural resources.[336] Both liberalism and Marxism call for the abandonment of modern institutions for a less centralised governing structure.[337] What makes green theories distinct, however, is that the theory is not born out of politics but rather out of a social issue blamed predominantly on politicians.

It follows from the above that IEP is complex. The actions of role players in IEP transcend state borders and authorities. The theories of IR inform these actions. Although the state is an actor in IEP, IR theories confirm that it is no longer attainable to view states as the most important actor in global politics. Political scholars argue that the global world should find new ways to solve the global environmental crisis. The most extreme theories on IEP (Marxists and green ecologists) further suggest that states should have minimal to no role in global environmental governance.[338] It is not easy to imagine a world where national government plays no role in IEP, especially because cities are established in terms

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332 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 330.
333 Jungjohann 'The German Green Party: From a Broad Social Movement to *Volkspare!* 70.
334 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 333.
335 See para 2.2.1.2.1 above.
336 Baradat and Phillips *Political Ideologies: Their Origins and Impact* 333.
337 Segrillo 2012 *Brazilian Political Review* 8-27; Baradat and Phillips *Political Ideologies: Their Origins and Impact* 334.
338 See 2.2.3.3.1 and 2.2.3.4 above.

of domestic state laws.[339] Therefore, even though cities can participate in global city networks and execute IEAs, they will usually "act in national context".[340]

2.2.4 The relevance of domestic politics and party-political systems in different nation-states

As stated before, state governments are the most powerful actors in IEP.[341] They create, implement, and expand the role of their countries in international space.[342] State governments also determine their country's political regimes and how they respond to IEP. The domestic politics of a country influence its role in IEP.[343] States vary in their domestic environmental concerns and, therefore, in IEP.[344] Often, their response to IEP is determined by their political, economic, and institutional capacity to respond to IEP.[345]

Chasek and Brown identify states' different roles in environmental regime negotiation.[346] These roles are influenced by each state's varying political factors.[347] The first role is the lead state.[348] This state has a strong commitment to effective international action on environmental issues. The lead state drives the negotiation process by proposing an international environmental agreement (IEA) and attempts to win the support of other states to adopt and implement the IEA.[349] Canada and Sweden led the negotiation process on persistent organic pollutants (POPs).[350] Canada committed 20 million Dollars for POP capacity building in developing states

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339 Du Plessis 2015 *Comparative and International Law Journal of Southern Africa* 291.
340 Du Plessis 2015 *Comparative and International Law Journal of Southern Africa* 292.
341 See para 1.2 and 2.2.3.1 above.
342 Chasek and Brown *Global Environmental Politics* 51.
343 Mitchell 'International Environmental Politics' 814.
344 Breitmeier, Young and Zurn *Analyzing International Environmental Regimes: From Case Study to Database* 190 and DeSombre *Domestic sources of international environmental policy: Industry, environmentalists, and US power* 17.
345 Breitmeier, Young and Zurn *Analyzing International Environmental Regimes: From Case Study to Database* 190 and DeSombre *Domestic sources of international environmental policy: Industry, environmentalists, and US power* 17.
346 Chasek and Brown *Global Environmental Politics* 52.
347 Chasek and Brown *Global Environmental Politics* 52.
348 Chasek and Brown *Global Environmental Politics* 52.
349 Chasek and Brown *Global Environmental Politics* 52.
350 Chasek and Brown *Global Environmental Politics* 52.

to help them transition to alternative uses.[351] The negotiations culminated in an international agreement to reduce and eliminate POPs.[352] The second role is the supporting state. This state is espoused by realists — it supports the leading state during negotiation to gain favour with the lead state.[353] The third role is the swing state. This state's vote to adopt an IEA is swayed by various incentives and interests that are often made by lead states.[354] The fourth role is the veto or blocking state. It is often difficult to negotiate with this state because its primary goal is to block any proposed environmental regimes before negotiations occur.[355] Consequently, its refusal to vote for a proposed IEA weakens international efforts to address the different manifestations of the global environmental crisis.[356]

As stated before, domestic political factors influence environmental regimes. The first factor is that countries' economic interests are prominent in promoting veto roles.[357] The USA played a veto and swing role in some climate change issues because they host the world's leading oil and gas production entities.[358] Until January 2021, Donald Trump and the majority of Republicans denied the existence of climate change in support of the unfiltered production of oil and gas.[359]

Secondly, the extent to which a country plays a role in international environmental issues may often reflect the interest of the elite within its jurisdiction.[360] This is often to the detriment of the poor and marginalised who do not have resources against big businesses that fund governing parties. Gupta, Vegelin, and Pouw state that the USA tends to use non-ratification as a measure to destabilise the effectiveness of IEAs in favour of the interests of their elite members of society and to move in and

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351 Government of Canada year unknown https://shorturl.at/glotP.

352 UN Doc UNEP/POPS/CONF/2 (May 22, 2001). Also see Lallas 2001 *The American Journal of International Law* 692 and Hagen and Walls 2005 *Natural Resources and Environment* 49.

353 Chasek and Brown *Global Environmental Politics* 52.

354 Chasek and Brown *Global Environmental Politics* 52.

355 Chasek and Brown *Global Environmental Politics* 52.

356 Chasek and Brown *Global Environmental Politics* 52.

357 Chasek and Brown *Global Environmental Politics* 54.

358 Gross *The United States can take climate change seriously* 1.

359 Worland 2019 https://time.com/5622374/donald-trump-cimate-change-hoax-event/; Wise 2020 https://www.npr.com/2020/09/14/912799501/i-don-t-think-science-knows-visiting-fires-trump-denies-climate-change.

360 Chasek and Brown *Global Environmental Politics* 54.

out of agreements.[361] The country never ratified the Kyoto Protocol on Climate Change.[362] Furthermore, it ratified the Paris Agreement by executive order, withdrew from it, and later rejoined.[363] Another example is the European Union (EU), which swings in its position of regulating fisheries because of its interest in it.[364]

Thirdly, taking a lead role in environmental regime negotiations may be easy where the state does not have domestic opposition.[365] If anything, the existence of strong environmental movements or political parties in a country may influence the government to respond to IEP.[366] In Germany, green parties hold some of the highest positions in government, including the foreign ministry, which exerts enormous power in IEP.[367] Germany's foreign ministry has been at the forefront of global environmental efforts by implementing the Countrys' first Renewable Energy Act (2021). This Act has been credited with making solar and wind power the most important sources of electricity in Germany.[368] Conversely, the absence of strong environmental movements and political parties may mean that the government is not pressured to lead environmental regimes. Lastly, a governing party's political ideology may influence a state's role in IEP.[369] Section 3.7.2.2 of this study illustrates how the ideological beliefs of the mayors in Cape Town have culminated in the City's strong focus on climate mitigation. The section illustrates that even where the high-ranking politicians are not from the national sphere of government, the ever-increasing role of cities in environmental governance has ensured that IEAs are being implemented at the city level. This means that while it is good for state

361 Gupta, Vegelin and Pouw 2022 *International Environmental Agreement* 233.
362 Gupta, Vegelin and Pouw 2022 *International Environmental Agreement* 233.
363 Gupta, Vegelin and Pouw 2022 *International Environmental Agreement* 233.
364 Petersson and Stoett 2022 *International Environmental Agreement* 340.
365 Chasek and Brown *Global Environmental Politics* 54-55.
366 Chasek and Brown *Global Environmental Politics* 55.
367 Jungjohann 'The German Green Party: from a Broad Social Movement to *Volkspartei*' 69 and The Council on Foreign Relations 2023 https://www.cfr.org/backgrounder/how-green-party-success-reshaping-global-politics.
368 Clean Energy Wire 2018 https://www.cleanenergywire.org/factsheets/whats-new-germanys-renewable-energy-act-2021.
369 See Millner and Ollivier 2016 *Review of Environmental Economics* and Policy 234-235; Kulin and Seva 2019 *International Journal of Sociology* 110–129; Chasek and Brown *Global Environmental Politics* 55.

authorities to enact policies in support of IEAs, enactment does not guarantee effective implementation.[370] In some instances, effective implementation may require the federal government to delegate powers, functions, and responsibilities of IEAs to sub-national authorities.[371] States that are committed to IEP will direct financial and human resources towards these cities.[372]

2.3 Cities as political actors co-responsible for solutions to the global environmental crisis

Green theorists arguably are the most critical IR scholars on the role of the state in the global environmental crisis. Unlike Realists, Liberalists, and Marxists, green theorists argue that the existing political system is irreconcilably skewed in favour of humanity's superiority over the natural environment. This system, green theorists argue, remains state-centric. As a result, radical theorists do not believe that nation-states, in their current form, can solve environmental issues.[373] Nagtzaam and Van Hook support the assumptions of green theorists in this instance, stating that the global ecological interdependence discussed below highlights how nation-states, on their own, have failed to solve global environmental problems.[374] Schlichte adds to this view by arguing that one of the misconceptions sold by realists to the world is that the state not only controls its territory, but it is also a powerful organ where - an all competent government makes all major decisions.[375]

The assumptions of green theorists on the state have influenced other actors in the political space, including cities, NGOs, civil society, international organisations, and others, to contribute to solving the global environmental crisis.[376] The contribution of non-state actors to global environmental governance broadly includes agenda-setting, developing rules, norms and standards, and monitoring and enforcing

370 Lester 'Federalism and State Environmental Policy' 48.
371 Lester 'Federalism and State Environmental Policy' 48.
372 Lester 'Federalism and State Environmental Policy' 48.
373 See para 2.2.3.2 above.
374 Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 43.
375 Schitchte 'A historical-sociological perspective on statehood' 49.
376 Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 43.

compliance.[377] These actors believe that global environmental issues require a combination of efforts from various role players, including the state.[378] This approach by the various role players is defined as international interdependence, which signifies dependence between nation-states and an assortment of inter-societal contracts that break down the exclusivity of states in international politics.[379] This means these role players or actors are less critical of the state than radical green theorists. Hoff, Gausset, and Lex rightly state that there is no way to progress in global environmental issues without the extensive participation of state and non-state actors such as cities, private companies, unions, food corporations, and project leaders.[380] Bull further points out that the state is "here to stay" and that any attempt to examine IEP and law must grapple with the role played by states alongside other role players.[381]

Following the failure of national governments to reach a binding agreement on GHG emissions at the UN Conference of the Parties (COP)[382] 15 meeting in 2009, cities, civil society leaders and market actors led the drive to reduce these emissions and to create sustainable societies.[383] However, this does not extinguish states out of IEP.[384] If anything, an attempt to define other role players as non-state actors means that any analysis of them will always require an examination of their binary opposition: the state.[385]

One of the questions that one might ask is why non-state actors are responding to the global environmental crisis. Perhaps the answer lies in understanding the "governance" in environmental governance.[386] Governance as a term is difficult to

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377 Haufler 'Transnational actors and global environmental governance' 119; Chasek and Brown *Global Environmental Politics* 51.

378 Paterson 'Theoretical Perspectives on International Environmental Politics' 58.

379 Paterson 'Theoretical Perspectives on International Environmental Politics' 58.

380 Hoff, Gausset and Lex 'Introduction' 1.

381 Bull 1979 *Daedalus* 111; Eckersley *The Green State: Rethinking Democracy and Sovereignty* 7; Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 43.

382 COP is an international climate summit where world leaders gather every year to discuss and make decisions on climate change. See UN Climate Change (Year unknown) https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop.

383 Hoff, Gausset and Lex 'Introduction' 1.

384 Bouteligier *Cities, Networks, and Global Environmental Governance* 31.

385 Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 43.

386 See para 3.5.4. for the definition of environmental governance.

define.[387] The term has brought with it a change in the understanding of government, referring to new processes and novel ways of running a society.[388] According to Haufler, governance means that every effort to solve global issues, such as environmental problems, must flow from the understanding that the state is a primary actor in the international governing space.[389] Therefore, decisions and actions about the environment are drawn from a set of institutions and actors in and beyond government.[390] Once governance is expanded beyond the state, it includes the participation of public actors, such as cities and private actors, including INGOs, TNCs, and scientists, among others.[391]

2.3.1 Cities as political actors

Cities are responsible for 75 percent of global GHG emissions, with transport, buildings, energy production and consumption, and waste management being the biggest contributors.[392] Cities are the biggest contributors to GHG emissions because of urbanisation and the fact that they are centres of industrial production and trade.[393] According to the UN, 6 out of 10 people are expected to become urban dwellers by 2030.[394] With this rise in urban dwellings comes environmental degradation's impact on human health and well-being.[395] Therefore, cities are

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387 Colebath 2014 *Policy and Society* 307.

388 Bouteligier *Cities, Networks, and Global Environmental Governance* 31.

389 Haufler 'Transnational actors and global environmental governance' 120.

390 Keping 2018 *Fudan Journal of the Humanities and Social Sciences* 2.

391 Haufler 'Transnational actors and global environmental governance' 120; Kotzé *Legal Framework for Integrated Environmental Governance in South Africa and the North-West Province* 46; Kotzé 'Environmental Governance' 107-108; Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 156; Du Plessis 2010 *Stell LR* 270. See para 1.1 for a definition on governance.

392 Geneva Environment Network 2023 https://www.genevaenvironmentnetwork.org/resources/updates/cities-and-the-environment/.

393 Geneva Environment Network 2023 https://www.genevaenvironmentnetwork.org/resources/updates/cities-and-the-environment/.

394 UN United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1; Van Der Berg 'The Pursuit of SDG 11: Through the Lens of Integrated Development Planning' 208.

395 Geneva Environment Network 2023 https://www.genevaenvironmentnetwork.org/resources/updates/cities-and-the-environment/.

places where environmental degradation is more visible, tangible, and urgent worldwide.[396]

Cities, represented by city networks, participate in forming global commitments such as the SDGs and the Paris Agreement.[397] The targets set out particularly in SDG 11 state that cities will need to reduce the per capita environmental impacts of urban dwellings by paying special attention to air quality in municipal spaces and waste management, among other things.[398] Furthermore, city governments must strengthen their efforts to protect and safeguard the world's cultural and natural heritage.[399] The targets set out in SDG 11 clearly indicate that cities are critical role players and are co-responsible for a response to the global environmental crisis. Kanuri *et al* argue that SDG 11 is currently the strongest international and political recognition of the key role of cities in global governance.[400]

Cities have emerged as a potent force in driving the global sustainability agenda over the past two decades.[401] They have been identified as a governing structure within federal states that is "here to stay".[402] Literature has amply covered the discourse on cities and their transformed and meaningful role in global governance.[403] According to Bouteligier, cities matter beyond their territories and are one expression of our globalising world that shares common norms and practices.[404]

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396 Sassen 2009 *SAPIENS* 2.

397 Aust and Du Plessis 'Introduction' 3; Du Plessis 2017 *Law, Democracy and Development* 239; Davidson and Gleeson 'The new urban assertions: no prospect there' 424; Du Plessis 2015 *Comparative International Law Journal of South Africa* 290.

398 UN United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1.

399 UN United Nations *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1.

400 Kanuri et al' *Getting Started with the SDGs in Cities: A Guide for Stakeholders* 1.

401 UN-Habitat *Urbanisation and Development: Emerging Futures Worlds Cities Report* 29.

402 UN-Habitat *Urbanisation and Development: Emerging Futures Worlds Cities Report* 29.

403 See generally Bouteligier *Cities, Networks, Global Environmental Governance* 17; Aust and Du Plessis 'The Globalisation of Urban Governance-Legal Perspectives on Sustainable Development Goal 11' 3; De Solada and Galceran-Vercher 'Introduction' 13; Curtis 2016 *Millennium, Special Issue* 1-20.

404 Bouteligier *Cities, Networks, Global Environmental Governance* 17.

Many states today have multi-level governance structures, with sub-national governments directly responsible for delivering a significant part of the commitments made by national governments worldwide.[405] Simply put, the governing structure of cities in decentralised nations often rests with local political actors who govern in terms of national laws and policies. This means that, unlike other non-state actors, the governing powers of local government flow directly from national or federal authorities and their laws, including constitutional, local government and environmental laws.[406] Therefore, some of the powers and functions generally associated with local governments' role in environmental governance include developing, adopting, implementing, and monitoring policies, by-laws, and programmes.[407] This is typically seen as local government's contribution to curbing environmental problems and contributing to the global environmental governance effort. However, both scholars and policymakers globally expect more from cities, including sub-national governments creating legal relations among themselves to share knowledge and research on environmental governance issues.[408] Cities are also expected to forge relations with international institutions that can fund their developmental agendas, including the World Bank.[409]

A meaningful way for local government to respond to the global environmental crisis depends on effectively decentralising responsibilities from federal to local government, policy management, decision-making authority, capacity, and gathering sufficient resources through revenue collection, among other things.[410] Cities are critical for merging inter-city networks and organisations that could function as political infrastructure addressing global environmental issues.[411] For example, ICLEI is a global network that is currently operating in over 125 countries and works with more than 2500 local and regional governments to drive localised

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405 Kanuri et al' *Getting Started with the SDGs in Cities: A Guide for Stakeholders* 15.
406 Du Plessis 2015 *Comparative and International Law Journal of Southern Africa* 283.
407 Du Plessis 2015 *Comparative and International Law Journal of Southern Africa* 283.
408 Reigner 'International Institutions and the City' 38.
409 Reigner 'International Institutions and the City' 38.
410 See para 177 of the UN-Habitat *International Guidelines on Decentralisation and Access to Basic Services for All* and Kanuri *et al' Getting Started with the SDGs in Cities: A Guide for Stakeholders* 67.
411 Sassen 2009 *SAPIENS* 2.

action for "low emission, nature-based, equitable, resilient and circular development."[412] Cities also provide a 'home' to TNCs that depend on healthy governance of nation-states for their sustained development.[413] McDonald *et al* state that cities that can provide TNCs with good global connectivity in terms of effective transport infrastructure and Information Technology (IT) infrastructure conducive to effective data transmission are more likely to attract investment from these corporations.[414] Therefore, with the support of these TNCs, cities may be able to achieve their sustainability goals.

2.3.2 International non-governmental organisations as political actors

Transnational actors are active role players in IEP. Transnational actors are defined as a collective of individuals and organisations that interact across national borders but do not formally represent the foreign policy interests of a particular nation-state.[415] Three general categories of transnational actors are identifiable in literature: INGOs, multinational corporations (MNCs), and transnational networks.[416] More specifically, the IEP space is dominated by INGOs.[417] State governments do not establish INGOs, nor do they represent the interests or views of any governing authority.[418] Additionally, INGOs operate in and around two or more states.[419] Yamin adds to this definition by stating that INGOs are not established through "international agreements capable of playing a role in

412 ICLEI 2023 https://iclei.org/.
413 McDonald et al' 2020 *Transnational Corporations* 35-61.
414 McDonald et al' 2020 *Transnational Corporations* 35-36.
415 Risse-Kappen 'Bringing transnational relations back in: introduction' 3; Betsill 'Transnational Actors in International Environmental Politics' 185-186; Downie 'Transnational actors: Non-governmental organizations, civil society and individuals' 177.
416 Betsill 'Transnational Actors in International Environmental Politics' 185.
417 McCormick 'The Role of Environmental NGOs in International Regimes' 92; Betsill 'Transnational Actors in International Environmental Politics' 185; Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 43; Haufler 'Transnational actors and global environmental governance' 119-143.
418 McCormick 'The Role of Environmental NGOs in International Regimes' 92; Vincent 'Non-State Actors in International Relations' 168; Betsill 'Transnational Actors in International Environmental Politics' 185.
419 McCormick 'The Role of Environmental NGOs in International Regimes' 92 and Betsill 'Transnational Actors in International Environmental Politics' 185.

international affairs by virtue of their activities".[420] INGOs serve various purposes, including fighting to prevent regulatory regimes from interfering with the environmental human rights of people.[421] For instance, Earthjustice is an INGO that protects people's environmental rights by providing them with legal assistance in the fight for broader environmental protection.[422]

INGOs play various roles in IEP either as positive contributors to political regime changes or tracking the implementation of EIAS by different countries.[423] Therefore, some INGOs promote the implementation of international agreements at a domestic level.[424] In this regard, the World Wide Fund (WWF), Friends of the Earth (FoE), and Greenpeace have emerged as political models of INGOs.[425] Such INGOs have permeated the IEP space and act in a manner typically associated with sovereign states.[426] The WWF, FoE, and Greenpeace contributed significantly to the creation of global regimes for environmental protection, such as the Kyoto Protocol.[427] This behaviour has led some to argue that the political activities of INGOs are diminishing the sovereignty of nation-states.[428] This means that INGOs not only focus on influencing state policies and their national compliance with IEAs, but their political activities have permeated global civil society, thus making them political actors in their own right.[429]

INGOs have tried to exert political influence on states by raising public awareness of environmental issues, lobbying state decision-makers in the hope of affecting domestic and foreign policies related to the environment, coordinating boycotts, and participating in international environmental negotiations.[430] It can be argued,

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420 Yamin 2001 *Review of Europea, Comparative and International Environmental Law* 149 and Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 48.
421 Risse-Kappen 'Bringing transnational relations back in: introduction' 3.
422 Earthjustice 2023 https://earthjustice.org.
423 Jordan and O'Riordan 2004 *Global Environmental Change* 189.
424 Wapner 1995 *World Politics* 311.
425 Wapner 1995 *World Politics* 311 – 340.
426 Wapner *Environmental Activism and World Civic Politics* 190.
427 Vincent 'Non-State Actors in International Relations' 170.
428 Wapner *Environmental Activism and World Civic Politics* 190.
429 Wapner 1995 *World Politics* 315.
430 Betsill and Corell 2001*Global Environmental Politics* 67 and Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 50.

therefore, that although environmental INGOs cannot be classified as political parties, associations, or organisations, their activities are of such a nature that they influence how societies interact with their political leaders and governments. This means that environmental INGOs inculcate 'ecological sensibility' in people to make local communities act more responsibly towards the environment.[431] For instance, green movements have penetrated civil society and raised ecological awareness even to the extent that some private individuals have established green political parties.[432] Through these political parties, ordinary citizens can enter the political space to influence governing policies in their respective states.[433] Therefore, the political set-up of INGOs enables them to influence state regimes directly and indirectly. INGOs work with city governments to influence change in the environmental behaviour of nation-states.[434] They will work with the economic, social, and cultural networks in and around local communities to influence environmental change.[435] In return, these networks will directly influence change in their governments. Kenk and Sikkink have argued, for instance, that some domestic NGOs have even bypassed their governments and directly searched for international allies to try and put pressure on their countries from outside national borders.[436]

2.3.3 Other non-state actors

2.3.3.1 Transnational corporations

TNCs have been recognised as major actors in the global scene. However, their powers have not always been wielded ethically.[437] As seen in this study, Marxists have lamented greatly on the impacts of TNCs and businesses, stating that these organisations traditionally opposed or reduced the spread of environmental

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431 Wapner 2002 *Global Environmental Politics* 46 and Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 49.

432 Connelly and Smith *Politics and the environment: From theory to practice* 85 and Wapner 1995 *World Politics* 314.

433 Connelly and Smith *Politics and the environment: From theory to practice* 85 and Wapner 1995 *World Politics* 314.

434 Wapner 1995 *World Politics* 315.

435 Wapner 1995 *World Politics* 315.

436 Kenk and Sikkink *Activists Beyond Borders: Advocacy Networks in International Politics* 12 and Betsill 'Transnational Actors in International Environmental Politics' 198.

437 Haufler 'Transnational actors and global environmental governance' 124.

movements to ensure unfiltered access to raw and natural resources.[438] For this reason, scholars have continuously argued that TNCs are responsible for some of the world's worst natural resource exploitation cases.[439] A typical illustration of resource exploitation by TNCs is the abandoned mines in South Africa. According to Human Rights Watch, South Africa has over 6000 abandoned mines posing great risks to lives in many communities in the country, and only 27 of these have been rehabilitated since 2009.[440]

Some TNCs are interested in the political, economic, and environmental stability of the countries where they operate because they cannot properly function in chaos.[441] They make long-term investments in specific jurisdictions and, therefore, want to ensure stability and development prospects.[442] Therefore, in a political regime heavily influenced by green activism and environmental INGOs, TNCs do not want to find themselves at the opposing end of the environmental movement. In fact, some TNCs working with the use of raw and natural resources or whose activities directly affect the environment are starting to advocate for protecting and conserving the environment, a position similar to environmental INGOs.[443]

Lee, Humphrey, and Pugh identify four general avenues TNCs use to influence global environmental governance. These are (i) TNCs are official or representative members of environmental committees and expert advisors of government institutions, (ii) they have grouped themselves as organisations with NGO observer status at UN-sponsored negotiations, (iii) executive members and directors of these operations have occasionally been appointed as chairs of environmental governance

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438 See para 2.2.1.4.1 above.

439 Salako 2020 *International Law Review* 56.

440 Human Right Watch 2022 https://www.hrw.org/report/2022/07/05/forever-mines/perpetual-rights-risks-unrehabilitated-coal-mines-south-africa. Also see Africa Business 2023 https://african.business/2022/07/energy-resources/south-africas-poisonous-mines-spark-acid-crisis.

441 This is not always the case. For instance, 13500 residents in two Nigerian communities approached a court for recourse against Shell Company. The chronic oil spills by Shell are said to have poisoned the community's wells and polluted its land and water, making it impossible for residents to farm or fish. See Amnesty International 2023 https://shorturl.at/hnuO7 and Business and Human Rights Resources Centre 2021 https://shorturl.at/djlMY.

442 Vincent 'Non-State Actors in International Relations' 180.

443 Nagtzaam and Van Hook 'Stakeholders in international environmental regimes' 52.

committees, and (iv) they provide development assistance to members of various international bodies.[444] The avenues of impact identified by Lee, Humphrey, and Pugh are not exhaustive of the influence of TNCs on global environmental governance. Several economics and political sciences scholars argue that the broader umbrella under which TNCs have an impact or are responsible for environmental issues is through corporate social responsibility (CSR).[445] CSR is a concept that captures the responsibility that a business has towards the environment, its stakeholders, and the broader society.[446] It is an ever-evolving concept that broadly reflects the various approaches and ways businesses create and maintain their corporate relationships with different sectors of society.[447] CSR strategies may be adopted by an individual company through partnership with other entities or with NGOs and associations.[448] CSR strategies make TNCs political actors because they involve private entities in government activities.[449] Apart from the principles of CRS, TNCs are bound by human rights duties that flow from international human rights law, which compel them to respect basic human rights, including the environmental right, and to comply with all domestic laws of host countries.[450] According to Kotzé and Fuo, the evolution of governance even compels TNC to provide communities with basic needs such as water and sanitation services when their own governments fail.[451] This is not meant to encourage governments to shift their duties to TNCs, but rather enjoin corporations to environmental governance efforts.[452] This is especially where a history of unregulated business activities such as mining has led to environmental degradation and resource exploitation.[453]

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444 Lee, Humphrey and Pugh 1997 *Journal of Interdisciplinary International Relations* 229-357.
445 Egri and Ralston 2008 *Journal of International Management* 319-339; Moghaddam and Zare 2017 *Journal of Politics and Law* 78-84.
446 Blowfield 2005 *International Relations* 173.
447 Fordham and Robinson 2018 *International Journal of Corporate Social Responsibility* 1.
448 Haufler 'Transnational actors and global environmental governance' 128.
449 Haufler 'Transnational actors and global environmental governance' 128.
450 See Yusuf and Omoteso 2016 *Local Environment* 1372–1386 and Kotzé and Fuo 2016 *Journal of Energy and Natural Resources Law* 285-312.
451 Kotzé and Fuo 2016 *Journal of Energy and Natural Resources Law* 292.
452 Kotzé and Fuo 2016 *Journal of Energy and Natural Resources Law* 291.
453 Kotzé and Fuo 2016 *Journal of Energy and Natural Resources Law* 291.

TNCs participate in establishing or negotiating standards of behaviour; they monitor and report on compliance with these standards, and in some instances, enforce compliance among themselves.[454] For example, in self-regulation, BP committed to significantly reduce its GHG emissions in all its facilities globally to 100 percent reduction (net-zero) by 2050.[455] Another example is the equator principles voluntarily adopted by project finance banks, who agree to a set of common social and environmental standards for financing major projects.[456] The negative role of TNC in environmental governance is also noted. More specifically how the business activities of TNCs have caused a great distruction in the Global South.[457] For example, Murcott and Webster illustrate how the powers of a government to regulate fracking has significantly been impacted by TNCs and other actors.[458]

2.3.3.2 Scientists

Scientists generally contribute to the responses of political actors to the global environmental crisis.[459] Although their scientific work may not necessarily be labelled as political, they turn to influence the reactions of political decision-makers. Scientists are considered important role players in IEP as epistemic communities.[460] Epistemic communities are a network of knowledge-based experts or a group of people with shared knowledge, beliefs, and thinking whose primary task is to help decision-makers define problems, identify possible solutions and evaluate the outcomes.[461] Epistemic communities do not always need to be commissioned by political players for them to influence or play a meaningful role in addressing the global ecological crisis. Epistemic communities can be "politically empowered

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454 Haufler 'Transnational actors and global environmental governance' 128.

455 BP *Net Zero Progress Update* 1.

456 The Equator Principles Association 2023 https://equator-principles.com/.

457 See for instance Baum et al 2016 *Globalization and Health* 1-7. Also see Cooney and Freslon (eds) *Environmental Impacts of Transnational Corporations in the Global South* on scholarship focusing on addressing environmental impacts of TNCs in Global South under neoliberal globalisation.

458 Murcott and Webster 2020 *International Studies Quarterly* 213-233. Also see Gonzalez 2015 *Santa Clara Journal of International Law* 151-194.

459 Nagtzaam and Van Hook *Stakeholders in international environmental regimes* 46 and Elliot *The Global Politics of the Environment* 9.

460 Elliot *The Global Politics of the Environment* 116.

461 Haas 1992 *International Organization* 3; Haas 'Introduction: Reconstructing epistemic communities' 23.

through their claims to exercise authoritative knowledge by shared causal and principled beliefs."[462] Stairs and Taylor also state that "scientists are lobby groups in their own right."[463] According to Elliot, the ability of scientists to lobby for their interests means that they are both political and policy actors.[464]

At times, their scientific products get politicised and caught up in political and ethical debates surrounding the production and exploitation of their knowledge.[465] Scientists provide technical knowledge language, as well as encourage states to comply with existing IEAs.[466] Therefore, the 'science' behind the work done by scientists in IEP is often privileged because it is accumulated through rules and evidence and internally regulated by a peer-review process.[467] It has become common practice for different environmental regimes to have science expert committees that provide them with scientific knowledge and advice, even research that refutes the existence (or the severity) of climate change.[468] These scientific committees are granted observer status at party conferences and negotiations.[469]

The results of scientific research, whether it acknowledges or denies the existence of climate change, can often be subject to uncertainty and differences within the political and policy space.[470] As a result, a political discourse has emerged that studies the credibility of scientific knowledge produced in some environmental regimes.[471] These concerns beg the question of whether the scientific knowledge produced is done to fit the narrative of the organisation or government entity that commissions the research. Therefore, there is a need to scrutinise the interests of those who produce or fail to produce the sciences as well as the mechanisms used

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462 Haas 1990 *Millennium: Journal of International Studies* 349.
463 Stairs and Taylor 'Non-governmental organisations and the legal protection of the oceans: a case study' 122.
464 Elliot *The Global Politics of the Environment* 116.
465 Elliot *The Global Politics of the Environment* 115.
466 Nagtzaam and Van Hook *Stakeholders in international environmental regimes* 46.
467 Nagtzaam and Van Hook *Stakeholders in international environmental regimes* 46.
468 See Barrie, Shea and Borman 2017 *Environmental Education Research* 846-866 on scientists who are climate denialists.
469 Elliot *The Global Politics of the Environment* 115.
470 Elliot *The Global Politics of the Environment* 116.
471 Menéndez and Castro 2019 *Public Understanding of Science* 534-553; Ramirez and Belcher 2019 *Science and Public Policy* 504-517; Turnhout 2018 *Conservation and Society* 363-371; Edler, Karaulova and Barker 2022 *Minerva* 209-233.

to ensure the accountability of the sciences.[472] Unfortunately, fewer studies are being done on the correlation between science and policy-making, and because of this, it might prove difficult for scientific knowledge to play a credible role in policy development.[473] However, the turn side of questioning the validity of scientific knowledge might also be a political ploy. Often, when politicians do not support proposed policies, they will question the credibility of the science behind the policy.[474]

2.4 International environmental politics and the recognition of the environmental right: the case of South Africa

The politics of a country has a major influence on the course it takes towards environmental protection. Islam and Kieu convincingly state that environmentalism should be explained in the context of social structures and cultural dynamics of a society within which it is embedded.[475] The attitudes and values of people in a society are almost always a consequence of the circumstances in which the people find themselves.[476] This includes the historical constellation of events that lead to circumstances and socio-political trends.[477] Therefore, before the study can discuss South Africa's constitutional right in relation to the current political climate, it must consider the history of environmentalism or environmental governance in the country and how it related to IEP.

According to Zeelie, apartheid has had a more profound influence on the country's environment than any other political system.[478] Before apartheid, the development of environmental movements typically reflected those seen worldwide.[479] For instance, the first environmental NGO, the Natal Game Protection Association, was

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472 Turnhout 2018 *Conservation and Society* 393.
473 While there is literature on climate change and policymaking, there is less empirical evidence on the interface between these two. See generally Jones *Policy-making as a discourse: A recent knowledge-to-policy literature* and Ramerez and Belcher 2019 *Science and Public Policy* 504.
474 Turnhout 2018 *Conservation and Society* 363.
475 Islam and Kieu 2021 *Climate* 2.
476 Zeelie *Environmental Concern in South Africa* 6.
477 Zeelie *Environmental Concern in South Africa* 6.
478 Zeelie *Environmental Concern in South Africa* 6.
479 Zeelie *Environmental Concern in South Africa* 7.

founded in early 1884.[480] Furthermore, the first official game reserve, the Pongola Game Reserve, was proclaimed in 1894.[481] However, section 3.2.3 of this study illustrates how, with the apartheid system reaching its apex in 1960, the country's environmental governance efforts gradually fell behind its international counterparts. The menial role that the country played at the first international conference on global environmental governance in Stockholm cannot be overstated.[482] It was this Conference that made clear that the environment in South Africa was an apolitical issue. Arguably, the political status of the environment in South Africa, where the government narrowly focused on environmental conservation,[483] meant that the apartheid regime essentially had little to no relations with its counterparts in IEP. In fact, the South African delegates expressed resentment towards the other participants for their persistent criticism of the country's apartheid governance system at the time.[484] Perhaps the critics of apartheid at the Stockholm Conference failed to see how the right to an environment could be guaranteed in South Africa, while apartheid disregarded all other human rights, including the right to dignity.

Now that South Africa is a constitutional democracy, the *Constitution* enshrines a environmental right as was explained earlier.[485] This gives the right strong recognition and a relationship with national legislation that sets specific standards for its achievement. According to Du Plessis and Kotzé:

> Constitutionally entrenched standards relating to various societal concerns in human rights could either be a symbolic or a concrete attempt to elevate juridical guarantees of certain entitlements and duties of performance, to protect these entitlements and to ensure these duties as of right, and to ensure compliance with the duty to realise these entitlements.[486]

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480 Breet 2019 *African Journal of Hospitality, Tourism and Leisure* 1.
481 Carruthers *Game Protection in the Transvaal 1846 to 1926* 18.
482 See para 3.2.3 below.
483 See para 1.3 above.
484 See para 3.2.3 below.
485 See para 1.4 above.
486 Du Plessis and Kotzé 'The African Charter on Human and Peoples' Rights and Environmental Rights Standards' 93.

Du Plessis and Kotzé argue that by enshrining environmental rights in the *Constitution*, the government seeks to recognise the right, create an obligation on the state to protect it, and ensure that all its organs comply with its standards.[487] Furthermore, the concretisation of environmental rights allows for judicial intervention where the rights are under threat.[488]

Once an international outcast, South Africa is now a party to several IEAs.[489] By virtue of being one of the strongest constitutional democracies in Africa, South Africa plays a critical role in the development of IEL.[490] Below is a list of some of the IEAs ratified by South Africa as part of its integration in IEP.

Firstly, the FCCC was adopted in 1992.[491] South Africa ratified the convention in 1997.[492] More recently, South Africa signed the Paris Agreement on Climate Change (2015). To strengthen the efforts on climate change, South Africa had already established a national committee in 1996, which subsequently released the Climate Change Policy Discussion document in 1998.[493] Later, the South African National Climate Change Response Policy was published as a White Paper in October 2011.[494] In October 2022, the country's National Assembly voted to pass the Climate Change Bill introduced in 2022. South Africa also adopted the *Carbon Tax Act* 15 of 2019 to further give effect to its IEL agreements on climate Change.

Secondly, the Biological Diversity Convention was adopted in 1992. South Africa ratified this Convention in 1995.[495] One of the convention's objectives was to promote biodiversity conservation and sustainable development through national law and policy.[496] The Convention culminated in the White Paper on Conservation

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487 Du Plessis and Kotzé 'The African Charter on Human and Peoples' Rights and Environmental Rights Standards' 93.

488 Du Plessis and Kotzé 'The African Charter on Human and Peoples' Rights and Environmental Rights Standards' 93 and Pallemaerts and Déjeant-Pons *Human Rights and the Environment* 64.

489 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 1.

490 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 1.

491 See para 1.1 above.

492 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 1.

493 Rabie 1995 *South African Journal of Environmental Law and Policy* 127.

494 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 2.

495 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 2.

496 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 2.

and Sustainable Use of South Africa's Biological Diversity (1997).[497] To date, the *National Environmental Management: Biodiversity Act* 10 of 2004 (NEM:BA) is one of the sector-specific Acts in South Africa that recognise the importance of biological diversity conservation in the country.

The third convention was the UN Convention to Combat Desertification (UNCCD) adopted in 1994. South Africa ratified the convention in 1997.[498] UNCCD linked environment and development to the sustainable use of land.[499] Its objective was to combat desertification and mitigate the effects of droughts, particularly in African countries.[500] The convention also called for countries affected by drought and land degradation to develop National Action Plans (NAPs) to integrate UNCCD objectives into national efforts.[501] South Africa has developed the National Action Programme to combat desertification, land degradation and the effects of drought (2018-2030).[502]

South Africa's constitutional setting has also reinvigorated the country's participation in various international environmental forums. In 2002, South Africa hosted the World Summit on Sustainable Development in Johannesburg.[503] Noteworthy was the adoption of a Political Declaration and Implementation Plan which essentially included various governance measures to be taken by politicians at multilateral levels including internationally, regionally, nationally, and sub-nationally.[504] The discussion of environmental laws and policies in South Africa is further developed in chapter 4.

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497 GG 18163 in GenNot 1098 of 29 August 1997.
498 Parliamentary Monitoring Group *International Conventions on Environment: briefing* 3.
499 Article 1 of UNCCD (1994).
500 Article 1 of UNCCD (1994).
501 Articles 3 and 4 of UNCCD (1994).
502 See Department: Forestrys, Fisheries and the Environment National Action Programme to combat desertification, land degradation and the effects of drought.
503 See A/CONF.199/20.
504 Article 28 of A/CONF.199/L.6/Rev.2 (2002) the Draft political declaration submitted by the President of the Summit.

2.5 Concluding remarks

Politics is a topic that lends itself to extensive analysis. Politics explains how politicians can use different societal issues to get a specific reaction from people. This chapter explored how politics has created global environmental crisis and how it has responded to the effects of the crisis. Politics has explained why people disagree on how to solve the environmental crisis. The objective of this chapter was to briefly reflect on the fit of politics in the causes of and responses to the global environmental crisis at an international and domestic level. The central task was establishing how and why politics influence the global environmental crisis. The chapter found that states have come full circle concerning their global environmental governance efforts. State governments have been the cause of the environmental crisis and remain the solution to it.

Political sciences scholars have used several methods to study the fit of politics on the environment. IR theories have come out as a dominant method in analysing this nexus. As stated, IR has always concerned itself with different human activities, including war and peace. Each theory accounted for the causes and responses of different political actors in the global environmental crisis. It identified that there are varied levels to politicians' responses to the global crisis. For instance, on the one hand, some traditional politicians are comfortable with altering a few governing instruments to respond to the global crisis and on the other hand, some extreme politicians essentially hold that the world needs a complete reform in governing structures if the global environmental crisis is to be solved. According to these extremists, the current system is not fit to respond to the global ecological crisis because it caused the crisis.

The distinction between political and non-political role players in IEP is blurred. In fact, even where scientists in epistemological communities argue that they are not politicians, nor are their hypothesis and research conclusions influenced or driven by politics, these research outcomes influence the environmental attitudes of politicians and governments worldwide. For this reason, it becomes insignificant to ask if state governments still dominate IEP.

The enquiry into the most important political role players in IEP has shifted to cities. Cites are partly to blame for the environmental crisis. However, they have also emerged as critical role players in IEP. Cities are both hosts and collaborators of INGOs, TNC, and environmental associates. They have also contributed to developing and adopting IEA through representation in city networks, among other things.

The relationship between the federal government and city authority is important for addressing environmental challenges. Although cities influence IEP, they have to be enabled by federal constitutions and laws to better respond to environmental challenges. Therefore, the political regime of a country matters. The domestic politics of a country influence how politicians will react to IEP. It is always important for some states to know how they will benefit from cooperating with other countries in designing and implementing IEA. National governments enforce EIAs by adopting legislation and policies while city authorities develop and implement by-laws and municipal strategies, among other things. The chapter has shown that, in some instances, cities can adopt environmental governance instruments before national governments. This is the case where cities believe that they are more interested in a particular issue than their federal government. In some instances, a country's governing system may alienate it from the rest of the world. In other cases, it becomes difficult for city governments to play a role in IEP. This is especially true where a country's constitution does not provide for decentralisation of power from federal to subnational authorities.

South Africa provided a perfect case study into how the politics in a country influence its role in the global environmental crisis and its solutions. The constitutional environmental right in South Africa did not develop separately from the country's politics. In fact, the constitutional environmental right is a direct product of the history of politics in the country where black communities were essentially deprived of access to environmental resources. In the following chapter, this study details the history of politics and environmental governance in South Africa. The chapter juxtaposes this history with contemporary politics and environmental law and governance in South Africa.

CHAPTER 3 PARTY POLITICS AND ENVIRONMENTAL GOVERNANCE IN SOUTH AFRICA

3.1 Introduction

Politics in South Africa is complex, especially in the local government sphere. On the one hand, local government has emerged from apartheid as a key agent of transformation. Local government has significantly improved the lives of people in local communities by extending access to municipal services and development.[505] On the other hand, audit reports paint a picture of a sphere in trouble, with 163 out of 257 municipalities declared dysfunctional because of rampant corruption, lack of accountability and maladministration, among other things.[506] Municipalities struggle to meet the core function of local government to sustainably provide basic municipal services, either due to ongoing political battles within municipal councils, or the interference of national and provincial structures of parties in matters of municipalities.

This chapter explores in-depth and evaluates the historical and contemporary intersection between party politics and environmental governance in the South African context.[507] The chapter charts historical and contemporary perspectives on party politics and environmental governance in the country, focusing on the transforming political landscape, the dynamics of local party politics (at the time of writing this thesis), and their role in environmental governance. South Africa's political history is marked by specific eras. These are the colonial period (1652-1909), the Union of South Africa (1910-1947), the apartheid period (1948-1994), and the constitutional democratic era. The political history of South Africa does not begin in 1652. However, this chapter narrates history based on available literature, which focuses on the history from 1652. The first part provides a systematic

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505 De Visser 2009 *Commonwealth Journal of Local Governance* 8.

506 AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 2; IOL 2023 https://www.iol.co.za/news/politics/sona2023-ramaphosa-says-163-out-of-257-municipalities-are-dysfunctional-or-in-distress-70680d91-9b17-4833-a622-3e83da90c0f1; Times Live 2023 https://www.timeslive.co.za/politics/2023-02-10-luthuli-house-boss-fikile-mbalula-decries-failures-in-local-government/.

507 See para 1.1 for a definition on environmental governance.

discussion of environmental protection and governance in South Africa dating from 1652 to 1994. This part focuses specifically on the reactions of the different governments to environmental protection. It looks at the key environmental challenges faced by these governments and their reactions. This discussion warranted a literature review on each era's economic development trajectory, highlighting the environmental issues of each governing system. The second part of this chapter analyses the environmental governance stances of political parties before 1994.

The third part of the chapter studies the environmental governance trajectory after 1994. The significance of this period is that in 1994, South Africa became a constitutional democracy. This part discusses these environmental governance challenges as inherited by the government of the democratic dispensation. This trajectory is followed by the stance of current political parties in the local government sphere. In this part of the chapter, the study peruses the constitutions, policies, and manifestos of political parties operating in the local governance sphere. This section evaluates the above instruments to ascertain the environmental governance stance of these parties, including their explicit pronouncement on the need for environmental protection through legislative and other measures as enshrined in section 24 of the *Constitution*.

The fourth part of the chapter looks at the structure of municipalities and the relevance of contemporary party politics in local government. This part discusses how the *Constitution* has transformed the structure of municipalities, the role of local government and party politics concerning environmental protection and governance. In doing so, it lays the foundation for understanding the constitutional and legislative environmental powers, functions, and responsibilities of local government in South Africa, as discussed in the fifth part of the chapter. Part six of focuses on the meaning, role players and instruments in LEG. Thereafter, this part evaluates the impact of the current political landscape on LEG. The seventh part concludes the chapter.

3.2 Environmental governance in South Africa from 1652-1994

The narration of the history of environmental protection in South Africa depends on whom one asks. Moreover, because of the race relations in the country, this history is likely to be narrated from several perspectives.[508] However, two of these perspectives have dominated the study of environmental history in South Africa. The one 'history' is based on the romanticisation of the environment where natural resources are conserved for the use and enjoyment of a select group of people.[509] In this case, conservation was enforced by strict policies, fences, and border patrols.[510] The other 'history' is based on the people's struggle for access to natural resources, their removal from land and the exclusion of these communities from decision-making and management of the environment.[511] In the latter instance, these communities became pre-occupied with their material survival and less concerned with environmental protection. This perception may be understood in part from Maslow's hierarchy of needs which states that people's basic needs must be fulfilled first before spiritual and intellectual self-actualisation can occur.[512] In the South African historical context, Maslow's hypothesis suggests that members of relatively affluent societies are more concerned about and favour environmental protection than economically deprived communities.[513] Therefore, different perceptions of the history of environmental protection emanate from the material resources accessible over time to different societal groups.[514]

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508 See Carruthers 'Environmental History in Southern Africa: An Overview' 3-15 who states that the politics of race relations — whether written in the traditions of the Afrikaner nationalism, liberalism, or neo-Marxism — have dominated Southern African histography.

509 See generally Cock and Fig 2000 *Society in Transition* 22-35. Also see Kidd *Environmental Law* 12; Struwig 'South Africans' attitudes towards the environment' 200.

510 Cock and Fig 2000 *Society in Transition* 28; De Beer and Marais 2005 *Community Development Journal* 51.

511 Picard 2003 *Environmental Conservation* 182; Struwig 'South Africans' attitudes towards the environment' 200.

512 Struwig 'South Africans' attitudes towards the environment' 198.

513 Struwig 'South Africans' attitudes towards the environment' 198.

514 Struwig 'South Africans' attitudes towards the environment' 198.

3.2.1 The colonial period (1652-1910)

The colonial period in South Africa was marked by the arrival of Dutch settler Jan Van Riebeeck in the Cape Colony in 1652.[515] Van Riebeeck established a refreshment station for ships between Holland and their SouthEast Asian Colonies.[516] During this period, several societies (colonies) emerged in the country, many of which were populated by the Dutch settlers. The governance of these societies mirrored those of other British colonies.[517] By the nineteenth century, these settlers created a system whereby locally elected executives governed the colonies in South Africa, subject to the British-appointed Governor-General's powers to approve legislation.[518] This meant that the Governor-General had the power to veto any decision made by the executives of colonies, including any laws passed.

Hunting, an act seen as a seminal rite of passage for young Boers in the Cape and a ceremony of initiation into a larger community for indigenous people and settlers, is a critical point of entry into the history of environmental protection in South Africa.[519] Different forms of hunting exist and are relevant to South Africa's history of environmental protection, namely indigenous hunting, settler hunting for substance and trade, hunting as an adjunct to agriculture or a subsidy for other frontier enterprises, and elite hunting for the thrill of the chase, commonly characterised as a 'sport' in the nineteenth and early twentieth century.[520] Essentially, indigenous hunting was for food and to protect livestock from feline and canine predators.[521] Settler hunting, on the other hand, was regarded as a fundamental settler's right, a central tenet of an egalitarian frontier society.[522] This meant that laws at that time defined 'game' as a common property, which permitted

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515 Shackelton and Gwedla 2021 *Frontiers in Ecology and Evolution* 2.
516 Shackelton and Gwedla 2021 *Frontiers in Ecology and Evolution* 2.
517 De Vos and Feedman 'South African Constitutional Law in Context' 38.
518 De Vos and Freedman' South African Constitutional Law in Context' 38.
519 Beinart and Coates *Environment and History: The taming of nature in the USA and South* Africa 17.
520 Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 17.
521 See Beinart 1990 *The Past and Present Society* 163 and Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 18.
522 Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 23.

its free taking.[523] Initially, settlers bred livestock. However, when they could not breed cattle fast enough for their needs, they turned to game, which they shot and dried the meat to provide a durable supply of protein for their ships.[524]

Meanwhile, throughout the nineteenth century, the impulse behind hunting, especially for visiting British elite, gave rise to the idea of sport.[525] It is this form of hunting that literature describes as "the most atavistic and antagonistic connection between humans and animals".[526] This sport led to overexploiting natural resources, prompting Jan van Riebeck to issue instructions to regulate hunting in the Cape.[527] These regulations included issuing proclamations for various game reserves, primarily between 1894 and the 1930s, some of them relatively soon after the world's first national park was proclaimed in Yellowstone, United States (USA).[528] The first game reserves in South Africa were located in the Knysna and Tsitsikamma forests in 1886 and the Pongola Game Reserve in 1894.

The history of national parks is important because the implications of what was initially seen as an effort to conserve nature during the colonial period would later shape society during the apartheid era.[529] The creation of national parks in South Africa can be traced back to 1898 when a small game sanctuary was established at Sabie.[530] This sanctuary and the land added to it became the nucleus of the Kruger National Park (Kruger), founded in 1926.[531] These national parks were established

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523 Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 23.

524 Manyanga and Pangeti 'Pre-colonial hunting in Southern Africa' 282; Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 23.

525 Beinart and Coates *Environment and History: The taming of nature in the USA and South* Africa 23.

526 Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 25; Ritvo *The Animal Estate: The English and other Creatures in the Victorian Age* 288.

527 Pooley 2009 *Environment and History* 17; Vries *The Economy of Europe in an Age of Crisis, 1600-1750* 131.

528 Müller 'Environmental Governance in South Africa' 68; Kidd *Environmental Law* 12; Department: Forestry, fisheries and the environment date unknown https://www.dffe.gov.za/projectsprogrammes/peopleparks/southafrican_conservationhistory.

529 Cock and Fig 2000 *Society in Transition* 23.

530 Cock and Fig 2000 *Society in Transition* 22.

531 Cock and Fig 2000 *Society in Transition* 22.

as an attempt to develop the conservation of a representative sample of each of South Africa's diverse ecological systems.[532]

However, it was soon observed that the creation of the Kruger Park and the like depended less on public support for conservation and more on the surge of white nationalism.[533] This is because national parks were surrounded by overcrowded and degraded rural areas, essentially reflecting what Cock and Fig argue was "the worst aspect of 'colonial conservation'".[534] There was total neglect of archaeological records that show how some parts, particularly Kruger, had been a site of settled African mining and trading communities for hundreds of years.[535] However, because of the prevalent colonial philosophy of exclusion and domination of indigenous people, these communities were forcefully relocated or lost their land, often at gunpoint.[536] The only Africans allowed to remain in the Kruger were low-paid labourers of the Park.[537] Reserves were fenced off, and the communities lost their rights and access to resources within the reserves.[538] Military tactics were used, and fines were issued to offenders.[539] Wild animals escaped from the parks into community land, damaging crops and livestock.[540] As a result, conservation became elitist, and access to parks required social privileges. Therefore, for impoverished Africans, what the Park had to offer by way of aesthetic beauty had little to no relevance.[541]

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532 Cock and Fig 2000 *Society in Transition* 22.

533 Beinart and Coates *Environment and History: The taming of nature in the USA and South Africa* 76; Carruthers *The Kruger National Park: A Social and Political History* 4; Cock and Fig 2000 *Society in Transition* 23.

534 Cock and Fig 2000 *Society in Transition* 23.

535 Cock and Fig 2000 *Society in Transition* 23.

536 Khan *Contemporary South African Environmental Response: An Historical and Socio-Political Evaluation, With Particular Reference to Blacks* 18 and Cock and Fig 2000 Society in Transition 23.

537 Cock and Fig 2000 *Society in Transition* 23.

538 Siyabonga Africa 2022 https://www.krugerpark.co.za/game-conservation-in-the-transvaal.html.

539 Department: Forestry, fisheries and the environment date unknown https://www.dffe.gov.za/projectsprogrammes/peopleparks/southafrican_conservationhistory.

540 Department: Forestry, fisheries and the environment date unknown https://www.dffe.gov.za/projectsprogrammes/peopleparks/southafrican_conservationhistory.

541 Carruthers *The Kruger National Park: A Social and Political History* 4; Cock and Fig 2000 *Society in Transition* 2.

The history of the Dutch settler is critical, not only because it details the conservation practices of the country but also the evolution of water governance in South Africa. When the Vereenigde Oost-Indische Compagnie (VOC)[542] colonised South Africa, they applied Dutch legal principles.[543] Thompson details, for instance, how establishing Dutch control over water resources in South Africa was a gradual process that started in the Table Bay Valley and its outskirts.[544] The process started when a series of *placcaets* were issued to control the streams in Table Bay Valley between 1655 and 1740.[545] Then, by 1827, the colonial government had resorted to granting entitlements for streams; this became the biggest tool used to regulate water use in the colony.[546] More *placcaets* were issued after an outcry by settlers on the quality of drinking water at the colony when settlers in upstream used water to bathe and wash their personal belongings in water, which affected the quality of drinking water for occupants downstream.[547] Even more, restrictions had to be placed as soon as the government realised South Africa was a water-scarce country.[548] This means that the country had limited river water available, relative rainfall, and it was prone to droughts.[549] Granting entitlements and placing restrictions on water use allowed VOC to establish authority over water resources in South Africa. *Dominus fluminis,* a term coined by South African jurists at the time, which essentially meant the owner of the river, was used to describe the title that VOC had over water resources in the country.[550] As *dominus flumini,* VOC had legal dominance on all bodies of water in the country and could control these by passing

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542 VOC was a Dutch trading enterprise which was given monopoly water resources in the Cape Colony by its founder, the Dutch Republic (now known as Netherlands). Schrire 'The background of the Archaeology of the VOC at the Cape' 17.

543 Tewari 2009 *Water SA* 695.

544 Thompson *Water law: a practical approach to resource management and the provision of services* 34.

545 Thompson *Water law: a practical approach to resource management and the provision of services* 34.

546 Thompson *Water law: a practical approach to resource management and the provision of services* 34.

547 Tewari 2009 *Water SA* 695.

548 Tewari 2009 *Water SA* 696.

549 Thompson *Water law: a practical approach to resource management and the provision of services* 3; Visser 2018 *Historia* 41; Kidd *Environmental Law* 69; Kidd 'South Africa: The Development of Water Law' 87; Viljoen and Bosman 2022 *PELJ* 2.

550 Tewari 2005 *Water International* 438.

various legislation.[551] According to Tewari, unfortunately, VOC's control of water resources was not always fair as the government used its *dominus fluminis* laws to impose restrictions on water use on people it wanted to punish for breaking its rules, and granted water entitlements as privileges to those it deemed worthy.[552] Kidd adds that even when entitlements were granted, the VOC reserved the right to revoke them at any given time.[553] It must be noted that although the *dominus fluminis* principle dominated water governance for most of the colonial period, there was confusion between this principle and *res nova*, a matter later resolved in *Hough v Van Der Merwe* (1874). In *Retief v Louw* (1856), the Court approached the issue of flowing water as *res nova*; a principle which essentially held that, where perennial streams ran across several adjoining land parcels, the owners of such land would each hold a common right in the use of such water.[554] In *Retief v Louw,* the Court distinguished between public and private water streams, but essentially held that riparian owners of land adjacent to a public stream could divert a portion of that water for irrigation purposes.[555] This meant that a person could do as they wished with private water or water found on private land.[556]

It follows from the above that water governance in the colonial period was dominated by riparian owners' rights as well as judicial interpretation of public and private water use. This comes as no surprise because the country was, at that time, an agrarian state. This would not be a focus for too long as the country gradually moved into its secondary economy by then, which was mining.[557] Unlike agriculture, which was sensitive to climate instability, mining would become easy for the state to exploit.[558]

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551 Tewari 2005 *Water International* 438.
552 Tewari 2009 *Water SA* 696.
553 Tewari 2009 *Water SA* 696.
554 Kidd 'South Africa: The Development of Water Law' 88.
555 Viljoen and Bosman 2022 *PELJ* 8.
556 Kidd 'South Africa: The Development of Water Law' 89.
557 Kidd 'South Africa: The Development of Water Law' 90.
558 De Kiewet (1941) in Wison 2001 *Daedalus* 100.

3.2.2 The Union of South Africa (1910-1948)

The Union of South Africa began in 1910 with the unification of the Cape, Natal, Transvaal, and Orange Free State colonies into a single unitary state.[559] The Union of South Africa was characterised by a constitution that essentially granted political power to the white minority and subjugated the black majority to an autocratic administrative rule under the Westminister-style parliamentary system.[560] By the time South Africa became a Union, protected areas (national parks) had become a reflection of the relations of power and privilege that have shaped South African society to date.[561] Carruthers argues in this regard that what was supposed to be regarded as ecologically commendable existed for a variety of reasons, including perpetuating white self-interest, Afrikaner nationalism, ineffectual legislation, elitism, capitalism, and exploitation of Africans.[562] Carruthers' argument is convincing because, under apartheid, black South Africans were subject to double exclusion from these protected areas.[563] Firstly, black South Africans were excluded as consumers of the parks' recreational and educational opportunities; secondly, they were excluded from decision-making about parks.[564] Furthermore, Kruger was also used for military purposes to support the apartheid regime, including training South African defence force soldiers, amongst other things.[565]

Arguably, the biggest consequence of this period concerning environmental protection is the legislation of the notorious *Land Acts* of 1913 and 1936.[566] These Acts divided South Africans among ethnicities, making it illegal for blacks to own land in designated so-called white areas, thus creating what became known as the homeland system.[567] These laws' economic, social, and political consequences were

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559 De Vos and Freedman 'South African Constitutional Law in Context' 43.
560 De Vos and Freedman 'South African Constitutional Law in Context' 43.
561 Cock and Fig 2000 *Societies in Transition* 17.
562 Carruthers *The Kruger National Park: A Social and Political History* 4; Cock and Fig 2000 *Society in Transition* 4.
563 Cock and Fig 2000 *Societies in Transition* 23.
564 Cock and Fig 2000 *Societies in Transition* 23.
565 Cock and Fig 2000 *Societies in Transition* 23.
566 South African Government 2023 https://www.gov.za/1913-natives-land-act-centenary.
567 Khan *Contemporary South African Environmental Response* 19; Giliomee and Mbenga *New History of South Africa* 233.

far-reaching, especially because they struck at the roots of the physical and emotional bond between the land and its users.[568] It was, however, the political consequences of these Acts that would have the greatest impact and would reverberate down to the present.[569] Firstly, the Act deprived blacks of land, signalling a clear intention of the legislators to deal firmly with the perceived threat of the rising African bourgeoisie.[570] In 1959, in the White Paper that accompanied the Promotion of Bantu Self-Government Bill, the government attempted to justify its homeland system by stating that the Bill aimed to identify each of the various African groups with its own land in the reserve and to ensure that Africans entered the 'white' areas only as migrant labourers.[571] Secondly, the Act enabled a further estrangement of blacks from land by laying the basis for later legislation such as the *Native Trust and Land Act* 18 of 1936, which was essentially an extension of the *Native Land Act* of 1913.[572] Thirdly, the *Native Land Act* of 1913 was arguably the single most important piece of legislation affecting black environmental perceptions in that it culminated in distorting black environmental attitudes from a previously positive to a negative one.[573]

As stated before,[574] the legacy of the homeland system is not confined to the political alienation of black people. However, it extends to the widespread environmental degradation of land brought by a policy of enforced overpopulation of already overpopulated land.[575] Thus, it led to further overstocking, overgrazing, and over-cultivation in some parts of the country.[576] The system of migrant labourers[577] further contributed to environmental issues, including soil erosion, since

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568 Giliomee and Mbenga *New History of South Africa* 233.
569 Khan *Contemporary South African Environmental Response* 19.
570 Khan *Contemporary South African Environmental Response* 19.
571 Sherwood *The Political Economy of South Africa's Environmental Governance* 27.
572 Khan *Contemporary South African Environmental Response* 19.
573 Giliomee and Mbenga *New History of South Africa* 233; Sherwood *The Political Economy of South Africa's Environmental Governance* 25-27.
574 See para 3.2.1. above.
575 Khan *Contemporary South African Environmental Response* 53.
576 GN 1095 in GG 18163 para 1.5.
577 The migrant labour was a system manipulated by capitalists, colonial, and apartheid power as a means of reconciling the conflicting needs for cheap labour in mines and cities of "white" South Africa. In this system, people (mostly black men) were forced to migrate to places of employment, leaving behind their families and not being allowed to stay in their places of

the absence of men from their farms meant that the labour needed for soil conservation measures was unavailable.[578]

Water scarcity in a drought-prone economy continued during the Union of South Africa. This time, the government enacted more legislation focusing on water use within and outside the riparian rights system.[579] Kidd notes, for instance, how government had enacted over 40 Acts that would later be replaced by the *National Water Act* of 1998 (NWA).[580] However, a novel issue of great environmental concern during the Union period was air, waste and water pollution stemming from a new activity that would become the economic backbone of the country: mining.[581]

The first mining operation in South Africa was established in 1852 during the colonial period.[582] However, literature accounts for mining activities of the early 19th century. This is because, during that period, mining in South Africa was synonymous with the exposure of miners and local communities to silica, silicosis and tuberculosis.[583] For this reason, mining and its implication on the environment, particularly air quality during the 19th century, is only addressed in this section of the study.

Mining has played a defining role in South Africa's history.[584] It has proven influential in weaving society's political, economic and social fabric.[585] The country has the world's largest reserves of platinum groups of metal.[586] In fact, one of the case studies, Bojanala Platinum District Municipality, is known as the 'platinum belt of the country'.[587] Furthermore, the country hosts significant reserves, including gold,

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employment. See Timberlake *Africa in Crisis: The Causes, the cure of environmental bankruptcy* 48-112; Vosloo *Extreme Apartheid: the South African System of Migrant Labour and its Hostels* 2 and Bank, Posel and Wilson *Migrant Labour After Apartheid: The Inside Story* 6.

578 Posel and Wilson *Migrant Labour After Apartheid: The Inside Story* 6.

579 Kidd 'South Africa: The Development of Water Law' 89.

580 Kidd 'South Africa: The Development of Water Law' 89.

581 Davenport *Digging Deep: A History of Mining in South Africa* 8.

582 Davenport *Digging Deep: A History of Mining in South Africa* 9.

583 Naidoo 2013 *Global Health Action* 1.

584 Davenport *Digging Deep: A History of Mining in South Africa* 8.

585 Davenport *Digging Deep: A History of Mining in South Africa* 8.

586 Davenport *Digging Deep: A History of Mining in South Africa* 8; Lumby 2005 *South African Journal of Economic History* 69-70.

587 See para 5.3.4 below.

diamonds, coal and iron ore.[588] Similar to the regulation of water use in South Africa, the government enacted a myriad of Acts in the mining sector, including the *Mining Lease Act* 12 of 1865, the *Precious Stones and Minerals Act* 19 of 1883 and the *Disposal of Crown Land Act* 15 of 1887.[589] However, with the Union of South Africa, came a catch-all piece of legislation that vested all mineral rights to the State, namely the *Reserved Minerals Development Act* 55 of 1926.[590] Under the latter Act, the only right reserved to owners of land was to prospect for minerals under their soil.[591] The consequence of the *Reserved Minerals Development Act* is that it allowed the state to exploit these natural resources for two reasons. Firstly, minerals stabilise state revenue by moving it from an agrarian to a mineral economy.[592] De Kiewiet argues in this regard that minerals "preserved national income from violent fluctuations".[593] Secondly, minerals gave the country firmness in foreign trade because they were the state's principal article of export.[594]

It follows, therefore, that with the formation of the Union of South Africa, the country was steadily moving away from laws that recognised private properties, at least with regard to natural endowments such as minerals. Under the apartheid regime, more legislation would be used to protect the States' unfiltered enjoyment of the minerals and its involvement in waste, water, and air pollution.

3.2.3 The apartheid period (1948-1994)

Apartheid was a system of absolute racial segregation and political and economic discrimination applied against non-European groups in South Africa by the white minority.[595] During this period, environmental protection in South Africa was mainly regulated in an uncoordinated and reactive manner through legislation regulating

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588 Davenport *Digging Deep: A History of Mining in South Africa* 8 and Lumby 2005 *South African Journal of Economic History* 69-70.
589 Van Der Schyff 2012 *New Contree* 137-143.
590 Van Der Schyff 2012 *New Contree* 147.
591 Section 2 of the *Reserved Minerals Development Act* 19 of 1926.
592 De Kiewet (1941) in Wison 2001 *Daedalus* 99.
593 De Kiewet (1941) in Wison 2001 *Daedalus* 99.
594 De Kiewet (1941) in Wison 2001 *Daedalus* 99.
595 See De Vos and Freedman 'South African Constitutional Law in Context' 781.

specific environmental issues.[596] In fact, during the twentieth century, before 1970, a plethora of environmental legislation was passed in South Africa.[597] For example, the *Water Act* of 1956 included provisions aimed both at counteracting pollution and conserving water, but the overall objective of the Act was to cater for the supply of water to industry and the agrarian sector.[598] Until recently, several Acts promulgated before 1970 have been principal legislation in their areas, such as the *Water Act* and the *Atmospheric Pollution Prevention Act* 35 of 1965. According to Kidd, although there was significant legislative activity in the environmental sphere before 1970, this was piecemeal.[599] Therefore, it could be said that pre-1994 legislation was responding to environmental issues on an *ad hoc* basis.[600] This was true in South Africa and the state of the environment globally. For instance, 1970 is the year in which the *National Environmental Policy Act* was promulgated in the USA, an Act which addressed environmental issues on a programmatic basis, a departure from the ad hoc legislation which had been a pattern up until then.[601]

After 1970, the environment became a burning international issue.[602] The Stockholm Conference in 1972 can be seen as having introduced a new ecological order.[603] South Africa's delegation viewed its role at the Conference as that of observers, mainly because the country, owing to its apartheid policy, was not involved in any of the preparatory work.[604] The Conference produced a Declaration containing twenty-four principles constituting the first general text of international environmental law.[605] The first principle condemned all policies promoting apartheid, racial discrimination, and any form of colonialism, a principle that the South African delegates strongly opposed and placed on record their reservation.[606] The delegation felt that inserting the principle constituted interference in the

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596 Kidd *Environmental Law* 12.
597 Kidd *Environmental Law* 12 and Müller 'Environmental Governance in South Africa' 69.
598 Kidd *Environmental Law* 12.
599 Kidd *Environmental Law* 12.
600 Kidd *Environmental Law* 13.
601 Kidd *Environmental Law* 13.
602 Kidd *Environmental Law* 13.
603 Steyn 2001 *Historia* 31.
604 Steyn 2001 *Historia* 28.
605 Kidd *Environmental Law* 13.
606 Steyn 2001 *Historia* 29.

domestic affairs of a member state of the UN, which was against the organisation's Charter.[607] Apart from this principle, South Africa supported the Declaration as a whole.[608]

The year 1994 saw the birth of a new democratic government that inherited a set of governance structures and relationships and a set of laws, policies, guidelines, and procedures that formed the basis of managing the environment.[609] The government also inherited a myriad of legislation that dealt with different environmental issues in a piecemeal fashion that dates back to 1970 when the United Party (UP) first voiced its demand for change in the administration of environmental affairs in the country.[610] This meant that until around 1970, some of the legislation enacted by colonies was still in use. UP's request was that the Prime Minister establish a separate environment department headed by its own minister. UP argued that the country needed a central ministry with executive powers to deal with environmental issues.[611] The Party believed that too many departments and state bodies were involved with the environment, resulting in a lack of coordination, ultimately weakening the effectiveness of the government's conservation efforts.[612] The government declined this request, stating that existing administrative efforts to conserve the environment were adequate.[613] Arguably, this decline by the government could have been a political move by the then-governing Party, the National Party (NP), to show the UP that it would not be 'strong-armed' by an opposition party. While unwilling to dedicate a department, the government created several committees to address imminent environmental concerns, including a cabinet committee in 1971 dealing with pollution.[614] The latter committee was later

607 Steyn 2001 *Historia* 29.
608 Steyn 2001 *Historia* 29.
609 Kidd *Environmental Law* 14; Müller 'Environmental Governance in South Africa' 69.
610 Steyn 2001 *Historia* 31.
611 Steyn 2001 *Historia* 31.
612 Steyn 2001 *Historia* 31.
613 Steyn 2001 *Historia* 31.
614 Rabie 1973 *The Comparative and International Law Journal of Southern Africa* 80.

replaced by the Pollution Subsidiary Committee of the Prime Minister's Planning Advisory Council in the same year.[615]

The aspiration of those longing for such a dedicated department was partially met when in 1973, the Minister of Planning became the Minister of Planning and the Environment.[616] The establishment of a Department of Planning and Environment did not solve the fragmentation issue in environmental governance.[617] A total of twelve state departments, the provincial governments, local authorities, and six state and parastatal bodies were involved in either the enforcement of environmental legislation or environment-related research.[618] Pollution control alone was carried out by nine government departments, namely the Departments of Labour, Bantu Administration and Development, Health, Agricultural Technical Services, Mines, Industries, Transport, Water Affairs, and the South African Railways and Harbours.[619]

For a long time, the South African government believed that the home of the overall coordination of environmental affairs was within the Department of Planning.[620] The opinion held was that no enhancement of the South African environment could happen if all planning actions were not environmentally sound and purposeful.[621] Thus, the establishment of the Department of Planning and the Environment.[622] The Department subsequently changed its name and altered its purpose of existence. For instance, it was renamed to the Department of Environmental Planning and Energy in 1979, then the Department of Forestry and Environmental Conservation in 1980, and later the Department of Water Affairs, Forestry and Environmental Conservation in the same year.[623]

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615 Steyn 2001 *Historia* 32.
616 Steyn 2001 *Historia* 31.
617 Steyn 2001 *Historia* 32.
618 GN 1095 in GG 18163 para 1.5.
619 Steyn 2001 *Historia* 33.
620 Steyn 2001 *Historia* 34.
621 Steyn 2001 *Historia* 34.
622 Steyn 2001 *Historia* 34.
623 Steyn 2001 *Historia* 34.

By the year 1980, it had become evident that establishing committees and state bodies to coordinate environmental affairs between different role players was insufficient.[624] The work of these bodies was hampered by their lack of executive powers to enforce environmental decisions and policies.[625] Moreover, the fragmented approach to environmental administration resulted in a lack of unity, with some departments being more willing than others to enforce legislation entrusted to them.[626] Thus, the need for, and establishment of, the White Paper on Environmental Conservation National Policy of 1980 propagated a strong department of Water Affairs, Forestry and Environmental Conservation with two main objectives: it was responsible for a wide range of policies that the country still lacked, and it was tasked with coordinating all environmental conservation activities with the assistance of statutory representative bodies.[627]

The White Paper on Environmental Conservation also made room for the enactment of the *Environment Conservation Act* 100 of 1982 (ECA) and, subsequently, the *Environment Conservation Act* 73 of 1989. It is the latter Act that scholars such as Glazewski argued constituted a major milestone in developing South African environmental law.[628] The Act facilitated the efficient protection and utilisation of the environment.[629] The Act also allowed the Minister of Environmental Affairs to declare a statutory environmental policy by notice in the government gazette, with which all administrative bodies had to comply.[630] Perhaps the most important contribution made by the Act was that it took the first tentative steps towards making Environmental Impact Assessments (EIAs)[631] compulsory by granting the

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624 See Muller 'Environmental Governance in South Africa' 69.

625 Steyn 2001 *Historia* 35.

626 Steyn 2001 *Historia* 35.

627 Steyn 2001 Historia 35 and Glazewski *A new Environment Conservation Act: an awakening of environmental law?* 872-875.

628 Glazewski *A new Environment Conservation Act: an awakening of environmental law?* 872-875; Nel and Kotzé 'Environmental Management: An Introduction' 4-6; *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 5 SA 124 W para 33-35.

629 Steyn 2001 *Historia* 36.

630 Steyn 2001 *Historia* 36.

631 EIA is a tool used before certain developments that may have a significant environmental impact are undertaken to determine whether to grant environmental authorisation. See Paschke and Glazewski 2006 *PELJ* 2 and Rantlo *Ex post facto environmental authorisation in South Africa* 6.

minister discretionary powers to declare certain designated areas or activities to be affected areas. Once declared, authorisation for continuing developments in the area was subject to an EIA.[632] What the Act did for environmental governance is that it made it compulsory for the state to consider the effect that proposed developments would have on the environment. By making EIAs compulsory, it became the duty of the Minister to approve or deny developers from establishing developments that would harm the environment. Arguably, this was a tentative recognition of sustainable development.

The colonial authorities, the government of the Union of South Africa and the apartheid government did not create a political environment conducive to the participation of other role players in environmental governance. The laws enacted either by the colony, the Union of South Africa, or the apartheid government were restrictive, and essentially deprived the majority of people in the country from accessing natural resources. Furthermore, the government never welcomed any suggestions to enhance environmental governance. In fact, the only time that an opposition Party made a public outcry for environmental conservation was when the UP proposed that the NP government establish a ministerial office on environmental governance.[633] Even that plea was disregarded as the government considered the outcry as a political move by its opponent and not a genuine concern for the environment.[634]

3.3 Political stances towards environmental protection and governance

Political parties have always played a unique and crucial role in many countries. In a democratic state, parties enable citizens to participate coherently in a system of government that allows for a substantial number of popularly elected offices.[635] In an autocratic state, irrespective of the ability of these parties to compete in elections or not, they are often considered to provide sufficient grounds for recognising that

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632 Glazewski *A new Environment Conservation Act: an awakening of environmental law?* 873.
633 See para 3.2.3 above.
634 See para 3.2.3 above.
635 White 'What is a political party?' 8.

an authoritarian party system is in place.[636] Parties also play an important role in encouraging active political participation, holding politicians accountable for their actions, and encouraging debate and discussions on important issues.[637] Huckshorn argues, however, that above all other reasons, the *raison d'état* for having political parties is simple: they are a necessary means to win elections and provide direction to government.[638]

As indicated in 3.1 above, this part of the chapter evaluates the environmental stances of political parties in South Africa before the transition to constitutional democracy. It does this by reviewing relevant political parties' constitutions, policies, and manifestos. The section looks at the environmental stances of historical parties in South Africa. Therefore, the parties' position will be considered against the gist of section 24 of the *Constitution*.[639]

3.3.1 Historical stances of political parties in South Africa

The literature surrounding political parties before 1994 is scant. Therefore, for this analysis, in March 2023, the researcher of this study approached the Senate House Library at the University of London to ask for access to archive information on manifestos, policies and constitutions on South African political parties before 1994. Therefore, the analysis of these parties' environmental governance stance is limited to the political parties and documents that the Senate House Library could provide. Some of the parties discussed in this section no longer exist. This added to the challenge of obtaining information on the parties that existed in South Africa before 1994.

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636 Golosov *Authoritarian Party System* 7.

637 White 'What is a political party?' 8.

638 Hackerson in White 'What is a political party' 5.

639 Section 24 of the *Constitution* states 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.

3.3.1.1 African National Congress (ANC)

The ANC was formed in 1910.[640] According to Sherwood, the ANC played an important role towards environmental protection because it drew together traditional authorities and the educated African elite in common grievances.[641] The policy of the ANC was primarily to respond to the discriminatory conditions of the South African Act of 1910.[642] The ANC could not separate environmental issues from land issues. For this reason, the land and natural resources position of the Party was formally expressed in the Party's Freedom Charter of 1955, which stated that:

> The People Shall Share In The Country's Wealth! The national wealth of our Country, the heritage of South Africans, shall be restored to the people. The mineral wealth beneath the soil, the Banks and monopoly industry shall be transferred to the ownership of the people as a whole. All other industry and trade shall be controlled to assist the wellbeing of the people. All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions.[643]

The Freedom Charter added that restrictions on land ownership on a racial basis shall be ended and all land re-divided amongst those who work it in order to banish famine and land hunger.[644]

In 1991, the ANC issued a set of constitutional guidelines that committed similarly to democratic principles as in the Freedom Charter.[645] These guidelines became the foundation on which the Party would govern the country should it become a national government.[646] According to these guidelines, the party was committed to implementing a land reform programme that would abolish racial restrictions on land ownership and conform to the principles of affirmative action. In addition, an objective of the land reform programme was to provide restitution for people who had lost their land because of forced removals.[647]

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640 Sherwood *The Political Economy of South Africa's Environmental Governance* 29.
641 Sherwood *The Political Economy of South Africa's Environmental Governance* 29.
642 ANC (2023) https://www.anc1912.org.za/history/.
643 ANC *The Freedom Charter* 1955.
644 ANC *The Freedom Charter* 1955.
645 ANC *Constitutional Guidelines for a Democratic South Africa* 1-10.
646 ANC *Constitutional Guidelines for a Democratic South Africa* 1-5.
647 ANC *Constitutional Guidelines for a Democratic South Africa* 4.

In terms of the Party's commitment to a specific environmental conservation policy of 1989, the Party declared that the conservation of natural resources would be an "overarching component" in future policymaking.[648] When questioned on the Party's position on a number of environmental issues, Max Sisulu, then spokesperson of the ANC in 1989, mentioned that the Party was concerned about the high levels of atmospheric pollution and the fuel crisis in the country, particularly as it affected the poor in townships.[649] Sisulu indicated that the Party was committed to the use of alternative sources of energy, the use of appropriate technology, and had the intention to keep the country free of nuclear weapons.[650]

Despite the above pronouncements, the ANC did not necessarily focus on environmental issues until around 1989. Several high-profile situations in the late 1980s and early 1990s placed the environment on the agenda of many political parties and NGOs, including the ANC.[651] Quesne states in this regard that the situation of the environment at that time was bound to make it onto the agenda of those grounds destined to assume political power in 1994.[652] These situations included the mercury poisoning at the Thor chemical plant,[653] the numerous cases of industrial pollution in typically poor communities and the campaign to save St Lucia from mining activities.[654] These issues and more led the ANC to codify their environmental stance into their *Mayibuye iAfrika*: An introduction to ANC Environmental Policy of 1991.[655] According to Sachs, the then legal expert of the Party, the Party's environmental position arose not only from issues of the land but a fight for the sky, water and people.[656] Sachs wrote that:

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648 Nunas *Nunas Talks to the ANC* 29.
649 Khan *Contemporary South African Environmental Response* 71.
650 Khan *Contemporary South African Environmental Response* 71.
651 Quesne 2000 *South African Journal of Environmental Law and Policy* 3.
652 Quesne 2000 *South African Journal of Environmental Law and Policy* 3.
653 Butler 'Lessons from Thor Chemicals: The Links between Health, Safety and Environmental Protection' 194-196 and Oosthuizen and Ehrlich 2001 *International Journal of Environmental Health Research* 42-43.
654 Porter 'South Africa's First World Heritage Site' 10-13 and Quesne 2000 *South African Journal of Environmental Law and Policy* 3.
655 See generally Steyn *Locating environmental justice in the internal anti-apartheid struggle in South Africa, 1970s-1994* 1.
656 Sachs (1990) in Cock and Koch *Going green: people, politics, and the environment in South Africa* 29.

> Apartheid not only degrades the inhabitants of our country, it degrades the earth, the air and the streams. When we say Mayibuye iAfrica, come back Africa, we are calling for the return of legal title, but also for restoration of the land, the forest and the atmosphere. The greening of our country is basic to its healing.[657]

According to Sachs, the protection of the environment cannot be separated from any issues on land and land access.[658] Essentially, while the Party had always concerned itself with the issue of land as a means of production and survival of local communities, the 1980s was a period where pervasive economic activities led to rapid deterioration and exploitation of the environment in its totality. This led the Party to realise that it would inherit major environmental challenges as a potential incumbent government.

3.3.1.2 The Azania People Organisation (AZAPO)

The Azania People Organisaton (AZAPO) was formed in 1979. AZAPO offered a political home to the ideology of Black Consciousness.[659] The philosophy of Black Consciousness has its roots in the ideas of Pan-Africanism as well as in the American concept of black pride and power.[660] During the interview with Khan in 1990, Mosala, then President of AZAPO, stated that although the organisation did not have a formal environmental policy, it would emerge in the near future.[661] Admittedly, the President further stated that the Party was preoccupied with "many pressing issues" in addition to the difficulties faced by extra-parliamentary parties and organisations in general.[662] Arguably, Mosala's statement signals that environmental governance and protection was not a political issue that deserved the attention of AZAPO at the time. Nonetheless, Mosala identified three key aspects that would form the basis of AZAPO's environmental response. Firstly, the social and economic structures of the country were, and still are, an inextricable element in developing

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657 Sachs (1990) in Cock and Koch *Going green: people, politics, and the environment in South Africa* 29.

658 Sachs (1990) in Cock and Koch *Going green: people, politics, and the environment in South Africa* 29.

659 https://azapo.org.za/about-us/. Black Consciousness is essentially about the realisation by the black people of the need to rally together around the cause of their oppression which is the blackness of their skin. See Chimurega 2023 https://chimurengachronic.co.za/the-definition-of-black-consciousness-by-bantu-stephen-biko/.

660 National Archive (2021) https://www.archives.gov/research/african-americans/black-power.

661 Khan *Contemporary South African Environmental Response* 73.

662 Khan *Contemporary South African Environmental Response* 73.

environmental strategies.[663] This meant fighting capitalism would form part of the fight against environmental exploitation.[664] Secondly, land, as in the case of the ANC, was fundamental to considering environmental issues.[665] Thirdly, conditions in the black townships were a major stumbling block in creating mass environmental awareness.[666] The Party criticised conditions in the black townships as being unhealthy, badly planned, and alienating inhabitants from their natural environment.[667] It follows from the later statement that the Party recognised that environmental health and well-being of black townships was the least of the government's concerns. This view is supported by scholars who argued that the primary consideration for government when developing townships was if black people would be close enough to urban areas for them to provide cheap labour.[668]

3.3.1.3 Call of Islam

Call of Islam was founded in 1984.[669] One of its primary objectives was to increase the role of Muslims in political, social and ecological issues.[670] The Party has been committed to a formal environmental policy since its inception. This was due to the commitment of founding member Moulana Farid Esack.[671] In 1986, Esack stated that:

> Our struggle for justice must enhance justice to our home and all other species that inhabit it. People's power must specifically exclude our rights to rape and plunder the natural resources as if there's no tomorrow… we must place ecological issues on the agenda of the liberatory movement.[672]

Even after Esack resigned from the Party in 1989, Call of Islam had plans to strengthen its commitment to environmental issues in South Africa. This became evident in the statement of its principles, which affirmed that:

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663 Khan *Contemporary South African Environmental Response* 73.
664 Khan *Contemporary South African Environmental Response* 73.
665 Khan *Contemporary South African Environmental Response* 73.
666 Khan *Contemporary South African Environmental Response* 73.
667 Khan *Contemporary South African Environmental Response* 74.
668 Straaus 2019 *Fundamina* 148; Fortien 2022 *The Ecumenical Review* 527-540; Vosloo 2020 *Image and Text* 2.
669 The Call of Islam year unknown https://bit.ly/3Zj4B3j.
670 The Call of Islam year unknown https://bit.ly/3Zj4B3j.
671 The Call of Islam year unknown https://bit.ly/3Zj4B3j.
672 Khan *Contemporary South African Environmental Response* 75.

> We are from the earth and are an integral part of it. Uncontrolled industialisation has made humankind an adversary of nature…we need technology that puts people and the ecological balance first…we want to have a respectful reverence for the earth, its seas, its mountains and the rest of creation.[673]

Call for Islam made it clear that the organisation planned a vigorous consolidation and implementation of its existing environmental commitment.[674] According to the Party, the concept of ecology needed to be politicised; it could no longer be a liberal theme.[675] For the Party, at the top of their ecological concerns were toxic waste and the depletion of the ozone layer. The Party envisaged that these issues would determine the quality of the new South Africa if it were elected to govern.[676]

3.3.1.4 The Pan-Africanist Congress (PAC)

The Pan-Africanist Congress (PAC) was established in 1959 by a breakaway group of ANC members who were disenchanted with the Party's multi-racial approach and thus viewed the Freedom Charter as a betrayal of the principles of African nationalism.[677] Its founder and leader, Robert Sobukwe, was strongly influenced by the gospel of the Black Consciousness movement.[678] While making its goals very clear by supporting the UN's Charter of Equal Rights, the PAC felt that the liberation of Africans lay in the hands of Africans themselves.[679]

The PAC did not have a formal environmental policy.[680] However, the Party was in the process of focusing attention on environmental issues to formulate a policy in future.[681] Further research did not reveal if the PAC did eventually develop this policy. A former Spokesperson of the Party, Desai, stated that the Party was concerned about environmental issues.[682] The environment, as the Party saw it, had

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673 Khan *Contemporary South African Environmental Response* 76.
674 Khan *Contemporary South African Environmental Response* 76.
675 Khan *Contemporary South African Environmental Response* 76.
676 Khan *Contemporary South African Environmental Response* 76.
677 South African History Online 2021 https://www.sahistory.org.za/article/pan-africanist-congress-pac.
678 South African History Online 2021 https://www.sahistory.org.za/article/pan-africanist-congress-pac.
679 South African History Online 2021 https://www.sahistory.org.za/article/pan-africanist-congress-pac.
680 Khan *Contemporary South African Environmental Response* 86.
681 Khan *Contemporary South African Environmental Response* 86.
682 Khan *Contemporary South African Environmental Response* 86.

been "raped and looted", especially by foreign companies, without much consideration of the consequences for the people living in the country.[683]

The Party was in talks with the Chemical Workers Union concerning environmental health issues, such as handling and disposing of toxic waste.[684] However, other environmental concerns for the Party included mining operations undertaken with no regard to ecological consequences, overexploitation of marine resources by the fishing industry, and the future of the Koeberg nuclear power station.[685] Land was a crucial issue for the PAC, like many democratic extra-parliamentary organisations. The Party's stance on land in relation to the environment was encapsulated in its slogan, *"Izwe lethu iAfrica"* directly translated as this is our land, Africa must be returned to its people. [686]

3.3.1.5 National Party (NP)

The National Party (NP) was formed in 1914 following a division in the Afrikaner cabinet under the leadership of General Hertzog.[687] In its race relations policy of 1974, the Party stated that in order to promote the happiness and well-being of all citizens, both white and non-white, the State had to preserve and safeguard white areas.[688] Thus, protecting the white race was the fundamental policy of the NP.[689] For this reason, the Party undertook to combat any policy, doctrine, or attempt calculated to undermine or endanger the continued existence of the white race.[690] In 1948, the pro-Afrikaner Party won the general elections. In most respects, its policy was a systematic and brutal continuation of the segregation policies of the previous regimes.[691] This means that until the 1950s, South Africa's racial policies

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683 Khan *Contemporary South African Environmental Response* 86.
684 Khan *Contemporary South African Environmental Response* 86.
685 Khan *Contemporary South African Environmental Response* 86.
686 Khan *Contemporary South African Environmental Response* 87.
687 Politicsweb 2023 https://www.politicsweb.co.za/news-and-analysis/apartheid-the-nps-1947-manifesto.
688 Politicsweb 2023 https://www.politicsweb.co.za/news-and-analysis/apartheid-the-nps-1947-manifesto.
689 Politicsweb 2023 https://www.politicsweb.co.za/news-and-analysis/apartheid-the-nps-1947-manifesto.
690 Politicsweb 2023 https://www.politicsweb.co.za/news-and-analysis/apartheid-the-nps-1947-manifesto.
691 Sherwood *The Political Economy of South Africa* 30.

were in relative tandem with the global colonial policies elsewhere in the African continent.[692] However, when the global community started to mobilise for the codification of human rights, the architects of apartheid responded by dividing South Africa into ethnic nations, each with their own homelands and with the prospect of independence.[693] The environmental consequence of the NP's policy was that land was expropriated, rural areas were thoroughly degraded by overpopulation, and soil erosion and vast slums developed in the homelands.[694]

Agriculture and water (primarily for irrigation) are two environmentally related issues that received the most attention in the Party's Manifesto (1979).[695] The Party promised to provide expert research and information services to farmers regarding measures they could take during droughts.[696] The Party also promised to provide financial assistance to farmers whom droughts, natural disasters, and other unfavourable conditions would hit.[697] Furthermore, the Party would promote soil conservation and sound farming practices.[698] The Manifesto did not state what "sound farming practices" entailed. The Party boasted that it is only under the NP, as the governing Party, that sound conservation and utilisation of water resources had received attention.[699] As such, the NP government would continue to develop water resources in an orderly way to benefit industry, agriculture, and the urban population.[700] Again, the Party did not elaborate on what orderly way of developing water resources entailed.

3.3.1.6 Conservative /Konserwatiewe Party (KP)

The Conservative/Konserwatiewe Party was founded in 1982 by a fraction of the NP.[701] This fraction was dissatisfied with the constitutional resolution of the NP in

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692 Sherwood *The Political Economy of South Africa* 30.
693 Sherwood *The Political Economy of South Africa* 31.
694 Sherwood *The Political Economy of South Africa* 31.
695 National Party *The Election Manifesto of the National Party* 5.
696 National Party *The Election Manifesto of the National Party* 5.
697 National Party *The Election Manifesto of the National Party* 5.
698 National Party *The Election Manifesto of the National Party* 5.
699 National Party *The Election Manifesto of the National Party* 6.
700 National Party *The Election Manifesto of the National Party* 6.
701 O'Malley year unknown https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03198.htm.

1977 — a resolution stating that coloureds and Indians should participate in decision-making in government.[702] The Party's founding policy may be summarised as follows: firstly, it did not accept the social and economic integration of South Africa.[703] Secondly, the Party's primary philosophy may be described as self-determination, which advocated for the geographical separation of people based on racial lines.[704] According to the Party, coloureds and Indians would be accommodated in the homelands or group areas where they would exercise political rights in their own areas. These homelands would soon gain independence, thus disqualifying them from gaining citizenship in South Africa. Black communities would have no political rights in South Africa, nor would they be able to demand permanent residency. Under the Party's policy, black people would only be allowed in "white" South Africa if they fulfilled an economic function, which was to provide cheap labour.

In its Election Manifesto of 1981, the Party rejected any form of power sharing and any attempt to create a multiracial unitary state.[705] The Party expressly bound itself to the dictates of the *Land and Trust Act of 1936,* which effectively recognised the agricultural land structures in South African homelands.[706] According to the Manifesto, the Conservative/Konserwatiewe Party was not prepared to add a single hectare of land more than what was already catered for in the Act's quota.[707] This was despite the fact that the land in the homelands was already overgrazed, overcultivated and overpopulated.[708]

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[702] O'Malley year unknown https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03198.htm.
[703] O'Malley year unknown https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03198.htm.
[704] O'Malley year unknown https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03198.htm.
[705] Conservative Party National Manifesto General Election April 21, 1981.
[706] Conservative Party National Manifesto General Election April 21, 1981.
[707] Conservative Party National Manifesto General Election April 21, 1981.
[708] Conservative Party National Manifesto General Election April 21, 1981.

Conservative/Konserwatiewe Party was the main opposition in parliament from 1987 until the first democratic elections in 1994. The Party subsequently refused to participate in the non-racial elections in 1994, a decision that rendered it irrelevant.

3.3.1.7 The Herstigte Nasionale Party van Suid-Afrika

The *Herstigte Nasionale Party van Suid-Afrika* (HNP) was established in 1969 by former cabinet minister, Hertzog.[709] The HNP's policy can generally be summarised as a firm belief by the Party that black people should be granted independence in the homelands.[710] The Party wanted to safeguard the national interest of Afrikaners; as such, Afrikaans was to be promoted as the official language of South Africa.[711] HNP also believed that the government had to put South Africa first, where international politics were concerned.[712] As such, the country would not bind itself to "expensive and ineffective diplomatic systems" unless these relations would directly benefit the country.[713]

The HNP did not specifically have an environmental policy; at most, the Party believed in protecting small-scale farmers against commercial farmers.[714] It pledged to support these farmers by providing them with financial support.[715] A key objective in funding small-scale farmers was to ensure that small-scale farmers find innovative ways to conserve the environment.[716] According to the Party's Election Manifesto of 1970, conservation was a shared responsibility of the farmers and government.[717]

It is evident from above that the Party's economic policy was agrarian. The policy rested on the development of small-scale farming by white people. Notably, the Party also pledged to revitalise rural and underdeveloped black areas.[718] The reason

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709 O'Malley year unknown https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv03188/06lv03202.htm.
710 HNP HNP Election Manifesto of 1970.
711 HNP HNP Election Manifesto of 1970.
712 HNP HNP Election Manifesto of 1970.
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715 HNP HNP Election Manifesto of 1970.
716 HNP HNP Election Manifesto of 1970.
717 HNP HNP Election Manifesto of 1970.
718 HNP HNP Election Manifesto of 1970.

was not to safeguard black communities' economic or environmental interests. Instead, the Party wanted to prevent urban sprawl.[719]

3.3.1.8 Democratic Party (DP)

The Democratic Party was launched in 1989, jointly led by De Beers, Worrall, and Malan.[720] The Party was an amalgamation of the Progressive Federal Party, the Independent Party and the National Democratic Movement.[721] The principles of the Party included the following: the protection of fundamental human rights and liberties of all South Africans, representative government based on universal franchise, an independent judiciary and sovereignty of laws, limitation of the authority of the central government, and rejection of violence as a political instrument.[722]

Although its Manifesto of 1995/6 did not indicate the Party's stance on the environment, the Party did, at most, commit to allocating an amount for repayable lifeline tariffs for services, including water for pensioners, persons living with disabilities and the previously disadvantaged communities.[723] The Party recognised that because of apartheid, many communities were living in shocking environmental conditions without running water, sewerage systems, effective refuse removal and electricity.[724] Therefore, the Party promised to provide financially viable and sustainable services.[725]

It follows that the parties under discussion had a narrow view of what constituted the environment. At most, democratic parties focused on land deprivation as an environmental issue. These parties included the ANC, AZAPO, Call of Islam, PAC and Democratic Party. This study cannot fault these political parties because it is evident that their primary focus was to abolish a legal and political system that enables the government to restrict black communities from benefiting from the full endowments

719 HNP HNP Election Manifesto of 1970.
720 O'Malley year unknown https://bit.ly/41TDlsK.
721 O'Malley year unknown https://bit.ly/41TDlsK.
722 O'Malley year unknown https://bit.ly/41TDlsK.
723 Democratic Party Local Elections Manifesto.
724 Democratic Party Local Elections Manifesto.
725 Democratic Party Local Elections Manifesto.

of the natural environment. It would seem, therefore, that environmental governance was secondary to the latter "mission". The focus of the predominantly apartheid-driven parties, including the NP, the Conservative/Konserwatiewe Party, and the *Herstigte Nasionale Party van Suid Afrika* was on maintaining the political system of apartheid. At the centre of their policy was 'self-determination', which was evidently used to disregard the environmental consequences of underdeveloped homelands. Therefore, like the predominantly black parties, environmental governance was an apolitical issue in most policies and manifestos.

3.4 Environmental challenges and stance of political parties post-1994

The following discussion provides an overview of the environmental governance challenges inherited by the democratic government in South Africa and the stances of post-1994 political parties in the country.

3.4.1 Inherited environmental governance challenges

As stated in 3.2 above, with the advent of democratic government in 1994, the new South African government inherited a set of governance structures and relationships, together with laws, policies, guidelines, and procedures, that formed the basis for managing the environment.[726] Furthermore, the government inherited a fragmented political system that used laws to create social, economic, and environmental inequalities among South Africans.[727] The International Mission on Environmental Policy, supported by the International Development Research Centre (IDRC), compiled a Report which identified major problems with South Africa's environmental governance system between 1991 and 1994.[728] From 1991 to 1995, IDRC — in partnership with the ANC, the Congress of South African Trade Unions (COSATU), and the South African National Civic Organisation — conducted a series of missions in South Africa to assist that country in its transition to democracy. This partnership resulted in a report compiled by the International Mission on

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726 See para 3.2 above.
727 Muller 'Environmental Governance in South Africa' 69.
728 See IDRC *Building a New South Africa: Environment, Reconstruction and Development*.

Environmental Policy, supported by IDRC (the Report), that identified major problems with South Africa's environmental governance system between 1991 and 1994. Although the Report was published in 1995, the findings were made prior to the democratic elections of 1994.[729] The problems identified in the Report included:

Firstly, there was a high degree of fragmentation in policy in that almost every national government department was involved in some aspect of environmental management.[730] This meant that both resource allocation and regulation were subdivided between different legislation and government departments.[731] Additionally, environmental management was a joint responsibility of national and provincial governments, with certain aspects falling under local government.[732]

Secondly, there was ineffective legislation enforcement in that, in some cases, the fines imposed were so low that they could not act as a deterrent.[733] Hall states, for instance, that when the environmental right was enshrined in section 24 of the *Constitution* (and subsequently the *National Environmental Management Act* 107 of 1998 (NEMA)), it signalled that the environmental injustice that prevailed under apartheid would no longer be tolerated.[734] Coupled to this was a general situation of inadequate accountability to the public where environmental groups, civic organisations, and trade unions had been trying unsuccessfully to obtain health-related environmental data from responsible government departments over a considerable period.[735]

Thirdly, there was a scarcity of trained human resources in critical key areas such as inspectorates and professional staff in departments due to uncompetitive salaries and a loss of talented people to the private sector.[736]

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729 Quesne 2000 *SAJELP* 2.
730 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 56.
731 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 56.
732 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 56.
733 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 57.
734 Hall 2022 *PELJ* 2.
735 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 56.
736 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 58.

Fourthly, national government's lack of decentralised powers was also a key issue. Thus, fragmentation of responsibility among government departments coexisted with the over-centralisation of authority at the national level of government with a large number of civil workers based in the capital city of Pretoria.[737]

The fifth challenge was that public participation was moot as environmental legislation was largely put in place during a period when there was little public involvement or interest in the process, and government was biased towards a more technocratic approach in terms of which the majority of the population were not part of policy formulation and decision making.[738]

The sixth aspect highlighted in the Report is mining. Mining has been perceived as the backbone of the South African economy since 1852.[739] However, it has led to serious environmental costs, many of which have not been internalised into the price of products but have been borne by workers, local communities, and the environment.[740] The key challenges that faced the democratic government included reviewing licence processes and regulations in general and with respect to environmental impact, establishing the potential impact of new small and medium-size mining enterprises, and assessing the negative impact of abandoned mines and mine tailings affecting environmental quality and safety.[741] Some of the recommendations made by the Report included (a) allocating special funds for environmental rehabilitation, (b) as a condition of granting licences to operate a mine, an independent assessment of environmental and social impacts should be required under a strengthened integrated environmental management process, and (c) a survey of abandoned mines should be undertaken to ascertain environmental risks and assign priorities for environmental rehabilitation.[742]

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737 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 58.
738 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 59.
739 Africa mining iQ 2022 https://bit.ly/3CP5uXt.
740 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 140-142.
741 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 140-142.
742 IDRC *Building a New South Africa: Environment, Reconstruction and Development* 140-142.

While the Report succinctly sums up the characteristics of the South African environmental governance system during 1991 and 1995, it omitted consideration of the profound effect that the government's own economic activities would have on this system. For instance, it did not consider that enforcing environmental control measures was also difficult because of the government's direct involvement in the South African economy.[743] Through Eskom,[744] Iscor,[745] and the South African Railways,[746] the government was one of the major polluters in the country, and its industries contributed to the rapid depletion of natural resources.[747] The government's 'near untouchable' status within legislation and its state-owned industries meant that the State was free to act as it wished as far as the environment was concerned.[748]

3.4.2 Environmental governance stance of present South African political parties

This section of the study appraises political parties' constitutions, policies, and manifestos during the recent 2021 local government elections. It investigates the above instruments to ascertain the perceived role of political parties in the environmental governance context. As indicated above, the parties selected for this analysis registered and stood for election in the 2021 local government elections. The study attempts to illustrate how the adoption of the *Constitution* and with it the

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743 Steyn 2001 *Historia* 41.

744 Eskom is a state-owned entity established in terms of the *Electricity Act* 42 of 1922. Eskom must implement government policies and strategies, including creating and distributing electricity supply in South Africa at the lowest possible cost. See Eberhard 'The political economy of power sector reform in South Africa' 217.

745 Iscor was established as a state-owned enterprise in terms of the *Iron and Steel Industry Act* 11 of 1928. Its objectives of Iscor were to produce iron and a range of steel and create employment opportunities. See Arcelo Mittal *The History of ArcelorMittal South Africa* 1.

746 South Africa's railway is governed by Transnet, a state-owned company wholly owned by the Government of South Africa. Transnet is the custodian of rail, ports and pipelines. Its objective is to enable competitiveness, growth and development of South Africa's economy by delivering reliable freight transport and handling services to satisfy customer demand. See Transnet (year unknown) https://www.transnet.net/Divisions/Pages/DivisionsHome.aspx.

747 Steyn 2001 *Historia* 41.

748 Steyn 2001 *Historia* 41.

constitutional envioronmental right impacts how present political parties view their role in environmental governance.

3.4.2.1 Action SA

ActionSA is a relatively new political party. It was established in 2020 by the former mayor of the City of Johannesburg Metropolitan Municipality, Herman Mashaba, after he left the Democratic Alliance.[749] The Party states on its official website that it seeks to provide a credible alternative to what it views as "a broken political system that has failed the people of South Africa since the dawn of democracy".[750] It is also stated that, as its name suggests, the party's focus is on "action" to move South Africa forward from an era of broken promises, corruption and failed government.

ActionSA recognises that there is an ongoing battle against climate change and further states that it will commit to international imperatives to fight climate change and integrate sustainability into operating models.[751] Clean air, water, and waste are singled out as priority areas for the Party in its local government election Manifesto (2021), and it further indicates that its municipalities will take better care of the environment by promoting a culture of reducing, reusing, and recycling solid waste to deal with waste.[752]

According to the Party, there is a need for urgent action in local councils driven by committed leadership to ensure adaptation to and mitigation of climate change.[753] This action includes the national government allowing local municipal councils and individuals to procure electricity from renewable sources directly from independent Power Producers (IPPs).[754]

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749 ActionSA 2023 https://www.actionsa.org.za/about/.
750 ActionSA 2023 https://www.actionsa.org.za/about/.
751 ActionSA 2021 https://www.actionsa.org.za/wp-content/uploads/2021/09/ActionSA-LGE-Manifesto-2021.pdf (the Action SA *Manifesto 2021*) 6.
752 Action SA *Manifesto 2021* 6.
753 ActionSA Year Unknown https://www.actionsa.org.za/climate-change/.
754 ActionSA Year Unknown https://www.actionsa.org.za/climate-change/.

As of the last local government elections (2021), ActionSA is not governing a municipal council. As such, they do not have a record of what their Party has done to improve local environmental governance. However, the Party appears dedicated to positive action towards environmental improvement at the local level. It is committed to "take progressive action to improve air quality and ensure that all residents have access to potable drinking water that meets stringent health standards".[755] The assumption is that the 'stringent health standards' refer to those found in legislation, including the *Water Services Act* 108 of 1997 (WSA) and *National Health Act* 61 of 2003. Furthermore, the Party wants to protect biodiversity by holding accountable those that cause damage to the environment.[756]

3.4.2.2 African National Congress

The African National Congress (ANC) is a well-established political party. It was established in 1912 as a socio-democratic political party known for its role in the opposition to and struggle against apartheid.[757] The ANC has been the dominant party in the South African government since the inception of democracy in 1994.[758] As such, at the time of writing this study, the ANC is governing a sizable amount of municipalities in the Country. In its latest constitution (2017), the Party states that its primary objective is to construct a "united, non-racial, non-sexist, democratic and prosperous society in South Africa".[759] As the governing party, the ANC inherited a fragmented policy and legal framework in South Africa, which required an overhaul of legislation, including environmental laws and policies. NEMA, a framework legislation, is a result of the environmental policy development process of the ANC, known as the Consultative National Environmental Policy Process (CONNEP), launched in August 1995.[760]

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755 Action SA *Manifesto 2021* 6.
756 Action SA Manifesto 2021 6.
757 ANC 2023 https://www.anc1912.org.za/our-history/.
758 ANC 2023 https://www.anc1912.org.za/our-history/.
759 ANC 2017 https://www.anc1912.org.za/wp-content/uploads/2021/01/ANC-Constitution-2017.pdf. The ANC hosted its 55th National Conference in December 2022, when the constitution was amended and adopted. However, the document was not yet available at the time that this article was written.
760 Kidd 1999 *South African Journal on Environmental Law and Policy* 24 and Hall 2022 *PELJ* 2.

According to the Party, environmental issues in municipal councils entail municipalities battling water loss due to poor maintenance, refuse not being collected regularly, and raw sewage flowing in the streets.[761] As such, the Party proposes a focus on developing and maintaining water and sewage infrastructure and, where such infrastructure exists, rehabilitating it.[762] This includes rehabilitating water pump stations and water waste equipment. In its January 8th, 2023, statement, the Party noted how the collapse of municipalities in South Africa has devastated communities that deal with chronic water loss due to poor maintenance, refuse not being collected regularly, and raw sewage flowing in the streets.[763] Electricity (or the lack thereof) is also recognised as an environmental governance issue that requires the Party to take steps to solve it.

The Party proposes that municipal councils need to increase their contribution of renewable energy to the country's energy mix by diversifying energy sources.[764] The Party further states that there is a need for a just transition from reliance on coal to renewable energy that creates new economic opportunities for workers and communities.[765] The Party also seeks to oversee the retirement of ageing coal-powered stations to improve the air quality for communities by reducing greenhouse gas emissions.[766]

3.4.2.3 African Transformation Movement

The African Transformation Movement (ATM) is a new Party established in 2018.[767] ATM is a faith-based political party established to create and develop a "decolonised, modern, healthy, happy, functional democracy, fair and prosperous society that

761 African National Congress 2021 https://bit.ly/3P99JBp (the ANC Manifesto 2021).
762 ANC Manifesto 2021.
763 The ANC Manifesto 2021.
764 ANC Manifesto 2021.
765 ANC Manifesto 2021.
766 ANC Manifesto 2021.
767 ATM 2019 https://socialsurveys.co.za/wp-content/uploads/2019/04/ATM_Manifesto_booklet.pdf.

prides itself on integrity and inclusivity".[768] Its political ideology is humanism — more particularly, African humanism.[769]

The key environmental problems recognised by this Party include the lack of clean and potable drinking water, the removal of domestic refuse and the prevention of soil, water, air and noise pollution.[770] Public health care is, however, at the centre of the Party's focus.[771] It may be assumed that health, as seen by the Party, refers to environmental health. [772] This inference is drawn from issues that the Party deems as affecting human health, including the inability of many communities to access quality drinking water, the shortage of health inspectors to check that food is produced, stored, and distributed safely and that such food is safe and wholesome for human consumption. Preventing communicable diseases is also identified as an environmental health challenge in local government.

As of the last local government elections (2021), ATM is not governing a municipal council. As such, they do not have a record of what their Party has done to improve local environmental governance. At most, the Party states its commitment to solving environmental issues without necessarily identifying specific tools or measures.[773] For instance, the Party commits to prioritising and providing basic services to local communities as necessary for human health and well-being, as envisaged in section 24 of the *Constitution*.[774]

3.4.2.4 Democratic Alliance

The Democratic Alliance (DA) was created in 2000.[775] It was founded after the Democratic Party (DP) reached a merger agreement with the Federal Alliance and

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768 ATM 2019 https://socialsurveys.co.za/wp-content/uploads/2019/04/ATM Manifesto-booklet.pdf.

769 According to Eleojo, African Humanism is a philosophy or ideology that "extols not only the good of the human person in general but also the good of the African person as the purpose of all actions". See Eleojo 2014 *AIJCR* 298.

770 ATM 2021 https://bit.ly/3uLNcCO (the *ATM Manifesto 2021*) 20.

771 ATM *Manifesto 2021* 20.

772 See May 'Environmental Health' 7-11, which defines municipal public health as a sub-component of environmental aspects in South Africa.

773 ATM *Manifesto 2021* 20.

774 ATM *Manifesto 2021* 20.

775 DA 2019 https://www.da.org.za/why-the-da/history.

the New National Party (NNP).[776] The DA is known as the official opposition party of the dominant party, the ANC.[777] The DA states in its constitution that it stands with all South Africans who "share a community of values embodied by these words: freedom, fairness, opportunities and diversity".[778] At the time of writing, this Party governed several municipalities in South Africa, including the City of Cape Town, and is in charge of several coalition councils, including Tshwane Metropolitan Municipality. DA is currently governing the Western Cape province.

In its 2021 Manifesto, the Party highlights environmental issues, including water scarcity, wastewater and sewage, pollution, and reliance on coal for energy.[779] The Party considers these issues pertinent to environmental concerns in the local government sphere[780] and recognises that water is a scarce resource essential to life, health, and economic development. It is the building block of human life and of every municipality.[781] As such, the Party is of the view that the water crisis across municipalities reflects government failure.[782] The Party also recognises that the deteriorating state of municipal wastewater and sewage treatment management is one of the numerous pollution problems experienced in most parts of the country and that it is a major contributor to environmental and human health problems.[783] As such, the Party pledges, amongst other things, to provide access to reliable, clean running water, safe to drink and to use in food preparation, and not to expose communities to raw sewage.[784]

As stated before, the DA has a history of governance in local government, and therefore identifies programmes that have been carried out in its municipalities over the years and proposes that these should be mainstreamed across all municipalities that it envisages to govern. Firstly, having experienced the so-called "Day Zero" in

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776 DA 2019 https://www.da.org.za/why-the-da/history.
777 DA 2019 https://www.da.org.za/why-the-da/history.
778 DA 2020 https://cdn.da.org.za/wp-content/uploads/2020/11/09091807/DA-Constitution-As-Adopted-on-31-October-2020-final.pdf.
779 DA 2021 https://bit.ly/3P5Z36x (the *DA Manifesto 2021*) 6-14.
780 DA *Manifesto 2021* 6-14.
781 DA *Manifesto 2021* 6.
782 DA *Manifesto 2021* 6
783 DA *Manifesto 2021* 6.
784 DA *Manifesto 2021* 6.

a DA-led municipality (the City of Cape Town in 2017/2018), the Party envisages working with residents, businesses and civil society to effectively deal with droughts in any municipality it is elected to govern.[785] Educating communities on environmental conservation is also important for the DA. The Party's Manifesto states that it wants to encourage communities to find solutions to reduce water consumption, such as waterless toilet systems or grey water flush systems.[786] Secondly, to reduce waste pollution, the Party pledges to ensure sufficient rural waste collection points that ideally link to local buyback centres.[787] An ideal solution is also believed to include innovations such as free drop-off facilities and the use of online waste recycling maps that connect residents and businesses with all types of buyback centres.[788] Part of the Party's strategy is Expanded Public Works Programme (EPWP) employment.[789] Thirdly, to minimise the effects of load shedding, the Party states that DA-led municipalities will purchase power from independent power producers (IPPs) instead of relying on Eskom. The Party supports businesses and people that sell their excess wind-and-solar-generated electricity.[790] The Party further urges the national government to implement zero-rating VAT on LED lightbulbs and energy-efficient appliances[791] - it is estimated that streetlights account for 30 to 60 per cent of total local government carbon emissions.[792] The Party proposes that all streetlights operate using LED lighting, which will reduce carbon emissions because of the longer lifetime of such lights.[793]

With regards to what should be done by municipal councils to improve environmental governance, the Party proposes that whether the environment is governed through regulations, market-based mechanisms (including incentives) or taxes, each of the instruments should be subjected to a comprehensive regulatory

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785 DA *Manifesto 2021* 7.
786 DA *Manifesto 2021* 7.
787 DA *Manifesto 2021* 9.
788 DA *Manifesto 2021* 9.
789 DA *Manifesto 2021* 9.
790 DA *Manifesto 2021* 11.
791 DA *Manifesto 2021* 11.
792 DA *Manifesto 2021* 13.
793 DA *Manifesto 2021* 13.

impact assessment to determine the likely effect of the instrument on economic growth and employment levels.[794]

3.4.2.5 Economic Freedom Fighters

The Economic Freedom Fighters (EFF) is a radical and militant economic emancipation movement formed in 2013.[795] The Party was established by the former ANC Youth League Chairperson, Julius Malema, following his expulsion from the ANC. The EFF states on its website that its main aim is to bring together "revolutionary, militant activists, community-based organisations and lobby groups into a political party that is pursuing the struggle of economic emancipation".[796]

According to the EFF, most municipalities in South Africa do not deliver on the basics that underpin environmental governance, which, the Party recognises, includes providing services such as clean drinkable water, reliable electricity, sanitation and refuse services.[797] The Party recognises that local government has a positive duty towards the environment that includes conserving the environment for current and future generations.[798] The instruments and history of the Party do not suggest that the Party has governed a municipal council. In its Manifesto (2021), the Party seeks to explore alternative measures from legislative ones to fulfil this duty.[799] It believes, for instance, that nature reserves must be used for environmental education purposes.[800] Therefore, the Party states that it will nurture young people "that are aware of the ecological limits of the planet".[801] Municipalities under the EFF will supposedly prioritise the maintenance of ecological infrastructure, employ a team of people that will focus on eradicating alien plants, rehabilitating wetlands, and rehabilitating areas affected by soil erosion through the planting of ecologically suitable plant species.[802]

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794 DA *Policy on natural resources* 3.1.
795 EFF 2022 https://effonline.org/home/home-main2/main-home/.
796 EFF 2022 https://effonline.org/home/home-main2/main-home/.
797 EFF 2021 https://effonline.org/2021-lgemanifesto/ (the *EFF Manifesto 2021*) 27.
798 EFF *Manifesto 2021* 54.
799 EFF *Manifesto 2021* 58-60.
800 EFF *Manifesto 2021* 59.
801 EFF *Manifesto 2021* 58.
802 EFF *Manifesto 2021* 59.

Other extra-legal measures proposed by the Party include creating municipal-owned nurseries.[803] The Party wants to create municipal-owned nurseries that will grow indigenous plants with the hope that this will incentivise businesses that use clean energy, have clear water recycling methods and limit pollution levels.[804] The Party also wants to establish a biodiversity conservation forum primarily comprised of civil society organisations.[805] The functions of such a forum will include discussing the progress made in conserving natural resources and acting as an advisory forum to municipalities.[806]

3.4.2.6 GOOD Party

The GOOD Party was formed in 2018 by its founder and leader, Patricia DeLille (former Mayor of the City of Cape Town and current Minister of Tourism).[807] The Party states that its principles include zero tolerance for racism, gender, discrimination, corruption and poverty.[808] The GOOD Party focuses on climate change as an environmental governance issue for local government.[809] According to the Party, cities are where climate change effects are felt most severely and where poor and vulnerable communities are disproportionally affected by its adverse.[810]The Party believes that in governing the environment, municipal councils must uphold and implement international commitments to reduce emissions and the country's impact on the planet.[811] This includes reducing reliance on coal for energy and focusing on cheaper renewable energy sources.[812] The Party states that there is a need to devolve relevant national and local government functions, such as electricity procurement and distribution, transport, rail and efficient urban planning.[813] This will allow municipal councils to legislate on matters affecting their

803 EFF *Manifesto 2021* 59.
804 EFF *Manifesto 2021* 59.
805 EFF *Manifesto 2021* 59.
806 EFF *Manifesto 2021* 59.
807 GOOD 2023 https://forgood.org.za.
808 GOOD 2023 https://forgood.org.za.
809 GOOD *Environmental Justice for South* 1.
810 GOOD *Environmental Justice for South* 1.
811 GOOD *Environmental Justice for South* 1.
812 GOOD *Environmental Justice for South* 2.
813 GOOD *Environmental Justice for South* 2.

communities and implement sustainability programmes suitable for their communities.[814]

3.4.2.7 The Freedom Front Plus

The Freedom Front Plus (FF Plus) was established shortly before April 1994 under the leadership of General Constand Viljoen.[815] The Party participated in the first democratic elections, which were held in the same year.[816] In its mission statement, the Party states that it is

> … irrevocably committed to the realisation of communities, in particular the Afrikaner's internationally recognised right to self-determination, territorial and otherwise, the maintenance, protection and development of their rights and interests as well as the promotion of the right on self-determination for any communities in South Africa bound by a common linguistic and cultural heritage.[817]

According to the Party, core problems in local government include the ongoing destruction of the environment.[818] The Party argues that an incompetent government is destroying South Africa's natural resources and environment with incorrect priorities.[819] Landfills are illegal, sewage runs into rivers and the sea, and municipal by-laws meant to prevent pollution either do not exist or are not properly implemented.[820]

One of the instruments of the Party suggest that the FF Plus has an idea of what innovative measures are necessary in environmental goverance. In its Manifesto (2021), the Party states that the environment should be protected through effective policing in the case of pollution and the contravention of applicable laws.[821] There is also a need to prioritise upgrading and maintaining sewage plants[822] - infrastructure allocations must be used to upgrade existing infrastructure.[823]

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814 GOOD *Environmental Justice for South* 2.
815 FF Plus 2020 https://www.vfplus.org.za/background.
816 FF Plus 2020 https://www.vfplus.org.za/background.
817 FF Plus 2020 https://www.vfplus.org.za/mission.
818 FF Plus 2021 https://www.vfplus.org.za/File/Download/17018/a95cb569-6b50-40c2-b488-775da5dca823 (the FF Plus *Manifesto 2021*) 9.
819 FF Plus *Manifesto 2021* 9.
820 FF Plus *Manifesto 2021* 9.
821 FF Plus *Manifesto 2021* 15-16.
822 FF Plus *Manifesto 2021* 15.
823 FF Plus *Manifesto 2021* 15.

Practical solutions must be investigated to prevent waste pollution in rivers, dams, and the sea.[824] Such solutions should include, for instance, affixing nets to stormwater drains to prevent plastic waste from entering water sources.[825]

According to the FF Plus, attention should also be given to the security of landfill sites and the enforcement of applicable legislation.[826] Each municipality must encourage a culture of recycling and initiate projects which involve the unemployed in the orderly recycling of waste for the benefit of the community and the environment.[827] The FF Plus also posits that municipalities should create a favourable environment for residents to switch to renewable energy.[828] This should involve tax rebates for residents who switch to renewable energy sources, for example.[829] The Party also encourages the private generation of electricity and calls for affordable and sustainable alternative electricity projects.[830]

3.4.2.8 Inkatha Freedom Party

The Inkatha Freedom Party (IFP) was established on the 21st of March 1975 by its leader and president emeritus, Mangosuthu Buthelezi.[831] The Party states that it exists to serve the people of South Africa and to do so in the spirit of Ubuntu.[832] This makes Ubuntu a founding principle of the IFP.

It is common knowledge that the IFP governs several municipalities in KwaZulu-Natal, including uMhlathuze, Dannhauser, Mtubatuba, and Amajuba local municipalities.[833] The instruments of the IFP do not highlight the environmental

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824 FF Plus *Manifesto 2021* 15.
825 FF Plus *Manifesto 2021* 15.
826 FF Plus *Manifesto 2021* 15.
827 FF Plus *Manifesto 2021* 15.
828 FF Plus *Manifesto 2021* 15.
829 FF Plus *Manifesto 2021* 15.
830 FF Plus *Manifesto 2021* 15.
831 IFP 2023 https://www.ifp.org.za/our-history/.
832 IFP 2023 https://www.ifp.org.za/why-ifp/.
833 Mail and Guardian 2023 https://mg.co.za/politics/2023-01-30-ifp-eff-coalition-collapse-will-cost-inkatha-one-or-two-councils-says-hlabisa/.

governance stance of the Party other than the Manifesto (2021) committing to provide clean water by investing in infrastructure and connecting households.[834]

3.4.2.9 United Democratic Movement

After being expelled from the ANC in November 1996, Bantu Holomisa launched the United Democratic Party (UDM) on the 27th of September 1997.[835] In its vision statement, the Party avers that the UDM is "a political home for all South Africans, united in the spirit of South Africanism".[836] South Africanism, if taken from the context of Eleoja,[837] is an ideology that focuses on how the common passion and rich cultural diversity of South Africans can be used to create a country that all will be proud to live in.

The key environmental challenges prevalent in municipalities, as seen by the UDM, include access to water and sanitation, reliable access to electricity, and regular refuse removal.[838] These issues, the Party states, are prevalent in rural areas, townships, health care facilities and schools.[839] The Party states in its Manifesto that access to water and sanitation is even more important because it is at the basis of a constitutional right of everyone in South Africa.

The Party makes a commitment to providing basic municipal services such as ensuring regular waste removal.[840] It also states that it will enforce by-laws for the effective execution of the duties of local government.[841] The Party adds in its Manifesto that it will establish dedicated task teams to clean and remove alien vegetation from vacant municipal sites, wetlands, and streams, and that it will provide recycle centres for waste pickers to avoid the mushrooming of unregulated recycle sites.[842]

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834 IFP 2021 https://bit.ly/3okvG4Z.
835 UDM 2017 https://udm.org.za/vision-mission/.
836 UDM 2017 https://udm.org.za/vision-mission/.
837 See para 5.1.3 above.
838 UDM 2021 https://bit.ly/3yBzrYs (the UDM *Manifesto 2021*) 1-5.
839 UDM *Manifesto 2021* 1-5.
840 UDM *Manifesto 2021* 4.
841 UDM *Manifesto 2021* 4.
842 UDM *Manifesto 2021* 4.

3.4.3 Observations

Political parties have observed that water shortage, raw sewage running in the streets and yards, and illegal waste dumps are becoming an everyday sight in many communities. These issues are raised in several of the political party instruments discussed above. Even more, these environmental governance issues are seen as a failure of municipalities to provide basic services to local communities as a cardinal function of local government. Having climate and environmental consideration as a thread running through the instruments of political parties active in the local government context reveals an understanding of what it will take for councillors coming from these political parties to balance socio-economic issues, such as poverty and unemployment, against the dictates of the constitutional environmental right in South Africa.

Some of the political parties believe the key environmental challenges may be solved simply by ensuring that municipalities execute their legislative and executive functions.[843] These functions require local government to provide

> a democratic and accountable government for local communities, ensure the provision of services in a sustainable manner, promote social and economic development, promote a safe and healthy environment, and encourage the involvement of communities and community organisations in matters of local government.

The fact that councillors have legislative and executive authority vested in the *Constitution* distinguishes political parties operating under the *Constitution* from those existing pre-1994. Despite the understanding by political parties that their environmental commitments must be guided by section 24, the *Constitution* is not a means to its own end.

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[843] See para 3.4.1.1; 3.4.1.2; 3.4.1.7 above.

3.5 The structure of municipalities and relevance of contemporary party politics at the local level

The inception of the *Constitution* has altered the role of political parties in local government by allowing people to elect their local representatives. This differs from pre-constitutional democracy in South Africa, where local government was elected by the white minority and governed by provincial councils with limited legislative power.[844] According to Hirschl, the *Constitution* of South Africa is perhaps the most effective way to "constitutionalise city power in the world, to date."[845] This has made politics a central feature of South Africa's decentralised constitutional democracy.[846] Besides restructuring political leadership in local government, the *Constitution* also assigns specific functions of government that municipalities are responsible for, including environmental matters.[847] The structure, functioning and system of local government appears to be more coordinated after the inception of the *Constitution* and post-apartheid legislation.[848] The judiciary has also made several pronouncements in this regard.[849] Before the *Constitution*, local government was designed to being an administrative wing for national and provincial government with no real powers to administer matters within its jurisdictions.[850] The *Constitution* has restructured the role of local government by giving this sphere

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844 Fuo *Local government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 73; Cloete *Public Administration and Management* 27; De Visser 2009 *Commonwealth of Local Governance* 8.

845 Hirschl City, States, Constitutionalism, and the Megacity 12-13. Also see Pieterse 2023 *Hague Journal on the Rule of Law* 305-307.

846 Mhlongo 2020 *Obiter* 257.

847 Muller 'Environmental Governance in South Africa' 80.

848 Madumo *An evaluation of the functioning of metropolitan municipal councils in Gauteng, South Africa* 160.

849 See for instance *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458 (CC) paras 26, 38 and 124 (Fedsure); *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) paras 39-40; *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 25; *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd* 2009 1 SA 337 (CC) paras 13-17 and 32; *City of Cape Town v Robertson* 2005 3 BCLR 199 (CC) 58; *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC) para 42-47.

850 *City of Cape Town v Robertson* 2005 2 SA 323 (CC) para 53; *Fedsure paras 2-4; African National Congress v Minister of Local Government and Housing, KwaZulu-Natal* 1998 (4) BCLR 399 (CC) paras 4-12; see generally *Rates Action Group v City of Cape Town* 2007 1 All SA 233 (SCA) para 10.

the right to govern, on its own initiative, some key matters of its communities.[851] An ongoing debate is that all functional matters that should sit with local government currently do not.[852] With municipal councils (the political structure) being at the helm of municipalities, it means that (party) politics has seeped into the daily functioning of municipalities and, subsequently, the local environmental governance (LEG) efforts of municipalities.[853] Below is a discussion on the structure of municipalities followed by the current political climate in which municipalities operate. The purpose of this discussion is to demonstrate how the current political landscape in the country influences the environmental governance efforts of the relevant role players in LEG.

3.5.1 The structure of local government

Wilson argued that public administration is a field of business that "is removed from the hurry and strife of politics."[854] He further argued that public administration as a study stands apart from any debate on constitutional law because administrative matters are more focused on the effective execution of functions and less to do with people and their rights.[855] Wilson's thinking suggests that he believed that political office bearers (i.e. municipal councillors) and administrators (i.e. municipal officials) are separate entities.[856] Bluntschli agrees with Wilson by stating that public administration is not within the scope of politics.[857] Bluntschli believes that challenges surrounding administrative management are not political issues.[858] The reality, however, is that separating politicians from the technocrats (administrators) is extremely difficult, especially in the South African local government context.[859]

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851 See para 3.6 below.

852 See Fuo 2022 *Stell LR* 484-500; *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC) para 55.

853 Nel, Du Plessis and Retief 'Key elements of municipal planning' 2-23.

854 Wilson 1887 *Political Science Quarterly* 209.

855 Wilson 1887 *Political Science Quarterly* 209-210.

856 Wilson 1887 *Political Science Quarterly* 197-222; Gou 2019 *Open Journal of Social Sciences* 357.

857 See generally Bluntschli *The Theory of the State*. Also see Rosser 2014 *Administrative Theory and Praxis* 101-105 and Guo 2019 *Open Journal of Social Science* 357.

858 See generally Bluntschli *The Theory of the State*. Also see Rosser 2014 *Administrative Theory and Praxis* 101-105 and Guo 2019 *Open Journal of Social Science* 357.

859 Several scholars have reflected on this challenge or distinction famously referred to as the political-administrative interface or dichotomy. See De Visser *The political-administrative*

Although the Municipal Systems Act distinguishes between the administration, the political structure and local communities, these role players are not meant to work in isolation.

This study cannot begin to discuss politics (or local party politics) in South Africa without considering the structure of local government. The *Constitution* in South Africa and subsequent post-apartheid legislation, i.e. *Municipal Systems Act* and *Municipal Structures Act,* have altered the role of politics in local government; this alteration also included the governing structure of local government. Below is a discussion on why each structure is important to municipal, and more specifically, environmental governance.

3.5.1.1 The municipal administrative structure

Municipal administration, which is primarily tasked with delivering services to local communities, is also responsible for executing the policies made by municipal councils and the various committees.[860] The administration of a municipality is governed by the general principles for public administration contained in section 195(1) of the *Constitution,* including "promoting and maintaining a high standard of professional ethics and efficient, economical, and effective use of resources", amongst other things.[861] The administration consists of officials who are employed by the municipal council. The leadership of the administrative structure of a municipality is vested with the municipal manager (MM), who is hired by the council and, in turn, employs administrative staff to implement the functions of the municipality.[862] This means that the MM is the most senior official in a municipal

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interface in local government 1-3; Thornhill 2005 *Journal of Public Administration* 182-185; De Visser 2010 *Commonwealth Journal of Local Governance* 86-101; Ncalane *Investigating the impact of political-administrative interface on service delivery* 7-8 and Thornhill 'The Political/Administrative Interface in African Cities' 1-16.

860 Van Der Waldt 'Local Government' 166.

861 Section 6(2) of the *Municipal Systems Act* defines further and instructs the administration to "take measures to prevent corruption and to give members of the community full and accurate information about the level and standard of services they are entitled to receive and about the persons in charge of municipal management", amongst other things.

862 Section 82(a) of the *Municipal Structures Act*. Also see Craythorne *Municipal Administration: A Handbook* 438.

administration.[863] As such, even the heads of different departments in the municipality must regularly report to the MM.[864] Such reporting is often performance-based, meaning the MM must assess and ensure that municipal resources, including equipment, infrastructure, staff members, and finances, are effectively utilised to render services to local communities.[865] As the accounting officer, the MM is responsible for all income and expenditure, all assets and discharge of liabilities of the municipality, and for the overall compliance of the municipality with municipal finance management legislation.[866] This means that the MM is responsible for the implementation of the performance management system of the municipality.[867] The consequence of this responsibility is that a municipal council will hold the MM accountable for the administration's overall performance.[868]

It follows from the above that the administrative structure of a municipality is a critical structure to its functioning. Although this structure is not responsible for approving executive policies, it remains responsible for their implementation, for example. Its senior head is responsible for the formation and development of an effective, efficient, and accountable administration that is equipped to implement the integrated development plan (IDP), operate within the municipality's performance management system and be responsive to the needs of the local community.[869]

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863 Section 55(1) of the *Municipal Systems Act*. Also see Craythorne *Municipal Administration: A Handbook* 438.

864 Section 55(1)(a) of the *Municipal Systems* Act; Van Der Waldt 'Local Government' 169.

865 See section 38-49 of the *Municipal Systems Act*. In terms of section 39(b) of the *Municipal Systems Act*, the executive mayor, executive committee, or a special committee must assign responsibilities with regard to the performance management system to the MM.

866 Section 55(2) of the *Municipal Systems Act*.

867 In terms of section 39(b) of the *Municipal Systems Act*, the executive mayor, executive committee, or a special committee must assign responsibilities with regard to the performance management system to the MM.

868 Section 51(i) of the *Municipal Systems Act* states that a municipality must, within its administrative and financial capacity, establish and organize its administration in a manner that would enable the municipality to hold the MM accountable for the overall performance of the municipality.

869 Section 55(1)(a) of the *Municipal Systems Act*.

3.5.1.2 Municipal councils

Each municipality must have a municipal council.[870] This structure exercises both legislative and executive authority in a municipality.[871] This means that municipal councils make decisions concerning the exercise of all powers and the performance of all functions of a municipality.[872] The nature of the powers of municipal councils establish a governing model that obscures the conventional division of powers between the executive and legislature.[873] The decisions taken in a municipal council are generally taken by way of a majority vote by councillors.[874] Thus, the importance of strong political leadership for municipalities is an aspect that can never be overemphasised.[875] This means that municipal councils are, by their very nature, political entities founded on the basis of political principles.[876]

The functions of every municipal council include passing by-laws,[877] approving budgets,[878] and imposing rates and other taxes, levies, and duties,[879] as well as raising loans.[880] Councils have to exercise executive and legislative authority and use the resources of the municipality in the best interest of the local community,[881] to provide, without favour and prejudice, democratic and accountable government,[882] to encourage the involvement of local communities in matters of local government[883] and strive to ensure that municipal services are provided to

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870 Section 18(1) of the *Municipal Structures Act*.
871 Section 156 of the *Constitution*; Van Der Waldt 'Local Government' 166; Madumo *An evaluation of the functioning of metropolitan municipal councils in Gauteng, South Africa* 31 and Fuo *Local government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 264.
872 Section 156 of the *Constitution*.
873 Fuo *Local government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 264; Steytler and De Visser *Local Government Law of South Africa* 3-3.
874 Sections 151(2) and 160(1)(a) of the *Constitution* and section 30 of the *Municipal Structures Act*.
875 Van Der Waldt 'Local Government' 166.
876 Madumo *An evaluation of the functioning of metropolitan municipal councils in Gauteng, South Africa* 165.
877 Section 160(2)(a) of the *Constitution*.
878 Section 160(2)(b) of the *Constitution*.
879 Section 160(2)(c) of the *Constitution*.
880 Section 160(2)(d) of the *Constitution*.
881 Section 4(2)(a) of the *Municipal Systems Act*.
882 Section 4(2)(b) of the *Municipal Systems Act*.
883 Section 4(2)(c) of the *Municipal Systems Act*.

local communities in a financially and environmentally sustainable manner.[884] Municipal councils must give members of the local community equitable access to municipal services that they are entitled to,[885] promote and undertake development in the municipality,[886] promote gender equity in the exercise of the municipality's executive and legislative authority,[887] and promote a safe and healthy environment.[888] Therefore, local councils specifically make decisions concerning the exercise and performance of all functions of municipalities, including matters relating to the environment and people's health and well-being.[889]

A municipal council consists of several councillors determined by a member of the executive committee (MEC) for local government in the province concerned by notice in the Provincial Gazette.[890] The number of councillors is determined in accordance with a formula published by the Minister by notice in the Government Gazette. This formula must be based on the number of voters registered on that municipality's segment of the national common voters' roll on a date determined in the ministerial notice.[891] Councillors in the municipal council may not be fewer than three or more than 90 if it is a local and district municipality,[892] and not more than 270 if it is a metropolitan municipality.[893] The *Municipal Structures Act* distinguishes between the elections of metropolitan and local councils and the elections and appointments of district councils.[894] In terms of this Act, the council of a metropolitan and local municipality consists of councillors elected in accordance with Schedule 1, (a) by voters registered on the municipality's segment of the national common voters roll to proportionally represent the parties that contested the elections in that municipality (PR councillors)[895] and, by voters registered on that

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884 Section 4(2)(d) of the *Municipal Systems Act*.
885 Section 4(2)(f) of the *Municipal Systems Act*.
886 Section 4(2)(g) of the *Municipal Systems Act*.
887 Section 4(2)(h) of the *Municipal Systems Act*.
888 Section 4(2)(i) of the *Municipal Systems Act*.
889 See Nel, Du Plessis and Retief 'Key Elements for Municipal Action' 2-23.
890 Section 18(3) of the *Municipal Structures Act*.
891 Section 20(1)(a) of the *Municipal Structures Act*.
892 Section 20(1)(b) of the *Municipal Structures Act*.
893 Section 20(1)(c) of the *Municipal Structures Act*.
894 See section 22 and 23 of the *Municipal Structures Act*.
895 Section 22(1)(a) of the *Municipal Structures Act*.

municipality segment of the national common voter roll in the respective wards in that municipality, to represent the ward (ward councillors) directly.[896] This means that councillors are both members of a municipal council and representatives of their political parties. As previously stated,[897] the two-fold function of councillors means that councillors *inter alia* play an oversight role in the work of municipal public servants (the administration) on behalf of the community (the electorate).[898]

In terms of the Code of Conduct, councillors are appointed to serve as representatives for local communities within municipal councils. Their duty is to ensure the implementation of structured accountability mechanisms in municipalities and to prioritise the needs of the communities by providing services in an equitable, effective, and sustainable manner, consistent with the financial capabilities of the municipality.[899] Although this mandate largely applies to ward councillors representing their respective communities, it remains applicable to PR councillors. This is because councillors are accountable to local communities in terms of the Code of Conduct.[900] Therefore, councillors must always act in the best interests of their municipalities in such a way that the credibility and integrity of their municipalities are not compromised.[901]

Another important role player within the council is the office of the Speaker. Each municipal council must elect a chairperson who is called the Speaker.[902] The Speaker must be elected 14 days after elections, making this the first item on the agenda of a municipal council.[903] The council needs a 50 percent-plus-one vote to elect a Speaker successfully.[904] The Speaker holds immense power because this office oversees the municipal council's legislative functions.[905] This is because it is the Speaker's responsibility to ensure that council meetings are conducted under the

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896 Section 22(1)(b) of the *Municipal Structures Act*.
897 See para 1.6 above.
898 Preamble of schedule 1 of the *Municipal Systems Act*.
899 Preamble of Schedule 1 of the *Municipal Systems Act*.
900 Preamble of Schedule 1 of the *Municipal Systems Act*.
901 Section 2(b) of Schedule 1 of the *Municipal Systems Act*.
902 Section 36(1) of the *Municipal Structures Act*.
903 Section 36(2) of the *Municipal Structures Act*.
904 See Schedule 3 of the *Municipal Structures Act*.
905 Mawere and Matoane 2022 *Journal of Public Administration* 274.

rules and orders of the council.[906] Furthermore, in terms of section 30(4) of the *Municipal Structures Act*, where there are an equal number of votes on an issue, the Speaker, as the chairperson, must cast an extra vote to break the tie. This effectively means that the Speaker of a council may, in several instances, decide on the fate of a council where councillors fail to exercise their legislative powers. This makes the Speaker of a council an indispensable councillor.

Another important structure in local government is traditional leadership. Although traditional leadership is not listed in section 1 of the *Municipal Systems Act* as part of the definition of a municipality, traditional leadership is an important structure in traditionally-led communities in terms of the *Constitution*, the *Municipal Structures Act* and the *Traditional Leadership and Governance Framework Amendment Act* 41 of 2003 as discussed below.

3.5.1.3 Traditional leadership

Traditional leadership is not unique to South Africa. Before colonisation, the African continent was ruled by traditional leaders.[907] In South Africa, autonomous kings and chiefs governed most communities.[908] The role of traditional leadership in South Africa has undergone fundamental changes since colonisation.[909] For instance, colonisation introduced a system of headmen, where the position of individual chiefs and kings was strengthened *vis-à-vis* that of commoners.[910] These headmen relied heavily on their alliance with the colonial government for them to retain a level of authority over their respective communities.[911]

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906 Section 37(f) of the *Municipal Structures Act*.

907 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 35.

908 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 35 and Fuo *Local Government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 276.

909 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 35 and Fuo *Local Government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 276.

910 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 41.

911 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 41.

During the apartheid period, traditional leaders exercised significant administrative powers. When the NP came into power in 1948, a series of laws were enacted, especially the *Bantu Authorities Act* of 1951 and the *Promotion of Bantu Self-Authorities Act* of 1959. These Acts were used to create a separate development system in South Africa where traditional leaders acted as tribal, regional, and territorial authorities.[912] According to Amtaika, the system of separate development was perversely used to allow for partial and, subsequently, complete independence of the homelands from the rest of South Africa.[913] To achieve this, the apartheid government needed traditional leaders to act as administrators of these homelands.[914]

Democracy in South Africa came with a formal constitutional recognition and protection of traditional leadership as an institution at a local government level. Section 211(1) of the *Constitution* recognises the institution, status, and role of traditional leadership in South Africa, subject to the *Constitution.* According to the *Constitution*, a traditional authority adhering to a customary law system may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.[915] The *Constitution* further provides that national legislation may provide a role for traditional leadership as an institution at the local government level on matters affecting local communities.[916]

Apart from these provisions, the *Constitution* does not elaborate on the role of traditional leadership in South Africa. The *Municipal Structures Act* aids the *Constitution*. In terms of this Act, traditional authorities that observe a system of customary law in the area of a municipality may participate through their leaders in the council proceedings, and those leaders must be allowed to attend and participate in any council meeting.[917] Furthermore, before a municipal council

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912 Dlungwana *The role of traditional leaders in rural local government: A case of Vulindlela and Impendle Traditional Areas* 41.
913 Amtaika *The role of tribal authorities in a democratic KwaZulu-Natal* 12.
914 Amtaika *The role of tribal authorities in a democratic KwaZulu-Natal* 12.
915 Section 211(2) of the *Constitution*.
916 Section 211(3) of the *Constitution*.
917 Section 81(1) of the *Municipal Structures Act*.

decides on any matter directly affecting the area of traditional authority, the council must give the traditional leader an opportunity to express a view on the matter.[918] In essence, the *Constitution* or applicable legislation does not recognise traditional leaders as municipal council members. Furthermore, traditional leaders do not have voting rights in municipal councils. Both the *Constitution* and the *Municipal Structures Act* merely reduce the role of traditional leaders to advisors to municipal councils. The *Municipal Systems Act,* however, acknowledges that traditional leaders can serve as a mechanism for service delivery in the local government sphere.[919]

The *Traditional Leadership and Governance Framework Amendment Act* was enacted to give effect to Chapter 12 of the *Constitution*. This Act allocates roles and functions provided for in terms of customary law and customs of traditional communities concerned and in applicable legislation.[920] The *Municipal Structures Act,* for instance, states that the MEC for local government in a province may prescribe a role for traditional leaders in the affairs of a municipality after consulting the provincial house of traditional leaders.[921] Therefore, through legislative and other measures, traditional councils or leaders may be given a role in land administration, community welfare, the environment, disaster management, and the management of natural resources, amongst other things.[922] When a role in this respect is allocated to a traditional leader or council, an organ of state assigning this function must ensure that the allocation is consistent with the *Constitution* and applicable legislation.[923] Furthermore, the organ of the state must strive to ensure that the allocation of the function is accompanied by resources and that appropriate measures for accounting for such resources are put in place, amongst other things.[924]

The legislation on traditional authorities discussed above does not prevent councillors from creating good working relationships with the traditional leaders in

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[918] Section 81(3) of the *Municipal Structures Act*.
[919] Section 76 of the *Municipal Systems Act*.
[920] Section 19(1) of the *Traditional Leadership and Governance Framework Amendment Act*.
[921] Section 81(4)(b) of the *Municipal Structures Act*.
[922] Section 20(1) of the *Traditional Leadership and Governance Framework Amendment Act*.
[923] Section 20(2) of the *Traditional Leadership and Governance Framework Amendment Act*.
[924] Section 20(2) of the *Traditional Leadership and Governance Framework Amendment Act*.

their communities in an effort to realise environmental objectives. This relationship may include councillors seeking advice from traditional leaders, using traditional authorities to connect the municipality with local communities and entering into environmental services agreements with traditional authorities.

3.5.1.4 The Community

Communities are an integral part of a municipality. In terms of the *Constitution*, local government must provide a democratic and accountable government for local communities and encourage the involvement of local communities and community organisations in matters of local government.[925] The White Paper also recognises that local government must work with local communities to find sustainable ways to meet their needs and improve the quality of their lives.[926] The White Paper further mandates active participation by local communities in four senses: (a) as voters to maximise the accountability of politicians, (b) as citizens who express their views through organisations, (c) as consumers of municipal services who expect value for money, and (d) as organised partners in the mobilisation of resources for their communities.[927]

A municipality's administration and political structures must develop governance arrangements that support a formal representative government with a system of participatory governance.[928] Loosely put, a municipality must develop a culture of municipal governance that supplements formal representative governance by incorporating a system of participatory governance.[929] Such a culture must encourage and create conditions for local communities to participate in the matters of the municipality, including in the preparation, implementation and reviewing of the IDP, its performance management system, and the budget, amongst others.[930]

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925 Section 151(1)(a) and (e) of the *Constitution*.
926 Section B, para 1 of the White Paper.
927 Section B, para 3.3 of the White Paper.
928 SALGA *Generic Councillors Induction Handbook 2021 and Beyond* 132 (Councillor Handbook).
929 Section 16(1) of the *Municipal Systems Act*.
930 Section 16(1)(a) of the *Municipal Systems Act*.

It is the responsibility of the administration and municipal council to contribute to building the capacity of the local community to enable them to participate in the affairs of the municipality.[931] Similarly, councillors and staff must continuously capacitate themselves to foster community participation.[932] The onus rests on the municipality to implement mechanisms and processes to enable public participation.[933] The council must decide on the processes it wants to establish for this responsibility.[934] Thereafter, it becomes the responsibility of the MM to implement the decision and set up the mechanisms desired by the council.[935]

One of the mechanisms recognised by legislation for public participation and as a local governance structure is municipal ward committees.[936] Ward committees are an object to enhance participatory democracy in local government.[937] They function as an advisory body, a representative structure and an impartial body that must perform its function without fear, favour and prejudice.[938] Ward committees must convene regularly and host meetings. Such meetings must allow ward committee members and the ward councillor to raise concerns and inputs of the community regarding service delivery and to report back to the community on issues that affect respective wards.[939] Ward committees thus become the vehicle through which matters concerning local communities can be raised and recommendations on solving such matters made. This means that apart from raising issues, ward committees are encouraged to recommend matters affecting their wards to the ward councillor or through the ward councillor to the municipal council.[940]

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931 Section 16(1)(b)(i) of the *Municipal Systems Act*.
932 Section 16(1)(b)(ii) of the *Municipal Systems Act*.
933 Section 17(2) of the *Municipal Systems Act*.
934 Section 19(3) of the *Municipal Structures Act*.
935 Section 55(1)(n) of the *Municipal Systems Act*.
936 Section 17 of the *Municipal Systems Act* states that citizen participation in matters of local government must that place through the ward committees provided for in the *Municipal Structures Act*.
937 SALGA *Guideline Document for the Roles and Responsibilities of Councillors, Political Structures and Officials* 42.
938 SALGA *Guideline Document for the Roles and Responsibilities of Councillors, Political Structures and Officials* 42.
939 Section 74(a)(i) of the *Municipal Structures Act*.
940 Section 74(a)(ii) of the *Municipal Structures Act*.

3.5.2 The current local political landscape

Although the structures of municipalities are succinctly outlined above, the politics within and among political parties often find a way to seep into these structures. A prime example of this was when Mmusi Maimane, then president of the DA, announced that he would be taking political control of the drought-induced water shortage crisis in the City of Cape Town, colloquially known as Day-Zero, on the 24th of January 2018.[941] The DA is the party in political control of the municipal council of the City of Cape Town and the Western Cape Province. The DA-affiliated deputy mayor and the Premier of the Western Cape, who was elected by provincially, flagged the announcement as an undue influence by the president of a political party into matters of local government.[942] This announcement by Mmusi Maimane led legal and political commentators to question if it is permissible for the president of a national structure of a governing party to interfere in the functioning of a municipal council.[943] Arguably, the actions of the federal leader of the DA violated the *Constitution* which envisages that the participation of a governing political party should occur through its councillors duly elected into political office.

Based on the above, this section of the study will look at how the politics within and around political parties intersect with the day-to-day functioning of municipalities. The attempt is to illustrate how party politics could enable or make it difficult for councillors to perform their functions and serve their purpose, thus affecting the environmental governance performance of municipalities. The section will show how internal fights and squabbles within political parties and in different spheres of government directly affect the functioning of a municipal council and its ability to respond to environmental challenges.

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941 Pieterse 2020 *SAJHR* 131.

942 Pieterse 2020 *SAJHR* 131.

943 GroundsUp Editors (2018) https://groundsup.org.za/article/cape-town-leadership-cacophy-chaos/; De Vos (2018) https://www.dailymaverick.co.za/opinionista/2018-01-31-party-and-state-conflating-the-two-undermines-democracy/; Pieterse (2018) https://theconversation.com/cape-town-water-crisis-crossing-state-and-party-lines-isnt-the-answer-90861. Also see Shepherd 2019 *Water* 2 and Nhamo and Agyepong 2019 *Journal of Disaster Risk Studies* 1-9.

3.5.2.1 National and provincial governments' undue influence in municipal matters

It seems to have become the norm for national and provincial structures of a party to interfere in matters of municipal councils, sometimes by trying to pressure national and provincial structures of government to place certain municipalities under administration in terms of section 139 of the *Constitution*.[944] It is even more unpleasant when provincial or national government apply 'double standards' in enforcing section 139 intervention on a municipality led by a different political party.[945] The section effectively allows the provincial government to interfere in local government.[946]

On the one hand, the *Constitution* provides powers to municipal councils to allow them to effectively govern their jurisdictions. However, section 139 of the *Constitution* is used as a measure to prevent badly performing municipal councils from continuing to govern in municipalities.[947] When a municipality cannot or does not fulfil an executive obligation in terms of the *Constitution* or legislation, the relevant provincial executive may intervene by taking appropriate steps to ensure fulfilment of that obligation, including (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps

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944 See Parliamentary Monitoring Group (PMG) 2019 pmg.org.za/committee-meeting/29249/; Makoti and Odeku 2018 *African Journal of Public Affairs* 72; Mathenjwa 2014 *Law Democracy and Development* 178-201. Also see *Premier of the Gauteng Province v Democratic Alliance* 2021 12 BCLR 1406 (CC) para 2, where the DA argued that the dissolution of the ANC-led provincial government was politically motivated. Also see *MEC for Local Government, Housing and Traditional Affairs v Utrecht Municipal Council* 2007 3 SA 436 (N), where the MEC in KwaZulu-Natal suspended three members of a hung council from an opposition Party, effectively placing members of his Party as the majority members of the municipal council.

945 This was the case in UMvoti Local Municipality (an IFP-led municipality) and UMgungundlovu District Municipality (an ANC-led Municipality), where the MEC of (ANC) instituted a legal claim to dismiss an MM from the former municipality for his failure to meet the employment requirements but ignored claims that the MM of the later ANC-led municipality also did not meet the requirements for employment. See *MEC KwaZulu-Natal for Local Government, Housing and Traditional Affairs v Yengwa* 2010 5 SA 494 (SCA) and Mathenjwa 2014 *Law Democracy and Development* 189. Also see generally *Premier, Gauteng v Democratic Alliance; All Tshwane Councillors Who are Members of the Economic Freedom Fighters v Democratic Alliance; African National Congress v Democratic Alliance* 2022 1 SA 16 CC and *Unemployed Peoples Movement v Premier, Province of Eastern Cape* 2020 3 SA 562 (ECG).

946 Also see section 106 of the *Municipal Systems Act*, which allows the provincial MEC to launch an investigation into the affairs of a municipality where they reasonably believe that there is ongoing fraud, maladministration, corruption, or malpractice in the municipality.

947 Bronstein and Glaser 2023 *The South African Law Journal* 96.

required to meet its obligations; (b) assuming responsibility for the relevant obligation in that municipality; or (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected.[948] De Visser argues that while the power of intervention goes to the core of local government autonomy, it is necessary for effective oversight by other spheres of government.[949] The actions of intervention by the provincial executive are to ensure that interruption of the delivery of services is kept to a minimum or even avoided, thus maintaining the minimum standards of service rendering.[950] An unjust enforcement of section 139 of the *Constitution* not only blurs political and state lines, but it threatens constitutional legality and the rule of law.[951] In the context of this study, unjust enforcement refers to when one governing party (in the provincial government) prematurely uses section 139 to place a municipality governed by an opposition party under administration. Moreover, a biased and unjust use of section 139 may threaten the stability of a municipality.[952] It unjustly restricts the powers and functions of a democratically elected structure of a municipality, thus hindering the ability of the municipality to its cardinal function to local communities, namely, to sustainably provide municipal services.[953]

3.5.2.2 In-council power struggles

When local political turmoil is not caused by national and provincial spheres of government or national and provincial structures in political parties, it is caused by

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948 Section 139 (1) of the *Constitution*.

949 De Visser *Developmental Local Government: A Case Study of South Africa* 185; Mathenjwa 2014 *Law, Democracy and Development* 183.

950 Madumo *An evaluation of the functioning of metropolitan municipal councils in Gauteng, South Africa* 163.

951 The rule of law is an evolving constitutional principle enforceable by courts and closely related to the principle of legality, which, at a minimum, requires the legislative and executive in every sphere to exercise power and perform functions if authorised to do so by law and only in a rational manner. De Vos and Freedman 'South African Constitutional Law in Context' 788. Also see Kampepe J's discussion on the rule of law for the majority judgement in *Secretary of the Judicial Commission of Inquiry into Allegation of State Capture, Corruption and Fraud in the Public Sector Including Organ of State v Jacob Gedleyihlekisa Zuma* 2021 9 BCLR 992 (CC) para 97.

952 Parliamentary Monitoring Group (PMG) 2019 pmg.org.za/committee-meeting/29249/.

953 See generally Makoti and Odeku 2018 *African Journal of Public Affairs* 68-85.

members of the municipal councils themselves.[954] The structures of a municipal council may determine the extent to which attention is given (or not given) to environmental governance.[955] This may bring internal political turmoil. For instance, it has become common practice that if an executive mayor has an interest in environmental matters, that person is likely to prioritise environmental governance issues during his or her tenure.[956] Although the *Constitution* provides for the position of the Speaker of a council, the executive committee, and even sub-committees, it does not delineate the powers, functions, and limits of an executive mayor.[957] Furthermore, prospective incumbents are not directly elected by the electorate but have to be elected by the full council for the service period of such council.[958] This means that the more seats a political party holds in a council, the more likely the chance that a member affiliated with their Party will be elected as the executive mayor of that council. The powers and functions of an executive mayor are extremely wide and loosely worded. For instance, in terms of the *Municipal Structures Act*, an executive mayor must identify the municipality's needs.[959] The executive mayor must also review and evaluate those needs in order of priority.[960] This further means that where an executive mayor does not deem environmental issues of a municipality as a priority, it is likely that such issues will not be attended to during the council's tenure. Therefore the abandonement of political issues in a five year term may result in everlasting environmental challenges within a municiplaity. In some instances, mayors have also gone against the mandate of their political parties, which has not often yielded good results. A prime example is the constructive dismissal of Herman Mashaba as Mayor of the City of Johannesburg

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954 See *Premier of the Gauteng Province v Democratic Alliance* 2021 12 BCLR 1406 (CC) paras 5-23, where the resultant dissolution of the council in Tshwane by the Premier followed ongoing turmoil between members of council from the DA, EFF, and the ANC.

955 See sections 8-10 of the *Municipal Structures Act* on the types of municipalities and their council compositions.

956 See for instance Pasquini and Shearing 2014 *Journal of Environment and Development* 281.

957 The powers and functions of the executive mayor are set out in section 56 of the *Municipal Structures Act* and correspond with those of the executive committee contained in section 44 of the same Act.

958 Section 48 of the *Municipal Structures Act*.

959 Section 56(2)(a) of the *Municipal Structures Act*.

960 Section 56(2)(b) of the *Municipal Structures Act*.

in October 2021.[961] When resigning as a member of the DA and Mayor, Mashaba stated that his own Party made it difficult for him to perform his duties in the council.[962]

3.5.2.3 The politics of coalition governments

Municipal infighting is fast becoming a norm for many South African municipalities, and although debates and fall-offs might be a regular occurrence in municipal council meetings, these might look different in the case of a coalition or hung council.[963] Coalition governments in local government in South Africa are formed when different political parties choose to cooperate in the administration and regulation of a municipality, where there is no outright winner in local elections.[964] Where no single political party gains a clear majority, it is standard practice for competing parties to negotiate to work together.[965] Coalition or hung councils have made debates or squabbles less about how to better govern their municipalities and more about pursuing political parties to maintain dominance and retain or regain power over other political parties represented in municipal councils.[966]

Like all municipal governments in the country, coalition governments exercise executive and legislative authority over their municipalities.[967] This means that it requires close cooperation between coalition partners to ensure that the council's responsibilities are carried out effectively. However, the history of coalition governments in South Africa's local government shows that such governments are unstable, and almost all get terminated before the end of a council term. A prime example is the instability in the City of Johannesburg municipal council in 2022. In this case, Mpho Phalatse was ousted as the executive mayor of the City of

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961 Beaumont *The Accidental Mayor* 1.
962 Beaumont *The Accidental Mayor* 1.
963 Nelson, Gabris and Davis 2011 *State of Local Government Review* 4; Bronstein and Glaser 2023 *The South African Law Journal* 117.
964 Oyugi 2006 *Journal of Contemporary African Studies* 53; Kadima 2014 *Journal of African Elections* 2. Also see generally De Vos 'The constitutional-legal dimensions of coalition politics and government in South Africa' 235-266.
965 Britannica year unknown Britannica.com/topic/ideology-society/The-context-of-international-relations.
966 Booysen 2022 https://theconversation.com/multiparty-democracy-is-in-trouble-in-south-africa-collapsing-coalitions-are-a-sure-sign-192966.
967 Kadima 2014 *Journal of African Elections* 2.

Johannesburg in an extraordinary sitting of the council.[968] The events that preceded this seating included coalition partners betraying each other. The Speaker of the council stated in this regard that the downfall of the DA-led coalition was due to "a concerted campaign of subterfuge, which ultimately backfired".[969] Phalatse was later reinstated through a court order. The Johannesburg High Court declared the extraordinary sitting and motion of no confidence against the executive mayor unlawful, unconstitutional, and invalid.[970] Another example of instability in a coalition government is the City of Tshwane Metropolitan Municipality (Tshwane). Until March 2023, Tshwane's municipal council had three attempts to elect a new mayor for the City following the resignation of Randall Williams of the DA, who was elected mayor shortly after the 2021 local government elections.[971] In May this year, the DA-led coalition government also lost control of Nelson Mandela Bay following a chaotic council sitting.[972]

3.5.2.4 Different political ideologies and interests

Different political ideologies and interests within a municipal council affect the daily operations of a municipal council, especially in so far as it relates to the development of municipal policies relating to environmental governance. As discussed in the previous section, this may be the case with coalition governments. Mawere and Matoane argue, for instance, that if political parties' policy agendas and governing principles are opposed, they could hamper service delivery.[973] Therefore, it is always

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968 *Mpho Phalatse v Speaker of the City of Johannesburg* 2022/26790 para 8.

969 *Mpho Phalatse v Speaker of the City of Johannesburg* 2022/26790 para 4.

970 *Mpho Phalatse v Speaker of the City of Johannesburg* 2022/26790 para 105. Mayor Mpho Phalatse has been ousted again as the Mayor of the City of Johannesburg following a motion of no confidence on the 26th of January 2023. See Eyewitness News (EWN) 2023 https://ewn.co.za/0001/01/01/mpho-phalatse-ousted-as-joburg-mayor-again; Daily Maverick (2023) https://www.dailymaverick.co.za/article/2023-01-26-shes-out-shes-back-in-shes-out-again-mpho-phalatse-removed-as-johannesburg-mayor/.

971 See for instance Ditabo 2022 https://bit.ly/3lNuMAf; Njlo 2023 https://www.dailymaverick.co.za/article/2023-02-13-plan-to-boot-tshwane-mayor-williams-had-been-in-pipeline-before-he-quit/; Goba 2023 https://ewn.co.za/2023/02/13/tshwane-mayor-randall-williams-resigns.

972 Daily Maverick 2023 https://www.dailymaverick.co.za/article/2023-05-28-da-led-coalition-government-loses-control-of-nelson-mandela-bay-council-in-chaotic-meeting/.

973 Mawere and Moatoane 2022 *Journal of Public Administration* 272.

necessary for coalition partners to understand each others' policy interests and ascertain if compromises may be reached.

Following the 2021 local government election, the South African Local Government Association (SALGA) drafted a Framework for Coalitions in Local Governments, which aimed to assist municipalities in preparing a joint policy agreement between coalition partners.[974] The agreement should ideally set out the objectives that coalition partners want to achieve in the municipality over the five-year council term.[975] It may very well detail the response of the partners in instances where challenges arise, including water scarcity, floods, sanitation, refuse removal, or the lack thereof, and municipal health.[976] According to De Visser, a policy programme can be a starting point for a coalition government's IDP and budget.[977] Therefore, the absence of a policy programme could mean that a municipality may experience challenges in adopting appropriate governing instruments when needed. This study could not locate any such coalition policy agreement, which could mean two things. Firstly, no such agreement exists between the current local coalition governments in South Africa. Secondly, where there are such agreements, they are not meant for public access.[978]

The multi-party councils functioning through coalition governments are not always a bad thing. In fact, multi-party councils can be an effective way to strengthen political oversight. For example, a councillor might be scared to question another councillor of the same party due to political party allegiance. In a multi-party coalition council, however, it is easy for councillors to question the activities of other councillors if they do not belong to the same political party.[979] Multi-party coalition councils also mean diverse views on how to govern the environment. In cases where

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974 SALGA *A Framework for Coalitions in Local Government* 19.
975 SALGA *A Framework for Coalitions in Local Government* 19.
976 SALGA *A Framework for Coalitions in Local Government* 19.
977 SALGA *A Framework for Coalitions in Local Government* 19-20.
978 At the time of writing this study, the Department of Cooperative Governance and Traditional Affairs (COGTA) announced that it was in the process of developing laws around coalition government in local government. See Business Tech 2023 https://businesstech.co.za/news/government/695937/big-changes-coming-for-coalition-governments-in-south-africa/.
979 See para 5.4.4 for more details on political oversight.

a municipality has been governed by one political party for over ten years, the strategies are not likely to change. However, a change in political leadership may spark the adoption of new strategies, programmes, and plans.

3.5.2.5 Inference of councillors in administrative matters

Political interference[980] in the administration of a municipality is also a critical issue affecting how municipal officials carry out their daily functions. The provisions of the *Municipal Systems Act,* as well as the *Municipal Structures Act* make it clear that the political and administrative structures of a municipality each have different powers, duties and functions and that one should not unduly interfere in the day-to-day running of the other.[981] However, inappropriate political interference in administrative matters and strained relations between key political and administrative officials are everyday occurrences in municipalities.[982] While legislative and other measures might be put in place to remedy this problem, De Visser correctly puts it that behavioural change by political office bearers is more important than legislative intervention.[983] This means that the administrative and political leadership and structure surrounding a municipality should be acutely aware of the consequences that inappropriate political leadership and intervention have on the functioning of a municipality and, therefore, on service delivery.[984]

3.5.2.6 Lack of responsiveness to matters of environmental governance

The first step in understanding the role of local government with regard to environmental governance is for municipal councillors to embrace section 24 of the *Constitution* and its features as imposing binding legal duties on all municipal structures. The role of municipal councils to realise the constitutional environmental right was recently reiterated in *Trustees for the time being of Groundwork Trust v*

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980 Interference in the context of this study includes the unsolicited and inappropriate involvement of councillors in the work of municipal officials and *vice versa*.

981 Schedule 5, section 11 of the *Municipal Structures Act* and Schedule 1, section 11 of the *Municipal Systems Act*.

982 Mngomezulu 2020 *Journal of Economics and Behavioural Studies* 39-40; De Visser 2010 *Commonwealth Journal of Local Governance* 86.

983 De Visser 2010 *Commonwealth Journal of Local Governance* 101.

984 De Visser 2010 *Commonwealth Journal of Local Governance* 101.

Minister of Environmental Affairs.[985] In this case, the applicant sought declaratory and mandatory relief concerning the extent of government's obligation regarding air pollution in the Highveld Priority Areas.[986] The applicant's cause of action was that the state had violated section 24(a) of the *Constitution* in so far as the provision affords everyone the right to an environment that is not harmful to their health and well-being.[987] The applicant argued that not all air pollution violates the right to a healthy environment; however, if air quality does not meet the National Ambient Air Quality Standard, it is *prima facie* a violation of the right.[988] The area in question covers some of the most heavily polluted towns in the country, including Middelburg, eMalahleni, Secunda, Standerton, Benoni, and Boksburg. The area has twelve of Eskom's[989] coal-fired power stations and Sasol's[990] coal-to-liquid fuels refinery. Therefore, due to its concentration of industrial pollution sources, residents experience poor and dangerous air quality.[991]

The Court held that the poor air quality in the Highveld Priority Area is in breach of section 24(a) of the *Constitution* and that this right, like the right to basic education, is immediately realisable.[992]

The immediate realisation of section 24(a) regarding the air quality in Highveld rests with local government. Collis J explained in this regard that the realisable nature of section 24(a) of the *Constitution* is confirmed in section 4 of the *Municipal Systems*

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985 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* (39724/2019) 2022 ZAGPPHC 208.

986 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 1. In terms of s 18(1) of the *National Environmental Management Act: Air Quality Act* 39 of 2004, the Minister or MEC may, by notice in the Gazette, declare an area as a priority area if the Minister or MEC reasonably believes that ambient air quality standards are being, or may be, exceeded in the area, or (a) any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and (b) the area requires specific air quality management action to rectify the situation.

987 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 8.

988 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 10.

989 Eskom is a state-owned company and South Africa's primary electricity supplier, generating approximately 90% of the electricity used in South Africa and approximately 30% of the electricity generated on the African continent. See National Government of South Africa year unknown https://bit.ly/3IHn6YY.

990 A global chemical and energy company listed on the Johannesburg Stock Exchange (JSE) and the New York stock. See Sasol 2022 https://www.sasol.com/who-we-are/about-us.

991 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 17.

992 *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 163.

Act where local government exercises legislative and executive authority to promote a safe and healthy environment and the duty to promote a safe and healthy environment.[993]

The pronouncement by the Court that section 24(a) of the *Constitution* is immediately realisable may very well lead to academic and judicial scrutiny as some scholars hold the view that the constitutional environmental right is not a socio-economic right.[994] Kotzé has pointed out that section 24 reflects characteristics of both a classical fundamental right and a socio-economic right.[995] According to Werner and De Waal, this Judgement should be lauded because it clarifies the state's duty regarding section 24(a) and puts pressure on government to combat poor air quality.[996]

In another example, the Court in *Kgetlengrivier Concerned Citizens v Kgetlengrevier Local Municipality* was also strict with the municipality after finding that there was chronic ignorance of the environmental hazards faced by the local community in that area.[997] This case concerned the unlawful act of a municipal manager to adequately respond to the outcry of community members in Kgetlengrevier Local Municipality.[998] In this case, the municipal council's responsibility is found in its failure to oversee the work of the municipal manager as an employee of the council. In December 2020, an urgent application was made by the residents of Kgetlengrivier against their Municipality and its MM regarding its failure to provide adequate water and prevent the Municipality from polluting two rivers with untreated sewage.[999] The Court found that the Municipality's actions constituted a violation of the community's constitutional environmental right.[1000] As such, it

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993 See section 4(2)(i) and (ii) of the *Municipal Systems Act*. Also see *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 117.

994 See generally Trilsch 2009 *Verfassung und Recht in Übersee* 552-575; Fuo 2013 *Obiter* 91; Feris 2008 *SAJHR* 29-49.

995 Kotzé 2004 *PELJ* 60.

996 Werner and De Waal 2022 https://bit.ly/3RU9JYc.

997 *Kgetlengrivier Concerned Residents v Kgetlengrivier Local Municipality* 2023 2 All SA 452 (NWM) (*Kgetlengrivier Concerned Residents*).

998 *Kgetlengrivier Concerned Residents*.

999 *Kgetlengrivier Concerned Residents* para 29.

1000 *Kgetlengrivier Concerned Residents* para 60.

ordered that the MM be imprisoned for 90 days should the sewage pollution persist without being remedied.[1001] Another condition for imprisonment was that sufficient, potable water should be provided within ten weeks.[1002] The provisions stated by the Court in finding in favour of the local community, including sections 24, 27 and 151 of the *Constitution,* apply to the municipal council of Kgetlengrevier Local Municipality, which cannot distance itself from the consequences of the Court's judgement based on the pronouncement by the Court that the municipal manager should face imprisonment.

These cases (from a list of relevant other judgments) illustrate how municipal political role players' lack of an immediate and meaningful response to matters of environmental governance can lead to the violation of section 24 of the *Constitution*.

3.5.2.7 Lack of political will and environmental champions

In the context of this study, political will is defined as the extent of commitment or support exhibited by key decision-makers in matters affecting the environment. The *Unemployed Peoples Movement v Premier, Province of Eastern Cape* (*Makana case*)[1003] illustrates how the Municipality's failure to adhere to principles of good governance and lack of political will led to a continuous breach of its obligation to provide basic environmental services to the community.[1004] The Municipality faced various problems regarding service delivery, administration, and finance.[1005] These challenges, in summary, include failure to provide basic services, particularly water and sanitation; lack of sound financial management and credit control; allegations of nepotism and corruption; lack of governance and political oversight; breakdown in communication between the municipality and key stakeholders (including the community); and no attempt to strengthen and improve the functioning of the administration.[1006] All of these made the Municipality unable to utilise its resources in the community's best interest.[1007] Many of the challenges experienced by the

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1001 *Kgetlengrivier Concerned Residents* para 16.
1002 *Kgetlengrivier Concerned Residents* para 16.
1003 2020 3 SA 562 ECG.
1004 *Makana case* para 5.
1005 *Makana case* para 9.
1006 *Makana case* para 9.
1007 Wright, Dube and Du Plessis 2022 *Verfassung und Recht in Übersee* 109.

Municipality recurred over long periods.[1008] The failures of Makana Municipality must be juxtaposed against the Municipality's success in 2005 when it received the National Vuna Award for its excellence in service delivery.[1009] At that time, the Municipality had over 50 million Rand in reserves, operating with 350 employees.[1010] By the end of 2014, the Municipality was bankrupt and in debt of about R150 Million.[1011] Its workforce had ballooned to 1500 employees.[1012]

3.5.2.8 Unlawful appointment of key administrative officials

As stated before, MMs and senior administrative officials are key role players in municipalities because their mandate is to administer the policies, plans, and laws determined by municipal councils, among other things.[1013] For this reason, municipal councils must appoint competent senior managers. The current dilemma in local government in South Africa is that some municipalities are being flagged for the unlawful appointment of officials in key municipal positions, including MMs and municipal financial officers (MFOs). In February 2019, the KwaZulu-Natal High Court declared null and void the decisions to appoint Jili and Sibiya by Mthonaneni and Nkandla local municipalities, respectively.[1014] In other cases, the appointees failed to meet the requirements for appointment as an MM in terms of section 54A of the *Municipal Systems* Act.[1015] In December of the same year, the decision of the High Court was upheld by the Constitutional Court.[1016] In October 2021, the North West High Court set aside the decision of the Mafikeng Local Municipality to appoint an MM who was hired despite being less qualified than their competitors.[1017]

1008 *Makana case* para 9.
1009 *Makana case* para 7.
1010 *Makana case* para 7.
1011 *Makana case* para 7.
1012 *Makana case* para 7.
1013 See para 3.5.1.1 of the study.
1014 *MEC for the Department of Co-operative Governance and Traditional Affairs v Nkandla Local Municipality* 5369/18P, 5370/18P 2019 ZAKZPHC 4.
1015 *MEC for the Department of Co-operative Governance and Traditional Affairs v Nkandla Local Municipality* 5369/18P, 5370/18P 2019 ZAKZPHC 4.
1016 *Member of the Executive Council for Cooperative Governance and Traditional Affairs, KwaZulu-Natal v Nkandla Local Municipality* 2022 8 BCLR 959 CC.
1017 Koko 2021 https://mg.co.za/news/2021-10-26-appointment-of-incompetent-mahikeng-manager-unlawful-court-finds/.

3.5.2.9 Other political issues

It follows from the above that the current local political landscape is riddled with conflict between key players in local government, the lack of meaningful responsiveness from councils, and corruption.[1018] However, local government is also confronted with other issues that continuously contribute to and shape the current local government landscape. These issues cannot be neatly categorised in the above-discussed sections. According to the South African Local Government Organisation (SALGA), South African communities are infested with challenges, including high levels of poverty, gender-based violence, political violence, inequality, fraud, corruption, high unemployment, and economic depression, amongst other things.[1019] SALGA adds that the state of municipalities is diminished, as evidenced by high rates of community protests, poor audit outcomes, weak Local Economic Development (LED) initiatives, and poor financial management, amongst other things.[1020] The Auditor General (AG) of South Africa's findings contained in the *Consolidated General Reports on Local Government Audit Outcomes* (2022) in the past years[1021] are a reflection that South African municipalities grapple with poor service delivery across municipalities,[1022] a lapse of oversight,[1023] unreliable performance reporting, non-compliance with legislation,[1024] irregular expenditure,[1025] and fruitless and wasteful expenditure.[1026] Again, the Report

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[1018] See Wright *Leal Perspectives on the prevention and minimasation of corruption* 2-4.

[1019] SALGA Councillor Handbook 25.

[1020] SALGA Councillor Handbook 25.

[1021] See the latest published AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22*.

[1022] This is evident in the number of protests and citizens litigating against municipalities. See AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* highlights Mkhanyakude District Municipality as an example of how weak annual audit performances can be a reflection of protests in the municipality. IOL 2023 hhttps://bit.ly/3K1QRoh; The Witness 2022 https://www.citizen.co.za/witness/news/residents-in-Kzns-umkhanyakude-up-in-arms-over-ministerial-representative. Also see the Foreword from the AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 2.

[1023] AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 39.

[1024] Non-compliance with legislation remains the biggest contributor to irregular expenditures incurred. See AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 19.

[1025] Irregular expenditure has increased from R22,40 billion in 2020/21 to 30,34 billion in 2021/22. See AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 45.

[1026] Fruitless and wasteful expenditures amounted to R14.65 billion for 2021/22. See AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22 94*.

indicates that interference in operational processes by councillors remains a critical challenge.[1027]

The perceived lack of responsiveness on the part of councillors towards local communities, coupled with the alleged and proven cases of corruption and maladministration, also does not help to paint a positive picture of the current state of municipalities in South Africa.[1028] If anything, it all contributes to the perception that councillors are not accountable to their communities.[1029] While it is often reiterated that the necessary legislation to ensure accountability in local government is in place,[1030] the lack of effective performance management systems and enforcement of this legislation with consequence management is often cited as the problem.[1031]

As seen from the above discussion, courts deem municipal councils responsible for the current state of affairs in municipalities. Literature has also alluded to the expectations of political leadership in local government regarding the environment. It adds, for instance, that local councils should improve governmental commitment to environmental rights.[1032] Political leadership should exhibit the necessary will coupled with sufficient environmental education and awareness.[1033] In all instances, local politicians must bear environmental principles, such as those enshrined in NEMA, in mind in all environmentally relevant decisions.[1034]

1027 The MM office is vacant at 32 percent of municipalities in the country, significantly higher than the 17 percent reported in the 2020/21 report. See AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 35.

1028 AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 3 and Wright *Legal perspectives on the prevention and minimasation of corruption* 2-4.

1029 AG *Consolidated General Report on Local Government Audit Outcomes, MFMA 2021-22* 3.

1030 See Karsten *Local Government Accountability in South Africa: An Environmental Law Reading* 6; Section 195 of the *Constitution*; GN 338 in GG 18340 of 1 October 1997 (The Batho Pele 'People First' White Paper on Transforming Public Service Delivery) para 5.8.

1031 See Masenya, Mokoena and Makalela 2018 *Journal of Public Affairs* 108; Macanda *The Performance Management System in South Africa's Local Government: A Study of Policy Implementation* 16.

1032 Kotzé *Global Environmental Governance* 17-19 and Du Plessis 2015 *Comparative and International Law Journal of Southern Africa* 292.

1033 Du Plessis 2010 *Stell LR* 293.

1034 Du Plessis 2010 *Stell LR* 293.

3.6 Constitutional division of environmental authority in South Africa

An important aspect of the *Constitution* is the way it determines which sphere of government is responsible for which area of governance. The *Constitution* divides the country into nine provinces.[1035] It then provides that the legislative authority of a province vests in its legislature, which means that the provincial legislature has the powers to*, inter alia*, pass legislation for its province with regard to any matter within the functional areas listed in Schedules 4 and 5 of the *Constitution*, including matters assigned to province in terms of national legislation and any matter for which a provision of the *Constitution* envisages the enactment of provincial legislation.[1036] Schedule 4 sets out functional areas of concurrent national and provincial legislative competence, which means that the national and provincial legislatures may pass legislation pertaining to any of these functional areas.[1037] The Schedule is divided into two parts, meaning that while functional areas in part A are exclusively reserved for national and provincial government, the matters listed in part B are regarded as local government matters.[1038] The matters in part B of the *Constitution* are, therefore, matters of local government to the extent set out in section 156 of the *Constitution*. These matters include air pollution, municipal planning, municipal health services, stormwater management systems in built-up areas, water and sanitation services limited to portable water supply systems and domestic wastewater and sewage disposal systems. Schedule 5 sets out functional areas of exclusive provincial legislative competence. The exclusive matter of provincial competence concerning the environment includes provincial planning, cultural matters, recreation and amenities. Schedule 5B sets out the areas of competence for local government to the extent set out in Section 156 of the *Constitution*. The functional areas include beaches and amusement facilities,

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[1035] Section 104(1) of the *Constitution*.
[1036] Section 104(1) of the *Constitution*.
[1037] South African Cities Network (SACN) *Township Economic Development in Gauteng Province: National and Provincial Law Perspectives* 14.
[1038] SACN *Township Economic Development in Gauteng Province: National and Provincial Law Perspectives* 14.

cleansing, noise pollution, refusal removal, the control of public nuisance,dumps and solid waste disposal.

As far as local government matters are concerned, several constitutional provisions are relevant. Firstly, in terms of section 156(1)(a), read with Schedules 4B and 5B of the *Constitution*, municipalities have original constitutional powers and are directly responsible for the functions as found in the Schedules. In terms of section 151(1) of the *Constitution*, the local government sphere consists of municipalities, which must be established for the whole territory of the Republic. This makes municipalities a wall-to-wall feature of local government.[1039] A municipality maintains the right to govern, on its own initiative, the local government affairs of its community, in accordance with national and provincial legislation, as provided for in the *Constitution*.[1040] The right of a municipality to govern means that national and provincial governments may not compromise or impede the ability or the right of a municipality to exercise its powers or perform its functions.[1041] Although local government has constitutional powers and functions, these are not absolute. These powers seem limited to the functional areas of competence for local government found in Schedules 4A and 5B of the *Constitution*. Consequently, the limits imposed by the *Constitution* ensure that municipal councils do not legislate on matters that are outside their competence, those not assigned to them or those not incidentally aligned to their functions.[1042]

In terms of section 155(5) of the *Constitution*, the provincial government, through legislation, must determine the different types of municipalities to be established in the province. Each province must provide for the monitoring and support of local government in its province[1043] and promote the development of local government capacity to enable municipalities to perform their functions and manage their

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1039 Du Plessis and Nel 'An Introduction' 1-27.
1040 Section 151(3) of the *Constitution*.
1041 Section 151(4) of the *Constitution*.
1042 Freedman 2014 *PELJ* 567. See sections 156(1)(b) and (2) for assigned powers and 156(5) of the *Constitution* for incidental powers of local government. See *Ex Parte President of the Republic of South Africa: In re the Constitutionality of the Liquor Bill* 2000 1 BCLR 1 para 42.
1043 Section 155(6)(a) of the *Constitution*.

affairs.[1044] Furthermore, national and provincial governments have legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4B and 5B by regulating the exercise by municipalities of their executive authority referred to in section 156(1) of the *Constitution*.[1045]

Section 151(3) also makes local government's legislative and executive powers and functions subject to national and provincial legislation. The safeguard of this latter provision against national and provincial government usurping their powers is found in section 151(4) of the *Constitution* in so far as it dictates that national and provincial government must exercise their powers and perform their functions in a manner that does not compromise or impede on the municipality's ability to exercise its own powers. The implication of section 151(4) of the *Constitution* is that local government is a sphere of government and other spheres cannot remove it through legislation.[1046] Secondly, local government is a sphere that functions within a system of cooperative governance.[1047] As such, national and provincial governments must support local government and strengthen the capacity of municipalities to manage their affairs, exercise their powers and perform their functions. This means that neither national nor provincial government can take over the powers and functions of local government in respect of Schedules 4B and 5B of the *Constitution*. Any attempt to usurp these powers by national and provincial government would be invalid and unconstitutional.[1048] Thirdly, the national and provincial government only has "regulatory" powers with respect to local government.

In *City of Johannesburg v Gauteng Development Tribunal*,[1049] the Constitutional Court held that national and provincial governments cannot use their powers to give themselves, through legislation, powers to exercise municipal functions or the right

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1044 Section 155(6)(b) of the *Constitution*.
1045 Section 155(7) of the *Constitution*.
1046 Fuo 2017 *De Jure* 329.
1047 Section 154(1) of the *Constitution*; Makoti and Odeku 2021 *African Journal of Public Affairs* 44. Also see para 4.2.2 above.
1048 Fuo 2017 *De Jure* 329.
1049 2010 6 SA 182 (CC).

to administer municipal affairs.[1050] The Court further observed that the mandate of national and provincial government is ordinarily limited to regulating the exercise of executive municipal powers and municipalities' administration of municipal affairs.[1051] According to Fuo, this regulatory role implies that national and provincial governments can manage and control rather than directly authorising the powers and functions of local government.[1052] Regulation in terms of section 155(7) of the *Constitution* means creating norms and guidelines for exercising power or the performance of a function.[1053] Muir adds that regulation also entails monitoring, performing oversight and supporting municipalities.[1054] This means that regulating municipalities entails setting minimum and essential standards and monitoring procedures applicable to all municipalities across the country.[1055] Regulating in terms of section 155(7) does not give provincial and national governments the right to legislate, administer or implement the matters of local government listed in Schedules 4B and 5B of the *Constitution*.[1056]

Moreover, municipalities have executive authority in respect of and have a right to administer the matters listed in Schedules 4B and 5B and any matter assigned to local government by national and provincial legislation.[1057] This means that municipalities may make and administer by-laws for the effective administration of matters in which they have the right to govern. According to Freedman, the ability of municipal councils to pass laws on the matters listed in Schedules 4B and 5B of the *Constitution* is a significant source of power and a fundamental feature of the institutional integrity of local government.[1058] National and provincial governments may not compromise or impede on the ability or right of local government to

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1050 *City of Johannesburg v Gauteng Development Tribunal* 2010 6 SA 182 (CC) para 59.
1051 *City of Johannesburg v Gauteng Development Tribunal* 2010 6 SA 182 (CC) para 59.
1052 Fuo 2014 *De Jure* 330.
1053 *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council, Minister of Local Government, Environmental Affairs and Development Planning v City of Cape Town* 2014 4 SA 437 (CC) para 22.
1054 Muir 2017 *South African Public Law* 559.
1055 Fuo 2017 *De Jure* 321.
1056 Freedman 2014 *PELJ* 571.
1057 Section 156(1) of the *Constitution*.
1058 Freedman 2014 *PELJ* 26.9. Also see Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 2, who also lament the considerable powers of local government to legislate following the adoption of the *Constitution* in 1996.

exercise its powers or perform its functions.[1059] If anything, national and provincial governments must, through legislative and alternative measures, assist and enhance the capability of municipalities to manage their affairs, exercise their powers and perform their functions.[1060]

While the *Constitution* outlines the powers and functions of local government concerning the environment, the implementation of municipal measures, specifically by-laws to give effect to these powers and functions, has proven to be a challenge.[1061] According to Du Plessis and Van Der Berg, understanding how local government's constitutional environmental powers and functions work is difficult.[1062] This is because the environment is a function that is also found in the competencies of provincial and national government.[1063] In another article, Du Plessis and Fuo make the previous argument clearer by arguing that there is little detail in the *Constitution* on how each sphere of government should execute its executive authority.[1064] Secondly, there is no specific guideline except for the principles of cooperative governance on how the spheres of government should co-govern in terms of Chapter 3 of the *Constitution*.[1065] Another challenge is that the functions of local government are not delineated clearly in the *Constitution*.[1066] There are several cases where the courts have been confronted with interpreting constitutional powers and functions of the three spheres of government, especially in relation to their environmental powers and functions of local government.[1067] This was the case of, amongst others, *RA Le Sueur v eThekwini Municipality*.[1068] This case sparked scholarly debate on the executive powers (and not so much the legislative powers)

1059 Section 151(4) of the *Constitution*.
1060 Section 154(1) of the *Constitution*.
1061 Du Plessis and Van Der Berg 2014 *Stellenbosch Law Review* 580.
1062 Du Plessis and Van Der Berg 2014 *Stellenbosch Law Review* 580.
1063 Du Plessis and Van Der Berg 2014 *Stellenbosch Law Review* 580.
1064 Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 2.
1065 Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 3.
1066 Muir 2017 *South African Public Law* 568; Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 7. Also see De Visser 2010 *Stell LR* 90, who argues that the delineation of the constitutional powers and functions of local government will always be a point of contestation.
1067 See para 3.5 above.
1068 *RA Le Sueur v eThekwini Municipality* 2013 JDR 0178 (KZP) (*Le Sueur*). Earlier judgements include City of *Johannesburg v Gauteng Development Tribunal* 2010 6 SA 182 (CC) and *Maccsand (Pty) Ltd v City of Cape Town* 2021 7 BCLR 690 (CC).

of local government with respect to the environment and municipal planning, among other things.[1069] In this case, the Court had to consider the meaning of constitutional planning powers of municipalities concerning the conservation of natural resources.[1070] This case was prompted by the Municipality's use of its planning authority to protect sensitive environmental areas.[1071] The Municipality introduced the Durban Municipality Open Space System (D-Moss) as a type of land use zone in its town planning, amongst other measures.[1072] The applicant, Le Sueur, approached the High Court to challenge the Municipality's amendment of its town planning scheme on primarily constitutional grounds.[1073] The Respondent's argument was that the City acted beyond the scope of its constitutional powers in amending its town planning instrument, suggesting that "the environment" falls within the exclusive legislative competence of national and provincial government.[1074] From reading section 24 of the *Constitution* together with section 7(2), it becomes impossible for any municipality to divorce itself from the state's duties towards the environment.[1075] The respondent correctly argued that local government is 'the state'.[1076] In finding in favour of the Respondent, the Court stated that it was impossible, as a matter of accepted town planning practice, to separate environmental and conservation concerns from town planning principles.[1077] The Court gave an example of how IDPs integrate spatial

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1069 See, for instance, Humby 2014 *PELJ* 1660-1689; Bronstein 2015 *South African Law Journal* 639-661; Muir 2017 *South African Public Law* 556-579.

1070 *Le Sueur* para 1.

1071 *Le Sueur* para 1.

1072 D-Moss was initially a policy directive of the City's municipal council established to protect an interconnected system of open spaces of land and water. It comprised areas of high biodiversity value within the City. As a policy, it failed to have legislative authority needed or similar to that of a town planning scheme. In response to this, the municipal council of the City passed a resolution in 2010 to integrate D-Moss into its town planning scheme. The effect of this decision was that developers living in affected areas would need to obtain permission from the municipality before commencing with developments. See *Le Sueur* para 1.

1073 *Le Sueur* para 16.

1074 *Le Sueur* para 16. The study will not dwell on the Court's discussion of Schedules 4 and 5 of the *Constitution,* as these have been discussed at length above.

1075 *Le Sueur* para 16.

1076 See section 239(a) of the *Constitution* for a definition of the state.

1077 *Le Suere* para 22 and Humby 2014 *PELJ* 1668.

development frameworks (SDFs)[1078] in order to illustrate that municipal planning and the (localised) regulation of the environment are intrinsically linked. The Court also agreed with the Muncipality's interpretation of the state in finding that the "State" included local government in the form of the Municipality.[1079] Furthermore, section 156(5) of the *Constitution* provides that a municipality has a right to exercise any power concerning matters reasonably necessary for or incidental to, the effective performance of its functions. Therefore, It is apparent that local government is in the best position (being the closest sphere to communities) to know, understand and deal with issues involving the environment at a municipal level.[1080] Thus, the Court found that municipalities are authorised to legislate regarding environmental matters to protect the environment in the local government sphere.[1081]

The High Court's reasoning on the application of the BOR in the *Le Sueur* case is similar to the one made by the Constitutional Court in the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties,* where the Court dismissed the argument of the City of Johannesburg that it did not have a responsibility to provide temporary accommodation to persons who after eviction from private property would be left destitute because housing is a national and provincial competence in terms of Schedule 4A of the *Constitution*.[1082] This case does not necessarily deal with environmental matters. However, it highlights the responsibility of municipal councils to develop and adopt relevant policies and by-laws necessary for the effective administration of socio-economic rights in South Africa. The case also highlights that, in line with the cooperative governance

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1078 An SDF is a framework that seeks to guide, overall spatial distribution of current and desirable land uses within a municipality to give effect to the vision, goals, and objectives of the municipal IDP. A municipality's SDF must explicitly include a strategic assessment of the environmental pressures and opportunities within the municipal area, including spatial locations of environmental sensitivities, high potential agricultural land and coastal access strips, amongst other things. See sections 12 and 21 of the *Spatial Planning and Land Use Management Act* 16 of 2013 (SPLUMA) and section 25(1) of the *Municipal Systems Act*.

1079 *Le Sueur* para 19 and Humby 2014 *PELJ* 1665.

1080 *Le Sueur* para 20.

1081 *Le Sueur* para 40.

1082 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* 2012 2 BCLR 150 CC paras 53-55.

mandate of municipalities, councils cannot escape their constitutional duties to advance socio-economic rights in the *Constitution*.[1083] The Court reasoned that the City was responsible for providing temporary accommodation as bounded by the socio-economic right enshrined in section 26 of the *Constitution*.[1084]

The incidental powers of municipalities in terms of section 165(5) of the *Constitution* have also been a matter for judicial scrutiny in *Marius Nel v Hessequa Local Municipality*[1085] and subsequently in the *Featherbrook Homeowners Association NPC v Mogale City Local Municipality*.[1086] In the *Hessequa* case, the Hessequa and Swellendam Local Municipalities each adopted by-laws (between 2012-2013) relating to the management and use of rivers in their areas.[1087] These by-laws sought to regulate boating activities, requiring boat users to, amongst other things, be licensed by the municipalities.[1088] The consequence of licensing included users paying licenses and cancellation of license fees.[1089] Additionally, municipalities would fix tariffs, fees, and levies regarding the registration and licensing of boats.[1090] The by-laws also prohibit some behaviours relating to using boats, fishing and other activities, including operating boats recklessly while under the influence of alcohol or drugs, operating an overloaded boat or one leaking pollutants. [1091] The applicants (owners of holiday homes) approached the High Court to declare the adopted by-laws unconstitutional and in conflict with national legislation.[1092] Several grounds were raised by the applicant; however, for purposes of this study, the focus is on the ground that municipalities do not have powers to legislate on the use of rivers.[1093] The Court held that it is permissible for a municipality to make and

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1083 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* 2012 2 BCLR 150 CC paras 22-26.
1084 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* 2012 2 BCLR 150 CC para 26.
1085 *Marius Nel v Hessequa Local Municipality* 12576/2013 (*Marius Nel case*).
1086 *Featherbrook Homeowners Association NPC v Mogale City Local Municipality* 11292/2020 (Featherbrook case).
1087 *Marius Nel case* para 5.
1088 *Marius Nel case* para 6.
1089 *Marius Nel case* para 6.
1090 *Marius Nel case* para 6.
1091 *Maruis Nel case* para 5.
1092 National legislation included the NWA, the *Marine Living Resources Act* 19 of 1998 and the *Criminal Procedure Act* 51 of 1977. See *Marius Nel case* para 2-3 and 9.
1093 *Marius Nel case* para 2-3 and 9.

administer by-laws requiring that people who wish to use boats on rivers be licensed and to authorise officers to enforce such by-laws.[1094] The Court reasoned that section 156, read with Schedules 4B and 5B of the *Constitution,* gives municipalities powers to regulate the use and management of rivers within their areas.[1095] In this context, the relevant local government matter includes local amenities, municipal recreation, and public spaces.[1096] Although 'rivers' is not explicitly listed in Schedules 4B and 5B, public amenities, public places, and places of recreation include rivers, at least in the context of this case. Furthermore, in regulating the use of rivers in their jurisdiction, the Municipality was contributing to enforcing national, provincial and local environmental standards as a mandate of section 24 of the *Constitution*.[1097] This speaks to the ability of municipalities to co-govern the environment with the national and provincial governments.[1098] According to the Court, the navigable rivers which flow from within the jurisdictional areas of Hessequa and Swellendam Local Municipality provide several recreational opportunities which, if not appropriately regulated, might result in disorderly conduct in public spaces.[1099]

In the *Featherbrook* case, Mogale City Local Municipality (the Municipality) was short-sighted in their responsibility towards section 24 of the *Constitution*. In 2020, the Featherbrooke Homeowners Association (the applicant) applied for an interim structured supervisory interdict to the High Court seeking relief against several state entities, including Mogale City Local Municipality.[1100] The applicant's cause of action arose from the constant overflooding of the Muldersdrift Se-Loop River that traverses the jurisdiction of the Municipality and the City of Johannesburg.[1101] The Court had to consider whether municipalities have a duty to undertake measures to mitigate stormwater flooding against their climate change policies and whether

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1094 *Marius Nel case* para 13 and 16.
1095 *Marius Nel case* para 11.
1096 *Marius Nel case* para 11.
1097 Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 8.
1098 See generally Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 9 and Christmas and De Visser 2009 *Commonwealth Journal of Local Governance* 108.
1099 *Marius Nel case* para 11.
1100 *Featherbrooke case* para 1.
1101 *Featherbrooke case* para 1.

doing so is part of fulfilling their obligations in terms of the constitutional environmental right.[1102] The Court had to decide on this question based on the allegations made by the applicant that despite numerous pleas and engagements, the Municipality failed to provide any stormwater mitigation, adaptation and prevention as far as chronic stormwater flooding is concerned.[1103] According to the applicant, annual rains had increased the water flow and stormwater into the area since 2010, placing pressure on the river's embarkment and beds, thus corroding them and making them highly unstable and leading to floods.[1104] This flooding threatened security fences adjacent to the riverbed and exposed municipal infrastructure, including sewer pipes and electric cables.[1105] In deciding in favour of the applicant, the Court found that the Municipality failed to meet its duties in terms of section 24 of the *Constitution* in so far as the provision employs organs of state, including local government, to provide everyone with an environment that is not harmful to their health and well-being.[1106] The Court established that section 24 of the Constitution further imposed an obligation on municipalities to adopt legislative and other measures to prevent pollution and ecological degradation.[1107] The Court held that the Municipality's failure to remedy the situation experienced by the applicant breached section 24 of the *Constitution* and placed the occupants of the applicant in constant danger of flooding, electrocution and an environment contaminated with sewage.[1108] The Court relied on previous judgments to interpret the applicant's environmental right in terms of section 24 of the *Constitution*.[1109]

In *Propshaft Master (Pty) Ltd v Ekurhuleni Metropolitan Municipality*,[1110] the Court emphasised that section 24 of the *Constitution* creates a positive obligation for municipalities to protect communities against environmental disasters, such as river

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1102 *Featherbrooke case* para 8.
1103 *Featherbrooke case* para 7.
1104 *Featherbrooke case* para 1.
1105 *Featherbrooke case* para 1.
1106 *Featherbrooke case* para 34.
1107 *Featherbrooke case* para 34.
1108 *Featherbrooke case* para 35.
1109 *Featherbrooke case* paras 52-53.
1110 2017 4 All SA 901 GJ.

floods, which threaten bridges, properties, and people.[1111] The Court further stated that a person's sense of environmental security concerning the potential risk of environmental disaster, as was the case with the applicant's occupants, falls within the ambit of section 24 of the *Constitution*.[1112]

It follows, therefore, that the *Constitution* gives municipalities broad powers, functions, and duties regarding environmental governance. While the arguments made by scholars that these powers and functions are so broad that they remain ill-defined, [1113] it does not prevent councillors from executing their functions in terms of the *Constitution.* If anything, the continuous development of constitutional environmental powers and functions rests with councillors in their daily use of and compliance with these constitutional provisions. Furthermore, cases such as *Le Sueur* illustrate that the courts continue to map out the contours of the executive authority of all spheres of government in environmental governance. These judicial interpretations should aid councillors in understanding their environmental duties.

3.7 Local environmental governance, its tools and party politics

The broad and general powers and functions of local government on environmental governance means that there is room for municipalities to carve out their own processes, procedures, rules and instruments to help them in their quest to achieve the objectives of section 24 of the *Constitution*. This is aligned with the notion of local environmental governance (LEG) defined in 3.7.1 below. Despite the LEG powers of municipalities, the political factors discussed in section 3.5.2 above may make it difficult for councillors to advance the commitments in section 24 of the Constitution. This section first discusses the meaning, role players and instruments of LEG. This is followed by a discussion of the potential impacts of local politics on LEG.

[1111] *Featherbrooke case* para 36; *Propshaft Master (Pty) Ltd v Ekurhuleni Metropolitan Municipality* (33788/17) 2017 ZAGPJHC 270 para 8.

[1112] *Propshaft Master (Pty) Ltd v Ekurhuleni Metropolitan Municipality* para 8. See also *Featherbrooke case* para 36.

[1113] Du Plessis and Fuo 2017 *Commonwealth Journal of Local Governance* 2 and Fuo 2015 *Commonwealth Journal of Local Governance* 18.

3.7.1 The meaning of LEG

As posited by Nel and Du Plessis, environmental governance encompasses the collection of legislative, executive, administrative functions, along with the usage of processes, and instruments by any state entity.[1114] Its purpose is to ensure sustainable behaviour by all in the governance of activities, products, services, processes and tools.[1115] Kotzé subsequently extended the definition of environmental governance that Nel and Du Plessis provided by identifying environmental bodies outside of government. According to Kotzé, environmental governance is:

> A management process executed by institutions and individuals in the public and private sector to holistically regulate human activities and the effects of human activities on the total environment (including all environmental media, and biological, chemical, aesthetic and socio-economic processes and conditions) at international, regional, national and local levels; by means of formal and informal institutions, processes and mechanisms embedded in and mandated by law, so as to promote the present and future interests human beings hold in the environment.[1116]

Kotzé's definition expressly shows that environmental governance is generic; it applies to all spheres of government, organs of state as well as the private sector.[1117] Meaning that these definitions also apply to local government.[1118] As explained earlier, this definition shows that a wide range of actors are involved in environmental governance, especially municipalities.[1119]

[1114] Nel and Du Plessis 2004 *South African Public Law* 183.
[1115] Nel and Du Plessis 2004 *South African Public Law* 183.
[1116] Kotzé 'Environmental Governance' 107-108.
[1117] Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 155.
[1118] Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 155 and Du Plessis 2010 *Stell LR* 266.
[1119] See para 2.3 above.

According to Du Plessis, a strictly local government context may require extracting relevant components from the definitions given above.[1120] considering the powers and nature of local government generally,[1121] Du Plessis defines LEG as:

> The management process executed by local government and communities to holistically regulate human activities and the effects of these activities on their own and the total environment (including all environmental media and biological, chemical, aesthetic, cultural, and socio-economic processes and conditions) at local levels; by means of formal and informal institutions, processes and mechanisms embedded in and mandated by law, so as to promote the present and future interests human beings hold in the environment. This management process necessitates a collection of legislative, executive and administrative functions, instruments and ancillary processes that could be used by local government, the private sector and citizens to stimulate sustainable behaviour within the community as far as products, services, processes, tools, and livelihoods are concerned, both in a substantive and procedural sense.[1122]

LEG is not a new notion both internationally and nationally.[1123] In brief, LEG entails how local communities organise themselves to make and implement decisions regarding the environment in order for them to achieve mutual understanding, agreement and actions.[1124] LEG also looks at how decisions regarding the environment in the local government sphere are made and implemented.[1125]

It follows therefore that the definitions of environmental governance and, subsequently, LEG place emphasis on what constitutes the environment and environmental protection. Additionally, LEG emphasises (i) the role players (ii) the instruments used in LEG, (iii) the processes applicable to environmental governance; and (iv) envisaged outcomes. The definitions provided by Du Plessis,

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[1120] Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 156 and Du Plessis 2010 *Stell LR* 270.

[1121] See Du Plessis 2010 *Stell LR* 274-279 on the discussion on the constituent elements of local government, including local governance, public administration, Cooperative government and intergovernmental relations and traditional leadership.

[1122] Du Plessis *Fulfillment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 156 and Du Plessis 2010 *Stell LR* 279-280.

[1123] See for instance Humby 2014 *PELJ* 1681; Pasquini and Shearing 2014 *Journal of Environment and Development* 272; Bulkeley and Betsill 2003 *Environmental Politics* 229-253; Sassen 2009 *SAPIENS* 2; Du Plessis 2015 *CLIJSA* 283-315; UN Development Programme (2004) as cited in Mngoma, Pillay and Reddy 2011 *African Journal of Public Affairs* 106. Also see para 1.1 for a general definition of environmental governance.

[1124] UN Development Programme (2004) as cited in Mngoma, Pillay and Reddy 2011 *African Journal of Public Affairs* 106.

[1125] Mngoma, Pillay and Reddy 2011 *African Journal of Public Affairs* 106.

Nel and Du Plessis respectively talk about regulatory, legislative, and executive functions of municipalities. Councillors are directly involved in LEG because they possess these legislative and executive powers. Furthermore, councillors may use innovative ways to enhance LEG.

3.7.2 The role players in LEG

Du Plessis is correct in basing LEG on the basis of the principle of subsidiarity.[1126] Essentially, the principle of subsidiarity advocates for the national government to allocate the most specific powers and functions to the lowest possible sphere of government.[1127] In terms of the African Union (AU) *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* of 2014 (the African Charter), the idea behind the principle is to transfer powers, responsibilities, capabilities, and resources from national to sub-national government with the aim to strengthen the ability of the latter to foster public participation and deliver quality services.[1128] This principle finds application in section 156(4) of the *Constitution* in so far as the provision makes it compulsory for national and provincial government to assign to a municipality the administration of matters listed in Schedules 4A and 5A, which necessarily relates to local government if (a) that matter would be most effectively be administered locally, and (b) the municipality has the capability to administer it.[1129] Therefore, the application of the principle of institutional subsidiarity and LEG enables municipalities to exercise their powers, functions and responsibilities in a manner that can effectively respond to the environmental issues within their jurisdiction.

One of the issues raised by Nel, Du Plessis and Du Plessis is that there are numerous complexities in LEG, one of which is understanding its different role players and the

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[1126] Du Plessis 2010 *Stell LR* 265; Du Plessis 2015 *Comparative International Law Journal of South Africa* 281-316; Humby 2014 *PELJ* 1681.

[1127] De Visser 2010 *Stell LR* 93-94.

[1128] See article 6 of African Charter. Also see Chigwata and Ziswa 2018 *Hague Journal on the Rule of Law* 2195-2316 and Du Plessis 2015 *Comparative International Law Journal of South Africa* 290.

[1129] De Visser 2010 *Stell LR* 94; Fuo 2022 *Stell LR* 484-500.

interests and positions each holds.[1130] For instance, there are specific line departments within national and provincial government that affect LEG, and this is despite Du Plessis's previous definition that placed emphasis on the 'local' in 'local environmental governance'.[1131] These departments include, among others, Forestry, Fisheries and the Environment; Water and Sanitation; and Energy. Each of these departments establishes specific norms and standards that municipalities, in their governance of the environment, must adhere to. For instance, municipal councils are expected to work with the national government to provide and conserve water.[1132] This includes them acting as water services authorities required to provide access to water services in an equitable, efficient, affordable, and sustainable manner.[1133] This is also in line with the duty of local government to participate in national and provincial government programmes.[1134]

The other role players include councillors, municipal officials, local communities and NGOs, and the private sector. As established in Du Plessis's definition of LEG, councillors hold the legislative and executive authority necessary as well as some of the tools and processes needed by other role players to achieve LEG. This makes councillors important enablers in advancing LEG in municipalities, thus requiring a great deal of political will.[1135] Du Plessis, Nel and Retief generally describe political will as:

> The desire and commitment, especially by elected political office bearers to undertake political action by means of the unconditional use of their public power to achieve a set of objectives usually to the benefit of societal welfare and to budget for and sustain the cost of those actions over time.[1136]

It may not be necessary for councillors to use their legislative and executive powers and functions "unconditionally" as suggested by Du Plessis, Du Plessis and Nel to advance LEG.[1137] This is because various LEG instruments are available to municipal

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1130 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-7.
1131 See para 3.7.1 above.
1132 Section 11 of the *Water Services Act* 108 of 1997.
1133 Section 11 of NWA.
1134 Section 153(b) of the *Constitution*.
1135 Du Plessis, Nel and Retief 'Key elements for municipal action' 2-22.
1136 Du Plessis, Nel and Retief 'Key elements for municipal action' 2-26.
1137 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-4.

councillors in their pursuit to advance LEG. These instruments can be categorised in different ways, namely governing, governance, compliance-based and cross-cutting governance instruments.[1138] These instruments are described briefly below.

3.7.3 Instruments of LEG

LEG instruments refer to those available to municipalities to fulfil their legal mandates in line with their constitutional and legislative powers.[1139] Governing instruments are further distinguished between command-and-control, incentives and disincentives, agreement-based and right and civil-based instruments.[1140] Governing-based instruments give councils the power to determine internal instruments they must develop and adopt in response to local environmental challenges within their municipalities. A predominantly used instrument under governing-based instruments is by-laws. Municipalities are authorised by the *Constitution* and applicable legislation to draft and adopt standard, model and sector-specific issue by-laws.[1141] Councillors play a significant role in identifying, developing and adopting by-laws. Each councillor must carefully peruse the contents of a proposed by-law and question whether the instrument will be effective in regulating a particular environmental issue. When drafting by-laws, municipal councils must consider their obligations in terms of sections 24 and 152(1)(d) of the *Constitution* to address their environmental issues.[1142] Therefore, a councillor must raise issues of concern if they do not believe that the proposed by-law will fulfil the objects in sections 24 and 152(1)(d) of the *Constitution*.

When governing their municipalities, councils are responsible for planning and controlling their own processes and activities, specifically, seeing to it that their oversight and strategic direction mandates are fulfilled.[1143] They must use governance-based instruments, including IDPs, SDFs, budgets and internal audit

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[1138] This study adopts the classification of LEG instruments as classified by Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-2-3-86.
[1139] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-32.
[1140] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-32.
[1141] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-34.
[1142] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-34.
[1143] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-24.

processes to achieve this mandate.[1144] Councils are key role players in municipalities because they approve their municipalities' policies, plans, strategies, and processes.[1145] In practice, municipal councils share the task of designing, developing and implementing policies and by-laws with the administration of their municipality.[1146] It is good for municipal councils and administration to share this task because the officials of a municipality often have institutional memory that a newly elected municipal council may not have.[1147]

Furthermore, the oversight role of municipal councils means that municipalities track the implementation of strategies and policies and assure transparency by reporting and disclosing progress to communities.[1148] One of the instruments used in governance-based instruments is the IDP. Municipalities are legally obliged to develop and adopt IDPs in terms of section 153(a) of the *Constitution* as well as section 23(1) of the *Municipal Systems Act*. Both sections instruct all municipalities to undertake developmentally-oriented planning that gives priority to the developmental mandate of municipalities.[1149] IDPs should generally reflect the municipal council's vision for the municipalities most critical development and transformation needs.[1150] Ideally, when a new council enters office, their IDP should not look starkly or completely different from the previous IDPs unless all the objectives of the previous plan have been fulfilled. This is because councils are temporary (serving a five-year term in South Africa) and may not achieve all the objectives set out in the IDP during the tenure. Councils typically comprise politicians who focus on a political agenda that may not always be in the interest of the environment and the right of people to the environment. IDPs must identify and prioritise existing challenges and needs, including environmental issues.[1151] Nel, Du Plessis and Du Plessis state in this regard that the nature of IDPs makes them a

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1144 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-24.
1145 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-24.
1146 Du Plessis 2015 *Comparative International Law Journal of South Africa* 292.
1147 Du Plessis 2015 *Comparative International Law Journal of South Africa* 292.
1148 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-25.
1149 Fuo *Local Government's role in the pursuit of the transformative constitutional mandate of social justice in South Africa* 343.
1150 Section 26(a) of the *Municipal Systems Act*.
1151 Section 26(c) of the *Municipal Systems Act*.

powerful tool to drive and direct the environmental management performance of all municipalities.[1152]

Compliance-based instruments are tools used by municipalities to manage compliance with applicable environmental law. Because municipalities are governed by a myriad of line-function departments in the national and provincial spheres of government,[1153] they must comply with applicable national and provincial legislation.[1154] To comply, municipalities must acquaint themselves with environmental laws that apply to their activities, products and services, amongst other things.[1155] Upon identifying applicable laws, municipal councils must extract their powers, duties and responsibilities emanating from applicable laws. For instance, legislation may directly impose specific environmental duties on municipalities, which could imply adopting and using specific LEG instruments.[1156] Municipal councils must comply with compliance-based instruments. As Du Plessis puts it, municipal councils are established and empowered in terms of the *Constitution* and applicable legislation to govern.[1157] Chapter 4 of this study identifies a myriad of environmental duties that emanate from a suite of environmental laws.[1158] Monitoring is a key activity of municipalities in their compliance efforts. Monitoring encompasses continuous verification of progress towards achieving specific objectives and goals.[1159] Political oversight is one aspect of monitoring.[1160] In the context of compliance management, municipal councils must monitor the compliance level of their municipalities with applicable environmental law. This means that municipalities must objectively assess if their activities fully comply with environmental law.[1161] It follows, therefore, that

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1152 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-25.
1153 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-13.
1154 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-13.
1155 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-14.
1156 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-18.
1157 Du Plessis 2015 *Comparative International Law Journal of South Africa* 291.
1158 See para 4.3 below.
1159 SALGA Councillor Handbook 23.
1160 SALGA Councillor Handbook 23.
1161 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-20.

councillors need to be objective in their daily activities within the council in order to have a true reflection on the status of municipalities concerning environmental law.

There are some instruments in LEG that cannot be neatly packaged into the categories already discussed above.[1162] As such, Nel, Du Plessis, and Du Plessis group these instruments into what they term cross-cutting LEG instruments.[1163] Some of these cross-cutting instruments are not designed or adopted by municipal councils.[1164] For instance, a Service Delivery and Budget Implementation Plan (SDBIP) is an instrument of the administration that operationalises a municipality's IDP, budget and service delivery targets.[1165] In essence, the administration takes the development objectives set out in the IDP and translates these into measurable outputs and performance indicators.[1166] Once adopted, the SDBIP commits administration to performance and to report on its deliverables.[1167] If the SDBIP is not aligned with the environmental commitments of the municipal councils, it may impact their realisation.

These cross-cutting instruments can further be classified into four subclasses: spatial-based instruments, specific environmental management plans, information-based instruments, and cooperation-based LEG instruments.[1168] Firstly, spatial-based instruments could generally be categorised under governing instruments and IDPs.[1169] However, as the name suggests, spatial-based instruments specifically address the spatial planning objectives of municipalities.[1170] Secondly, specific environmental management plans are instruments deemed additional to IDPs as their mandates are vested in specific sector environmental legislation.[1171] Thirdly, information-based instruments relate to other civil-based instruments, including

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1162 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60.
1163 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60.
1164 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60
1165 Section 53(1)(c) of the MFMA.
1166 See section 53(3) of the MFMA.
1167 See section 53(3) of the MFMA.
1168 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60.
1169 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60-61.
1170 Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-60.
1171 Some of these plans are addressed in the discussion of sector-specific legislation in para 4.4.4 below.

access to information and public participation.[1172] These instruments are meaningfully classified as cross-cutting because they not only relate to public participation in environmental decision-making but also rely on municipalities to disseminate information voluntarily or in compliance with legal obligations.[1173] Lastly, cooperation-based instruments encompass partnerships of different kinds that municipalities engage in to achieve LEG goals and objectives.[1174]

Some councillors may experience challenges during the adoption of LEG instruments. This is because, while instruments are used outside municipal council meetings, adopting the correct or most effective instruments for LEG remains a critical task for councillors. A skills audit report commissioned by the MEC of Cooperative Governance and Traditional Affairs (COGTA) in KwaZulu Natal recently revealed that 298 of 1944 councillors in the Province could not read or write and that 33 percent of them have asked the government to teach them.[1175] This begs the question of how a councillor can approve an instrument when they fail to comprehend documents written in its explanation. Therefore, the skills and acumen of councillors, not only to determine the impact of a potential instrument but to approve only those instruments necessary for effective LEG is critical.[1176] The second challenge relates to the understanding that no single instrument or class of instruments can offer a definitive and complete solution to municipalities.[1177] Emilsson, Tyskeng and Carlsson state that 'the achievement and improvement of LEG performance often depend on the adoption and use of an appropriate suite of instruments'.[1178] Again, this requires that municipalities have skilful councillors who can determine how and by when to adopt a mix of LEG instruments to achieve a particular goal.

[1172] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-68.
[1173] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-68.
[1174] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-73.
[1175] Maliti 2023 https://www.news24.com/news24/politics/dysfunctipalities-nearly-300-kzn-councillors-cant-read-or-write-20230710.
[1176] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-4.
[1177] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-4.
[1178] Emilsson, Tyskeng and Carlsson 2004 *Journal of Environmental Assessment Policy and Management* 133.

It cannot be overstated that LEG is complex. Under LEG, councillors are both governed and governors. This means that, on the one hand, councillors must comply with environmental national and provincial laws. On the other hand, councillors must use their political will and skills to help their councils make the necessary environmentally sound decisions for their municipalities. This means that councillors must actively and deliberately extend their executive and legislative duties to achieve the objectives of section 24 of the *Constitution*. Nel, Du Plessis and Du Plessis state in this regard that "a fundamental principle underpinning any transition to a future that is sustainable requires municipalities to perform beyond compliance with the law".[1179]

3.7.4 Impacts of the local political landscape on LEG and the potential role of councillors

3.7.4.1 Impacts of the local political landscape on LEG

The implication of embracing councillors as political role players with their wide powers and function is that politics will inevitably creep into LEG in South Africa. As Shaw and Paterson put it, "it would be an illusion to imagine LEG free from party politics or not subject to political decision-making".[1180] Those in political office within local government make critical decisions on behalf of municipalities. For instance, the allocation of human and financial resources towards LEG depends on political decision-making within municipal councils.[1181] The successful implementation of policies in municipalities often depends on the backing and support of influential political personalities within the council.[1182] These political powers of municipal councillors also become evident when decisions are made on, amongst other things, the allocation of funds to expand waste services, implement environmental management systems, appoint additional environmental compliance officers, or implement a green procurement policy. [1183]

[1179] Nel, Du Plessis and Du Plessis 'Instruments for local environmental governance' 3-83.
[1180] Shaw and Paterson (2003) as cited in Du Plessis 2010 *Stell LR* 291.
[1181] Du Plessis 2010 *Stell LR* 291.
[1182] Du Plessis 2010 *Stell LR* 293.
[1183] Du Plessis 2010 *Stell LR* 291.

Du Plessis speaks of the politics of pollution, denoting the negative influence that politics and political office bearers may have on LEG.[1184] These actions include making erroneous decisions, actions, or the failure thereof in the environmental context.[1185] The decision in the *Kgetlengivier Concerned Residents* case illustrates how courts are imposing strict orders against municipalities who consistently fail to take action on environmental hazards which affect local communities.[1186] Although the MM was expressly identified as the responsible party in this infringement, it remains the councillors' duty in performing oversight to ensure that MMs perform their work. Other actions that may undermine LEG include corruption, mismanagement, the complete disregard for constitutional principles and environmental legislation, and the self-enrichment of political office bearers.[1187]

Conversely, in a democratic dispensation, party politics may be conducive to improving LEG.[1188] Councillors may show the necessary political will that, coupled with environmental education and awareness, can result in good environmentally relevant decisions being made at the municipal level.[1189] This section unpacks the potential role of a councillor regarding LEG in the current political landscape by looking at current municipal projects reported, news announcements and court decisions across municipalities.

3.7.4.2 The potential role of councillors in LEG

3.7.4.2.1 Councillors ability to lobby for private investment in LEG

The relationship between councillors and corporations is important. As residents of municipalities, corporations consume municipal services, including water, sanitation, electricity and refuse removal, among other things. Corporations are also strategic investors in municipalities. For instance, they are stakeholders in government projects and external service providers contracted by municipalities in terms of

[1184] Du Plessis 2010 *Stell LR* 291.
[1185] Du Plessis 2010 *Stell LR* 291.
[1186] See para 3.5.2.6 above.
[1187] Du Plessis 2010 *Stell LR* 293.
[1188] Du Plessis 2010 *Stell LR* 293.
[1189] Du Plessis 2010 *Stell LR* 293.

section 76(b) of the *Municipal Systems Act;* they co-manage specific precincts and dominate property development in municipal spaces.[1190] In industrial and mining towns, it is common for corporations to influence decision-making by municipal councils and provide municipal services to local communities.[1191] For instance, it has become common in Emalahleni Local Municipality for mining and railway companies to provide basic municipal services to communities whenever the Municipality fails to deliver.[1192]

Councillors can influence which corporations invest in local communities. When a municipality does not have the necessary resources, it may have to look outside the organisation for such resources. Councillors can either lobby for investment or simply approve proposed environmental governance strategies from corporations.[1193] Lobbying investment is often difficult when considered against instances where corporations approach a municipality with an existing proposal. This is because lobbying investment requires councillors to actively look for investment. Often, this involves councillors encouraging their colleagues in the council to join environmental governance networks such as the C40s cities network and ICLEI.[1194]

The adverse impact of the involvement of councillors in investment matters by corporations is that councillors may 'turn a blind eye' or be accomplices to environmental crimes committed by corporations. For instance, following an explosion at the Engen refinery in Durban,[1195] local community members said that

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1190 Pieterse 2022 *PELJ* 3.

1191 Pieterse 2022 *PELJ* 3.

1192 See Campbell, Nel and Mphambukeli 2017 *Land Use Policy* 228; Witbank News 2016 https://witbanknews.co.za/80952/glencore-serving-as-bulk-water-service-provider/; Borehole Water Association of Southern Africa 2023 https://bwa.co.za/the-borehole-water-journal/2016/1/30/turning-acid-mine-water-into-award-winning-municipal-water.

1193 Councillors can also lobby against private investment in the municipality. See for instance Mail and Guardian 2023 https://mg.co.za/environment/2023-06-23-sas-coal-lobby-pushes-back-against-green-transition/.

1194 South African Government 2018 https://www.gov.za/speeches/soca-2018-13-apr-2018-0000 and ICLEI 2021 https://africa.iclei.org/african-mayors-and-city-leaders-stand-in-solidarity-in-response-to-global-crises/.

1195 Engen is an African-based energy group that markets and sells petroleum, lubricants and functional fluids, and chemicals. Engen hosts retail convenience services across seven countries in sub-Saharanrica. See Engen 2023 https://www.engen.co.za/about.

the incident was bound to occur given the entity's history of lack of maintenance and cutting costs and the failure of government in the area to enforce regulations.[1196] The residents of the City also alleged that Engen was deeply embroiled in political matters, which gave the Company enough confidence to be unresponsive to environmental concerns often raised by the community.[1197] On the 4th of December 2020, an explosion at a refinery occurred, leaving seven employees injured, nearby flats burned down, and nearby communities, including Manor Gardens, Pinetown, and Glenwood, covered in black smoke that filled the air.[1198] According to D'Sa the incident at Engen made a complete mockery of the Ethekwini Metropolitan Municipality's publicised intention to clean up the environment.[1199] Ethekwini had recently announced the adoption of the Durban Climate Action Plan (CAP),[1200] which had the immediate goal of reducing the City's emissions by 40 percent by 2030.[1201]

3.7.4.2.2 Advancing LEG through political will and environmental championship

Strategies, programmes, and plans are only wishful thinking on the part of municipal councils unless there is political will from councillors to realise them. Sometimes, political will may come from one councillor — a political champion. Political champions are significant contributors to policy design and adaptation.[1202] Their ability to identify environmental issues in and around their communities and their

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[1196] Erasmus 2020 https://www.dailymaverick.co.za/article/2020-12-07-engen-is-still-killing-us-says-durban-community-body-after-explosion-at-refinery/.

[1197] Erasmus 2020 https://www.dailymaverick.co.za/article/2020-12-07-engen-is-still-killing-us-says-durban-community-body-after-explosion-at-refinery/.

[1198] Erasmus 2020 https://www.dailymaverick.co.za/article/2020-12-07-engen-is-still-killing-us-says-durban-community-body-after-explosion-at-refinery/.

[1199] Erasmus 2020 https://www.dailymaverick.co.za/article/2020-09-27-durbans-climate-plan-is-drowning-in-politics-with-targets-far-from-being-reached/.

[1200] CAP builds on the City's Climate Action Strategy (2015) with a goal of expediting action on climate change to limit global temperature increases to 1.5 degrees Celsius. See Durban 2020 https://www.durban.gov.za/storage/Documents/Climate%20Adaptation%20Branch%20Projects/Durban%20Climate%20Action%20Plan.pdf.

[1201] Erasmus 2020 https://www.dailymaverick.co.za/article/2020-09-27-durbans-climate-plan-is-drowning-in-politics-with-targets-far-from-being-reached/.

[1202] Bush 2020 *Environmental Innovation and Societal Transitions* 40.

general understanding of the environment make them meaningful contributors to drafting effective LEG plans and strategies.[1203]

Bush argues, however, that political champions are only influential if they hold a higher-ranking position in the council.[1204] As such, the mayor of a municipality is more likely to produce good environmental governance outputs if they, during tenure, are the champion.[1205] The City of Cape Town has had a suite of mayors that could be labelled champions. The first is former Mayor Patricia De Lille, who, on several occasions, demanded that the national government devolve powers in the energy sector to local government.[1206] De Lillle's aim was to gain more autonomy to increase the use of renewable energy and steadily move away from coal reliance.[1207] The second and current mayor is Geordin Hill-Lewis. This Mayor is vocal on environmental governance and holds their council accountable for problems arising from their municipality. For instance, the ongoing water pollution at Milnerton Lagoon, which has resulted in the death of marine life, prompted a response from Hill-Lewis.[1208] The Mayor said that restoring environmental health to Milnerton Lagoon is not optional for the Municipality.[1209] The Mayor added that the City had approved a multi-billion-rand project to address the issue.[1210] Indeed, the City approved the five billion rand upgrade of the Potsdam Wastewater Treatment Works (WWTW) project in March 2023.[1211]

1203 Bush 2020 *Environmental Innovation and Societal Transitions* 40.
1204 Bush 2020 *Environmental Innovation and Societal Transitions* 40.
1205 Bush 2020 *Environmental Innovation and Societal Transitions* 40.
1206 Hickmann and Stehle 2019 *Journal of Environment and Development* 64.
1207 Hickmann and Stehle 2019 *Journal of Environment and Development* 64.
1208 Engel 2023 https://www.iol.co.za/capeargus/news/mayor-geordin-hill-lewis-says-restoring-health-of-milnerton-lagoon-is-not-optional-f1a225ad-42e2-45d9-8f65-cef95d04f85b.
1209 Engel 2023 https://www.iol.co.za/capeargus/news/mayor-geordin-hill-lewis-says-restoring-health-of-milnerton-lagoon-is-not-optional-f1a225ad-42e2-45d9-8f65-cef95d04f85b.
1210 Daniels 2023 https://www.news24.com/news24/community-newspaper/tygerburger/lagoon-progress-slow-20230321-2.
1211 Polity 2023 http://bitly.ws/LhSV.

3.7.4.2.3 Corruption and abuse of powers and functions by councillors affect LEG

Corruption and the abuse of powers and functions by councillors are aspects that could potentially negatively impact LEG.[1212] These aspects specifically impact a municipality's financial and human resource capacity concerning LEG. Clientelism is one of the many ways environmental projects are prioritised or disrupted, specifically on political grounds. Clientelism is the exchange of public goods and services for political support.[1213] When used correctly, clientelism can be a strategy local communities use to bargain votes in exchange for collective goods (such as the electrification of their townships).[1214] When used in bad faith, clientelism may translate to municipal councils awarding contracts to private entities that show loyalty to a dominant political party in the council.[1215] Furthermore, where a particular group of councillors feel betrayed, they will likely 'punish' individuals and private entities by restricting their access to municipal resources and future projects.[1216]

Ethics and accountability are critical for political and administrative systems as they underline the legitimacy of the governing structures of a municipality.[1217] The undue influence of political leaders in the proper selection of private entities as potential external service providers[1218] may undermine this legitimacy. It effectively compromises the public participation culture of a municipality, thus creating a barrier for administration and political leaders to be accountable and transparent to local communities.

[1212] See para 3.5.3 above.
[1213] Pasquini and Shearing 2014 *Journal of Environment and Development* 273.
[1214] Bénit-Gbaffou et al 'Exploring the role of party politics in the governance of African cities' 33.
[1215] Bénit-Gbaffou et al 'Exploring the role of party politics in the governance of African cities' 36. See Wright *Legal Perspectives on the prevention and minimasation of corruption* 31, where the author described collective corruption as a form of corruption done by a group of people such as a municipal council.
[1216] Bénit-Gbaffou *et al'* 'Exploring the role of party politics in the governance of African cities' 36. Also see Staniland 2008 *Transformation* 34-60.
[1217] SALGA Councillor Handbook 42 and Wright *Legal Perspectives on the prevention and minimisation of corruption* 38. Also see 3.5.1.1 above.
[1218] In terms of section 80 of the *Municipal Systems Act*.

3.8 Concluding remarks

The governing systems in South Africa have always determined how governments responded to environmental issues that occurred in the country. For instance, during the colonial period, water was an important national resource for the agrarian community. The government assigned various rights to farmers at that time but excluded black communities from accessing these rights. During apartheid, the national government owned several mines. The government did not implement effective mining laws to regulate the sector because these regulations would work against it. The political parties raised concern when they argued that the environment was a land issue and that to solve one issue, the government would need to address the other. The objective of this chapter was to explore and evaluate the historical and contemporary intersection between party politics and local environmental governance in the South African context. The chapter chartered historical and contemporary perspectives on politics and environmental governance in the country with a focus on the transforming political landscapes, local party politics and their role in environmental governance.

The chapter concluded that, though the government viewed environmental issues as apolitical, political parties saw a link between the country's governing system and its environmental issues. Many of these parties argued that depriving people of natural resources meant violating their rights, including the right to dignity. The parties further argued that the country needed an overhaul in its governing system to constitutional democracy: a system that primarily recognises human rights, including the right to the environment.

An analysis of the manifestos of the parties revealled that there is little difference between historical and contemporary political parties and their stance on environmental governance, except that the current parties exist under a constitutional democracy. Contemporary parties understand that failing to provide environmentally related municipal services, such as water, sanitation, refuse collection and stormwater drainage systems, violates the constitutional

environmental right. Depsite this understanding, the Chapter did find that there are several failures for municipalities to provide environmentally related services.

This chapter has also concluded that the difficulty in sustainably providing municipal services includes the involvement of politics in matters of local government. The *Constitution* could not have envisaged these politics. Prior to the *Constitution*, the powers and functions of the environment were vested in the national government. Therefore, the inception of the *Constitution* has (i) altered the role of political parties in the different spheres of government and (ii) restructured and redefined the role of the spheres of government in environmental governance. The *Constitution* has cemented the role of politics in local government by allowing councillors to be elected to municipal councils. Its result is the significant environmental governance powers given to political office bearers within the local government sphere. This means that at the heart of LEG are political role players vested with both executive and legislative powers and functions that enable them to develop and administer by-laws, develop policies, and adopt budgets within their areas of competence.

While municipal councils have significant environmental governance powers and functions, political trends have become the biggest enabler and obstacle to realising the constitutional environmental right. The political trends in the country have become complex. Municipal councils receive unwarranted pressure from national and provincial governments on the one hand and national and provincial structures of political parties. Added to this is the trend in coalition governments in South Africa. The study has demonstrated that a majority of councils still experience challenges governing under a coalition government. The chapter has revealed, however, that it is up to a political leader or council to use their political powers to advance LEG. The mayors of Cape Town have shown that it is possible to advance LEG through political will.

This study asks what the duty of municipal councillors is as political office bearers in the realisation of South Africa's constitutional environmental right? The chapter has found that a healthy political climate coupled with the political will of councillors is a key driver of LEG. The subsequent chapter will analyse the provisions of the

Constitution, applicable local and environmental law, and sector-specific statutes to identify the powers, functions, and responsibilities of municipal councillors to realise the constitutional environmental right.

CHAPTER 4 ENVIRONMENTAL POWERS AND DUTIES OF MUNICIPAL COUNCILLORS IN TERMS OF SOUTH AFRICAN LAW

4.1 Introduction

Local government has been transformed in terms of Chapter 7 of the *Constitution*.[1219] Local government is recognised as a distinct sphere with powers to govern their matters without unlawful interference from provincial and national governments.[1220] Local government autonomy allows municipalities to be creative in furthering their environmental governance agenda. The *Constitution* has also restricted the role of the national and provincial governments to providing support and strengthening the capacity of municipalities to govern themselves.[1221] This includes adopting legislation to enable local governments to realise their environmental governance mandate.[1222] This legislation must comply with the *Constitution*. The legal framework pertaining to environmental governance in South Africa is elaborate and encompasses framework and sector-specific legislation dealing with different environmental media.[1223] Environmental law is applicable to all spheres of government.

This chapter aims to establish the environmental powers and duties of councillors in terms of the *Constitution* as further manifested in local government and environmental legislation. Furtherance to this, the chapter determines the extent to which the *Constitution* and the body of relevant legislation emanating from it informs what exactly it is that councillors in South Africa must and can do to advance the rights of people entrenched in section 24 of the *Constitution*. The statutes analysed in this chapter are all generally applicable to local government and to the environmental governance mandate of municipalities and do not often refer to "councils" or "councillors." Therefore, the chapter reads the duties of councillors

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[1219] See para 3.6 above.
[1220] See para 3.6 above.
[1221] See para 3.6 above.
[1222] See para 3.6 above.
[1223] Kidd *Environmental Law* 20.

into applicable legislation except in instances where the law explicitly refers to specific municipal officials such as the MM or air quality officer, for example.

It cannot be overstated that the *Constitution* is the cornerstone of South Africa's local government and environmental law framework from which all environmentally relevant duties, powers, and responsibilities of government flow. Therefore, the first part of the chapter discusses the constitutional framework for LEG with specific reference to the duties as well as powers and functions of municipal councillors. The second part of the chapter identifies provisions in the suite of local government legislation that reflect on the environmental powers and duties of councillors. Local government legislation generally includes framework legislation used in the day-to-day running of municipalities, such as the sustainable delivery of municipal services to communities and financing of municipal programmes. The third part of the chapter identifies provisions in the suite of environmental legislation applicable to the environmental powers and duties of councillors.

The local government and environmental law framework do not always make it easy to identify the explicit duties of councillors in pursuit of section 24 of the *Constitution*. This is because this legal framework broadly speaks of "municipalities" and 'municipal councils'. In fact, seldom does legislation expressly mention councillors unless in prohibitory language. For example, section 103 of the MFMA prohibits councillors from interfering in the finances of a municipal entity. Another instance where legislation focuses on councillors is in dedicating a Schedule in the *Municipal Systems Act* for a Code of Conduct. Therefore, a careful analysis is necessary in order to establish specific duties of councillors in environmental governance from the broad legal framework. This analysis requires this study to identify environmental duties that are capable of being performed by a councillor operating within a municipal council or a ward. To achieve this, part four of this chapter lists the duties of councillors in environmental governance under specific categories of environmental duties, such as space planning, public participation, and municipal finance management, among others. The fifth part concludes the chapter.

4.2 The Constitution

The *Constitution* operates as a framework within which all local government duties, powers, and responsibilities with regard to the environment flow.[1224] This is because the *Constitution* contains a constitutional environmental right which imposes concrete duties on all spheres of government and organs of state, as discussed in the local government context in 4.2.1 below. Essentially, the rights in the *Constitution* create a parallel responsibility for local government to fulfil them through providing basic municipal services. In *Joseph v City of Johannesburg*, the Court said that service provision is a cardinal function of local government which is sourced from the *Constitution* and supporting legislation,[1225] making it a duty for municipalities to provide basic municipal services. In addition, the *Constitution* allocates functional areas of competence regarding the environment to different spheres of government.[1226]

The previous chapter established that although the 'environment' is listed in Schedule 4A of the *Constitution*, it is a functional area of competence that runs across all spheres of government.[1227] However, the degree of responsibility for the different spheres of government to advance environmental objectives as well as access to the necessary human and financial resources, may vary.[1228] The varying degrees of environmental governance responsibilities further extend to councillors as political office bearers in municipalities. The discussion below elaborates on the duties of councillors emanating from the Bill of Rights.

4.2.1 Duties emanating from the Bill of Rights

Various aspects of the *Constitution* are important for environmental governance in South Africa. This is because the *Constitution* is the ultimate source of all substantive

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1224 Kidd *Environmental Law* 20.

1225 *Joseph v City of Johannesburg* 2010 3 BCLR 212 (CC) paras 34-35. Also see *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 2 BCLR 150 (CC) para 38.

1226 See para 3.5.3 above.

1227 See para 3.5.3 above.

1228 Du Plessis 2010 *STELL* 268. Also see *Grootboom v Oostenberg Municipality* (6826/99) 1999 ZAWCHC 1 paras 17 and 18.

and procedural environmental rights.[1229] It is constructed to effect economic and social transformation in the country.[1230] The transformative vision of the *Constitution* can be seen in the Bill of Rights. Its application to both the state and, in some instances, to private parties, including the rights protected in it, establishes it as a "post-liberal text aimed at facilitating social and economic transformation in the country".[1231] Simply put, the rights in the Bill of Rights are supposed to be used to transform people's socio-economic circumstances, given the country's history of inequality. This means that the *Constitution* is used as a tool to transform the lives of people. It is the duty of councillors to facilitate the transformation of people's lives by using the *Constitution*. Councillors should start the transformation agenda firstly by providing municipal services to all communities and secondly, by securing an environment that is good for peoples' health and well-being.[1232]

The Bill of Rights is perhaps the most noteworthy because it contains constitutional environmental right.[1233] Feris and Fuo put it, for instance, that the rights in the Bill of Rights have significantly altered how government, and to some extent, how individuals have to conduct themselves.[1234] This means the Bill of Rights places profound limits on unfettered government action and mandates these organs of state to realise human rights, such as the rights in section 24 of the *Constitution*.[1235] As previously stated, section 24 of the *Constitution* captures global concerns about the increasing deterioration of environmental quality and the consequence of such deterioration in South Africa.[1236] The section spells out the government's role in addressing these concerns. Local government, as a co-responsible organ of the

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1229 Van der Linde and Basson 'Environment' 50-8.

1230 De Vos et al *South African Constitutional Law in Context* 319; Feris and Fuo 'Environmental rights protected in the Constitution' 6-3. Although scholars and policymakers agree that the *Constitution* is transformative, there is no definite or absolute definition for transformative constitutionalism. See Langa 2006 *STELL* 352-360; Klare 1998 *South African Journal on Human Rights* 146-188; Fuo 2006 *Obiter* 77-95 and Murcott 2017 *Humanities* 1-15.

1231 De Vos et al *South African Constitutional Law in Context* 319.

1232 See generally Langa 2006 *Stell LR* 354; *City of Johannesburg v Rand Properties (Pty) Limited* 2006 6 BCLR 728 (W) paras 51-52; Murcott *Transformative Environmental Constitutionalism* 78.

1233 Kidd *Environmental Law* 20.

1234 Feris and Fuo 'Environmental rights protected in the Constitution' 6-3.

1235 Feris and Fuo 'Environmental rights protected in the Constitution' 6-3.

1236 Feris and Fuo 'Environmental rights protected in the Constitution' 6-4.

state,[1237] is not excluded from the dictates of this section.[1238] A joint reading of sections 24, 7(2), and 8(1) of the *Constitution,* firstly, imposes an obligation on local government, together with other spheres, to respect, protect, promote, and fulfil the constitutional right and secondly, it establishes the environmental right as part of a cluster of fundamental rights outlined in the Bill of Rights, designed to function as the cornerstone of democracy.[1239] Therefore, this section will discuss the environmental duties of councillors emanating from section 24 as well as other environmentally related provisions in the *Constitution*, namely, sections 26, 27, 32 and 33.

4.2.2.1 Section 24 of the Constitution

Section 24 states that:

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

It is possible to identify two dimensions of the environmental right: one is the right of humans to a safe and healthy environment, and the other is the right of the environment itself not to be degraded. The notion of the Anthropocene best supports the latter dimension of the environmental right. The Anthropocene signifies "a geological time"[1240] where scholars have argued that the world has entered a period where the Earth has left the Holocene epoch (a relatively harmonious interglacial state) because of pervasive human activities.[1241] As a result, the environment must be protected for its own sake. Essentially, section 24(a) places two duties on councillors; the first is for councillors to contribute towards protecting

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[1237] Du Plessis 2010 *STELL* 267-268.
[1238] Feris and Fuo 'Environmental rights protected in the Constitution' 6-4.
[1239] Du Plessis 2010 *STELL* 267-268.
[1240] See Zalasiewics *et al''* 'Stratigraphy and the Geological Time Scale' 11-17.
[1241] Kotzé 2019 *Journal of Human Rights and the Environment* 62-63; Kotzé 2014 *The Anthropocene Review* 253; Murcott 2017 *Humanities* 1.

the rights of people for the sake of protecting the interests they hold in the environment. The second duty is to contribute to protecting the environment for the environment's own sake.

When it comes to protecting people's right to the environment, two aspects have to be considered, namely, human health and well-being. In this context, well-being protects a person's welfare, which covers environmental instances that do not necessarily have evident health implications.[1242] The reference to well-being implies that people should be protected against environmental harms that may impede their ability to be content and at ease.[1243] Well-being is not exclusive to physical and mental health but also captures economic, social, aesthetic, and emotional considerations.[1244] Well-being may also include religious and cultural values that people place on natural resources.[1245]

Health in the context of the constitutional environmental right refers to the health of individuals or the public at large. [1246] The World Health Organization (WHO) defines being healthy as a state of complete physical, mental, and social well-being, not merely the absence of disease and infirmity.[1247] A person's health is often beyond the control of the state due to the nature of the causes of ill health, such as genetics and inherent medical conditions.[1248] However, in the context of the constitutional environmental right, health relates to the extent that a person's health may be negatively affected by external factors and causes that are ultimately within the control of the government.[1249] Such factors may include pollution, exposure to hazardous substances and the failure to provide sufficient access to safe drinking water and sanitation.[1250] Scholars also agree that health should be broadly viewed

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1242 Du Plessis 2011 *South African Journal on Human Rights* 295.
1243 Du Plessis 2011 *South African Journal on Human Rights* 295.
1244 Van der Linde 'Environment' 50-14.
1245 Du Plessis 2011 *South African Journal on Human Rights* 295.
1246 Du Plessis 2011 *South African Journal on Human Rights* 293; Van der Linde and Basson 'Environment' 50-13.
1247 WHO (2023) https://bit.ly/3kqHJ2k. Also see Du Plessis 2011 *South African Journal on Human Rights* 293; Van der Linde and Basson 'Environment' 50-13.
1248 Du Plessis 2011 *South African Journal on Human Rights* 293.
1249 Du Plessis 2011 *South African Journal on Human Rights* 293.
1250 Du Plessis 2011 *South African Journal on Human Rights* 293.

to include both physical and mental health and quality of life in so far as the latter depends on good health and adequate life expectancy.[1251] Health in the context of section 24 refers to the right for people to live and work in a place that will not potentially harm their physical or mental health.

This means that health, in such instances, imposes a duty on authorities such as councillors to prevent and address despoliation of the physical environment.[1252] There are various functions of local government listed in Schedules 4B and 5B of the *Constitution* that, when not realised, severely impact the health and well-being of local communities as enshrined in section 24 of the *Constitution*. Section 156 (1) of the *Constitution*, read with Schedules 4B and 5B, gives municipal councillors the right to administer by-laws and develop policies as a measure to respond to air quality, water and sanitation, biodiversity, and waste issues in their municipalities. Therefore, councillors must ensure that while degradation and pollution may not be avoidable, each person in the local community must be protected from the actions of others that are likely to interfere with their health and well-being.[1253]

Section 24(b) further imposes a duty on municipal councils to protect the environment for the benefit of present and future generations through reasonable legislative and other measures. Councillors must regulate activities in and around their jurisdictions in favour of environmental protection and, more specifically, sustainable development.[1254] Councillors may use by-laws and other LEG instruments to protect the environment. Furthermore, councillors can ensure that their municipalities provide municipal services sustainably. This means that councillors must be cautious of the needs of future generations when they provide environmentally related services to the current generation. While the concept of sustainable development has developed in academic circles in South Africa,[1255] *Fuel*

1251 Du Plessis 2011 *South African Journal on Human Rights* 293; Van der Linde 'Environment' 50-14; Feris and Tladi 'Environmental Rights' 260.

1252 Van der Linde and Basson 'Environment' 50-13.

1253 Feris 'Environmental rights protected in the Constitution' 6-8.

1254 Feris 'Environmental rights protected in the Constitution' 6-9. Also see section 24 (b)(iii) of the *Constitution*.

1255 See Field 2006 *The South African Law Journal* 423; Kotzé 2006 *PELJ* 76; Du Plessis 2015 *PELJ* 1849-1880; Du Plessis 2016 *Law, Democracy and Development* 239-262.

Retailers Association of South Africa v Director-General: Environmental Management (*Fuel Retailers*)[1256] allowed the Constitutional Court to interpret the concept in the context of section 24(b) of the *Constitution*.[1257] In its interpretation, the Court found that the *Constitution* recognises the interrelationship between the environment and development in so far as it envisages that any form of development must be balanced against consideration of nature and its resources.[1258] Loosely put, the concept of sustainable development, as read in section 24(b) of the *Constitution*, aims to strike a balance between economic development and environmental protection.[1259] In *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation Environment and Land Affairs* (*BP Southern Africa*),[1260] the Court proclaimed that "pure economic principles could no longer determine in an unbridled fashion whether development is acceptable."[1261] Development regarded as economically and financially sound should be balanced against its environmental impact, taking cognisance of the principle of intergenerational equity and the sustainable use of resources to arrive at integrated environmental management.[1262] The Constitutional Court's reasoning in *Fuel Retailers* is not without scholarly criticism. Tladi questions if the concept of sustainable development was underdeveloped because the Court lumped social and economic considerations together.[1263] Although there are subtle but important correlations between social and economic considerations, the Court may have missed the opportunity to halt the ongoing economic development that threaten the environment by lumping them together.[1264] Therefore, section 24(b) of the *Constitution* is also concerned with the actions of private parties or developers. This

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1256 2007 6 SA 4 (CC).
1257 Feris 2008 *Constitutional Court Review* 235. Also see Murombo 2008 *South African Law Journal* 488-504.
1258 *Fuel Retailers* para 45.
1259 Murombo 2008 *South African Law Journal* 491.
1260 03/16337 2004 ZAGPHC 38.
1261 *BP Southern Africa* para 144.
1262 *BP Southern Africa* para 144.
1263 Tladi wrote a note responding to Feris, who lauded the Constitutional Court's reasoning in *Fuel Retailers*. See Tladi 2008 *Constitutional Court Review* 257 and Feris 2008 *Constitutional Court Review* 235-253.
1264 Tladi 2008 *Constitutional Court Review* 258.

imposes a duty on councillors to halt economic developments that threaten the environment in their jurisdictions.

The rights in the Bill of Rights do not exist in isolation; therefore, councillors cannot fulfil one right and neglect the other. These rights are interdependent and interconnected.[1265] De Vos explains the interrelationship of rights in the following way:

> Starving people may find it difficult to exercise their freedom of speech, while a restriction on freedom of speech may make it difficult for individuals to enforce their right of access to housing.[1266]

De Vos illustrates how the enjoyment of one right depends on the realisation of other rights. Below is a discussion of the rights in the Bill of Rights that are directly relevant to the environment and environmental governance.

4.2.2.2 Section 26

Section 26 enshrines everyone's right to have access to adequate housing.[1267] It provides that government must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.[1268] Moreover, no person may be removed from their home or witness the destruction of their home without a court order made after considering all circumstances.[1269] No legislation may permit arbitrary eviction.[1270]

Section 26 is a socio-economic right.[1271] Socio-economic rights were recognised mainly in the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Economic, Social and Cultural Rights* (1966) as rights that give people access to basic needs that are necessary for human beings to lead a dignified life.[1272]

1265 De Vos 1997 *SAJHR* 71. See also Murcott *Transformative Environmental Constitutionalism* 55-56 where the author discusses the socio-justice oriented approach to judicial adjudication.
1266 De Vos 1997 *SAJHR* 71.
1267 Section 26(1) of the *Constitution*.
1268 Section 26(2) of the *Constitution*.
1269 Section 26(3) of the *Constitution*.
1270 Section 26(3) of the *Constitution*.
1271 Liebenberg 2012 *African Human Rights Law Journal* 13-14 and Liebenberg *Socio-Economic Rights* 268-311.
1272 Also see Liebenberg *Socio-Economic Rights* 103-104; Liebengerg 2007 *ESR Review* 5; Khoza *Socio-Economic Rights in South Africa* 19.

Government, and in certain instances, private entities, can be held accountable if they fail to respect, protect, promote, and fulfil these rights.[1273] In the South African constitutional context, the right employs all spheres of government to ensure that people are provided with adequate housing.[1274]

Housing is not an exclusive function of local government in the *Constitution*. This means that it is not a function of councillors. This function is a concurrent function of the national and provincial government in terms of Schedule 4A of the *Constitution*. However, the fact that housing does not sit in Schedules 4B and 5B of the *Constitution* does not mean that municipalities are exonerated from the mandate to provide adequate services. In *Blue Moonlight*, the Court said that if residents of a private property in the City of Johannesburg face eviction and homelessness, the City has a responsibility to provide emergency and temporary accommodation.[1275] Furthermore, any policy adopted by the Council that goes against this responsibility is unconstitutional.[1276]

Although the Constitutional Court has recognised the interlinkages between sections 24 and 26 of the *Constitution*,[1277] the Court failed to consider how the enjoyment of the right to housing depended on the ability of municipalities to provide water, sanitation, and solid waste disposal, among other things.[1278] This means that in realising section 26, municipalities are expected to provide basic municipal services necessary for the proper functioning of a household. The latter does not suggest that providing basic municipal services is the only task local government has in relation to section 26 of the *Constitution.*

When municipalities draft IDPs, they are expected to strive to fulfil the basic needs of their communities. In terms of section 27(2)(a) of the *Municipal Systems Act*, the

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[1273] Also see Khoza *Socio-Economic Rights in South Africa* 19; Froneman 2017 *ESR Review* 20-25; Ngang 2014 *African Human Rights Law Journal* 655-680; Mubangizi 2006 *African Journal of Legal Studies* 1-19.

[1274] Du Plessis *Fulfilment of South Africa's constitutional environmental right in the local government sphere* 368.

[1275] See para 3.6 above.

[1276] See para 3.6 above.

[1277] Fuo 2013 *Obiter* 78.

[1278] Fuo 2013 *Obiter* 78.

IDP must be compatible with national and provincial development plans. This means that in fulfilling their own constitutional mandate, municipal councils will not escape functions that are often considered to be the primary task of national and provincial government because these duties are set out in IDPs, including providing adequate housing, even if it is temporary. The Court in *Blue Moonlight* expressly said that municipalities have the duty to self-fund emergency temporal housing. This means that they must factor this into their IDPs.[1279]

Some of the councillors' functions directly applicable to sections 24 and 26 of the *Constitution* include municipal health services and potable water supply systems. These functions are found in Schedule 4B and enshrined in section 27 of the *Constitution*.

4.2.2.3 Section 27

Section 27(1) of the *Constitution* provides that everyone has the right to have access to (a) healthcare services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are not able to support themselves and their dependants, appropriate social assistance. In terms of section 27(2), the government must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights.[1280] Section 27(3) of the *Constitution* provides that no one may be refused emergency medical treatment.[1281] Section 27 is a socio-economic right.

According to Du Plessis, section 24 links with section 27(1) and (2) in so far as the latter provisions provide that everyone has a right to have access to healthcare services, sufficient food, and water.[1282] More explicitly, the sections entitle everyone to services such as healthcare, water, sanitation, and food.[1283] Therefore, it is likely that the section will address conditions detrimental to people's health and well-

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[1279] City of *Johannesburg Metropolitan Municipality v Blue Moonlight Properties* 2012 2 BCLR 150 CC para 57.
[1280] Section 27(2) of the *Constitution*.
[1281] Section 27(3) of the *Constitution*.
[1282] Du Plessis 2011 *South African Journal on Human Rights* 281.
[1283] Du Plessis 2011 *South African Journal on Human Rights* 294.

being. This means that to unlock the entitlements of people (especially the poor) to an environment that is not detrimental to their health, as enshrined in section 24, this environmental right would have to be supported by section 27 of the *Constitution*.[1284] These sections oblige municipalities to provide basic municipal services such as water and sanitation because if they are not provided, it will endanger the life, safety and health of people and the environment.

The nexus between sections 24 and 27 of the *Constitution* was considered in *Beja v Premier of the Western Cape* (the Beja case).[1285] In this case, the applicants approached the High Court in the Western Cape seeking relief to declare the conduct of the City of Cape Town unlawful and in violation of the *Constitution*.[1286] In May 2009, the City erected 1316 toilets, including 51 open toilets, as part of its Upgrading of Informal Settlements Programme (UISP).[1287] The open toilets subjected the community to degrading circumstances, including people being forced to use public toilets in full view of society. One of the applicants (a 76-year-old woman) was stabbed and injured on her way back to her dwelling after using the open toilet as she was covered only in a blanket.[1288] Finding in favour of the applicant, the Court reasoned that the City violated sections 24 and 27 of the *Constitution*.[1289] According to the Court, the objects of local government are to provide services to communities sustainably and promote a safe and healthy environment. This is in line with municipalities providing the basic services necessary for advancing human health and well-being.[1290]

It follows from the above that the advancement of the constitutional environmental right by municipalities cannot be separated from national and provincial development plans, for example. When municipal councils draft environmental governance or other plans, they must ensure that these instruments broadly address the prescripts of the Bill of Rights. When councils adopt a narrow focus on their

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1284 Du Plessis 2011 *South African Journal on Human Rights* 294.
1285 *Beja v Premier of the Western Cape* 2011 (10) BCLR 1077 (WCC).
1286 *The Beja case* para 19.
1287 *The Beja case* para 7.
1288 *The Beja case* para 23.
1289 *The Beja case* para 150.
1290 *The Beja case* para 145.

functions by limiting themselves only to the expressed functions listed in Schedules 4B and B of the *Constitution*, they fail to achieve the objectives of local government to participate in the development agenda of national and provincial government.[1291]

Municipal councils do not have unfettered powers and functions. The *Constitution* filters their authoritative powers, particularly procedural environmental rights. In essence, procedural rights are intended to prevent the abuse of administrative powers.[1292] The following section discusses the duties of local government emanating from the right to information and the right to just administrative action.

4.2.1.4 Section 32

Section 32 of the *Constitution* provides that everyone has the right to access to (a) any information held by the state and (b) any information held by another person that is required for the exercise or protection of any rights.[1293] National legislation had been enacted to effect this right and now provide for reasonable measures to alleviate the administration and financial burden on the state.[1294] The *Promotion of Access to Information Act* 3 of 2000 (PAIA) was enacted to give effect to the constitutional right.[1295]

Feris and Fuo state that PAIA is "access driven" which means that it promotes the right to receive access to information.[1296] It functions differently from environmental legislation, such as NEMA, that requires the government to publish specific information for public access.[1297] For instance, section 15 of NEMA requires that all national departments that exercise an environmental function must develop, adopt and publish environmental implementation plans and management plans in the Government Gazette in order for them to become effective.[1298] PAIA and its regulations operate differently because they enable local communities to request

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1291 Section 153 of the *Constitution*.
1292 Hage 'Basic Concept of Law' 34.
1293 Section 32(1) of the *Constitution*.
1294 Section 32(2) of the *Constitution*.
1295 *Promotion to Access to Information Act* 2 of 2000 (PAIA).
1296 Feris and Fuo 'Environmental rights protected in the Constitution' 28.
1297 Feris and Fuo 'Environmental rights protected in the Constitution' 28 and McCarthy *Seeking access to environmental information in South Africa* 6.
1298 Section 15(5) of NEMA.

information from municipalities and municipal service providers.[1299] Kidd provides an example of this in practice where people who live near a factory causing air pollution might require access to environmentally relevant information from their municipality about the conditions attached to the company's registration certificate under which the factory operates.[1300] In a further real-life example, in *Company Secretary of ArcelorMittal South Africa v. Vaal Environmental Justice Alliance (VEJA)*,[1301] the Supreme Court of Appeal upheld the decision of the High Court ordering ArcelorMittal to furnish environmentally related information to VEJA.[1302] The request by VEJA to ArcelorMittal followed the allegation by VEJA that ArcelorMittal is the biggest cause of air pollution in the Vaal and that the company is violating the right of the community to an environment that is not harmful to their health or well-being terms of section 24 of the *Constitution*.[1303] The Court found in favour of VEJA, stating that ArcelorMittal has a duty to be transparent to local communities on its environmental activities because transparency plays a critical role in preventing human rights violations by government and the private sector.[1304]

Access to information plays two roles in local communities; the first is that it enables local communities to become watchdogs.[1305] In this instance, communities can monitor that public authorities and third parties comply with environmental norms and standards. The second role is where access to information is used to enforce the substantive environmental right.[1306]

PAIA requires that each municipality appoint an information officer to facilitate the requests for information held by the municipality.[1307] The information officers in municipalities are its MMs who may grant or refuse a request for information in line with the provisions of the Act.[1308] An MM may also redirect the request for

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1299 Feris and Fuo 'Environmental rights protected in the Constitution' 28.
1300 Kidd *Environmental Law* 27.
1301 2015 1 515 (SCA).
1302 *Company Secretary of ArcelorMittal South Africa v VEJA* 2015 1 515 (SCA) para 2.
1303 *Company Secretary of ArcelorMittal South Africa v VEJA* 2015 1 515 (SCA) para 8.
1304 *Company Secretary of ArcelorMittal South Africa v VEJA* 2015 1 515 (SCA) para 66-68.
1305 Du Plessis 'Access to Information' 198.
1306 Du Plessis 'Access to Information' 198.
1307 Section 1 of PAIA.
1308 Section 1 of PAIA.

information to other structures or individuals in the municipality, including the municipal council.[1309] This means that in terms of the PAIA, a municipal council or councillor may be compelled to provide information to requestors. A failure to provide this information may result in the infringement of the right to access information.

A decision to refuse to grant information in terms of PAIA must be legitimate. In terms of this Act, information officers may refuse to grant information if it pertains to certain records of private parties, the South African Revenue Services (SARS), commercial information of third parties and the safety of individuals and property.[1310] Where information is refused and does not fall within these ambits, it may infringe on the requestor's right to just administrative action.

4.2.1.5 Section 33

Section 33 of the *Constitution* provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.[1311] Everyone adversely affected by administrative action is entitled to written reasons on request.[1312] Furthermore, national legislation must be enacted to give effect to these rights and must (a) provide for the review of administrative action by a court or, where appropriate, an independent or impartial tribunal; (b) impose a duty on the state to give effect to the rights in subsection (1) and (2); and (c) promote an efficient administration.[1313] The *Promotion of Administrative Justice Act* 3 of 2000 (PAJA) gives effect to this provision.

PAJA applies to the powers and functions of administrative officials. This exempts the legislative and executive functions of a municipal council and its councillors.[1314] Feris and Fuo state, for instance, that PAJA will become effective when the officials of a municipality use their powers to make decisions that affect the environment or

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[1309] Section 17 of PAIA.
[1310] See sections 34-38 of PAIA.
[1311] Section 33(1) of the *Constitution*.
[1312] Section 33(2) of the *Constitution*.
[1313] Section 33(3) of the *Constitution*.
[1314] Section 1 of PAJA.

a person's right to the environment.[1315] However, while this distinction might be clear on paper, its practical exercise might not be straightforward. To throw a spanner in the works, the courts have, in some instances, stated that administrative justice has less to do with a person who makes the pronouncement and more to do with the nature of the decision taken.[1316] In *President of the Republic of South Africa v South African Rugby*, the Court stated that some actions by a legislature may qualify as administrative action.[1317] Therefore, some acts of a council may qualify as an administrative action. Therefore, although the source of power is relevant to administrative action, the nature of the decision taken is even more important.[1318] It follows, therefore, that an action by a municipal council can constitute administrative action. Where this occurs, this administrative act may infringe the constitutional environmental right of local communities.

4.2.2 Duties emanating from Chapter 7

Chapter 7 of the *Constitution* is dedicated to local government matters.[1319] Section 151(2) of the *Constitution* states that a municipality's executive and legislative authority is vested in its Municipal Council. This makes it a duty for councillors to govern the environmental affairs of their municipalities subject only to national and provincial legislation and the *Constitution*.[1320]

Chapter 7 of the *Constitution* outlines the objectives of local government. The objectives of local government stated in the *Constitution* are to provide a democratic and accountable government for local communities,[1321] ensure the provision of services to communities in a sustainable manner,[1322] promote social and economic

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1315 Feris and Fuo 'Environmental rights protected in the Constitution' 25.
1316 *President of the Republic of South Africa v South African Rugby Union* 1999 10 BCLR 1059 para 141.
1317 *President of the Republic of South Africa v South African Rugby Union* 1999 10 BCLR 1059 para 141; *Fedsure Life* para 27.
1318 *Tshabalala v Council of the Maluti-A-Phofung Local Municipality* 1537/2022 2022 ZAFSHC 230 para 13.
1319 See para 3.6 above.
1320 Section 151(3) of the *Constitution*.
1321 Section 152(1)(a) of the *Constitution*.
1322 Section 152(1)(b) of the *Constitution*.

development,[1323] promote a safe and healthy environment,[1324] and encourage the involvement of communities and community organisations in the matters of local government.[1325] It can be argued that the duty of municipal councils to adopt policies, strategies, plans and programmes on behalf of their municipalities compels them to ensure that these instruments will achieve the objectives of local government as set out in section 152 of the *Constitution*. Furthermore, municipalities must strive to achieve the above objectives within their financial and administrative capacity. This means that further to the plans developed by the council, each of the above objectives must be considered whenever a municipal council drafts a budget on the environment.[1326]

Municipal councils also have developmental duties enshrined in section 153 of the *Constitution*. In terms of this section, municipalities must structure and manage their administration, budgeting, and planning processes to prioritise the community's basic needs, including its environmental needs, and promote its economic and social development.[1327] Developmental duties also include that municipalities must participate in national and provincial environmental development programmes.[1328] The key tenet of developmental local government rests on the ability of this sphere to work with local communities to find sustainable ways to meet their basic needs and improve the quality of their lives.[1329] The developmental mandate of local government aligns with African regional and international environmental goals, including providing basic services to current generations without compromising the needs of future generations.[1330] As part of a council, councillors must find innovative and sustainable ways to provide basic municipal services without compromising the needs of future generations.

[1323] Section 152(1)(c) of the *Constitution*.
[1324] Section 152(1)(d) of the *Constitution*.
[1325] Section 152(1)(e) of the *Constitution*.
[1326] Section 152(2) of the *Constitution*.
[1327] Section 153(a) of the *Constitution*.
[1328] Section 153(b) of the *Constitution*.
[1329] Section B White Paper on Local Government.
[1330] Section B White Paper on Local Government.

Innovative ways could also imply that councillors may have to approach NGOs and private entities outside their municipalities to leverage support and other resources.

The executive authority of a municipality means that municipal councils have the right to legislate and execute by-laws for the effective administration of matters listed in Schedules 4B and 5B of the *Constitution*. It is the duty of the municipal council to effectively administer matters in Schedules 4B and 5B of the *Constitution*. This includes making by-laws, adopting policies or both.

Section 160 of the *Constitution* outlines the internal procedures of a municipal council. In terms of the section, a municipal council is responsible for making decisions related to the utilisation of powers and the performance of all the functions of the municipality. It must elect its chairperson and may elect an executive committee and other committees,[1331] subject to national legislation. Furthermore, a municipal council may employ personnel necessary for the effective performance of its functions.[1332] Section 160 of the *Constitution* allows councillors to identify if there are any gaps in the administrative staff of a municipality and propose that, where necessary, the council employ personnel for effective environmental governance. Section 160(2) further lists specific duties that members of a municipal council cannot delegate to other structures or persons in the municipality, including passing by-laws, approving budgets, imposing rates, taxes, and levies and raising loans.[1333] Municipal councillors must ensure that they are present in council meetings because the decisions taken on these duties require a supporting vote of a majority of its members.[1334]

4.2.3 Duties emanating from Chapter 3

As previously stated, one of the relevance of the *Constitution* on governance in South Africa is that it has fundamentally altered and transformed the structures of government in the country.[1335] One of the key changes in the *Constitution* is that it

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[1331] Sections 160(1)(b) and (c) of the *Constitution*.
[1332] Section 160(1)(d) of the *Constitution*.
[1333] Section 160(2) of the *Constitution*.
[1334] Section 160(3) of the *Constitution*.
[1335] See para 3.5.3 above. Also see Fuo 2017 *De Jure* 324.

has created a system of cooperative governance and principles of intergovernmental relations between the three spheres of local government. [1336] Chapter 3 enshrines a system of cooperative government and intergovernmental relations principles. The Chapter lays down principles through which municipalities should co-function with other municipalities as well as with provincial and national governments.[1337] The essence of this Chapter is to ensure that there are little to no disputes between the three spheres of government and that where disputes arise, they are settled by means of mechanisms and procedures provided for that purpose and must exhaust all other remedies before they approach a court to resolve the dispute.[1338] Therefore, municipalities must ensure that they avoid conflicts with other municipalities or spheres when they are governing the environment. When a dispute does arise, it must be promptly resolved to ensure that the spheres of government focus on their constitutional mandate, which encourages them to work together to ensure the performance and discharge of their responsibilities towards local communities.[1339]

Municipal councils, as the governing authority in municipalities, must ensure that they (a) preserve peace, national unity and indivisibility of the Republic; (b) secure the well-being of people; (c) provide effective, transparent, accountable and coherent government; (d) be loyal to the *Constitution,* the Republic and its people; and I respect the constitutional status, institutions, powers, functions of government in the other spheres.[1340] The *Constitution* obliges these councils to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional and institutional integrity of government in another sphere.[1341] Furthermore, municipal councils are not expected to assume any power or function except those conferred to them in terms of the *Constitution*.[1342]

[1336] Section 41 of the *Constitution*.
[1337] Du Plessis and Nel 'An Introduction' 1-28.
[1338] Makoti and Odeku 2021 *African Journal of Public Affairs* 44.
[1339] Makoti and Odeku 2021 *African Journal of Public Affairs* 44.
[1340] Section 41(1)(a) to (e) of the *Constitution*.
[1341] Section 41(1)(g) of the *Constitution*.
[1342] Section 41(1)(f) of the *Constitution*.

Cooperation amongst the different spheres means that there should be evidence of mutual trust and good faith accompanied by (i) fostering of friendly relations; (ii) assisting and supporting each other; (iii) informing each other of, and consulting one another on, matters of common interest; (iv) co-ordinating their actions and legislation with one another; and most importantly, (v) avoid legal proceedings against one another.[1343] This is important given that the study identified instances where political tension between municipalities or provincial and national governments affects environmental governance.[1344] Cooperation between councillors is also important, given that political office bearers must *inter alia* foster friendly relations, assist each other and adhere to procedures in council meetings. This is especially necessary in councils governed through a coalition agreement. Recently, the Minister of COGTA issued regulations in terms of section 92 of the *Municipal Structures Act*, which essentially stated that councillors must maintain good and orderly behaviour during meetings.[1345] If councillors conduct themselves in a disruptive manner during a meeting, they may face fines or imprisonment.[1346]

The *Intergovernmental Relations Framework Act* 13 of 2005 has been enacted to give effect to Chapter 3 of the *Constitution*. The Act was established to provide for processes, structures, and institutions to promote and facilitate intergovernmental relations.[1347] The Act also provides appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes.[1348] The principles set out in this Act have filtered into the framework of environmental law, creating explicit environmental duties on councils in intergovernmental relations.[1349] For instance, one of the objectives of NEMA is to promote cooperative environmental governance

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[1343] Section 41(41)(1)(i) to (vi) of the *Constitution*.
[1344] See para 3.5.2.1 above.
[1345] Section 3(1)(c) of GN 3538 of 48786 of 14 June 2023.
[1346] Sections 2 and 3 of GN 3538 of 48786 of 14 June 2023.
[1347] Olivier and Gouws 'Cooperative government and intergovernmental division of environmental powers and functions' 11-18.
[1348] Olivier and Gouws 'Cooperative government and intergovernmental division of environmental powers and functions' 11-18.
[1349] Du Plessis and Nel 'An Introduction' 1-29.

in decision-making processes, including investigations and issuing or declining environmental authorisations.[1350]

On several occasions, the courts have made judicial pronouncements on the importance of cooperative governance and the principles of intergovernmental relations. In the decision of *National Gambling Board v Premier of KwaZulu-Natal* the Court stated that government departments should not litigate against each other; rather, they should try to resolve their disputes amicably before approaching courts.[1351] The Court further said that the departments should "re-evaluate their positions fundamentally to consider alternative possibilities and compromises".[1352] In *MEC for Health, KwaZulu-Natal v Premier of KwaZulu-Natal In re: Minister of Health v Treatment Action Campaign*,[1353] the Court found that the application brought before it concerned a political dispute which could and should have been resolved at a political level.[1354] In *Uthukela District Municipality v President of the Republic of South Africa*,[1355] the Court said that it would not interfere with intergovernmental disputes that could have been solved at a political level and that all internal mechanisms should have been exhausted before a court of law was approached.[1356]

While Chapter 3 of the *Constitution* clearly demarcates how the three spheres of government should cooperate, these spheres are known for usurping each other's powers and functions.[1357] This is often the case with the "newly established self-governing powers of local government".[1358] The case of *Merafong City Local*

1350 Section 24(4) of NEMA.
1351 *National Gambling Board v Premier of KwaZulu-Natal* 2002 2 SA 715 para 36.
1352 *National Gambling Board v Premier of KwaZulu-Natal* 2002 2 SA 715 para 36.
1353 2002 10 BCLR 1028.
1354 *MEC for Health, KwaZulu-Natal v Premier of KwaZulu-Natal In re: Minister of Health v Treatment Action Campaign* 2002 10 BCLR 1028 para 12.
1355 2002 11 BCLR 1220 (CC).
1356 *Uthukela District Municipality v President of the Republic of South Africa* 2002 11 BCLR 1220 (CC) para 14-24. Also see a recent judgement *City of Cape Town v National Energy Regulator of South Africa (NERSA)* 51765/17 2020 ZAGPPHC 800.
1357 See for instance *Glenister v President of the Republic of South Africa* 2009 1 SA 287 (CC). Also see Thabo and Odeka 2021 *Obiter* 547-560. Also see 4.2.3 for a discussion on Chapter 3 of the *Constitution*.
1358 Fuo 2014 *De Jure* 238.

Municipality v Anglo Gold Ashanti Ltd[1359] illustrates how the powers and functions of local government have been misconstrued, doubted and, against the ideals of Chapter 3 of the *Constitution*, contested in a court of law by other spheres of government.[1360] The Court, in this case, was faced with two issues. However, for this discussion, the study focuses on whether it was constitutionally permissible for a municipal council decision to set surcharges for water services to be subject to appeal to (as it then was) the Minister of Water Affairs and Forestry.[1361] The Minister, purporting to act under powers in section 8(9) of the WSA, had overturned the municipal council's decision to levy surcharges on water for industrial use.[1362]

Finding in favour of the Municipality, the Constitutional Court found that section 8(9) of the WSA impermissibly empowered the Minister to exercise an exclusive municipal power and thus acted unconstitutionally.[1363] The Court stated that the Schedules of the *Constitution* clearly state that local government has responsibilities with regard to water as an environmental resource, namely, to supply local communities with clean, potable drinking water.[1364] WSA further makes it compulsory for industries to procure water from municipalities as this sphere is duly designed under the Act as a water services authority.[1365] The Court also noted that the Minister ignored the fiscal powers of local government enshrined in section 229(1) of the *Constitution*, which states that a municipality has a right to levy a charge on services provided by it or on its behalf.[1366]

1359 2017 2 SA 211 (CC).
1360 Fuo 2014 *De Jure* 238.
1361 *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) para 1.
1362 *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) para 9.
1363 *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) paras 177-178.
1364 *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) para 157.
1365 *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) para 157.
1366 See *Merafong City Local Municipality v Anglo Gold Ashanti Ltd* 2017 2 SA 211 (CC) paras 155-163. See Fuo 'The courts and local governments in South Africa' 103-123 where the author discusses courts' pronouncements on the usurping of powers and functions of local government in respect to planning. See for instance *City of Johannesburg v Gauteng Development Tribunal* 2010 6 SA 182 (CC); *Maccsand (Pty) Ltd v City of Cape Town* 2012 7 BCLR 690 (CC); *Lagoon Bay Lifestyle Estate (Pty) Ltd v Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape* 2011 4 All SA 270 (WCC) (*Lagoon Bay Lifestyle Estate* case) and *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government,*

The above case illustrates how national and provincial government misconstruing the constitutional powers and functions of the local government sphere can fail to adhere to the principles of cooperative government and intergovernmental relations. Furthermore, it illustrates that local councils have environmental responsibilities. The national government (as all other spheres) has responsibilities in terms of the *Constitution* and the Bill of Rights, while the provincial government has certain concurrent legislative and executive powers with the national government on issues of the environment.[1367] Local government has extensive powers and functions in terms of the *Constitution*, Schedules 4B and 5B, the Bill of Rights and the mandate to "promote a safe and healthy environment" as enshrined in section 152(1)(d) of the *Constitution*.[1368]

Maccsand (Pty) Ltd v City of Cape Town stressed the importance of environmental cooperative governance when it decided that the granting of mining rights or mining permits by the Minister of Mineral Resources in terms of the *Mineral and Petroleum Resources Development Act* 28 of 2002 would not obviate the obligation on an applicant to obtain authorisations in terms of other legislation that deals with functional domains other than minerals, mining and prospecting, in this instance, the Land Use Planning Ordinance 15 of 1985.[1369] Another case is the *Lagoon Bay Lifestyle Estate* case where, in agreeing with the Respondent, the Court stated a municipal council cannot unilaterally make a decision where the environmental consequence of the decision spans across several other municipalities or areas.[1370]

In furtherance to the relationship between council members and the other spheres of government, Chapter 3 of the *Constitution* can be applicable to councillors and administrative officials in a municipality. The relationship between administrative officials and councillors is complex and multifaceted. It must also be guided by the principles in Chapter 3 of the *Constitution*. Municipal councils should exercise their

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Environmental Affairs and Development Planning, Western Cape v City of Cape Town 2014 4 SA 437 (CC).

1367 Du Plessis 2008 *South African Public Law* 4.

1368 Fuo 2014 *De Jure* 324; Du Plessis 2008 *South African Public Law* 4.

1369 *Maccsand (Pty) Ltd v City of Cape Town* 2012 7 BCLR 690 (CC) paras 44-51.

1370 *Lagoon Bay Lifestyle Estate* case para 10-11.

legislative and executive powers and functions to facilitate synergies between the different structures of a municipality. This entails that councillors should cooperate with officials when drafting policies and by-laws, for example. Officials should also implement these instruments in good faith — any uncertainties on who should exercise which function can lead to tension within the municipality.

Councillors should not interfere in the work of municipal officials. It is the role of a municipal council to appoint appropriate administrative staff to various positions. However, once appointed, an official should perform their function and exercise their powers without fear, favour, or prejudice. Furthermore, when performing oversight of the work of municipal officials, councillors should perform oversight with impartiality and neutrality.

4.2.4 Other relevant constitutional values and principles

4.2.4.1 Constitutional values and principles governing public administration

It is important for councillors and municipal officials to discharge their powers and perform their functions in resonance with the values and principles governing public administration in South Africa.[1371] In terms of section 195, public administration must be governed by the democratic values and principles enshrined in the *Constitution* including (a) high standard of professional ethics must be promoted and maintained; (b) efficient, economical, and effective use of resources must be promoted; (c) public administration must be development-oriented; (d) services must be provided impartially, fairly, equitably and without bias; (e) that people's needs must be responded to, and the public must be encouraged to participate ipolicy-making; (f) public administration must be accountable; (g) that transparency must be fostered by providing the public with timely, accessible and accurate information amongst other things.[1372] The Code of Conduct reflects the constitutional values and principles.[1373] Councillors must ensure that municipalities

[1371] See para 3.5.1.1 above.
[1372] Section 195(1)(a) to (f) of the *Constitution*.
[1373] See para 4.3.2 below.

create mechanisms for accountability.[1374] They must meet the priorities of their communities by providing services equitably, effectively, and sustainably.[1375] It is the duty of councillors to perform the functions of their office in good faith, honesty and transparency and to act in the interest of their municipality in such a way that the credibility and integrity of the municipality are not compromised.[1376]

4.3 National local government legislation

This section of the study discusses the national local government legislation with a view to determining the environmental powers and functions of municipal councils as crafted by the legislature. Legislation does not create unfettered rights or power for local government. In terms of section 39(2) of the *Constitution*, legislation must be interpretaed to promote the spirit, purport or object of the Bill of Rights. Furthermore, section 1(c) of the Constitution states that all laws must abide by the supremacy of the *Constitution* and the rule of law. The findings will feed into the eventual framework proposed in the concluding chapter for improved understanding and interpretation of the duties of councillors to realise the constitutional environmental right. Section 4.3 is dedicated to local government legisltion and to the extent that these laws can pootentially empower councillors to give effect to the constitutional environmental right. This discussion is then followed by section 4.4 that focuses on national environmental legisltion to the extent to which these laws implicate councillors and their municipalities to the realisation of section 24 of the *Constitution*.

4.3.1 Local Government: Municipal Systems Act

The *Municipal Systems Act* is one of several pieces of legislation reiterating how local government has been institutionally transformed into an autonomous sphere with relative autonomous power and functions.[1377] This Act is framework legislation that provides core principles, mechanisms, and processes necessary for

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[1374] Preamble of Schedule 1 of the *Municipal Systems Act*.
[1375] Preamble of Schedule 1 of the *Municipal Systems Act*.
[1376] Section 2 of Schedule 1 of the *Municipal Systems Act*.
[1377] Du Plessis and Nel 'Introduction' 1-7.

municipalities to uplift their communities' social and economic status. The Act's objective includes defining the legal nature of a municipality's political and administrative structure and providing for the manner in which the powers and functions of municipalities are exercised to provide for community participation.

As would be clear by now, one of the cardinal functions of local government is to provide services. As Du Plessis and Nel explain, ecologically sustainable development is one of the objectives of section 24 of the *Constitution*, which compels municipalities to achieve justiciable economic and social development, that is balanced with securing ecologically sustainable development.[1378] In advancing sustainable development, councillors should aim to improve the lives of residents, especially the previously disadvantaged members of society and ensure that development serves current communities without compromising the needs of future generations.[1379] Municipal services must be rendered in a manner designed to, firstly, minimise the risk of harm to the environment, human health, and safety to the extent reasonably achievable given the circumstances. Secondly, the potential benefits to the environment, human health, and safety should be maximised to the extent reasonably possible under the circumstances. Thirdly, that legislation intended to safeguard the environment, human health, and safety is complied with.[1380] It is explicitly provided in section 4(2)(j) of the Act that councillors must contribute to the realisation of constitutional environmental right. [1381]

Providing services in a sustainable manner requires councils to *inter alia* develop IDPs that detail how the provision of all municipal services will be carried out without compromising the longevity of the environmental resources of that community. IDPs are a critical plan of any municipal council.[1382] Councils are expected to develop these IDPs after the start of the elected term.[1383] Councillors must align the resources and capacity of the municipality with the implementation of the IDP,

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[1378] Du Plessis and Nel 'Introduction' 1-11.
[1379] Section 1 of the *Municipal Systems Act*.
[1380] See sections 1, 4(2)(d) and 73(2)(d) of the *Municipal Systems Act*.
[1381] Section 4(2) of the *Municipal Systems Act*.
[1382] See Fuo 2013 *PELJ* 226.
[1383] Section 25(1) of the *Municipal Systems Act*.

allowing them to mainstream environmental issues across all other matters of the municipality.[1384] Councils also need to use their legislative duties to develop and adopt environmental policies, plans, strategies and programmes, including setting targets for service delivery and preparing, approving and implementing budgets, among other things.[1385]

Councillors must evaluate their performance regarding environmental governance matters as set out in the IDP. The performance management system can be used to evaluate their environmental governance efforts.[1386] This system must be commensurate with the municipality's resources,[1387] be best suited for the circumstances of the municipality,[1388] and it must align with the environmental priorities, objectives, indicators, and targets set out in the IDP.[1389] The executive committee or executive mayor of a municipality, or if the municipality does not have either, a committee of councillors appointed by the municipal council, must develop the performance management system of a municipality. This committee must ensure that it assigns responsibilities to the municipal manager. Once developed, the committee must propose that the performance management system be adopted at a council sitting. It remains a duty of councillors to promote a culture of performance management within their municipality.[1390]

It has been established that there is a distinction between the administrators of a municipality and the political office bearers, who are the legislative and executive authorities. This Act however, allows for a councillor, who is a political office bearer, to assume an administrative task where needed. In terms of section 59 of this Act, it is a duty of a councillor to perform specific administrative duties if they are assigned to them through delegation from the municipal council.[1391] For instance, a councillor may be expected to manage an environmental programme, such as a

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1384 Section 25(1)(c) of the *Municipal Systems Act*.
1385 Section 11(3) of the *Municipal Systems Act*.
1386 Section 38(a) of the *Municipal Systems Act*.
1387 Section 38(a)(i) of the *Municipal Systems Act*.
1388 Section 38(a)(ii) of the *Municipal Systems Act*.
1389 Section 38(a)(iii) of the *Municipal Systems Act*.
1390 Section 38(b) of the *Municipal Systems Act*.
1391 Section 59(1)(b) of the *Municipal Systems Act*.

clean-up campaign, of the municipality in the absence of the director in the department of environmental management. This may include drafting a programme, convening a clean-up team, assigning responsibilities to officials and drafting a report once the campaign is completed. The prudence of a delegation system in a municipality is to ensure that councils maximise administrative and operational efficiency.[1392] A salient advantage to delegation is that it allows councillors in the environmental management portfolio of a municipality to familiarise themselves with the daily administrative work performed in the environmental department of their municipality.

A critical task for councillors is to promote a culture of public participation in the environmental governance matters of local government. Chapter 4 of the Act is dedicated to the duty of councillors to develop a culture of municipal governance that complements formal representative governance.[1393] Section 16 mandates councillors to be consistent in ensuring community participation in the matters of local government, this implies the inclusion of environmental governance issues. This means that communities must participate when municipal councils prepare, implement, and review the IDP, performance management system and a municipality's annual budget, among other things.[1394] Community participation is not a rigid exercise. Councillors can thus typically be innovative when fostering community participation. This means they should *inter alia* use unconventional processes to encourage and enrich community participation.

As hinted at earlier, the *Municipal Systems Act* provides a Code of Conduct that provides guidance for councillors in executing their legislative and executive functions.[1395] In terms of the Code of Conduct, councillors must act in good faith, honestly and transparently.[1396] They must at all time act in the best interest of their

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[1392] Section 59(1) of the *Municipal Systems Act*.
[1393] Section 16(1) of the *Municipal Systems Act*.
[1394] Section 16(1) of the *Municipal Systems Act*.
[1395] Schedule 1 of the *Municipal Systems Act*.
[1396] See para 4.2.4.1 above.

municipality and in such a way that the credibility and integrity of the municipality is not compromised.[1397]

4.3.2 Local Government: Municipal Structures Act

The *Municipal Structures Act* regulates internal systems and structures of a municipality, such as council committees. The three committees consisting of councillors relevant to their duties in environmental governance are ward committees and section 79 and 80 committees.

The first committee discussed is the ward committee. Councillors must enhance participatory democracy through ward committees.[1398] A councillor is a chairperson of the ward committee and a representative of the committee in the municipal council.[1399] This duty is reserved for ward councillors and does not apply to PR councillors. The double-faceted role creates a duty on councillors to firstly encourage community participation in environmental matters of the municipality and, secondly, to represent the ward by advocating for the environmental needs of its community. This means that the ward councillor should be the first person to know when an environmental issue arises, such as a leaking water pipe in the community. Therefore, it is the duty of the councillor to report environmental services issues to the municipality (administration) on behalf of his or her ward.

The second committee is the section 79 committee. Councillors have a duty to serve in section 79 committees if municipal councils appoint them. The council may establish the committee for the effective and efficient performance of any environmental function or for exercising any environmental powers of a council.[1400] The City of Johannesburg Metropolitan Municipality has assigned its legislative function on environmental governance to the Environment, Infrastructure and

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1397 See para 4.2.4.1 above.
1398 Section 72(3) of the *Municipal Structures Act*.
1399 Section 73(2) of the *Municipal Structures Act*.
1400 Section 79(1)(a) of the *Municipal Structures Act*.

Services committee.[1401] The primary task of the committee is to exercise oversight over the development and implementation of all by-laws, strategies and policies of the Municipality on the Environment, Infrastructure and Services Department.[1402] Section 79 committees may be useful because a councillor in the committee may identify an environmental expert and recommend that the committee co-opt such an expert.

A councillor should also serve in an intra-municipal structure which is established pursuant to an environmental governance issue or project. This structure may bring together councillors and municipal officials from various departments within a municipality.[1403] The role players in an environmental governance matter may include for instance, MMCs, members of portfolio committees and municipal officials from environmental management, land-use planning, disaster risk reduction, public works, and municipal health services departments.[1404]

The third committee is a section 80 committee, which is appointed to assist the executive mayor or an executive committee in terms of section 79 of the *Municipal Structures Act*.[1405] The difference, however, between a section 79 and 80 committee is that the latter is established by the executive mayor or executive committee to assist an executive committee or an executive mayor in their environmental governance matters.[1406] Therefore, councillors in this committee perform an oversight role, support and act as advisors to the executive mayor and executive committee. An executive or mayoral committee is appointed among councillors to

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1401 City of Johannesburg year unknown https://www.joburg.org.za/about/government/Pages/Legislature/SECTION-79-ENVIRONMENT,-INFRASTRUCTURE-AND-SERVICES-COMMITTEE.aspx.

1402 City of Johannesburg year unknown https://www.joburg.org.za/about/government/Pages/Legislature/SECTION-79-ENVIRONMENT,-INFRASTRUCTURE-AND-SERVICES-COMMITTEE.aspx.

1403 Nel, Du Plessis and Retief 'Key elements for municipal action' 2-20.

1404 Nel, Du Plessis and Retief 'Key elements for municipal action' 2-20 and 2-21.

1405 Section 80(1) of the *Municipal Structures Act*.

1406 Section 80(1) of the *Municipal Structures Act*.

assist the executive mayor.[1407] The members of this committee also exercise powers that are delegated to them by the executive mayor.[1408]

Arguably, the most powerful structure within a municipal council accorded with extensive powers and functions is the executive mayor and executive committee. In terms of section 55 of the Act, an executive mayor (and committee) is elected from amongst the members of a municipal council.[1409] This means that the mayor is a councillor with specific duties concerning environmental governance. The executive mayor's powers and functions include identifying the municipality's environmental needs, reviewing and evaluating these environmental needs in order of priority, and recommending to council strategies, programmes and services to address environmental needs through the IDP and estimates of revenue and expenditure.[1410] The powers and functions of an executive mayor provide that such a person must recommend and determine the best way to solve the municipality's issues, including partnerships and other approaches to deliver strategies, programmes and services to the maximum benefit of the community.[1411] The executive mayor, while enhancing the constitutional objective of a safe and healthy environment and providing sustainable municipal services, must identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services can be evaluated, including key performance indicators which are specific to the municipality and common to local government.[1412] Furthermore, the Act places great powers on the executive mayor, including that such a mayor must monitor the performance of all other role players in the municipality to ensure the realisation of the constitutional environmental right. For instance, section 56(3)(b) of the Act states that the executive mayor must evaluate its municipality's progress against key performance indicators to improve the economy, efficiency, and effectiveness of the municipality.[1413] This mayor must

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[1407] Section 60(1)(a) of the *Municipal Structures Act*.
[1408] Section 60(1)(c) of the *Municipal Structures Act*.
[1409] See para 3.5.1.1 above.
[1410] Section 56(2) of the *Municipal Structures Act*.
[1411] Section 56(2)(d) of the *Municipal Structures Act*.
[1412] Section 56(3)(a) of the *Municipal Structures Act*.
[1413] Section 56(3)(b) of the *Municipal Structures Act*.

monitor the management of the municipality's administration per the direction of the council and oversee the provision of sustainable municipal services to local communities.[1414]

4.3.3 Local Government: Municipal Finance Management Act

A municipality's finances are perhaps the biggest enabler or impediment to the realisation of the constitutional environmental right.[1415] The finances of municipalities are regulated in terms of the MFMA.[1416] One of the duties of councillors emanating from the MFMA is carefully budgeting for environmentally relevant services. The council of a municipality is expected to approve an annual budget each year before the start of a municipality's financial year.[1417] It is the duty of each councillor to ensure that the annual budget is mutually consistent with environmental governance matters as set out in the IDP of the municipality.[1418] In terms of the Act, a councillor must be able to raise inconsistencies in the budget before it is approved by the council;[1419] this speaks to the duty of a councillor to fend the environmental cause. Where a councillor raises inconsistencies on the budget in relation to the environmental governance matters of a municipality, section 25 permits the budget to be re-tabled and approved at another council sitting after the councillor's concerns have been addressed.[1420]

A councillor is also expected to carefully consider their vote whenever the council purchases or disposes of an asset of the municipality. Section 90(1) of the Act

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1414 Section 56(3) (d) and (e) of the *Municipal Structures Act*.

1415 Nel, Du Plessis and Retief 'Key elements of municipal actions' 2-16 and Olivier and Gouws 'Co-operative government and the intergovernmental divisions of environmental powers and functions' 11-13.

1416 Some of the objects of the MFMA include to ensure the prudent and sustainable management of fiscal and financial matters concerning municipalities and municipal entities. This is achieved through the establishment of norms, standards, and other requirements, including: (a) ensuring transparency, accountability, and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities; (b) managing their revenues, expenditures, assets, and liabilities, as well as handling their financial transactions;(c) aligning budgetary and financial planning processes with those of organs of states in other spheres of government. See section 2 of the MFMA.

1417 Section 16(1) of the MFMA.

1418 Section 21(a) of the MFMA.

1419 Section 24 of the MFMA.

1420 See section 25(1) of the MFMA.

prohibits the sale and disposal of capital assets needed for the provision of basic municipal services. Furthermore, a municipality may dispose of an asset after the council has considered all circumstances, including the environmental duties of the municipality, and resolving if such an asset will no longer be required to execute this function. Therefore, it is the duty of each councillor to raise a concern when the council wants to dispose of an asset that is needed for its environmental duties.

It follows from the above that the MFMA places a duty on councillors to raise concerns, where necessary, on critical financial matters of their municipalities. In raising these issues, councillors are performing their diligent duty to provide political leadership and determine a municipality's policy direction. However, while raising these concerns, councillors must not interfere in financial matters unless they have been assigned to. Section 103 of the MFMA states in this regard that a councillor must refrain from interfering in the financial affairs of municipal entities or the responsibilities of the Board of directors of municipal entities, other than those duties assigned to the councillor.[1421] Section 117 of the MFMA further prohibits councillors from being members of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts, or other bids. Councillors should not attend such meetings, even as observers. Therefore, while it is a duty of a councillor to advocate that the municipality acquire any asset necessary for environmental governance, they must not interfere in the supply chain process involved in the acquisition of that asset.

Public-private partnerships (PPPs) are also enablers for realising the constitutional environmental right regulated by the MFMA.[1422] PPPs can be defined as a contract between a public-sector institution and a private party where the private entity performs the function of a municipality.[1423] Most of the project risk (technical, financial, and operational) is transferred to the private party.[1424] Furthermore, the public sector pays for the full set of services including the new infrastructure built

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[1421] Section 103(a) and (b) of the MFMA.
[1422] Nel, Du Plessis and Retief 'Key elements of municipal actions' 2-33.
[1423] Regulation 16 of the *Public Finance Management Act* (PFMA) 1 of 1999.
[1424] Regulation 16 of the PFMA.

and maintenance.[1425] While councillors may be compelled to refrain from interfering in a municipality's finances, nothing prohibits them from raising awareness in instances where they believe that a proposed PPP agreement is not in the best environmental interest of a municipality.[1426] Councillors may raise concerns where the proposed agreement fails to demonstrate that the PPP (a) provide value for money to the municipality; (b) be affordable for the municipality; and (c) transfer appropriate technical, operational, and financial risk to the private party.[1427]

4.3.4 Disaster Management Act

The *Disaster Management Act* is directly applicable to local environmental governance.[1428] Chapter 5 of the Act is dedicated to the duties of councillors and municipal councils with regard to disaster management. In terms of section 42, municipal councils in each metropolitan and district municipality must develop a disaster management framework to ensure an integrated and uniform approach to disaster management in their areas.[1429] The disaster management framework is a core component of the IDP of a municipality.[1430] The framework places a duty on municipal councils to align their IDPs with the aspects of physical planning and infrastructure development as well as social and economic related issues relevant to disaster risk reductions and measures in their municipalities. This means that disaster risk management in municipalities is a cross-cutting issue that councillors must consider throughout the development of the IDP.

1425 Regulation 16 of the PFMA.

1426 See para 3.7.4.2.1 above.

1427 Section 120(1) of MFMA.

1428 The Act primarily aims to provide an integrated and coordinated disaster management policy that focuses on preventing and reducing the risks of environmental disasters, mitigating the severity of environmental disasters, emergency preparedness, rapid and effective response to disasters, and post-environmental disaster recovery, amongst other things. The preamble of the *Disaster Management Act*. See *Earthlife Africa Johannesburg v Minister of Environmental Affairs* 2 All SA 519 (GP) para 82, where the Court stated that climate change poses a great risk in sustainable development in South Africa in the form of rising temparatures, water scarcity and increased frequency in disaster risks.

1429 Section 42(1) of the *Disaster Management Act*.

1430 See section 26(g) of the *Municipal Systems Act* read with section 53(2)(a) of the *Disaster Management Act*.

In terms of section 54 of the Act, municipal councils are ultimately responsible for disaster risk reduction in their municipalities. This means that instead of responding to disasters, municipal councils must strive to reduce the risk of disasters in their municipalities. Careful planning for disasters in municipalities also requires that municipal councils establish disaster management centres within their administration. A metropolitan and district municipality must establish a disaster management centre after consulting with local municipal councils and, where possible, operating such centres in partnership with those councils.[1431] Such centres must specialise in issues concerning disasters and disaster management in municipal areas and promote an integrated and coordinated approach to disaster management with special emphasis on prevention and mitigation by internal units within the administration of the municipality, all municipal entities operating in the area, and other players in the municipality.[1432]

4.3.5 Spatial Planning Land Use Management Act

SPLUMA is directly applicable to local environmental governance.[1433] The basis of the environmental obligations included in *SPLUMA* is its recognition of local government's obligation to realise section 24 of the *Constitution* as well as advancing sustainable development of land in so far as it requires the integration of social, economic, and environmental consideration in both forward planning and land use management to ensure that development of land serves present and future generations.[1434] The municipal council of a municipality must develop a spatial development framework (SDF) as part of a municipality's IDP.[1435] Again, aligning the SDF with the IDP of a municipality means that the SDF must guide municipal councils throughout all its decision-making processes for the next five years. One of the duties of councillors, according to SPLUMA, is to collapse parallel administering of land use in municipalities, bringing together all land use activities under a single

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[1431] Section 43(1)(a) and (b) of the *Disaster Management Act*.
[1432] Section 44(1)(a) and (b) of the *Disaster Management Act*.
[1433] Karsten *Local Government accountability in South Africa: An environmental law reading* 135.
[1434] Preamble *SPLUMA*.
[1435] Section 20(1) and (2) of *SPLUMA*.

scheme for each municipality.[1436] This means that in areas where traditional authorities and municipalities administer land, the traditional administration of that land must be dismantled and placed under the land use scheme of the respective municipality.[1437] The object of planning and developing an SDF is to interpret and represent the spatial development vision of a specific municipality without discriminating between communities under traditional authorities and others.[1438] The council must allow local communities to submit written representation regarding the proposed SDF.[1439] It is the duty of the council to consider the representation given by local stakeholders before adopting a proposed SDF.[1440] When developing SDFs, municipal councils must ensure that their spatial planning and land use follow the obligations in *SPLUMA*, primarily land use management and spatial planning that protects the environment.[1441]

SPLUMA's development principles and norms and standards applicable to municipal councils include upholding consistency of land use measures in accordance with environmental management; efficiency whereby decision-making procedures are designed to minimise negative financial, social, economic and environmental impacts; and spatial plans, policies and land use systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.[1442] This means that it is the responsibility of councillors to ensure that people do not settle in environmentally disaster-prone areas and where they cannot be provided with basic municipal services.[1443]

1436 Viviers, Retief and Cilliers 'Land-use management and planning' 16-4; Dubazane and Nel 2016 *Indilinga African Journal of Indigenous Knowledge Systems* 222; Du Plessis 'An overview of land use management and the role of traditional leaders in terms of SPLUMA' 11.

1437 Viviers, Retief and Cilliers 'Land-use management and planning' 16-4; Dubazane and Nel 2016 *Indilinga African Journal of Indigenous Knowledge Systems* 222; Du Plessis 'An overview of land use management and the role of traditional leaders in terms of SPLUMA' 11.

1438 Section 25(1)(a) of *SPLUMA*.

1439 Section 20(3) of *SPLUMA*.

1440 Section 20(4) of *SPLUMA*.

1441 Karsten *Local Government accountability in South Africa: An environmental law reading* 135.

1442 See section 6 of *SPLUMA*.

1443 Dubazane and Nel 2016 Indilinga African Journal of Indigenous Knowledge Systems 224.

When *SPLUMA* was enacted in 2015, it required that all municipal councils prepare and adopt or amend their land use schemes in accordance with the Act.[1444] The object of land use schemes includes appropriating categories of land use zoning and regulations for an entire municipal area, including areas not previously subject to a land use scheme.[1445] Municipal councils should use their land use schemes to protect the environment. In terms of section 24(2)(b) of the Act, land use schemes must take cognisance of any environmental management instruments adopted by the relevant authority, and they must comply with environmental legislation.

4.4 National environmental legislation

It is to be expected that South Africa's extensive framework of environmental legislation includes duties and functions of local government which have a bearing on the duties of councillors. This framework is discussed next, starting with the NEMA and the NWA.

4.4.1 National Environmental Management Act

NEMA is deemed to be South Africa's framework of environmental legislation. Overarching and generic principles generally define framework legislation in terms of which sector-specific legislation is embedded.[1446] It provides "a vehicle for integrated environmental management as well as coordinated and sustainable protection of the environment".[1447] This means that as framework legislation, NEMA creates several duties for organs of state (including councillors), such as participating during the formulation of environmental legislation, fostering cooperation between municipal councils and national and provincial government and ensuring innovative use of environmental management tools and instruments for the benefit of the environment.[1448]

1444 Section 23 of *SPLUMA*.
1445 Section 24(2)(a) of *SPLUMA*.
1446 Kidd *Environmental Law* 35.
1447 Van der Linde 'National Environmental Management Act 107 of 1998 (NEMA)' 194.
1448 Nel and Du Plessis *SAJELP* 1-37.

NEMA gives effect to section 24 of the *Constitution*.[1449] The preamble of the Act refers to this right and distils councillor' obligations to respect, protect, promote, and fulfil this right. Furthermore, the preamble gives effect to the overarching principles of cooperative government. NEMA sets out so-called principles that are applicable to the actions of the organs of states, including councillors, that may significantly affect the environment.[1450] They restrict municipalities, as governed entities, from causing harm to the environment and compel action when environmental damage occurs. NEMA also directs local governance in as far as the principles must be incorporated with municipal by-law-making and local planning activities, among other things. Some of the key principles with application include the sustainable development principle,[1451] the preventative principle,[1452] the precautionary principle,[1453] the polluter pays principle,[1454] environmental justice,[1455] and the all important duty of care.[1456]

In addition to the principles and the statutory regime created for pollution control, Chapter 2 of the Act operationalises the principle of cooperative governance in environmental management.[1457] To give effect to the principles of cooperative governance, municipal councils should participate in national forums and advisory

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1449 Van der Linde 'National Environmental Management Act 107 of 1998 (NEMA)' 197.

1450 Van der Linde 'National Environmental Management Act 107 of 1998 (NEMA)' 198.

1451 Section 2(2) of NEMA. The principles essentially requires that economic development must be balanced with environmental concerns. See para 4.2.2.1 for a detailed discussion on sustainable development and the constitutional environmental right.

1452 section 2(4) of NEMA. This principle has its origins in the Stockholm Declaration and principle 2 of the Rio Declaration. The preventative principle demands that environmental pollution and degradation must be prevented.

1453 This principle is said to be an extension of the prevention principle. The precautionary principle demands that environmental degradation must be avoided where there is uncertainty or a lack of scientific knowledge. See Glazewski and Plit 2015 *Stell LR* 194; Rantlo *Ex post facto environmental authorisation in South Africa* 77; Oosthuizen, Van Der Linde and Basson 'National Environmental Management Act' 144.

1454 Section 2(4)(p) of NEMA. In terms of the polluter pay principle, the cost of remedying, preventing and minimising pollution, environmental degradation and health effects must be paid for by those responsible for harming the environment.

1455 In terms of section 2(4)(c) of NEMA, environmental justice must be observed in relation to the distribution of adverse environmental impacts and equittable access to environmental resources, benefits and services.

1456 See section 28 of NEMA. This principle imposes a duty for developers to act with care for the environment. The duty of care includes preventing, minimising and mitigating environmental harm.

1457 Oosthuizen, Van Der Linde and Basson 'National Environmental Management Act' 129.

committees on environmental governance. In terms of section 3A(a) of NEMA, the Minister may establish an advisory committee or forum. As the name suggests, advisory committees are designed to provide the Minister with advise on environmental governance issues.[1458] This suggests an inclusion of local government in the governance architecture designed by the NEMA.

Chapter 4 of the Act details processes available to the spheres to ensure fair decision-making, including expert investigations and conciliation and arbitration of environmental disputes. This chapter again is aimed at assisting the spheres of government to "coordinate their functions"[1459] and avoid environmental disputes.

Furthermore, NEMA provides for environmental law compliance and enforcement involving local government,[1460] extensive processes around EIAs and consquences for failure to comply,[1461] and access to environmental information.[1462] The Act also determines legal standing in the event of environmental adjudication[1463] and further provides for private prosecution in environmental matters[1464] – which is quite a novel and important provision. The Act thus serves to create a very insightful legal canvas against which municipalities and the roleplayers it engages with, should view and approach local environmental governance.

The NEMA and its relevant provisions should be read in conjunction with the more detailed provisions in the body of SEMAs discussed below.

4.4.2 National Water Act

The NWA is a national legislation that provides for sustainable management of water resources in South Africa.[1465] The NWA has heralded fundamental reform of water

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[1458] Oosthuizen, Van Der Linde and Basson 'National Environmental Management Act' 146.
[1459] Oosthuizen, Van Der Linde and Basson 'National Environmental Management Act' 129.
[1460] See sections 28-31 of NEMA.
[1461] See section 24 of NEMA.
[1462] See section 2(4)(k) and sections 11-16 of NEMA.
[1463] See section 32 of NEMA.
[1464] See section 33 of NEMA.
[1465] Swart and Adams 'Water service provision and the protection of water resources' 14-7.

law.[1466] In its preamble, the Act acknowledges that water, as a natural resource, is the common heritage of all humanity. However, discriminatory laws and practices have hindered equitable access to water and the use of water resources. As such, section 2 of the Act states that its purpose includes meeting the basic needs of present and future generations, promoting equitable access to water and redressing the results of past racial and gender discrimination.[1467]

Section 3(1) of the NWA confirms that the national government, as the public trustee, is responsible for the protection, use, development, conservation, management, and control of nation's water resources. This means that the Minister responsible for water affairs in the country has the duty to realise the objectives of the NWA. However, the Act envisages that through delegation and cooperative measures, various water management areas can be established either through a proposal being made by a municipal council, on the initiative of a community or a stakeholder concerned or on the Minister' own initiative, the management of which will be carried out by catchment management agencies.[1468] A catchment is an area (drainage basin) that captures rainfall that drains into a watercourse (river system).[1469] The drainage basin is an area drained by a river and its tributaries.[1470] Catchment management, therefore, is balancing the use and conservation of natural resources on a whole of catchment basis.[1471] In March 2012, the Minister of Water Affairs approved the consolidation of nineteen catchment management agencies (CMAs) to nine.[1472] However, according to the Report on Public Institutions listed in

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1466 Swart and Adams 'Water service provision and the protection of water resources' 14-7. Also see *Witzenberg Properties (Pty) Ltd v Bokveldsklof Boerdery (Pty) Ltd* 2018 6 SA 307 WCC para 32. In this case, both parties agreed that the NWA introduced fundamental reform to the law relating to water resources by moving away from the riparian principle of preferential and hierarchical water use rights to an administered authorisation system for circumscribed water uses, in the interests of all water users, thereby moving the traditional "water law" from the domain of private law to that of public law.

1467 Section 2 (a), (b) and (c) of the NWA.

1468 Sections 77-80 of NWA.

1469 Collins 2023 https://www.collinsdictionary.com/dictionary/english/catchment-area.

1470 Collins 2023 https://www.collinsdictionary.com/dictionary/english/catchment-area.

1471 Water and sanitation 2019 dws.gov.za/iwqs/nwa/tmp_Chaapter_7.html.

1472 Mofokeng *Challenges in developing water management institutions: The case of catchment management agencies (CMAs) in South Africa* 2 and Swart et al' 'Water services provision and the protection of water resources' 14-8.

the PFMA Schedules,[1473] the following catchment management areas are currently being funded by the National Treasury: Breede-Olifants, Inkomati-Usuthu, Mzimvubu-Tsitsikamma, Pongola-Umzimkulu, Vaal-Orange and Breede-Grouritz CMAs.[1474] The establishment of these agencies serves the objective of delegating water resource management to the regional or catchment level and incorporating local communities within the parameters of the national water resource strategy as outlined in Chapter 2 of the NWA.

The relationship between catchment agencies and municipal councils is increasingly becoming important because several activities by councils, including unlawful contamination of rivers with sewage spillages, may affect how catchment areas operate.[1475] Section 151(1)(i) of the Act states, for instance, any person that unlawfully and intentionally or negligently commits any act or omission which pollutes or is likely to pollute a water resource is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years.[1476] As such, municipal councils should ensure that their municipalities are duly authorised by the Department of Water and Sanitation or the relevant catchment water agency before the municipality can commence with water use activities such as, discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit.[1477]

According to the Act, the Minster is responsible for appointing the members of a governing Board of a catchment management agency. When making such appointments, the Minister must strive to achieve a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups.[1478] It is important that local government, as the sphere closest to local communities, is adequately represented in a catchment management agency. This means that councillors, as representatives of local

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[1473] Public Institutions listed in PFMA Schedules 1, 2, 3A, 3B, 3C and 3D as of 28 March 2023.
[1474] National Treasury 2023 rb.gy/db0xf.
[1475] Swart *et al* 'Water services provision and the protection of water resources' 14-13.
[1476] Section 151(2) of NWA.
[1477] See section 21 of NWA.
[1478] Section 81(1) of NWA.

communities and nominated by their respective councils, could serve on the Board of a catchment management agency.[1479] Therefore, serving on the Board of catchment management agencies means that municipal councillors have a duty to assist in delivering equitable and quality water to local communities. This duty is further expressed by the need for councillors to ensure that their municipalities do not interfere unlawfully with the functioning of catchment areas, including, for instance, not tempering with or interfering with any waterwork, seal or measuring device attached to a waterwork.[1480]

NWA also lists regulations for water use that municipalities are expected to adhere to.[1481] These regulations include limiting the purpose, extent and manner of water use;[1482] requiring water use to be monitored, measured and recorded;[1483] and that water use be registered with responsible authorities, including municipalities.[1484] Overall, the regulations enjoin municipalities to *inter alia* protect, conserve and control water resources considering the needs of current and future generations.

4.4.3 Water Services Act

As previously stated, WSA regulates the constitutional duty of local government to provide access to water and water-related services.[1485] In terms of section 2 of *WSA* the first and main objective of this Act is to provide for the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being.[1486] This responsibility is given to municipal councils as water services authorities and water services providers.[1487] Therefore, it is a duty of municipal councils to help fulfil the main objective of this Act. Municipal councils must provide measures to realise the

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1479 Section 81(2) of NWA.
1480 See section 151 of NWA.
1481 Section 26 of NWA.
1482 Section 26(1)(a) of NWA.
1483 Section 26(1)(b) of NWA.
1484 Section 26(1)(c) of NWA.
1485 See para 4.4.1.2 above.
1486 Section 2(a) of WSA.
1487 See section 1 of WSA for the definitions of a water services authority and water services provider.

right of local communities to access water and sanitation.[1488] A municipal council must set the conditions under which water services should be supplied.[1489] These conditions should be included in the by-law or policy of the municipality, which may determine the technical conditions of existing or proposed extensions of supply,[1490] the structure of the tariffs applicable in the municipality,[1491] the conditions for payment for water services,[1492] circumstances under which water services may be limited or discontinued,[1493] and measures to promote water conservation and demand management among other things.[1494] It is a duty of councillors to ensure that their local communities are not unfairly prejudiced by the decision of a municipality to discontinue or limit water and water-related services.[1495] This includes the duty of a municipality to provide reasonable notice of intention to limit or discontinue water services and for an opportunity for the community to make representations on the matter.[1496] It is critical, however, for municipalities not to limit or discontinue water services due to non-payment by the user where a person or a community proves that they cannot afford to pay for the services.[1497] Where local community members cannot afford to pay for a water-related service, it becomes the duty of their councillors to ensure the continuation of these services under the indigent policy of a municipality.[1498] This duty includes identifying vulnerable communities that need to be considered under the indigent policy of the municipality and informing members of those communities of their right to apply for indigent status.

The Court in *Mazibuko v City of Johannesburg* had to inter alia determine the validity of the City's Free Basic Water Policy (water policy), which essentially allocated 6

1488 Section 3(3) of WSA.
1489 Section 4(1) of WSA.
1490 Section 4(1)(b) and (c)(i) of WSA.
1491 Sections 4(1)(c)(ii) of WSA.
1492 Sections 4(1)(c)(iii) of WSA.
1493 Sections 4(1)(c)(iv) of WSA.
1494 Sections 4(1)(c)(vi) of WSA.
1495 Section 3(a) of WSA.
1496 Section 3(b) of WSA.
1497 Section 3(c) of the WSA.
1498 See sections 74(2)(c) and 74(i) of the *Municipal Systems Act*.

kilolitres of free water per month per account holder.[1499] The applicants argued that the water policy allocation conflicts with section 27 of the *Constitution* and section 11 of the NWA.[1500] The applicant further contended that this allocation was unreasonable, demeaning and not inclusive to every community member.[1501]

The Court reiterated the duty of municipalities to ensure access to sufficient water in terms of section 27(1) of the *Constitution*.[1502] In the same breath, the Court emphasised that section 27(1) must be read with subsection (2), which requires municipalities to take reasonable legislative measures progressively to realise the attainment of this right.[1503]

Relying on previous Judgements, including the *Government of the Republic of South Africa v Grootboom* and the *Minister of Health v Treatment Action Campaign*,[1504] the Court said that there are varying factors that hinder a municipality from providing desired amounts of water including income and unemployment statuses of local communities and the budgetary constraints of a municipality.[1505]

This Judgement implies that municipal councils must determine the provision of water against their available resources. It is important that available water is fairly distributed and that municipalities progressively work towards attaining sufficient water that may be deemed acceptable by community members.

In administering their water services function, municipalities must adhere to prescribed national standards that relate to the provision of water services,[1506] the quality of water taken from or discharged into any water service or water resource system,[1507] the effective and sustainable use of water resources for water services

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1499 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) para 44.
1500 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) para 4.
1501 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) para 44(c) and (d).
1502 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) para 46.
1503 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) para 50
1504 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) paras 53-56.
1505 *Mazibuko v City of Johannesburg* 2010 3 BCLR 239 (CC) paras 54-55.
1506 Section 9(1)(a) of the WSA.
1507 Section 9(1)(b) of the WSA.

and,[1508] the nature, operation, sustainability, operational efficiency, and economic viability of water services among other things.[1509]

Municipal councils also have a duty to adhere to norms and standards in respect of tariffs for water services.[1510] These norms and standards should be able to differentiate between various water service users,[1511] the different types of water services and,[1512] the different geographical areas taking into account each are"s socio-economic and physical attributes.[1513] In drafting norms and standards in respect of tariffs, the national government should rely on councillors' knowledge of the socio-economic conditions of their areas. This means that councillors have a duty to profile the socio-economic conditions of their areas and present these to national governments prior to the development of norms and standards on tariffs.

4.4.4 SEMAs

The framework of environmental law discussed above is supported by sector-based environmental laws, each dedicated to regulating specific environmental aspects or issues. These laws are known as sector environmental management Acts or SEMAs.[1514] They are discussed below to identify typical duties for local governments and their councils.

4.4.4.1 National Environmental Management: Air Quality Act

Air quality is a functional area of local government. Air pollution is expressly listed in Schedule 4B of the *Constitution*, making it an area of concurrent national and provincial legislative competence. Both national and provincial governments are

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1508 Section 9(1)(c) of the WSA.
1509 Section 9(1)(d) of the WSA.
1510 Section 10(1) of the WSA.
1511 Section 10(2)(a)(i) of the WSA.
1512 Section 10(2)(a)(ii) of the WSA.
1513 Section 10(2)(a)(iii) of the WSA.
1514 In terms of section 1 of NEMA, SEMAs refer to (a) the *Environmental Conservation Act* 73 of 1989; (b) NWA; (c) the *National Environmental Management: Biodiversity Act* 10 of 2004; (d) the *National Environmental Management: Air Quality* Act 39 of 2004; (e) the *National Environmental Management: Integrated Coastal Management Act* 24 of 2008; (f) the *National Environmental Management: Waste Act* 59 of 2008; (g) the *World Heritage Convention Act* 49 of 1999, and includes any regulations and subordinate legislation made in terms of these Acts.

competent to enact legislation on air pollution that must be administrated in the local government sphere.[1515] As such, NEM:AQA effectively places air quality management and enforcement of air-quality related regulations in South Africa on municipalities.[1516] NEM:AQA regulates air quality by providing reasonable measures to prevent pollution and ecological degradation and secure ecologically sustainable development and justifiable social and economic development.[1517]

Air quality in many parts of the country is not conducive to a healthy environment for people living in those areas, let alone promoting their social and economic advancement.[1518] As such, the Act binds municipal councils to provide local communities with an environment that is not harmful to their health and well-being in terms of section 24 of the *Constitution*.[1519] The Act acknowledges the poor state of air quality particularly for the most disadvantaged communities in the Country. The mandate is reiterated as an object of local government to promote a safe and healthy environment and social and economic development.[1520]

In administering air quality issues, municipal councils have a duty to adhere to a national framework established by the national government.[1521] This framework should include mechanisms, systems, and procedures to obtain compliance with ambient air quality standards, give effect to the country's obligations in terms of international agreements, national norms and standards for control of emissions from points and non-point sources, air quality monitoring and air quality management planning and information management.[1522] The national framework on air quality must also establish national standards for municipalities to monitor ambient air quality and point, non-point and mobile source emissions.[1523] These

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1515 See *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* para 139 where the Court stated that the constitutional scheme allocates the primary responsibility in respect of air quality to local government.
1516 Engelbrecht and Kornelius 'Air quality management' 12-4.
1517 Section 2 NEM:AQA.
1518 Preamble NEM:AQA.
1519 Sections 3 and 4 NEM:AQA. Also see Engelbrecht and Kornelius 'Air quality management' 12-16.
1520 Section 152(1)(c) and (d) of the *Constitution*.
1521 Engelbrecht and Kornelius 'Air quality management' 12-6.
1522 Section 7(1) NEM:AQA.
1523 Section 8(a)(i) and (ii) of NEM:AQA.

standards make it a duty for municipal councils to specifically monitor air quality and emission standards and mitigate these air quality issues as soon as reasonably possible.[1524] For instance, in terms of section 11(1), a municipal council may, by way of a by-law, (a) identify substances or mixtures in ambient air which, through concentration, bioaccumulation, deposition, or any other way, present a threat to health, well-being or the environment within the municipality or which the municipality reasonably believes present such a threat.[1525] Thereafter, the council may, in respect of each of these substances, establish local standards for emissions from point, non-point or mobile sources.[1526] A municipal council reserves the right to establish stricter standards for their jurisdiction where such standards have been adopted by national and provincial governments in terms of sections 9 and 10 of the Act.[1527] Engelbrecht and Kornelius affirm that while the national framework assigns responsibilities to all spheres of government with regard to air quality, it places stricter emphasis on implementation in municipalities.[1528]

Municipal councils also have a duty to perform any task assigned to them by the national government regarding the national framework on air quality. [1529] Where specific tasks have not been assigned to councillors by the national government, the council of a municipality must ensure that it strives to give effect to the national framework in its daily operations.[1530]

Municipalities are expected to include an air quality management plan in their IDPs.[1531] This plan must, within the domain of the municipality, seek to give effect to the principles of cooperative governance in terms of Chapter 3 of NEMA and the *Constitution*, improve air quality, identify and reduce the negative impact on human health and the environment for the poor, and address the effects of emissions from

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[1524] Sections 8, 9 and 10 of NEM:AQA.
[1525] Section 11(1)(a) of NEM:AQA.
[1526] Section 11(1)(b) of NEM:AQA.
[1527] Section 11(2) of NEM:AQA.
[1528] Engelbrecht and Kornelius 'Air quality management' 12-18. Also see *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs* paras 209-215.
[1529] Section 7(3)(b) of NEM:AQA.
[1530] Section 7(4) of NEM:AQA.
[1531] Section 15(2) of NEM:AQA.

the use of fossil fuels in residential applications amongst other things.[1532] An annual report that municipalities must submit in terms of section 16(1)(b) of NEMA must pertain information. This includes information on the municipality's air quality management initiatives, its adherence to ambient air quality standards, actions taken to ensure compliance with said standards, conformity with any priority area air quality management plan (if applicable), and the municipality's air quality monitoring activities.[1533] In order to draft an air quality management plan tailored to the circumstances of their municipalities, councillors must identify the sources of air pollution in their areas.[1534] These include residential fuel burning, where some households use coal, wood and biomass for cooking; coal-fired power generations predominantly found in Mpumalanga Province; and poor control of emissions by industries.[1535]

The Act also authorises metropolitan and district municipalities to implement the atmospheric licensing system referred to in section 22 of the Act. This means that for this purpose, local government acts as licensing authorities.[1536] The Act allows municipalities to delegate their licensing authority to the provincial government.[1537]

4.4.4.2 National Environmental Management: Waste Act

Local government has an explicit legal mandate to assist the national and provincial governments in keeping the country clean and managing waste.[1538] The foundation of this mandate for local government is found in sections 7(2) and 24 of the *Constitution,* read with sections 152(1)(b) and (d) of the *Constitution*.[1539] Refuse removal, refuse dumps, and solid waste disposal are also functions of local government, as expressed in Schedules 4B of the *Constitution*. This means that municipal councils have legislative and executive authority in this respect. NEM:WA requires municipal councils to use their executive powers to put in place uniform

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[1532] Section 16(1)(a) of NEM:AQA.
[1533] Section 17(a) to (e) of NEM:AQA.
[1534] Engelbrecht and Kornelius 'Air quality management' 12-6.
[1535] Engelbrecht and Kornelius 'Air quality management' 12-6 to 9.
[1536] Section 36(1) of NEM:AQA.
[1537] Section 36(2) of NEM:AQA.
[1538] Alberts and Van Rooyen 'Solid-waste management' 13-3.
[1539] Alberts and Van Rooyen 'Solid-waste management' 13-3.

measures to reduce the amount of waste generated in their municipalities and, where waste is generated, ensure that it is reused, recycled and recovered in an environmentally sound manner, before being safely treated and disposed.[1540] This hierarchy of waste management is typically internationally recognised.[1541] However, it also generally applies to how councillors and their respective environmental management portfolios approach solid waste management.[1542]

In terms of the Act, the Minister must establish a national waste management strategy for achieving the objects of the Act, which must include (a) objectives, plans, guidelines, systems and procedures relating to the protection of the environment and the generation (including the avoidance and minimisation of such generation, reuse, recycling, recovery, treatment, disposal, use, control and management of waste) in order to achieve the objects of the Act; (b) mechanisms, systems and procedures for giving effect to the Republic's obligations in terms of relevant international agreements, and (c) practical measures for achieving cooperative governance in waste management amongst other things.[1543] This strategy is binding on a municipal council, which must give effect to the national waste management strategy when exercising power or performing a duty in terms of this Act or any other legislation regulating waste management.[1544]

Municipal councils must exercise their executive authority in respect of this Act by delivering waste management services, including waste removal, storage and disposal to local communities.[1545] Waste collection services are subject to the need for an equitable allocation of such services to all people in a municipal area and the obligation of persons utilising the service to pay applicable charges.[1546] A municipality has a right to limit the provision of waste collection services if consumers fail to comply with reasonable conditions set for the provision of such services. However, municipal councils must be cautious not to pose a risk to health

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1540 Section 3 of NEM:WA.
1541 Kidd *Environmental Law* 178.
1542 Kidd *Environmental Law* 178.
1543 Section 6(1)(a) to (c) of NEM:WA.
1544 Section 6(4) of NEM:WA.
1545 Section 9(1) of NEM:WA.
1546 Section 23(1)(a) and (b) of NEM:WA.

or the environment should they take action to limit the provision of services.[1547] Municipal councils also reserve the right to differentiate between categories of users and geographical areas when setting service standards and levels of services.[1548] Furthermore, every municipal council must, subject to this Act, and as far as reasonably possible, provide containers and receptacles for the collection of recyclable waste that are accessible to the public.[1549] No person is allowed to collect waste other than municipal service providers or persons and entities authorised by a municipality.[1550] Waste pickers are excluded in several municipal by-laws as authorised refuse collectors.[1551] Waste pickers remain a sector that is largely missing in the policy and legal framework on waste management in municiplaities.[1552] Municipal councils must provide these services while adhering to all national and provincial norms and standards, integrating their own waste management plans into their IDPs, ensuring access for all to such services, providing services at an affordable price, ensuring sustainable services, and keeping separate financial statements.[1553] The broad powers of councils in NEM:WA allow them to develop and implement a variety of instruments, such as waste management and classification systems, norms and standards for separating, compacting and storing waste at the municipal level and separating waste management plans for industry and household waste-all of which is aimed at realising the integrated waste management mandate of local government.[1554]

Councillors have a duty to encourage and raise awareness in local communities on handling waste at the household level. Therefore, municipal councils may set local standards for separating, compacting, and storing solid waste collected as part of

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1547 Section 23(1)(c) of NEM:WA.
1548 Section 23(1)(d) of NEM:WA.
1549 Section 23(2) of NEM:WA.
1550 Section 24 of NEM:WA.
1551 See section 6(3) of the City of Cape Town *Integrated Waste Management By-law* (2009); section 4(a) *Policy for the Accreditation of Service Providers of Waste Services in Cape Town*; section 29 of the City of Johannesburg *Waste Management By-law* (2021). Waste pickers are also known as reclaimers, salvagers or recyclers. See Ngcobo 2022 *Speculum Juris* 23.
1552 Ngcobo 2022 *Speculum Juris* 18.
1553 Section 9(2) of NEM:WA.
1554 Alberts and Van Rooyen 'Solid-waste management' 13-12 to 17.

the municipal service or disposed of at a municipal waste disposal facility.[1555] These standards are one of the ways that municipal councils can influence local communities' behaviour regarding solid waste.

The attitudes of councillors on waste management should transcend beyond influencing households and reflect on how municipalities handle waste in their own landfill sites. For instance, the conduct of Msunduzi Local Municipality was brought under judicial scrutiny when the South African Human Rights Commission sought a declaratory order and interdict against the municipality on the management of the New England Road Landfill site.[1556] According to the applicants, the municipality breached the constitutional environmental right to a healthy environment.[1557] The history of the Municipality with regard to waste management is that it has been non-compliant with NEMA, NWA and NEM:WA dating as far back as 2000.[1558] The non-compliance has culminated in the National Department of Environmental Affairs issuing a compliance notice to the Municipality in 2019.[1559] Following the notice, the situation in the Municipality deteriorated further.[1560] As a result, the Court issued the declaratory order and interdict compelling the Municipality to file an action plan detailing how it will remedy its chronic non-compliance.[1561]

NEM:WA duplicates national and provincial government functions on waste management in the local government sphere. For instance, while the minister and MEC must designate an officer responsible for coordinating matters on waste management at the national and provincial government,[1562] the same is expected of municipal councils.[1563] For this reason, several councils appoint a councillor to the portfolio on environmental and waste management.

1555 Section 9(3)(a) of NEM:WA.
1556 *South African Human Rights Commission (SAHRC) v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 para 1.
1557 *SAHRC v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 para 10.
1558 *SAHRC v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 paras 32-41.
1559 *SAHRC v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 para 42.
1560 *SAHRC v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 para 42.
1561 *SAHRC v Msunduzi Local Municipality* 8407/2020P 2021 ZAKZPHC 35 17 June 2021 para 109.
1562 Section 10()1 and (2) of NEM:WA.
1563 Section 10(3) of NEM:WA.

4.4.4.3 National Environmental Management: Biodiversity Act

Fragmented, polarised, and inefficient administrative and legislative structures characterised South Africa's pre-constitutional biodiversity regime.[1564] The most significant step towards fixing these shortcomings in biodiversity law and, by extension, environmental law, in general, has been including section 24 of the *Constitution*.[1565] According to Paterson, while section 24 has raised the status of environmental issues in the country, section 24(b) is more significant in the context of biodiversity.[1566] As discussed above,[1567] section 24(b) imposes a duty on all spheres to take reasonable legislative and other measures to prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development. The sentiment in this provision evidently binds councillors to protect biodiversity. This provision culminates in several statutes generally applicable to biodiversity, including the *National Environmental Management: Integrated Coastal Management Act* 24 of 2008, the NWA, and NEMA.

As established in the *Le Seuer* case,[1568] municipal councils have a role in biodiversity protection. The role is regulated by NEM:BA. According to the Act, municipal councils have a duty to administer matters relating to municipal parks and beaches as part of functions that fall into the category of conservation.[1569]

Municipal councils have a duty to contribute to biodiversity management *inter alia* by developing a biodiversity management plan in relation to the ecosystem, indigenous species or migrating species. Municipalities must demonstrate how the plan aligns with legislative and administrative structures in terms of their IDP and with applicable national and provincial legislation.[1570] Paterson lists other municipal instruments that are important for biodiversity management; these include the SDF,

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[1564] White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (1997) para 17 and Algotsson "Biological Diversity"107.
[1565] Paterson 'Biodiversity' 19-22.
[1566] Paterson 'Biodiversity' 19-22.
[1567] See para 4.2.2.1 above.
[1568] See para 3.6 above.
[1569] Paterson 'Biodiversity' 19-27. Also see Schedule 5B of the *Constitution*.
[1570] Section 45 of NEM:BA.

municipal zoning scheme, and accompanying regulations.[1571] In essence, municipal councils must demonstrate how their SDF and land-use schemes promote biodiversity protection in their municipalities. Municipalities must also consider biodiversity protection when regulating land use changes when receiving development applications, in township approvals, and in subdivision applications.[1572] Most specifically, these instruments must be exercised in tandem with the National Biodiversity Framework adopted in section 38 of NEM:BA.

Municipalities must adhere to the national biodiversity framework. This framework must provide for an integrated, coordinated, and uniform approach to biodiversity management by organs of state, NGOs, the private sector and local communities.[1573] The framework must be consistent with the Act, national environmental management principles and relevant international agreements that bind the country.[1574] Furthermore, councillors must identify priority areas for biodiversity protection; through working together, municipal councils must notify the national government of such areas in their jurisdiction.

The duty of local government to realise section 24 of the *Constitution* compels them to consider developing biodiversity management plans for species and ecosystems in accordance with sections 52 and 56 of NEM:BA, respectively. When a municipal council adopts a biodiversity management plan for species, the aim must be *inter alia* to ensure the long-term survival of species, to provide for responsible persons to monitor and report on the progress of the implemented plan, and to ensure that the municipality complies with relevant statutes on biodiversity in the country.[1575] The Norms and Standards for biodiversity management plan for ecosystems sets out principles that must be integrated into municipal plans. These principles include clear biodiversity objectives for long-term protection of the ecosystem, integrated management of terrestrial and aquatic ecosystems, adaptive management that

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1571 Paterson 'Biodiversity' 19-4.
1572 Paterson 'Biodiversity' 19-4.
1573 Section 39(1)(a) of NEM:BA.
1574 Section 39(1)(b) of NEM:BA.
1575 Section 3 of GN 214 in GG 31968 of 2 March 2009.

allows for regular review of the effectiveness of management actions, and the use of the best available science.[1576]

Although the Act does not expressly mention Chapter 3 of the *Constitution*, it calls for the integration and sound cooperation of powers and functions of all spheres of government concerning biodiversity protection. This is evident in section 48 of the Act, which determines that the national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of the Act may not conflict with environmental management plans prepared in terms of Chapter 3 of NEMA, IDPs of municipalities, SDFs, and other applicable plans prepared in terms of applicable national and provincial legislation.[1577] Therefore, municipal councils have a duty to develop biodiversity plans that enhance rather than impede national and provincial programmes.

4.4.4.4 National Environmental Management: Protected Areas Act

Like in NEM:BA, the state is designated as the guardian or custodian of protected areas in South Africa.[1578] The State, in fulfilling the rights contained in section 24 of the *Constitution,* must, through other organs of the state, implement legislation applicable to protected areas and must act as trustees for protected areas as well as implement NEM:PAA in partnership with people to achieve the progressive realisation of those rights.[1579] While the Act preserves the validity of existing protected areas, it establishes five additional types of protected areas: special nature reserves, national parks, marine protected areas, nature reserves and protected environment.[1580] Before these areas are established, the national government must extensively consult relevant municipalities.[1581]

Municipal councillors must know their areas because NEM:PAA requires municipal councils to contribute to establishing protected areas. One of the duties of

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[1576] Section 2.2 of GN 83 in GG 37302 of 7 February 2014.
[1577] Section 48 of NEM:BA.
[1578] Paterson 'Biodiversity' 19-45.
[1579] Section 3 of the NEM:BA.
[1580] Section 9 of NEM:BA and Paterson 'Biodiversity' 19-45.
[1581] Section 31-34 of NEM:BA.

councillors in this regard is for councillors to have extensive consultations with local communities.[1582] Councillors must also avail themselves of mandatory consultations with relevant organs of state.[1583] Once a protected area has been established, the Minister may prescribe norms and standards for the achievement of any of the objects of the Act, indicators to measure compliance with those norms and standards and the requirement for the management authorities of those protected areas to report on those indicators to the Minister.[1584] However, before issuing norms and standards and setting indicators for local protected areas, the Minister must consult with local councils.[1585]

NEM:PAA prescribes a comprehensive management regime for special nature reserves, national parks, marine protected areas, nature reserves and protected environments.[1586] Once established, the Minister or MEC may assign the management of special nature reserves, nature reserves and protected areas to a municipality.[1587] Under this role, municipal councils become management authorities of the prescribed protected areas for all purposes and intent of the Act.[1588] As such, the council must prepare a management plan[1589] that should align with applicable aspects of the municipality's IDP.[1590] Section 41(1) and (2) of the Act prescribes mandatory content for the plan, which municipalities should comply with. Additionally, NEM:PAA encourages municipalities, as management authorities, to promote sustainable development and, as such, provides discretionary content that municipal councils choose whether to include in the plan or not.[1591] For instance, Section 41(3) of the Act states that the management plans of municipalities may

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1582 Sections 31-34 of NEM:BA; Paterson 'Biodiversity' 19-45 and Karsten *Local Government accountability in South Africa: An environmental law reading* 128-129.
1583 Sections 31-34 of NEM:BA; Paterson 'Biodiversity' 19-45 and Karsten *Local Government accountability in South Africa: An environmental law reading* 128-129.
1584 Sections 11(1) of NEM:BA.
1585 Sections 11(2) of NEM:BA.
1586 Section 37 of NEM:BA.
1587 Section 38 of NEM:BA.
1588 Sections 38(2) of NEM:PAA.
1589 Sections 39 of NEM:PAA.
1590 Sections 39(4) of NEM:PAA.
1591 Paterson 'Biodiversity' 19-46.

contain the development of economic opportunities within and adjacent to the protected area in terms of the IDP framework.

4.4.4.5 National Environmental Management Integrated Coastal Management Act

The statutes regulating waste, air quality, biodiversity management and disaster risk management are relevant to coastal management and marine environment in local government.[1592] These statutes are relevant to the extent that coastal areas and marine life should be protected from waste, poor air quality and environmental risks, where possible. The integrated Act for coastal and marine resources management is NEM:ICMA. The Act establishes a system for integrated coastal and estuarine management in the country.[1593] The objectives of the Act applicable to municipalities include providing a framework for coordinated and integrated management of coastal zones by all spheres of government in accordance with cooperative governance and ensuring that municipalities secure equitable access to opportunities and benefits of coastal protected zones.[1594] Municipalities must also give effect to national government's obligations in terms of international law regarding coastal management and marine environment.[1595]

NEM:ICMA recognises that everyone has a right to have the environment, including the coastal environment, protected for the benefit of the present and future generations.[1596] It acknowledges that integrated management of the coastal zone as a system is essential to achieve the constitutional commitment made in section 24 to improve the quality of life of all persons while protecting the natural environment.[1597] The implementation of this Act rests with the State, which, through its functionaries and institutions, must act as the trustee of the coastal zone.[1598]

[1592] Parramon-Gurney and Knox-Mosdell 'Marine and coastal management by local government' 21-17.
[1593] Parramon-Gurney and Knox-Mosdell 'Marine and coastal management by local government' 21-24.
[1594] Section 2(b) and (d) of NEM:ICMA.
[1595] Section 2(e) of NEM:ICMA.
[1596] Preamble of NEM:ICMA.
[1597] Preamble of NEM:ICMA.
[1598] Section 3(a) of NEM:ICMA.

NEM:ICMA prescribes various rights and duties for local government regarding integrated coastal zone management. Firstly, municipal councils whose areas include coastal public property must make by-laws that designate stripes of land as coastal access land to secure public access to that coastal public property.[1599] Such councils also reserve the right to respond to a request from an organ of the state or any other interested or affected party to withdraw the designation of any land as coastal access land.[1600]

It is the responsibility of the local government to ensure public access to coastal public property. This duty of municipal councils is often enforced through by-laws. Section 18(9) of the Act states that each municipality approving the rezoning, subdivision, and development of land units within or abutting on coastal public property must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal public property.[1601]

Secondly, municipalities have responsibilities with regard to coastal access land, including signposting entry points to that coastal access land; controlling the use of, and activities on, that land; protecting and enforcing the right of the public to use that land to gain access to coastal public property; and where appropriate and within available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of the physically disabled persons among other things.[1602] Municipal councils may make by-laws for the effective implementation of these.[1603]

Thirdly, it is the responsibility of a municipality within whose area of jurisdiction a coastal management line has been established to delineate the coastal management line on maps that form part of its zoning scheme in order to enable the public to

[1599] Section 18(1) of NEM:ICMA.
[1600] Section 18(5) of NEM:ICMA.
[1601] Section 18(9) of NEM:ICMA.
[1602] Section 20(1) of NEM:ICMA.
[1603] Section 20(2) of NEM:ICMA.

determine the position of the coastal management line in relation to existing cadastral boundaries.[1604]

Fourthly, municipalities that have jurisdiction over parts of the coastal zone may establish a coastal committee and determine its powers.[1605] Nothing in the Act prohibits a municipal council from establishing this committee within its council or the administration offices of its municipality. Such a committee may include persons with expertise in fields relating to coastal management and representatives of the management authorities of coastal protected areas or special management areas within the municipality.[1606] Such committees' functions include promoting integrated coastal management in their municipality and coordinating and effectively implementing this Act and any applicable municipal coastal management programme.[1607] Coastal committees may also advise the municipal manager, municipal council and the provincial coastal committee on matters concerning coastal management within the area of jurisdiction of the municipal coastal committee.[1608]

Fifthly, the municipal council of a coastal municipality has a duty to prepare and adopt municipal coastal zones or specific parts thereof.[1609] A municipality's coastal programme must form part of the IDP and SDF adopted in accordance with the *Municipal Systems Act*, thus, the programme must comply with the public participation requirements prescribed in the *Municipal Systems Act*.[1610]

Sixthly, NEM:ICMA allows municipalities to establish coastal zoning schemes to facilitate the attainment of coastal management objectives. The scheme should define places within the coastal zone or management areas that can be used for specific purposes or activities.[1611] This also means that the schemes may restrict

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1604 Section 25(3) of NEM:ICMA.
1605 Section 42(1) and (2) of NEM:ICMA.
1606 Section 42(3) of NEM:ICMA.
1607 Section 42(3)(a) of NEM:ICMA.
1608 Section 42(3)(b) of NEM:ICMA.
1609 Section 48(1)(a) of NEM:ICMA and Parramon-Gurney and Knox-Mosdell 'Marine and coastal management by local government' 21-8.
1610 Section 48(4) of NEM:ICMA.
1611 Section 56(1) of NEM:ICMA.

certain activities or uses of the area that do not comply with the scheme.[1612] Municipal councils may integrate their coastal management schemes into their land-use schemes.[1613] Furthermore, a council cannot adopt a land use scheme that is inconsistent with a coastal management scheme.[1614] Where the land-use scheme established after the commencement of this Act conflicts with a coastal management scheme, the former will be invalid.[1615]

Lastly, municipalities have a general duty to avoid causing adverse effects on the coastal environment.[1616] This duty is also a principle of NEMA.[1617] The Minister or MEC may issue a written coastal protection notice if it is believed that the municipality is carrying out, or is likely to conduct, an activity that is having, or likely to have, an adverse effect on the coastal environment.[1618] The notice may instruct the municipality to take steps to protect the coastal environment,[1619] investigate and evaluate the impact of the activity,[1620] or stop or postpone the activity to allow for an investigation to be conducted by the Minister or MEC.[1621] Councillors must perform oversight to ensure compliance with the notice by their municipalities.

4.4.5 The role of municipalities in climate change governance

Municipalities are prominent sub-national actors in climate change governance.[1622] As stated before, political leaders representing municipalities have advocated for climate governance at a level that influences national, regional, and international governance systems.[1623] These political leaders have committed to climate governance within their municipalities (and countries) through international liaison

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1612 Parramon-Gurney and Knox-Mosdell 'Marine and coastal management by local government' 21-32.
1613 Section 57(1) of NEM:ICMA.
1614 Section 57(2)(a) of NEM:ICMA.
1615 Section 57(2)(b) of NEM:ICMA.
1616 Section 58(1)(a) of NEM:ICMA.
1617 Section 28 of NEMA.
1618 Section 59(1) of NEM:ICMA.
1619 Section 59(1)(b)(i) of NEM:ICMA.
1620 Section 59(1)(b)(ii) of NEM:ICMA.
1621 Section 59(1)(b)(iii) of NEM:ICMA.
1622 Fuo, Zengerling and Sotto 2022 *Climate Law* 33.
1623 See para 1.1 above.

efforts as well as local legislative and other creative governance measures.[1624] The powers of these local political office-bearers stem from typical functions such as planning, the environment, environmental service delivery and the overall governing of urban spaces.[1625] Councillors must develop regulatory instruments with regard to municipal planning, the environment and urban spaces that coincide with their duty to mitigate the effects of climate change in municipal areas.[1626]

In South Africa, climate change mitigation[1627] and adaptation[1628] policies adopted by the national government and applicable to municipal authorities include the Climate Change Response White Paper, 2011 (NCCRP) and the National Development Plan-Vision 2030.[1629] The NCCRP *inter alia* guides policy development and implementation in the short, medium, and long term in municipalities.[1630] One of the shortfalls of the NCCRP is that it predominantly focuses on climate change mitigation. To address the deficit, the national government established the National Climate Change Adaptation Strategy (2019). This strategy provides guidance for climate change governance across all spheres of government, informs local planning and supports municipal councils in meeting international climate change resilience obligations.[1631] Each plan or policy developed by municipal councils in terms of this strategy must focus on four strategic areas. Firstly, councils must build or improve climate resilience and adaptation capacity to respond to climate change risks.[1632] Secondly, municipal councils must integrate their climate change adaptation response into their IDPs and SDFs.[1633] Thirdly, the council must improve its understanding of climate change and its impacts as well as what it will take to

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1624 See para 1.1 above.
1625 De Visser and Du Plessis 'Climate Governance and Federalism' 246.
1626 See Fuo, Zengerling and Sotto 2022 *Climate Law* 32-97 on the role of municipal planning and building regulations in climate change mitigation and adaptation.
1627 Mitigation is an act of responding to climate change, including preventing GHG emissions from entering the atmosphere. See Du Plessis and Kotzé 2014 *Journal of African Law* 152.
1628 Adaptation deals with how society copes optimally with the effects of climate change. See Du Plessis and Kotzé 2014 *Journal of African Law* 153.
1629 Van Niekerk 'Disaster risk reduction and climate change adaptation and resilience' 23-9; De Visser and Du Plessis 'Climate Governance and Federalism' 242-243.
1630 Para 4.2 in GN 757 of GG 34695 of 19 October 2011.
1631 Para 1 in GN 664 of GG 42446 of 6 May 2019.
1632 Para 4.2 in GN 664 of GG 42446 of May 2019.
1633 Para 4.2 in GN 664 of GG 42446 of May 2019.

respond to it.[1634] Lastly, municipal councils must put resources and systems in place to enable the implementation of climate change responses.[1635]

As of August 2023, South Africa's Climate Change Bill (2022) is under parliamentary consideration. Once assented to, this Bill will be the country's first and primary legislation on climate change.[1636] The objects of the Act relevant to municipalities include providing a coordinated and integrated response by local government to climate change and its impacts in accordance with the principles of cooperative governance; for local government to contribute to global efforts to stabilise GHG emissions that interfere with the atmosphere and to protect the environment for current and future generations.[1637] When interpreting and applying the Bill, municipalities should use the principles of NEMA alongside those following: contribution to a just transition towards low-carbon, climate-resilient and ecologically sustainable economies and societies which contribute to the creation of decent work for all, social inclusion and the eradication of poverty; and the need for decision-making to consider the special needs and circumstance of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, especially poor and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and the physically challenged among other principles.[1638]

The Bill has extensive provisions for local government. Firstly, section 7 of the Act places a duty on municipal councils to align their policies, programmes and plans with the Bill. This means that once the Bill becomes law, municipal councils will need to review its governing instruments; if necessary, they must amend these to ensure

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1634 Para 4.2 in GN 664 of GG 42446 of May 2019.
1635 Para 4.2 in GN 664 of GG 42446 of May 2019.
1636 The objective of the Climate Change Bill is to enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development; and to provide for matters connected therewith. See Parliament year unknown https://www.parliament.gov.za/storage/app/media/Bills/2022/B9_2022_Climate_Change_Bill/B9_2022_Climate_Change_Bill.pdf. Also see De Visser and Du Plessis 'Climate Governance and Federalism' 247; Du Plessis, Steyn and Rantlo 2023 *Transnational Environmental Law* 14; Fuo, Zengerling and Sotto 2022 *Climate Law* 35.
1637 Section 2 of the Climate Change Bill.
1638 Section 3 of the Climate Change Bill.

that the risks of climate change impacts and associated vulnerabilities are considered.[1639] The governing instruments must also give effect to the objects and principles of the Act enshrined in sections 2 and 3.[1640]

Secondly, the Bill will extend the responsibilities of district intergovernmental forums to serve as Municipal Forums on Climate Change.[1641] The current district intergovernmental forums consist of the mayors of district municipalities, mayors of local municipalities and a designated municipal councillor in the absence of a major in the local municipality.[1642] The Municipal Forum for Climate Change must coordinate climate change response actions for those activities within its operational control of the relevant municipalities in accordance with this Bill and provide a report on such actions to the relevant Provincial Forum on Climate Change.[1643]

Chapter 3 of the Bill is dedicated to the climate change response of provinces and municipalities. In section 15 (1) of the Bill, a mayor of a metropolitan or district municipality must undertake a climate change needs and response assessment for the municipality a year after the publication of the Act. A climate change response implementation plan must follow this assessment in conjunction with municipal planning instruments, policies, and programmes.[1644] Although the Bill specifically refers to mayors, they will require the assistance of their municipal councils. This requires that councillors be aware of climate change risks and their effects in their municipalities; this includes identifying the characteristics of the climate in their jurisdiction, vulnerable areas and, the inhabitants of such places, and the ecosystems of the areas.

Furtherance to the Climate Change Bill, a generous reading of the definition of 'disaster' from the *Disaster Management Act* has led Du Plessis and Kotzé to identify already some years ago, a specific role of local government in relation to climate

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1639 Section 7(1)(a) of the Climate Change Bill.
1640 Section 7(1)(b) of the Climate Change Bill.
1641 Section 9(1) of of the Climate Change Bill.
1642 Section 25 of the *Intergovernmental Relations Framework Act*.
1643 Section 9(3) of the Climate Change Bill.
1644 Section 15(1)(d) of the Climate Change Bill.

change or a climate change-related disaster.[1645] Section 1 of the *Disaster Management Act* defines a disaster as

> A progressive or sudden, widespread, or localised, natural or human-caused occurrence which-(a) causes or threatens to cause – (i) death, injury or disease; (ii) damage to property, infrastructure or the environment, or (iii) significant disruption of the life of a community; (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.

The above definition of disaster indirectly describes instances where councillors have a duty to respond promptly to local communities. Section 23(4) of the Act further classifies a local disaster as an event that affects a single metropolitan, district and local municipality and that a municipality's council and administration can deal with. Du Plessis and Kotzé argue that owing to the definition of local disasters, climate change impacts, where they do lead to disasters, comfortably lie under these definitions.[1646] This means the provisions of the *Disaster Management Act* may be used to manage local disasters triggered by climate change.[1647] Furthermore, the definition of "disaster management"[1648] places local government at the forefront of climate change defence.

Each of the SEMAs discussed above specifically makes provision for municipal councils to regulate air quality, protect biodiversity; protected areas as well as coastal areas as part of climate governance. These Acts provide that municipal councils must adopt air quality plans and standards, a biodiversity management plan in respect of biodiversity,[1649] a protected areas management plan in respect of protected areas,[1650] and a municipal coastal management programme in respect of

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[1645] Du Plessis and Kotzé 2014 *Journal of African Law* 167-169.

[1646] Du Plessis and Kotzé 2014 *Journal of African Law* 168 and De Visser and Du Plessis 'Climate Governance and Federalism' 248.

[1647] Du Plessis and Kotzé 2014 *Journal of African Law* 168 and De Visser and Du Plessis 'Climate Governance and Federalism' 248.

[1648] Disaster management means a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at—(*a*) preventing or reducing the risk of disasters; (*b*) mitigating the severity or consequences of disasters; (*c*) emergency preparedness; (*d*) a rapid and effective response to disasters; and (*e*) post-disaster recovery and rehabilitation.

[1649] Section 43 of NEM:BA.

[1650] Section 38(1)(a) of NEM:PAA.

coastal zones.[1651] All of these plans and programmes must align with the IDPs of municipalities, thus indirectly aimed at ensuring climate governance efforts are mainstreamed across all plans of the municipality.

Municipalities, especially metropolitan municipalities, are adopting climate change response policies.[1652] These include the Ekurhuleni Climate Change and Energy Strategy (2007)[1653] and the Durban Climate Change Strategy (2022).[1654] The City of Cape Town has been lauded by some scholars for its history in energy and climate change planning.[1655] Cape Town was the first city to complete a State of Energy Report (2001).[1656] The City has adopted a myriad of climate change strategies, the most recent being the Climate Change Strategy (2021).[1657] The City of Cape Town has also issued an independent power producer (IPP) tender for renewable energy supply in an effort to alleviate the burden on current coal-reliant, Eskom.[1658]

4.4.6 Other relevant laws

The legislation discussed in the preceding sections of this chapter may be classified as (a) framework environmental legislation such as NEMA,[1659] (b) legislation dedicated to regulating specific environmental media and waste such as SEMAs,[1660] and non-environmental legislation with direct environmental relevance such as *SPLUMA,* the *Municipal Systems Act* and the *Municipal Structures Act*.[1661] The Acts discussed below is a) not an exhaustive list; and b) may broadly be categorised as

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1651 Section 48-50 of NEM:ICMA.

1652 See generally Du Plessis, Steyn and Rantlo 2023 *Transnational Environmental Law* 21-24.

1653 Ekurhuleni 2007 https://www.ekurhuleni.gov.za/wp-content/uploads/2022/05/env_energy_and_climate_change_strategy_2007.pdf.

1654 Durban 2022 https://www.durban.gov.za/storage/Documents/Climate/DCCS_Strategy.pdf.

1655 De Visser and Du Plessis 'Climate Governance and Federalism' 248.

1656 De Visser and Du Plessis 'Climate Governance and Federalism' 248. For the latest State of Energy and Carbon 2021 Report, see City of Cape Town 2023 https://resource.capetown.gov.za/documentcentre/Documents/City%20research%20reports%20and%20review/CT_State_of%20Energy_and_Carbon_Report_2021.pdf.

1657 City of Cape Town 2021 https://resource.capetown.gov.za/documentcentre/Documents/City%20strategies%2C%20plans%20and%20frameworks/Climate_Change_Strategy.pdf.

1658 City of Cape Town 2023 https://www.capetown.gov.za/Work%20and%20business/Greener-business/Cape-Towns-green-future/independent-power-producers. Also see De Visser and Du Plessis 'Climate Governance and Federalism' 248-249.

1659 See para 4.4.1 above.

1660 See para 4.4.4 above.

1661 See paras 4.3.1; 4.3.2 and 4.3.5 above.

legislation that provides some form of environmental context for municipalities when implementing the laws in pursuance of section 24 of the *Constitution*, namely, the *Electricity Regulation Act* 4 of 2006, *Preferential Procurement Policy Framework Act* of 5 of 2000 and the *National Heritage Resource Act* 25 of 1999, the *National Health Act* 61 of 2003 and the *Housing Act* 107 of 1997.[1662] These Acts are briefly touched upon below for the sake of comprehensiveness.

4.4.6.1 Electricity Regulation Act

The *Electricity Regulation Act* 4 of 2006 (ERA) is the principal legislation dealing with regulating electricity services in the country.[1663] Chapter IV, titled "Reticulation" outlines the duties of local government in relation to energy reticulation.[1664] In terms of the Act, each municipal council must exercise its executive authority and perform its reticulation duty by complying with all technical and operational requirements for electricity networks determined by the regulator;[1665] integrating its reticulation services with its IDP;[1666] prepare, implement and require relevant plans and budgets;[1667] and progressively ensure access to at least basic reticulation services through appropriate investment in its electricity infrastructure, amongst other things.[1668]

The Act recognises that municipalities may select and appoint external service providers to fulfil the function of energy reticulation.[1669] Municipalities must comply with applicable provisions of external service providers in the *Municipal Systems Act* and the MFMA.[1670] However, the Act does not prohibit the Minister from making regulations relating to the criteria against which service delivery mechanisms must be assessed, matters which must be provided for in service delivery agreements,

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1662 Du Plessis and Nel 'An introduction' 1-23.
1663 See *National Energy Act* 34 of 2008 which regulates energy supply in South Africa.
1664 Sections 27-29 of the *Energy Regulation Act*.
1665 Section 27(a) of the *Energy Regulation Act*.
1666 Section 27(b) of the *Energy Regulation Act*.
1667 Section 27(c) of the *Energy Regulation Act*.
1668 Section 27(d) of the *Energy Regulation Act*.
1669 Section 28(1) of the *Energy Regulation Act*.
1670 Section 28(2) of the *Energy Regulation Act*.

and compulsory or standard provisions that must be included in the service delivery agreements.[1671]

After consulting with the Minister, the energy regulator must prescribe general key performance indicators regarding technical operational issues pertaining to reticulation systems for municipalities.[1672] The indicators may vary between categories and types of municipalities.[1673] Furthermore, the general key performance indicators prescribed by the *Municipal Systems Act* must include indicators prescribed by this Act.[1674] This means that local government legislation should be in harmony with the prescripts of ERA.

With the energy crisis in South Africa known as load shedding, the integrated Energy Plan (2016) has encouraged local government entities to formulate regulations and incentives for local customers who install small-scale distribution generation systems, including PV roofing and solar panels.[1675]

The function of local government is limited to energy reticulation. Municipalities buy electricity from Eskom and service it to local communities.[1676] They generate most of their revenue from electricity sales.[1677] Local government spent R50,2 billion on electricity purchases in the first six months of 2023 and, in turn, generated R60,0 billion in sales.[1678] However, the development of the Regulations adopted in 2020 essentially extends local government functions by allowing municipalities to generate or procure electricity from IPPs subject to specific conditions.[1679] These conditions include that municipalities must conduct a feasibility study where they intend to generate or procure electricity using internal mechanisms in terms of

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1671 Section 28(3)(a) to (c) of the *Energy Regulation Act*.
1672 Section 29(1) of the *Energy Regulation Act*.
1673 Section 29(2) of the *Energy Regulation Act*.
1674 Section 29(3) of the *Energy Regulation Act*.
1675 Distribution generation refers to diverse energy systems that rely on renewable energy sources that are centrally controlled by the system operator. Department of Energy *Integrated Energy Plan (2016)* para 8.8.
1676 Klees *Electricity Law in South Africa* 53.
1677 Stats SA 2023 https://rb.gy/fd0k0.
1678 Stats SA 2023 https://rb.gy/fd0k0.
1679 GN 1093 in GG 43810 of 16 October 2020 and Moyo *The Legal Autonomy of Municipalities in Energy Governance in South Africa* 191.

section 76(a) of the *Municipal Systems Act*.[1680] In a recent study, Moyo concluded that ERA Regulations essentially extend the municipality's mandate beyond reticulation.[1681] This gives municipalities greater autonomy in energy governance.[1682] The sentiments in Moyo's study are convincing to the extent that the regulation allows municipalities to use internal and external service providers to generate electricity. This means that municipalities can either use a service provider of their choice other than Eskom or develop their own infrastructure to produce electricity.

4.4.6.2 The Preferential Procurement Policy Framework Act

Procurement or public procurement can generally be defined as the act or a government activity of purchasing goods and services needed to carry out its functions.[1683] The *Preferential Procurement Policy Framework Act*, therefore, gives effect to section 217(3) of the *Constitution* by providing a framework for implementing the procurement policy contemplated in section 217(2) of the *Constitution*. Section 217(1) of the *Constitution* states that public procurement must be carried out according to a fair, equitable, transparent, competitive, and cost-effective system. The Act does not prevent municipal councils from implementing procurement policies for their municipalities that provide for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by discrimination.[1684] Although supply chain management is the duty of a financial officer of a municipality,[1685] contracts of goods and services must be allocated in terms of the supply chain policy preferences of a municipal council.[1686]

[1680] In terms of the section, a municipality may provide a municipal service in its area or a part of its area through—(a) an internal mechanism, which may be—(i) a department or other administrative unit within its administration; (ii) any business unit devised by the municipality, provided it operates within the municipality's administration and under the control of the council in accordance with operational and performance criteria determined by the council; or (iii) any other component of its administration.

[1681] Moyo *The Legal Autonomy of Municipalities in Energy Governance in South Africa* 191.

[1682] Moyo *The Legal Autonomy of Municipalities in Energy Governance in South Africa* 191.

[1683] Wessels 'Greening sustainable public procurement' 26-2 and Arrowsmith and Kunzlik *Social and Environmental Policies in EC Procurement Law-New Directives and New Directions* xvii.

[1684] Section 217(2)(a) and (b) of the *Constitution*.

[1685] See section 60 of the MFMA.

[1686] Section 111 of the MFMA.

4.4.6.3 National Health Act

Municipal health services concern the health and well-being of people in local communities.[1687] Under this function, municipalities must create an ideal environment that improves the quality of life of people.[1688] The *National Health Act* (NHA) is the principal Act with regard to municipal health services. May and Agenbag state, for instance, that the promulgation of this Act was meant to provide certainty and direction to municipalities in respect of municipal health services.[1689] Section 32 of the Act provides certainty and states that the function of municipal health is the responsibility of metropolitan and district municipalities.[1690]

Environmental health is broad and encompasses various components which fall within the ambit of local government and are subject to the regulation of municipalities, including water quality monitoring, food control, surveillance and prevention of communicable diseases, and waste management, among other things.[1691] Other legislation regulates all of these environmental and municipal health service components.[1692] This creates a dual system between the NHA and other statutes.[1693] For example, food control is regulated by the NHA and the *Foodstuffs, Cosmetics and Disinfections Act*.[1694] Waste and air quality are also regulated by NHA and alongside NEM:WA and NEM:AQA respectively. Municipalities must appoint air quality and waste management officers who must comply with NHA.

The dual regulation of environmental health function is not without challenges. For instance, the *National Health Amendment Act* established the Office of Health Standards Compliance, primarily responsible for inspecting health facilities.[1695] This function overlaps with the powers of environmental health practitioners, whose

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1687 May and Agenbag 'Environmental health and municipal public health services' 15-4.
1688 May and Agenbag 'Environmental health and municipal public health services' 15-4.
1689 May and Agenbag 'Environmental health and municipal public health services' 15-45.
1690 Section 32(1) of the NHA.
1691 Section 1 of the NHA.
1692 May and Agenbag 'Environmental health and municipal public health services' 15-45.
1693 May and Agenbag 'Environmental health and municipal public health services' 15-45.
1694 *Foodstuffs, Cosmetics and Disinfections Act* 54 of 1972.
1695 Sections 77-78 of the *National Health Amendment Act* 12 of 2013.

responsibilities include surveillance of premises for health hazards.[1696] Environmental health practitioners are appointed in terms of section 80(1)(c) of the NHA, but must comply with the by-laws and policies of the municipality on environmental health.

4.4.6.4 *Housing Act*

The *Housing Act* is among the legislation that promotes a transition towards a sustainable future with an economic and social focus.[1697] The Housing Act binds municipalities in so far as it recognises that the right of access to housing entail more than 'bricks and mortar'.[1698] The Act requires municipal councils to ensure that people have appropriate services, including water, sanitation, refuse and sewage removal.[1699] This duty is reiterated in section 9(1)(a) of the *Housing Act*.

The National Housing Code (2011) was established in terms of section 4 of the Acts applicable to local government. The Code sets out policy principles, guidelines, norms, and standards applicable to national housing programmes, which essentially bind local government to provide access to housing that meets the basic standards applicable to houses, including sanitation, stormwater drainage, and water, among other things.[1700] The application of the *Housing Act* also triggers the right to access housing enshrined in section 26 of the *Constitution*.[1701] When municipal councils are expected to provide housing, they must ensure that such accommodation complies with the National Housing Code.

4.5 A categorical understanding of the environmental duties of councillors

The legal framework discussed in sections 4.2, 4.3 and 4.4 distils different types of environmental duties for municipal councillors. Some of these duties are compliance based, and others require councillors to perform positive actions such as

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1696 May and Agenbag 'Environmental health and municipal public health services' 15-46.
1697 Du Plessis and Nel 'An introduction' 1-19.
1698 *Government of the Republic of South Africa v Grootboom* 2000 11 BCLR 1169 para 35.
1699 *Government of the Republic of South Africa v Grootboom* 2000 11 BCLR 1169 para 35.
1700 Department: Human Settlements *Human Settlements Programmes and Subsidies* 1 and Department: Human Settlements *The National Housing Code* 26.
1701 See para 4.2.2.2 above.

participating in municipal council meetings on environmental governance matters. This section will identify the duties of councillors in environmental governance under specific categories of environmental duties, namely, spatial planning; public participation; municipal finance management; municipal resource acquisition; development of policies and norms and standards; responding to environmental risks; co-trustee of environment endowments and; compliance with local government and environmental laws.

4.5.1 Spatial planning

As suggested by the analysis of SPLUMA, NEM:BA and NEM:PAA, councillors are important decision-makers in spatial planning.[1702] Their decision-making powers include participating in drafting SDFs as part of the IDP process.[1703] Before a council adopts the SDF, each councillor must carefully peruse this document and promptly raise issues of concern where necessary. A councillor must not vote to approve an SDF until the issues raised by the councillor or other members of the council have been addressed.[1704] Even before a councillor can vote to adopt an SDF, they must assist provincial and national governments to identify and protect nature reserves.[1705] Therefore, spatial planning requires councillors to promote green spaces and consistently raise concerns where development might threaten special nature reserves, national parks, and marine protected areas, among other things.[1706]

A councillor must contribute to the sustainable development efforts of their municipality.[1707] This requires a careful balance between development and environmental protection. The analysis of NEMA and NEM:ICMA illustrated how municipal councils should adopt coastal management plans that promote economic development while balancing the need to protect the environment.[1708]

[1702] See paras 4.3.5, 4.4.4.3 and 4.4.4.4 above.
[1703] See para 4.4.5 above.
[1704] See para 4.4.5 above.
[1705] See para 4.4.4.3 above.
[1706] 4.4.4.3 above.
[1707] See para 4.2.2.1 above.
[1708] See para 4.4.1 and 4.4.4.5 above.

4.5.2 Municipal finance management

The discussion on the MFMA and the *Preferential Procurement Framework Act* pointed to the fact that municipal finance and budgeting may serve an important environmental purpose.[1709] The process of getting budgets approved and adjusted is very much in the hands of the municipal council. The powers of councillors with respect to municipal finances rest in adopting and approving municipal budgets. Councillors must participate in developing municipal budgets.[1710] Participation in budgeting includes that councillors must raise issues of concern in the budget and refuse to vote for the adoption of the budget if the concerns raised are not adequately addressed.[1711] When a councillor is satisfied that the concerns raised on the budget have been addressed, they must vote to adopt the budget without delay to enable effective environmental governance.[1712]

Councillors must also create an enabling environment for private investment in environmental governance measures of the municipality.[1713] This duty includes lobbying for private investment. It is the duty of councillors to carefully peruse private investment proposals and raise issues of concern where necessary. These issues include, for instance, that the municipality may carry the bulk of the financial risk of the proposed private investment.[1714] Therefore, a councillor must ensure that their municipality maximises private investment. If the financial burden of a municipality will ultimately rest with the municipality, councillors must promptly raise this concern. They must do all the above without unduly interfering in the financial affairs of their municipalities.

Part of effective budgeting also includes councillors ensuring that their municipalities acquire the resources needed to protect the environment.[1715] These resources include purchasing refuse collection vehicles and recycling bins used for solid waste

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[1709] See para 4.3.3 and 4.4.6.2 above.
[1710] See para 4.3.3 above.
[1711] See para 4.3.3 above.
[1712] See para 4.3.3 above.
[1713] See para 4.3.3 above.
[1714] See para 4.3.3 above.
[1715] See para 4.3.3 above.

removal in local communities.[1716] Councillors must lobby their colleagues in council to acquire essential resources and must discourage their colleagues when they propose that the municipality acquire a non-essential asset, especially in a finance-stricken municipality.[1717]

4.5.3 Public participation

From the discussion of the *Municipal Systems Act and Municipal Structures Act* above,[1718] it would seem that councillors must help guard over inclusive environmental decision-making inter alia by way of public participation in processes with an environmental bearing. These processes include, for example, occasionally hosting community meetings between councillors and communities and establishing and maintaining effective ward committees.[1719] Every ward councillor must have good communication skills. This skill is used to promote public participation in environmental governance matters of local communities.[1720] Public participation entails inspiring local communities to think of innovative ways municipalities can govern environmental matters.[1721] Where residents propose innovative measures, ward councillors must meaningfully consider these. Part of maintaining a culture of public participation includes councillors raising environmental awareness and education.[1722] Councillors should consistently maintain a relationship with local communities through ward committees.[1723] This will enable community members to raise environmental issues promptly. Furthermore, maintaining good relations with community members allows councillors to identify and assist vulnerable members of society through indigent policies, among other things.[1724]

1716 See para 4.3.3 above.
1717 See para 4.3.3 above.
1718 See para 4.3.1 and 4.3.2 above.
1719 See para 4.3.1 and 4.3.2 above.
1720 See para 4.3.1 above.
1721 See para 4.3.1. above.
1722 See para 4.3.1 above.
1723 See para 4.3.1 above.
1724 See para 4.4.1.3 above.

4.5.4 Development of policies, norms, and standards

The reading of statutes such as NEM:AQA, NEM:WA and NEM:BA reveals that local environmental governance comes alive through the development, adoption, and eventual implementation of various instruments of local government.[1725] Several plans, policies, norms, and standards must be developed and adopted by councillors as part of environmental governance. These include the SDF,[1726] air quality management plan,[1727] disaster management framework and biodiversity management plan, among other things.[1728] Often, these policies form part of the IDP process, and councillors should consider each plan separately. Therefore, when the IDP is tabled in a council sitting for approval, councillors should raise concerns on each plan when necessary. A councillor must raise issues of concern in any policy, plan or norms and standards and refuse to vote for the adoption of these if the concerns raised are not adequately addressed.[1729] Subsequently, when a councillor is satisfied that the concerns raised on these plans have been addressed, they must vote to adopt them without delay.

4.5.5 Identifying and responding to environmental risks

Part of being an "involved" councillor includes identifying environmental needs and responding to them. Councillors must identify disaster risks in local communities while developing the disaster risk framework.[1730] Through public participation, local communities should report environmental risks to ward councillors.[1731] Once identified, part of responding to these risks is ensuring municipal services such as solid waste removal, stormwater drainage systems and sanitation services.[1732] Councillors should also participate in establishing disaster risk centres and managing

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[1725] See paras 4.4.4.1 to 4.4.4.5.
[1726] See para 4.4.5 above.
[1727] See para 4.4.4.1 above.
[1728] See para 4.3.4 and 4.4.4.3 above.
[1729] See para 4.3.3 above.
[1730] See para 4.3.4 above.
[1731] See para 4.3.1 above.
[1732] See para 4.3.1 above.

these.[1733] Furthermore, councillors must identify areas to be declared protected in terms of NEM:PAA.[1734]

4.5.6 Co-trustee of environment endowments

Councillors are responsible for natural endowments as co-trustees of fresh and coastal water, biodiversity, and protected areas with the national government.[1735] Councillors must ensure the sustainable provision of services such as potable water supply systems. The duty entails being a member of CMAs.[1736] When serving in CMAs, councillors must balance the interests of local communities by preserving water as a scarce resource and providing equitable access to water as a municipal service. Councillors should also ensure that their municipalities do not pollute water sources.[1737]

4.5.7 Compliance with local government and environmental laws

There are general duties of councillors regarding environmental governance that cannot be neatly packaged into specific categories above. These duties are identified here. Firstly, councillors should comply with the principles of NEMA, including sustainable development and the duty of care.[1738] Secondly, councillors should promote integrated environmental governance amongst municipalities and national and provincial governments.[1739] This includes councillors consistently availing themselves of consultations and other environmental programmes by the provincial and national government.[1740] Thirdly, councillors should maintain fair-decision making and practice in environmental matters.[1741] This requires councillors to always act in the interest of local communities while also protecting the environment. Lastly, councillors should never intentionally or negligently participate in activities

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1733 See para 4.3.4 above.
1734 See para 4.4.2.4 above.
1735 See para 4.4.2 above.
1736 See para 4.4.2 above.
1737 See for instance para 4.4.4 on the prohibition of municipalities to unlawfully contaminate water sources.
1738 See para 4.4.1 above.
1739 See para 4.4.1 above.
1740 See para 4.4.4.4 above.
1741 See para 4.4.1 above.

that pollute the environment.[1742] Every councillor should raise concern when they believe that their municipality is participating in activities that degrade or pollute the environment and allow for the municipality to remedy the situation. A councillor should also perform oversight when national and provincial governments have issued a compliance notice to a municipality to remedy an environmental issue that has either been caused by or neglected by a municipality.[1743] Furthermore, councillors must comply with the dictates of PAIA when national and provincial government or any other requestor requests information in furtherance of the realisation of the constitutional environmental right.[1744]

4.6 Concluding remarks

The *Constitution* is beautifully engineered. It contains rules for *inter alia* political leaders in all spheres of government. It also protects the rights of people and outlines the duties of organs of the state. Embedded in the *Constitution* are values which must guide everyone, including local government, namely, human dignity, equality, and human rights and freedom. Councillors must promote these values when they exercise powers and perform functions. This chapter aimed to establish which environmental law duties municipal councillors (as representatives of local government) are responsible for and which powers they possess to see to the execution of their environmental duties. The enquiry into environmental law powers, duties and responsibilities as outlined in the *Constitution* and legislation was necessary because this study essentially seeks to investigate the scope of the duty of municipal councillors as political office bearers in realising the constitutional environmental right in South African local government.

The powers and functions of municipal councillors vary with each law. For instance, sometimes councillors are expected to exercise their legislative and executive authority to regulate the environment. Sometimes, the responsibility of a councillor in terms of the national laws might be to refrain from acting at all. In other

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[1742] See for instance para 4.4.4 on the prohibition of municipalities to unlawfully contaminate water sources.
[1743] See para 4.4.4.2 above.
[1744] See para 4.2.1.4 above.

scenarios, councillors might simply have to monitor an environmental issue and report imminent environmental threats to provincial and national governments.

The legislation discussed in this chapter does not expressly state the environmental duty of each councillor in their municipality. These duties are read into the analysis after identifying the duties of municipal councils that emanate from the various legislation. It is understood from this study that a councillor is an individual who forms part of the council of a municipality and that a councillor's professional action or action in the cause of duty inevitably reflects on the relevant council. It was discovered that the far majority of environmental laws do serve to either guide or direct municipalities, councils included. One should read this to mean that often it will be the municipality's administration that executes daily environmental functions and duties, but this does not take away from the council's leadership (including monitoring and oversight) role. In the end, 'the municipality' is accountable and responsible. Not the administration or the council of the municipality as such.

The exact scope of the role of councillors is difficult to delineate. Councillors are expected to work with other spheres of government as well as with other structures of a municipality. It might happen that one sphere of government or a structure of a municipality may encroach on the powers and functions of another in this complicated web of relationships. When this happens, councillors should ensure that they maintain good relations with the other spheres of government or structures in their municipalities. A complete breakdown of relationships may result in a municipality failing to function at an optimal level and at their environmental governance duties.

This chapter has also established that environmental governance is not an *additional* or optional, nice-to-have duty of councillors. Municipal councils are expected to align their daily operations with the directives of environmental law. In several instances, councillors must by law participate in or oversee the adoption of plans, strategies and programmes dealing with issues such as waste, biodiversity, coastal area management and protected areas into the IDPs, SDFs, budgets and internal auditing processes of municipalities. In addition, the general oversight role of councillors

require them to track their municipalities' environmental governance performance in terms of established indicators.

The next chapter brings into scope the perspectives of a handful of municipal councillors in an attempt to juxtapose the vision in law and policy with at least part of the reality on the ground.

CHAPTER 5 COUNCILLOR PERSPECTIVES

5.1 Introduction

Chapters 1 to 4 of this thesis elaborated on the legally relevant intersection between (local) politics and local environmental governance. Furthermore, the chapters discussed the duty of councillors to realise the constitutional environmental right by evaluating the *Constitution* as well as environmental and local government framework legislation. At this juncture, the focus shifts to councillors as political office bearers and decision-makers in South Africa's municipalities. This chapter aims to gain some insight into municipal councillors' perspectives on their role in realising section 24 of the *Constitution*. The discussion that follows is based on a small number of councillors' personal interpretation and understanding of this role as was captured during semi-structured interviews in eThekwini Metropolitan Municipality, Bojanala Platinum District Municipality, and Emfuleni and Rustenburg local municipalities.[1745] As indicated in the research methodology section in chapter 1, only four of the six municipalities originally selected to participate in this study were available to participate in the interview process.[1746] A total of seven participants were interviewed in the end.[1747] Further indicated in the research methodology is that the participants were not questioned on the legislative environmental duties. Due to time and financial constraints, the researcher could not conduct follow-up interviews. The researcher does hope to conduct semi-structured interviews with councillors specific to their legislative environmental duties.

The chapter is divided into four parts. The first part explains how the research for this specific chapter was designed and the method used. The second part provides an overview of the political profiles of each of the represented municipalities and

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[1745] Ethical clearance was obtained from the Faculty of Law Research Ethics Committee (LAWRec), which was issued on the 12th of August 2022 under ethics number Law NWU-01504-19-S3/02. LAWRec considered the study as low risk. Therefore, no further approval from additional committees was necessary. Each of the municipalities approached had gatekeepers, including Speakers of municipal councils, the mayor's, and the MM's offices. Furthermore, permission from gatekeepers had to be obtained before councillors could be approached for an interview.

[1746] See para 1.9 above.

[1747] See para 1.9 above.

their municipal councils. This part of the chapter points out the municipal type, the political structure, and the politically relevant development of the represented municipal areas. The third part analyses the councillors' inputs based on the empirical data collected. The last part concludes the chapter.

5.2 Case study design

As explained in chapter 1 of this thesis, this study adopts a mixed-method research methodology.[1748] The first part of the research method consisted of a literature review of sources, including primary and secondary sources of law.[1749] This method was used in the research for chapters 1 to 4. The second part of the research methodology comprised the qualitative research covered in the present chapter.

According to Patton, qualitative research is an in-depth and detailed inquiry into a specific issue.[1750] Qualitative studies look at things in their natural form or setting, attempting to make sense of them and interpreting their meaning.[1751] Qualitative research further involves using and collecting a variety of material or case studies, personal experiences, introspections, life stories, interviews and visual texts that describe routine and problematic moments and meanings in people's lives.[1752] It requires the use of standardised measures and can be varied on the perspectives and experiences of people. According to Van Den Bos, qualitative research for legal scholars may involve words such as the text of court decisions, for example.[1753] Translated into the focus of this chapter, it, therefore, means that the qualitative research dimension of this study focused on the perceived role of councillors in realising the constitutional environmental right.

[1748] See para 1.9 above.
[1749] See para 1.9 above.
[1750] Patton (2002) in Chowdhury and Shil 2021 *American Journal of Qualitative Research* 190.
[1751] Trumbull 'Qualitative Research Method' 101.
[1752] Trumbull 'Qualitative Research Method' 101.
[1753] Van Den Bos Empirical Legal Research 5.

The councillors selected were ward councillors,[1754] PR (Proportional Representative)[1755] or MMC (Members of the Mayoral Committee),[1756] directly or indirectly, working on issues of environmental governance in their respective municipalities. The participants interviewed ranged from first-time councillors, experienced councillors and those who have served in two or more municipal councils in previous tenures either as ward councillors, members of section 79 or 80 committees of the *Municipal Structures Act* or MMCs.[1757] The municipalities initially selected were the eThekwini and City of Tshwane metropolitan municipalities (Category A municipalities), Sedibeng and Bojanala Platinum district municipalities (Category C municipalities), and Emfuleni and Rustenburg local municipalities (Category B municipalities). They were selected based on the size of their political structures and the key environmental challenges they face.[1758] In terms of sections 8, 9, and 10 of the *Municipal Structures Act*, there is a bigger number of councillors serving in a municipal council of a metropolitan municipality as opposed to councillors in district and local municipalities. Therefore, the study chose to interview councillors from all three types of municipalities to be able to establish, for example, if the size of a municipal council seems to affect how councillors in differently sized municipalities perceived their role to realise section 24 of the *Constitution*.

The key environmental challenges faced by municipalities also became a determining factor in selecting the represented councils. The researcher conducted desktop research into the environmental issues of the selected municipalities that are often reported on in popular media. The researcher intended to capture and understand some of the prevalent environmental issues faced by the municipalities. The environmental issues found through desktop research would later be compared to those identified by the councillors.

[1754] Also known as part-time councillors.
[1755] Also known as part-time councillors.
[1756] Also known as full-time councillors.
[1757] See para 3.5.1.3 on MMCs and para 4.3.2 above on section 70 and 80 committees.
[1758] The size of a political structure is based on the type of municipality.

Interviews are the most widely used method of qualitative research.[1759] Ritchie states that interviews provide an opportunity for detailed investigation of people's perspectives, an in-depth understanding of the personal context within which the research phenomena are located, and very detailed subject coverage.[1760] In this study, the researcher collected the perspectives and experiences of councillors through voluntary and open-ended semi-structured interviews. The face-to-face interviews were conducted from the 10th of October to the 18th of November 2022.[1761] Interviews were conducted with (only) four municipalities, as earlier explained.[1762]

Triangulation was used as a method to validate the data collected from participants. Triangulation is one of the central ways used in qualitative research to validate data.[1763] It "involves the use of different methods and sources to check the integrity of, or extend, inferences drawn from the data."[1764] The researcher cross-checked the responses of one participant with that of another in the same or similar municipality. The purpose of this was to capture commonalities in the answers given, thus suggesting that the answers are more accurate and probable. This means that commonality in the answers served to validate (so far as the method allows) the accuracy of the answers given by councillors.

It should be indicated that in accordance with the ethics clearance application with the North-West University, the identities of the municipalities and interviewed councils are protected in the discussion to follow. All efforts have been made to give a true reflection of the outcome of the study without compromising identity.

1759 Ritchie 'The Application of Qualitative Methods of Social Sciences' 36; Leavy 'Introduction' 3; Monzó-Nebot 'Interviewing legal interpreters and translators' 195; Andreassen, Sano and McInerney-Lankford 'Human rights research method' 6.

1760 Ritchie 'The Application of Qualitative Methods of Social Sciences' 36.

1761 The researcher physically visited the different municipalities in order to have face-to-face interviews with the councillors.

1762 See para 1.9 above.

1763 Ritchie 'The Application of Qualitative Methods of Social Sciences' 43.

1764 Ritchie 'The Application of Qualitative Methods of Social Sciences' 43.

5.3 Political profile of municipalities under study

The participants in this study work in different municipalities. Therefore, the answers they gave were a reflection of their municipalities. The researcher conducted desktop research on each participating municipality's political profile and development. This inquiry aimed to gain insight into the profile of each municipality and how this influences the answers given by the participants. Trumbull illustrates, for instance, that the quality of the answer given by a councillor during the interview may be determined by the environment in which the councillor is expected to exercise their duties.[1765]

5.3.1. eThekwini Metropolitan Municipality

The eThekwini Metropolitan Municipality (eThekwini) is located on the east coast of the KwaZulu-Natal province (KZN). eThekwini, formerly known as Durban, is the third largest metropolitan municipality in South Africa, following the City of Johannesburg and Cape Town.[1766] eThekwini is the only Category A municipality in KZN. It is also one of four coastal metropolitan municipalities in the country, together with Cape Town, Nelson Mandela Bay, and Buffalo City.[1767] As indicated earlier, eThekwini is a Category A municipality. Category A municipalities feature *inter alia* areas of high population density; extensive movement of people, services, goods, and people; extensive development; and multiple business districts and industrial areas.[1768] Category A municipalities are also deemed to be at the centre of economic activities with a complex and diverse economy; they are areas for which integrated development planning is desirable and have strong independent social and economic linkages between their constituent units.[1769] Below is a map of eThekwini Metropolitan Municipality. The map shows how the different towns within eThekwini are situated.

[1765] Trumbull 'Qualitative Research Methods' 101-102.
[1766] Cooperative Governance and Traditional Affairs (COGTA) *Ethekwini Metropolitan KZN* 5.
[1767] COGTA *Ethekwini Metropolitan KZN* 5.
[1768] Section 2 (a) of the *Municipal Structures Act*.
[1769] See section 2(b), (c) and (d) of the *Municipal Structures Act*.

Figure 1: Map of eThekwini Metropolitan Municipality.[1770]

The ANC has governed in eThekwini since 2000 and has remained in power without support from other parties until the 2021 local government elections (LGE).[1771] In the 2021 LGE, the ANC received 43 percent of the total votes, making the Party fall short of the numbers needed to retain power. Khambule accords the 15 percent decline in votes to *inter alia* the mayor siding with protesters who looted and destroyed infrastructure during the 2021 civil unrest.[1772] Though not raised by Khambule, in December 2018, Zandile Gumede (the former mayor of eThekwini) and several other ward councillors were formally served by the National Prosecuting Authority (NPA) with corruption charges.[1773] This signalled to local communities in eThekwini that the leadership of the ANC in the area could not be trusted.

The decline in votes meant that the ANC had to form a coalition government. The Party formed a coalition with Abantu Batho Congress (ABC)[1774] and the EFF to elect an ANC mayor Mxolisi Kaunda. The ANC took an unprecedented decision and gave

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1770 Municipalities of South Africa 2023 https://municipalities.co.za/map/5/ethekwini-metropolitan-municipality.

1771 Khambule 'Merits and Constraints of Coalition-Led Councils in South Africa: An Overview of Selected Municipalities' 173.

1772 Khambule 'Merits and Constraints of Coalition-Led Councils in South Africa: An Overview of Selected Municipalities' 173.

1773 EWN 2023 https://shrturl.app/PFcd6j and Daily Maverick 2022 https://shrturl.app/1A10DF.

1774 a party established by Philani Mavundhla in January 2020.

Mavundhla the powerful position of deputy mayor even though the ABC party only received two of the 222 seats in the council.[1775] On the 12th of December 2022, Mavundhla was ousted as the deputy mayor of eThekwini following a vote of no confidence in the council. On the same day, Mavundhla approached the High Court with an urgent application to set aside the vote by the council.[1776] The Court granted a rule *nisi,* effectively calling upon the council to show cause as to why the decision should not be made final.[1777] In August 2023, Mavundhla resigned as deputy mayor and member of the eThekwini municipal council.

eThekwini's municipal council consists of an executive system combined with a ward participatory system in terms of section 8 (c) of the *Municipal Structures Act*. The table below illustrates the number of political parties represented in the councils and the number of seats allocated to each party, either in a PR or ward councillor system at the time of writing.[1778]

Table 1: Council composition of eThekwini Metropolitan Municipality.[1779]

Political parties represented	Number of PR or ward councillors
ANC	96
DA	59
EFF	24
IFP	16
Action SA	4
Abantu Batho Congress (ABC)	2
Active Citizens Coalitions (ACC)	2

[1775] Beukes and De Visser have observed that in coalition governments, the position of mayor, deputy mayor and Speaker of the council is often allocated to the largest coalition partners. See SALGA *A Framework for Coalitions in Local Government* 33; Beukes *Hung Councils in South Africa: Law and Practice* 22 and Mutereko 'Coalition Governance in Local Government: A Theoretical Analysis of Multi-Party Administration of Hung Municipalities in South Africa' 103.

[1776] *Philani Godfrey Mavundhla v The Speaker of the eThekwini Metropolitan Municipality* 13181/2022 ZAKZDHC para 1.

[1777] *Philani Godfrey Mavundhla v The Speaker of the eThekwini Metropolitan Municipality* 13181/2022 ZAKZDHC para 1.

[1778] Local government uses a mixed-method electoral system where on the one hand, PR councillors are elected based on a party list proportional representation in proportion to a political party support and on the other hand, wards elect an individual councillor to represent them alongside the councillors named by their political parties.

[1779] See eThekwini Municipality 2023 https://durban.gov.za/pages/government/Council.

African Christian Democratic Party (ACDP)	2
African Independent Congress (AIC)	2
African Democratic Change (ADEC)	2
AL-JAMA-AH	1
African People First (APF)	1
ATM	1
Democratic Liberal (DLC)	1
Justice Employment Party (JEP)	1
KZN Independent (KZNI)	1
Minority Front (MF)	1
Minorities of South Africa (MOSA)	1
NFP	1
People's Freedom Party (PFP)	1
People's Revolutionary Movement (PRM)	1
Truly Alliance (TA)	1
United Independent Movement (UIM)	1
FF Plus	1

5.3.2 Tshwane Metropolitan Municipality

Tshwane Metropolitan Municipality (Tshwane) is located in the northern part of Gauteng and is one of three metropolitan municipalities in the province, which include Johannesburg and Ekurhuleni.[1780] Tshwane is the largest of the three metropolitan municipalities in Gauteng.[1781] The municipality is a Category A municipality. Below is a map of the City of Tshwane Metropolitan Municipality. The map shows the various towns within Tshwane.

[1780] COGTA *City of Tshwane Metropolitan GAU* 5.
[1781] COGTA *City of Tshwane Metropolitan GAU* 5.

Figure 2: Map of the City of Tshwane Metropolitan Municipality.[1782]

Tshwane is governed by a coalition government. No party received enough votes in the 2021 LGE to form a government in Tshwane; as such, a coalition government had to be created.[1783] Khambule convincingly argues that it would be difficult for the ANC to form a coalition with other parties around Tshwane because of the continued frustration linked to the Party's poor governance record.[1784] As a result, a coalition was formed between the DA and other parties, including Action SA, FF Plus, ACDP, UDM and Congress of the People (COPE).[1785] This means that while the ANC received the highest number of votes in Tshwane, the Party failed to convince opposition parties to co-govern with it.[1786] The multiparty government in Tshwane consists of five members of the mayoral committee (MMCs) from the DA and the other five from its coalition partners.[1787]

[1782] Municipalities of South Africa 2023 https://municipalities.co.za/map/3/city-of-tshwane-metropolitan-municipality.
[1783] Khambule 2022 *Politikon* 419.
[1784] Khambule 2022 *Politikon* 419.
[1785] Khambule 2022 *Politikon* 420.
[1786] Khambule 2022 *Politikon* 421.
[1787] Khambule 2022 *Politikon* 421.

Following the local government elections in November 2019, Tshwane has had an unstable government. As of the first quarter of 2023, the City has had three attempts to elect an executive mayor after the resignation of Randall William.[1788] The attempts to elect a mayor for Tshwane have been marred by infighting in the municipal council. One of the mayoral hopefuls, Murunwa Makwarela, was voted in on the 28th of February 2023. Still, Makwarela's tenure was shortlived after he fraudulently submitted a fake insolvency rehabilitation certificate to retain the position of executive mayor. In May 2023, Cilliers Brink, a member of the DA, was elected as the City's executive mayor. Cilliers Brink remains the Mayor of Tshwane at the time of writing.

Tshwane's municipal council has an executive system combined with a ward participatory system. At the time of writing, its municipal council consists of 214 councillors. The table below illustrates the number of political parties represented in the councils and the number of seats allocated to each party, either in a PR or ward councillor system.

Table 2: Council composition of Tshwane Metropolitan Municipality.[1789]

Political parties represented	Number of PR or ward councillors
ANC	75
DA	69
EFF	23
Action SA	19
FF Plus	17
ACDP	2
AIC	1
ATM	1
COPE	1
Defenders of the People (DOP)	1
Good Party	1
IFP	1

[1788] See para 3.5.1 above.
[1789] IEC 2023 https://results.elections.org.za/home/LGEPublicReports/1091/Detailed%20Results/GP/TSH.pdf.

PA	1
Pan African Congress (PAC)	1
Republican Conference of Tshwane (RC)	1

5.3.3 Sedibeng District Municipality

Sedibeng District Municipality (Sedibeng) is located in the southern part of Gauteng and features three local municipalities: Emfuleni, Midvaal, and Lesedi Local Municipalities.[1790] Below is a map of Sedibeng District Municipality. The map shows how the three local municipalities are situated within Sedibeng District Municipality.

Figure 3: Map of Sedibeng District Municipality.[1791]

Sedibeng is a Category C municipality. In terms of the *Constitution*, a Category C municipality has municipal executive and legislative authority in an area that includes more than one municipality.[1792] Category C municipalities generally have a collective executive system, a mayoral system, and a plenary executive system.[1793] Sedibeng features various landmarks, such as the Vaal River and dam, the Suikerbosrand Nature Reserve, the Sasol refinery, ArcelorMittal (previously Iscor)

1790 COGTA *Sedibeng District Municipality GAU* 5.

1791 Municipalities of South Africa 2023 https://municipalities.co.za/map/114/sedibeng-district-municipality.

1792 Section 155(1)(c) of the *Constitution*. Also see section 3 of the *Municipal Structures Act*.

1793 A municipal council can be governed by an executive mayor only; an executive mayor and the executive committee; or in small-sized municipalities, the whole council governs the council as a plenary executive structure. See section 10 of the *Municipal Structures Act*.

and Emerald Casino and Safari Park.[1794] Despite the landmarks and potential economic hubs identified, the biggest socio-economic challenge in Sedibeng is youth unemployment.[1795] At the time of writing, Sedibeng's council consists of 98 councillors with 49 PR councillors and 49 ward councillors. The table below illustrates the number of political parties represented in the councils and the number of seats allocated to each party, either in a PR or ward councillor system.

Table 3: Council composition of Sedibeng District Municipality.[1796]

Political parties represented	Number of PR or ward councillors
ANC	45
DA	31
EFF	11
FF Plus	3
PAC	2
New Horizon Movement (NHM)	1
AIC	1
Vaal Alternative Alliance Lekgotla (Vaal)	1
ACDP	1
Community Solidarity Association (CSA)	1

5.3.4 Bojanala Platinum District Municipality

Bojanala Platinum District Municipality (Bojanala) is located on the 'platinum belt' of the north-eastern side of the North West Province.[1797] Waterberg District Municipality, Tshwane, and West-Rand District Municipality surround the Northern side of Bojanala.[1798] Dr Kenneth Kaunde and the Ngaka Modiri Molema District Municipality surround the Southern side.[1799] Bojanala is a Category C municipality. It is one of four district municipalities in the North West Province and comprises five

[1794] COGTA *Sedibeng District Municipality GAU* 5.
[1795] COGTA *Sedibeng District Municipality GAU* 5.
[1796] See Sedibeng 2019 www.sedibeng.gov.za/municipality_councillors.html and IEC 2019 https:bit.ly/3Lehoh6.
[1797] COGTA *Bojanala Platinum District Municipality* 6.
[1798] COGTA *Bojanala Platinum District Municipality* 6.
[1799] COGTA *Bojanala Platinum District Municipality* 6.

local municipalities: Kgetlengrivier, Madibeng, Moses Kotane, Moretele, and Rustenburg local municipality.[1800] The figure below is a map of Bojanala Platinum District Municipality. The map shows the five local municipalities within Bojanala Platinum District Municipality.

Figure 4: Map of Bojanala Platinum District Municipality.[1801]

Before 1924, Bojanala was largely a farming area until the discovery of platinum. As of the year 2020, South Africa hosts over 80 percent of the world's platinum reserves, the bulk of which are in Bojanala. Thus, this district municipality is said to be "the worlds capital for the platinum group of metals".[1802]

Table 5: Council composition of Bojanala District Municipality.[1803]

Political parties represented	Number of PR or ward councillors
ANC	16
EFF	5

[1800] COGTA *Bojanala Platinum District Municipality* 7.
[1801] Municipalities of South Africa 2023 https://municipalities.co.za/map/139/bojanala-platinum-district-municipality.
[1802] COGTA *Bojanala Platinum District Municipality* 8.
[1803] See IEC 2023 https://results.elections.org.za/home/LGEPublicReports/1091/Seat%20Calculation%20Detail/NW/DC37.pdf.

DA	3
AIC	1
Forum for service delivery (F4SD)	1
Tsogang Civic Movement (TCM)	1
FF Plus	1

5.3.5 Emfuleni Local Municipality

Emfuleni Local Municipality (Emfuleni) is one of three local municipalities in the Sedibeng District Municipality area situated in Vanderbijlpark, Gauteng.[1804] Emfuleni is the westernmost local municipality in Sedibeng, covering the entire southern area of Gauteng.[1805] Figure 3 above provides a map of Emfuleni within Sedibeng. Emfuleni is a Category B municipality.[1806] In terms of section 155(1)(b) of the *Constitution*, Category B municipalities share municipal executive and legislative authority in its area with a Category C (district) municipality within whose area it falls. The types of Category B municipalities recognised by the *Municipal Systems Act* include municipalities with a collective executive system; municipalities with a collective executive system combined with a ward participatory system; municipalities with a mayor executive system combined with a ward participatory system; municipalities with a plenary executive system; and a municipality with a plenary executive system combined with a participatory system.[1807]

The Vaal River forms the southern boundary of Emfuleni; it is strategically located to afford the municipality many opportunities for tourism and other forms of economic development.[1808] Also situated in Emfuleni is ArcelorMittal.[1809] Much of the Vaal area remains the country's industrial heartland, presenting a tangle of deep-

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[1804] Emfuleni Local Municipality 2010 https://www.emfuleni.gov.za/index.php/about-emfuleni/overview-24837.
[1805] Emfuleni Local Municipality 2010 https://www.emfuleni.gov.za/index.php/about-emfuleni/overview-24837.
[1806] Emfuleni Local Municipality 2010 https://www.emfuleni.gov.za/index.php/about-emfuleni/overview-24837.
[1807] Section 9 of the *Municipal Structures Act*.
[1808] Emfuleni Local Municipality 2010 https://www.emfuleni.gov.za/index.php/about-emfuleni/overview-24837.
[1809] See para 3.4 above.

rooted and tenacious economic, environmental, spatial, socio-political, and infrastructural challenges.[1810]

Emfuleni has an executive system combined with a ward participatory system. Emfuleni is governed by a coalition council. The ANC is the controlling Party in the council, assisted by its coalition partners, including the PAC, CSA, NHM, Vaal and PA. During the interviews with councillors in Emfuleni, one participant explained that the coalition partners agreed that they would all co-govern. Therefore, each coalition party or organisation would be represented in the mayoral committee of the municipality. At the time of writing, the mayoral committee has 10 executive members that account to the mayor.[1811]

The municipal council in Emfuleni is composed of 90 councillors, of which 45 are PR councillors and the other 45 are ward councillors.[1812] The table below illustrates the number of political parties represented in the councils and the number of seats allocated to each party, either in a PR or ward councillor system.

Table 6: Council composition of Emfuleni Local Municipality.[1813]

Political parties represented	Number of PR or ward councillors
ANC	38
DA	24
EFF	14
FF Plus	6
CSA	2
PAC	2
ACDP	1
NHM	1
PA	1
Vaal	1

[1810] Pieterse 2021 *Urban Forum* 2.
[1811] Emfuleni Local Municipality *Annual Report 2020/21* para 2.2.1.
[1812] Emfuleni Local Municipality *Annual Report 2020/21* para 2.1.4.
[1813] See Emfuleni 2023 https://www.emfuleni.gov.za/index.php/government/councillors-77309.

5.3.6 Rustenburg Local Municipality

The mining town of Rustenburg was established in 1851.[1814] Rustenburg Local Municipality (Rustenburg) is situated at the foot of the Magaliesberg Mountain Range.[1815] The current municipality includes large pieces of land that are under the management of traditional authorities.[1816] The Municipality is one of five local municipalities in the Bojanala area, making it a Category B municipality with an executive mayor and ward committees.[1817] Figure 4 above provides a map of Rustenburg within Bojanala.

Although Bojanala, as a district municipality, is known as the platinum capital of South Africa, Rustenburg is the largest-scale extractor of platinum in the entire area.[1818] In the 1920s, platinum was already mined in Rustenburg.[1819] This means that out of the five local municipalities in Bojanala, Rustenburg had already become the "headquarters of the Platinum Belt" in the district.[1820] Consequently, the booming mining activities in Rustenburg resulted in a population increase bigger than the other local municipalities in the district.[1821] To date, Rustenburg has experienced the largest increase in population in Bojanala because of the mining sector.[1822]

Rustenburg has an executive system combined with a ward participatory system. At the time of writing, its municipal council consists of 72 councillors. 36 councillors are elected on ward representation, and 36 are PR councillors. Rustenburg has a coalition council governing the Municipality, with the ANC as a controlling party.

1814 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1815 Rustenburg Local Municipality (2022) https://www.rustenburg.gov.za/about-rustenburg/.
1816 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1817 Rustenburg Local Municipality (2022) https://www.rustenburg.gov.za/about-rustenburg/.
1818 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1819 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1820 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1821 Marais, Stevens, and Cloete 2020 *Land Use Policy* 7.
1822 COGTA *Bojanala Platinum District Municipality* 1.

Table 8: Council composition of Rustenburg Local Municipality.[1823]

Political parties represented	Number of PR or ward councillors
ANC	43
EFF	17
DA	13
TCM	7
FF Plus	3
ACDP	1
AIC	1
ARONA	1
Botho Community Movement (BCM)	1
F4SD	1
INDEPENDENT	1
UDM	1

5.4 An analysis of the participating councillors' input

The following sections offer findings derived from the seven semi-structured interviews conducted with councillors in the municipalities of eThekwini, Bojanala, Emfuleni and Rustenburg. The findings are directly derived from the interview feedback from councillors on:

- The adequacy or inadequacy of the training and support for councillors to realise section 24 of the *Constitution;*
- the key environmental issues in their municipalities;
- the environmental governance duties of municipalities and councillors, generally;
- the role of councillors in LEG in South Africa;
- the synergies between councillors and the councils they serve under; and councillors' relationship with their affiliated political parties or organisations.

[1823] IEC 2023 https://bit.ly/3nhWPlz.

Each finding stems from the answers to a question (or two) posed to the councillors.[1824] Each finding below is discussed in a separate section. For purposes of anonymity, the discussion below refers to every interviewed councillor by using a letter of the alphabet. For instance, Councillor A and Councillor B. The pronouns "they" and "their" are used as opposed to "he" or "she" to hide the gender of the participants. The words "councillor or councillors" and "participant or participants" are used interchangeably throughout this section.

The councillors are grouped as follows: Councillors A and B (Municipality 1); Councillors D and E (Municipality 2), and Councillors F and G (Municipality 3).

5.4.1 Training and work experience of councillors

As previously stated, all the participants serve in one or more committees or portfolios in their municipal councils that relate directly or indirectly to environmental governance, including environmental management and planning, human settlement and infrastructure, community services and vulnerable groups, basic services or public works and environmental health.

In this section, the participants were asked if they underwent any training before assuming office. The partcipants were further asked what the trianing entailed. Six out of seven councillors attended a two-week induction programme provided by SALGA. One of the six Councillors who attended the induction programme said that this course came months after they assumed their political office. Three out of the six Councillors who did attend the induction programme expressed that the training provided was inadequate. According to Councillor A, no official handover was done from the outgoing council to the incumbent council in their municipality. Four out of the seven Councillors expressed that they had to figure things out independently. One of them said: "It is each man to his own. You must try and figure out how your cluster works on your own".[1825] One of the councillors found that the lack of training

[1824] The interview questionnaires are included as an annexure to this thesis. See annexure A.
[1825] Councillor A.

was extremely dangerous for the development of their municipality, as the participant stated that:

> You cannot have people in local government or councillors in local government making decisions for local communities that have engineers, people with PhDs and other skills while they do not possess the correct or necessary skills and expertise themselves and just basically making decisions based on legislation.[1826]

Councillor G, serving their third tenure, said that their affiliated political Party had a continuity plan that essentially allowed the Councillor to retain their position in the same municipality each time the Party won seats after every local government election. Councillor G believes that they have adequate training and experience as a councillor. Councillor G further stated that they know all the environmental issues facing their municipalities because of their experience. Councillor G views themselves as a critical link between old and new councillors in their portfolio; this was illustrated in the following statement:

> So many researchers like yourself come to my office asking questions about this municipality that date as far back as 2008. If I was not here in 2008, I would not be able to answer their questions. Some of my colleagues direct people to me for assistance because I have been here since 2006. With my experience, I even help the chairperson of the portfolio where I serve. I even remind my committee of the municipalities' previous initiatives and their proven successes and failures.

One of the first-time councillors has used other avenues for training. Councillor B explained, for instance, that because they do not have background knowledge of environmental management, they have approached two professors from the two institutions of higher learning located within the municipality who, on several occasions, provided the participant with research on environmental issues and mentorship. The Councillor observed that:

> I always consult with the professor from one institution whenever I need help with interpretation or clarity on laws and policies governing aspects of environmental governance in South Africa.

The participant also advised that councillors should also approach the officials in their respective municipalities to empower and capacitate themselves. One

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[1826] Councillor C.

participant noted that some of the administrative staff in their cluster are knowledgeable on aspects of environmental governance, and they challenge the councillors to educate themselves. The ability of councillors to approach and learn from municipal officials further strengthens relations between municipal officials and councillors.

It follows from the above that the lack of adequate training provided to councillors may present challenges to their ability to adapt easily and quickly to an environment where the challenging politics of a municipality are forever evolving. Furthermore, inadequate training leads to time constraints issues where councillors may not play an effective role in the council for some of the duration of their tenure. In terms of the *Municipal Structures Act*, the term of municipal councils is five years, calculated from the day following the local government election date.[1827] This means that a councillor has five years to fulfil their environmental governance duties as necessary before they are potentially ousted from their political office. Therefore, councillors have a limited time in which they have to get adequate training on environmental and other areas of governance in order to enhance LEG in their municipalities.

5.4.2 Key environmental issues in municipalities

In this section, the participants were asked to describe the key environmental issues that continue to plague their municiplaities. This section explains what the interviewees deemed as the critical environmental issues in their respective municipalities. For instance, municipalities where mines operate, such as Bojanala and Rustenburg, grapple with high volumes of air pollution. This is despite the fact that these municipalities compel mining companies in their areas to have air quality officers and develop mitigation strategies. Additionally, these mining municipalities have a challenge with small-scale operations dumping toxic waste into rivers and streams and performing opencast blasting. One participant during the interview spoke of a worrisome activity in the Mooinooi area where small-scale operations

[1827] Section 24(1) of the *Municipal Structures Act*.

have moved into areas previously zoned for residential dwelling and performing opencast blasting. The participant stated that:

> These blastings are ripping apart people's houses. There are also instances where people build their homes after the mine has been established. These people's lives are at risk of these mining activities.[1828]

Coastal and river coast municipalities, including eThekwini, Emfuleni and Rustenburg, experience issues with a significant amount of sewage spilling into the river and ocean. Councillor G explained how spillages were caused by ageing infrastructure being destroyed by natural disasters in the Municipality, including floods. The Councillor said that sewage spillages are a big concern for the City:

> I understand that the City does not have money and is recovering from the natural disaster, but it is important that the provincial government steps in to assist. The issue of sewage is not desirable as many people in the municipality still use rivers for household duties, including washing, cooking, and even drinking. The sewage issue is sensitive and requires the City to canvass funds to deal with it.[1829]

Councillor F shared similar sentiments as Councillor G by explaining how the stormwater drainage system's ineffectiveness led to floods in the City. The Councillor added that:

> when it rains, the water does not drain properly. This water then reroutes toward sewage pipes exacerbating the sewage situation that the City is already facing.[1830] Sewage issues have also gone as far as exposing people to health challenges because when floods occur, the rerouting water leads to soil erosion, which blocks sewage systems and then the toxic waste ends up on the road and also goes into the river.[1831]

Both Councillors F and G (from the same municipality) also attributed drain blockages and other environmental issues in the municipality to the lack of education in local communities. One participant said that during oversight, they often find blankets and wardrobes stored in drainage systems by homeless people in the City. As a result, the drains cannot work when it rains because they are blocked. Councillor F said that informal settlements present the biggest challenge

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[1828] Councillor D.
[1829] Councillor F.
[1830] Some of the sewage pipes in the Municipality 3 are still made of asbestos which has a short life span. When asbestos decays it bursts.
[1831] Councillor G.

linked to environmental hazards in the City. According to the Councillor, the City does not possess the capacity to handle environmental hazards emanating from informal settlements at the moment. The Councillor stated that the City provides infrastructure to local communities, including toilets, but these get destroyed faster than they are provided. The Councillor mentioned that:

> During oversight in transit settlements,[1832] we find that the toilets and showers provided by the City are blocked due to people disposing of foreign objects such as nappies and sanitary towels. The City also provides transit dwellers with showers so that they can have decent places to bathe, but people also destroy these.[1833]

A general environmental concern across all the case studies is land pollution. Litter has become a normality in the areas under study. Councillor A stated as follows:

> I was shocked one day to see two people casually conversing next to an illegal dumping site. It shocked me that people now view such areas as normal everyday sites in local communities. Sadly, this means that the municipality has become accustomed to something that is wrong. The municipality has degraded the land and is violating people's right to dignity.

Councillors D and E from the same municipality spoke about an interesting environmental issue that none of the other municipalities discussed: environmental health. These participants identified insufficient municipal health inspectors as the biggest environmental health challenge, possibly compromising people's lives in their local community. According to the councillors, their Municipality has about seven inspectors. Each inspector has to deal with 10,000 people. Councillor E said that the lack of health inspectors in the Municipality "was total madness". The lack of inspectors in the Municipality presents challenges. One challenge is that when a health inspector visits a local shop in one area, the store owner contacts other owners, informing them of the unplanned visit by the inspector. In anticipation of the visit from the inspector, the other shop owners' will close their shops for the day. Another challenge is the undue influence of municipal officials in the inspector's work. Councillor E further detailed how sometimes inspectors get telephone calls from top management in the Municipality during a site inspection informing them

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[1832] Transit settlement places are temporary placement areas provided for people on the waiting list to receive RDP houses from the government.

[1833] Councillor F.

that they should immediately stop the inspection and exit the place of inspection. Councillor E was particularly concerned that inspections at retail stores often happened without the knowledge of the councillors. Councillor E believes that they (as councillors) should be informed whenever store inspections were happening in their municipality and that the failure of the officials to alert them effectively leaves councillors out of the process. This made the Councillor question how harmful foods confiscated from these shops were discarded or destroyed.[1834] Councillor D also raised concerns about the inspection of informal trading stalls. The Councillor stated, for instance, that they were aware of the economic needs of the people to establish businesses. However, informal traders operated in places with no sanitation facilities. Traders exposed themselves, their customers, and the food they sold to germs because food preparation, handling and storing were below health standards. Below is a summary of key environmental issues in participating municipalities according to the participants. For the purpose of anonymity, each participating municipality's name has been replaced with a letter of the alphabet.

Table 7: Summary of key environmental issues in participating municipalities

Key Environmental issues	Case studies			
	Municipality 1	**Municipality 2**	**Municipality 3**	**Municipality 4**
Land pollution	X	X	X	
Air pollution		X		X
Water pollution	X	X	X	X
Environmental health		X		

[1834] See para 5.4.4 on the oversight role of councillors.

Destruction of ecosystems	X			X
Decline in biodiversity	X			X
Climate change	X			

The table above shows that the biggest concern of councillors in all participating municipalities is soil, air, and water pollution. Pollution in participating municipalities is primarily caused by illegal dumping of solid waste, and sewage spills into residential homes and the streets and GHG emissions from platinum mines in Bojanala and Rustenburg. The table also illustrates that the least concern of councillors is climate change and its implications on environmental governance. Only one of the seven councillors expressly mentioned how climate change had affected their municipality.[1835] Besides this Councillor, participants did not expressly mention the consequences of climate change in environmental governance. In fact, Councillors F and G expressed that the root cause of some of the natural disasters, including floods in their municipality, was ageing infrastructure and the blockage of sewage systems from the pollution around the City.[1836] The councillors narrowly focused on the resulting floods without considering that the effects of climate change exacerbated the two-day heavy rainfalls that led to the floods. Two of the seven Councillors (from Municipalities 1 and 4) observed that cutting down trees and removing grass from residential homes affected environmental conservation.[1837]

5.4.3 The environmental governance duties of municipalities

In this section, participants were asked two interlinked questions to establish if, firstly, councillors were aware of the environmental governance duties of their respective municipalities and, secondly, if the councillors had knowledge of the

[1835] Councillor A.
[1836] See 5.4.2 above.
[1837] Councillor A and C.

measures taken by their municipalities to realise their environmental governance duties. The results were as follows:

Three of the seven Councillors affirmed that municipalities have a duty toward environmental governance. Councillors B and C (Municipalities 1 and 4) said that the environmental governance duties of municipalities emanate from section 24 of the *Constitution* and a suite of environmental and local government legislation. One other councillor did not state where the environmental governance duties emanated from; however, the participant indicated that "local government is the first respondent in environmental issues because the environment is where we live, work, and go to school".[1838] The four remaining Councillors were unclear in their answer to whether municipalities have environmental governance duties, with Councillor E exclaiming that even if the municipality had this duty, they simply did not have the capacity to fulfil it. Councillor A observed that even if their municipality has environmental governance duties, it is not a priority. According to the Councillor, other pressing issues supersede the environment, such as homelessness, poverty, and unemployment. Councillors A and C further admitted that environmental protection and management do not feature in the budgets of their respective municipalities, indicating that environmental governance is an ancillary issue of their councils.

The measures taken to manage and protect the environment (if any) support the claim that environmental governance is not a priority for many municipalities. For instance, Councillor A observed that their Municipality does not have plans to contribute positively to environmental protection. "The municipality deals with environmental issues as and when they arise".[1839] Councillor B, who is a colleague of Councillor A, affirmed the latter by stating that one of the severe issues with their Municipality is land pollution, more specifically, the mushrooming of illegal dumping sites and because of this, the department dealing with environmental governance in the Municipality has spent considerable time on clean-up programmes.

[1838] Councillor D.
[1839] Councillor A.

Furthermore, this department has channelled all its resources to the clean-up programme. Councillor C made a similar observation about their own Municipality by stating that their Municipality is found lacking in their environmental governance duties. Councillor C further observed that their Municipality had no approach to tackling environmental issues, particularly in handling waste pollution. The Councillor said that because their municipality does not have an approach to deal with waste pollution, a private company wants to assist the municipality in its environmental governance duties by partnering with the Municipality to generate energy from the Municipality's landfill site. According to the Councillor, the entity is a foreign investor, and its director is a former employee of the Municipality's environmental department. The Councillor stated that the idea was that the private entity would generate the energy, and the Municipality would buy the electricity from the company (as an independent private producer). The Councillor approved of this initiative, stating that "this initiative would make sure that the waste generated was used effectively". The Councillor further stated that the municipal council would not have done it on their own because of financial issues. Furthermore, the Municipality did not even have a recycling programme where households were motivated to recycle waste at the household level. The private entity would also help with this.

Three of the seven Councillors from Municipalities 2 and 4 (Councillors C, D and E) said that their municipalities had enacted by-laws as a measure to protect and manage the environment in their municipalities. Councillor G added that the metro police in their Municipality needed to help enforce the by-laws. "I am hoping that the City will employ more police because the homeless cause a threat to the environment, and metro police ought to deal with it." Councillor D observed that the current state of the by-laws in their Municipality was inadequate to protect and manage the environment. The Councillor said that the situation in their Municipality is that people do not have the finances and knowledge to correct their actions where they have contravened municipal by-laws.

5.4.4 The councillors' oversight role and local environmental governance

In terms of the *Municipal Structures Act*, municipal councillors have an oversight role in the day-to-day operations of a municipality.[1840] Participants were asked to detail what the oversight role entails regarding environmental governance issues. The rationale for the question was to establish how an everyday task of oversight could help councillors realise section 24 of the *Constitution*. The answers given by the participants varied from a step-by-step explanation of the oversight process, examples of oversight in practice and general remarks of frustration about the duty of oversight.

Essentially, oversight means identifying problems in local communities and presenting them to officials in the municipality. Identifying problems is the core of serving local communities. Councillor F explained how despite having ward councillors, political parties deploy their councillors to different areas of the City. Ward councillors are deployed to an area that they either live in or are familiar with. PR councillors are deployed to a particular area by their political party. The Councillor explained how their Party deployed them to an area where they had received the least number of votes:

> The idea was for me to go to that area and serve the community as best I could so that we regain the trust of the community. I make sure that I serve everyone, especially the people who do not support my Party.[1841]

Councillor F further detailed, how during oversight, a councillor meets with local committees who will take the participant around the area to familiarise the councillor with the local community. The councillor will identify problems and brainstorm possible solutions with residents and committees. The councillor is then responsible for returning the identified issues to the municipality. Councillor G added that once the issues have been identified, councillors must determine if the matter is catered for in the municipal budget. The latter determination tasks municipal councillors to lobby for the needs of their communities to be met. "If a water or sewage pipe

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[1840] See section 79 of the *Municipal Structures Act* on oversight committees for instance.
[1841] Councillor F.

bursts, a councillor will not go out to fix it."[1842] However, a councillor must ensure that officials have the necessary budget to fix the burst pipes.[1843] This means that an added process of oversight is to determine if the programmes presented to the council by municipal officials will fulfil the needs of local communities, especially because municipal programmes affect budget allocations. Furthermore, when programmes are approved by the council, councillors must ensure that these programmes are implemented correctly.

Councillor C differentiated between legislative and political oversight. Legislative oversight entails looking into the work of municipal committees, including section 79 of the *Municipal Structures Act* and the Municipal Public Accounts Committee (MPAC),[1844] to determine if the committees function accordingly. As a councillor, the participants can also conduct an unannounced visit to the municipal office and request documents for inspection. Political oversight is where a councillor can "catch municipal officials off-guard".[1845] Councillor C explained that political oversight was important because, during legislative oversight, "there are people who will not talk to you because of the colleagues accompanying them." However, when a councillor performs political oversight, they are more likely to get the answers they need.[1846] Councillor C further added that political oversight allows them as councillors to probe deeper into the matters of their municipalities.

Councillor B detailed how they oversee environmental governance matters in their Municipality. Firstly, a councillor must understand and know how the Environmental Governance and Planning Department (as termed in their Municipality) operates. Secondly, a councillor must understand the roles of senior officials within the department and ensure that each of these officials performs their duties. Thirdly,

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[1842] Councillor G.
[1843] Councillor G.
[1844] MPAC is an oversight committee established in terms of section 79 of the *Municipal Structures Act*. The committee is meant to strengthen councillor's oversight role and to ensure effective and efficient use of municipal resources.
[1845] Councillor C.
[1846] Councillor C.

the councillor must engage with officials to find out if they have any innovative projects and programmes to help the department to thrive.

It emerged from the councillors' inputs that the duty to perform oversight does not come without challenges. Two out of seven participants from Municipalities 1 and 2 (Councillors A and E) said they did not understand what oversight entailed.[1847] This was either because they were never alerted of instances where they needed to perform oversight or that they were only called for oversight when there was a crisis in the municipality and a councillor was needed to calm the situation among angry residents. Councillor E said

> As councillors, we are always left out. We are never told about them. If we are not conducting oversight, how can we be sure that officials carry out all the activities they tell us about? Officials get angry when we ask for proof of their activities since we did not do oversight. Officials must take us everywhere they go because we are serving communities as councillors. It is our responsibility to conduct oversight.

Councillor A said that they hated oversight. For the Councillor, oversight reduced the councillor to being a trophy MMC where things happened around them often without their knowledge. The participant added that when councillors asked how things had been carried out, they were often told that the matters were purely administrative and did not involve the political heads in the Municipality. According to the Councillor, the legal framework of local government is extremely poor because oversight is vague and excludes councillors from serious matters in municipalities, often categorised as administrative matters. According to Councillor F, councillors did not get involved in tender processes.[1848] They did not decide who gets awarded a tender.[1849] As councillors, they were only required to work with whomever the tender was awarded to by the supply chain department.[1850] The Councillor (Councillor F) further added that a proactive councillor in Municipality 1 was often accused of interfering in administrative matters. Councillor D explained

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1847 From Municipalities 1 and 2.

1848 In terms of section 117 of the MFMA, municipal councillors are barred from serving in any committee that evaluates and approves tenders, quotations, contracts, or other bids. See para 4.3.3 above.

1849 Councillor F.

1850 Councillor F.

that the golden rule for councillors during oversight was not to interfere in the work of municipal officials. "As a Councillor, you can intervene, but you may not interfere."[1851] This means that councillors should be cautious not to give instructions.

5.4.5 The contents of section 24 of the Constitution

In this section of the interview, participants were asked if they knew of section 24 of the *Constitution* and, if so, what the section entailed. The question aimed to ascertain each councillor's general understanding of the contents of section 24 of the *Constitution*.

Three of the seven Councillors (from Municipalities 1 and 3) said they did not know the contents of section 24 of the *Constitution*.[1852] Councillor A said that although they had perused the *Constitution*, they only focused on housing and labour rights sections. Councillor D said that councillors did not need to know section 24 of the *Constitution* because "they do not work with the section." The Councillor (Councillor D) further said that it was the responsibility of municipal officers to know the section and not the councillors.

Only one Councillor (Councillor C) detailed their understanding of section 24 of the *Constitution*. According to the Councillor, section 24 means that:

> We must protect the environment. We must keep it safe. We must protect the biosphere, fisheries, and every single part of the environment. Section 24 of the *Constitution* is put in place for the protection of the environment against people.

It was noted that the councillors were least engaged with this specific question. While the councillors generally provided long or detailed answers to other questions during the interviews and provided examples in some instances, the average answer in this section was a sentence long.

[1851] Councillor D.
[1852] Councillors A, F and G.

5.4.6 The distinct role of the local government sphere to realise section 24 of the Constitution

Section 3.5.3 of this study discussed the constitutional divisions of environmental authority among the three spheres of government based on a literature review. This section provides the participants' perspectives on the distinct role of the local government sphere to realise section 24 of the *Constitution*. The researcher asked participants which sphere was responsible for realising section 24 of the *Constitution*. This question aimed to determine if councillors were aware of the obligations that the constitutional environmental right places on the local government sphere. Section 24 was explained to the councillors who had previously said they did not know the section. The researcher explained that section 24 generally provided the right of people to an environment that is not harmful to their health and well-being. On this understanding, all the participants said that all the three spheres of government are responsible for realising section 24 of the *Constitution* and protecting the environment.

Four of the seven Councillors (Councillors C, D, E, and F) from Municipalities 2,3 and 4 said that realising section 24 of the *Constitution* was the responsibility of all spheres of government. Councillor C said that the role to realise the constitutional environmental right is even greater for local government because it "is a doorstep of government to local communities." According to Councillor C, local government must realise section 24 of the *Constitution* by enacting by-laws. The Councillor stated that by-laws explain constitutional rights and duties in layperson's terms. The Councillor believed that municipal officials cannot tell members of local communities that they are violating section 24 of the *Constitution*; rather, municipalities must develop by-laws that promote the realisation of constitutional environmental rights while educating people on the environment. The Councillor added that while the relationship between the three spheres of government is essential, the most critical and immediate relationship is between the district and the local municipality. Local and district municipalities can provide environmental education and oversight; for example, district municipalities issue licenses, permits and authorisation for development activities that affect the environment. Therefore, they perform a

critical oversight role in environmental issues across all their municipalities. Councillor G observed that the provincial sphere is the closest to local government. The Councillor observed that while their Municipality faces challenges with environmental issues, their provincial government "had a better understanding of environmental governance". Therefore, the provincial government must support and capacitate local government so municipalities can realise section 24 of the *Constitution*.[1853] Similar to the finding in 5.4.5 above on the councillors' understanding of section 24 of the *Constitution*, two of the seven Councillors (Councillors C and E) from Municipalities 2 and 4 expressed the sentiment that national government has a lesser role than it occupies in reality in realising the constitutional environmental right to providing financial support, such as grants to local government.

5.4.7 Synergies between the aims of political parties and the constitutional environmental right

Section 3.3.2 evaluated the environmental governance stance of political parties in South Africa after the transition to a constitutional democracy. The evaluation was based on a desktop literature review of the recent manifestos, constitutions, and party policies of (local) political parties in South Africa. The evaluation in this section is based on the interview question that asked if councillors thought that their affiliated parties' manifestos, constitutions, and policies advocated for the realisation of section 24 of the *Constitution*. The question aimed to determine if there were synergies between the instruments of political parties and section 24 of the *Constitution*. Furthermore, the question would determine if there were potential conflicts or complementary aspects between a political party's instruments and the local environmental governance legal framework.

Four out of seven participants across all the participating municipalities (Councillors B, C, D, and G) said that the manifestos of their political parties advocated for the realisation of section 24 of the *Constitution*. However, only one of the four

[1853] Councillor G.

councillors (Councillor C) listed some environmental issues discussed in their manifesto. The Councillor identified waste-to-energy as the biggest environmental focus of their Party since 2019. According to Councillor C, one of the Cities their Party governs has piloted a waste-to-energy initiative that in the opinion of the Councillor, worked. The researcher observed during this section of the interview that due to the ongoing electricity interruptions in the country (load-shedding), green energy or waste-to-energy had become a pertinent issue in local politics, with some political parties arguably using the issue to raise political awareness.[1854]

One of the participants (Councillor A) was a councillor and president of a political party. This Councillor said that the manifesto of their Party did not focus on the environment and its protection. Their manifesto had the following words "clean environment" at most. The Councillor further admitted that their Party should have had a clearer focus on aspects of environmental governance because "climate change is forcing the narrative". The Councillor explained how manifestos are often used to solicit funds and campaign for votes, not necessarily as a policy directive for an incumbent government. The Councillor stated, for instance, that their manifesto "spoke to what the people wanted to hear." The participant added that even private entities would not give the councillor funding if their campaign focused on the environment.

Councillor F had a completely different perspective. According to the Councillor, the manifesto of their Party was in their words, "fine". Rather, the focus of the Party and subsequntly the Municipal Council should have been on municipal departments and the officials. The researcher deduced that the Councillor had underplayed the significance of a party manifesto after the 2021 Local Government Elections. The Councillor expressed that municipalities need to focus on the various departments they have as well as the job description of those employed in them against the environmental situations faced in the City. The failure to do so would mean that

[1854] On the 20th of March 2023, the EFF hosted a national shutdown protest where the party called for the resignation of the President and the end to load-shedding. See EWN 2023 https://ewn.co.za/2023/03/20/eff-national-shutdown-what-you-need-to-know-about-what-s-happening-around-sa; Times Live 2023 https://timeslive.co.za/politics/2023-09-13/updates-effs-national-shutdown-on-March-20/.

what political parties write in their manifestos would not be realised unless municipalities had skilled officials.[1855] Councillor F explained that their Municipality was prone to disasters. As such, they needed to focus on getting the right officials to mitigate the risks and consequences of the disasters. This would include getting engineers to evaluate the kind of soil needed in the Municipality when houses are being built to reduce the erosion of houses during floods. According to Councillor F, the work of councillors in environmental governance after elections was more important. Furthermore, communities do not care about the portfolio a councillor serves in. In this regard, the Councillor exclaimed as follows:

> People do not care about municipal portfolios. When I go into a community, they will point out an issue that they have regarding sewage, and I will have to help them. I will stand there and call the relevant department. I will even tell the relevant department that I will not move from the area until someone comes and address the matter.[1856]

Finally, the participant (Councillor F) pointed out that councillors should prioritise environmental issues, not for the benefit of their political parties but for local communities and efficient service delivery. The Councillor stated, for instance, that when it comes to service delivery, it does not matter what political party is in charge[1857] Councillor F condemns "political grandstanding" by councillors by stating that when a Councillor helps a local community by informing the municipality of sewage spillages, the community should not say that "X party helped us". In order to minimise this, municipal services must be provided to communities.[1858]

5.4.8 The will of councillors to realise section 24 of the Constitution

While the previous sections focused on the perspectives of councillors on the role of their municipalities, the councils where they serve and their affiliated parties in local environmental governance, this section assessed individual councillors' moral compass and political will. For purposes of this section, the participants were asked two interrelated questions to determine the will of councillors to realise section 24

[1855] Councillor F.
[1856] Councillor F.
[1857] Councillor F.
[1858] Councillor F.

of the *Constitution*. The first question asked what councillors could do to help advance the environmental cause in municipalities, considering the distinct functions and authorities of councillors and municipal officials. The second question asked was if councillors felt comfortable defending the environmental cause in their municipal councils, and if not, why.

Four out of seven participants from municipalities 1,2, and 3 (Councillors A, B, E, and G) said that councillors must provide political leadership to local communities to realise section 24 of the *Constitution*. In this respect, political leadership included, firstly, raising environmental awareness in local communities. Councillor E said, for instance, that as political heads, councillors needed to start educating local communities on how best to take care of the environment.[1859] For Councillor G, environmental education included conducting clean-up programmes around different wards. The Councillor said that if a councillor could make members of a local community join them in clean-up campaigns, people would refrain from polluting the environment in the future.[1860] This meant that councillors needed to set an example of good environmental behaviour. Secondly, political leadership meant that in the absence of resources in the municipality, councillors needed to mobilise resources from external parties to solve environmental issues.[1861] Thirdly, political leadership included the ability of councillors to inspire innovation.[1862] Councillors A and B (from the same municipality) said that the biggest focus in their municipality was on inspiring innovation for the energy crisis in the country. According to the councillors, the waste problem faced by their Municipality could be converted into an opportunity to convert waste into energy. This initiative would not only reduce waste pollution and provide a solution to the energy crisis in the Municipality, but it could also create employment.[1863]

While the councillors could think of several programmes and strategies that they, as councillors, could develop in order to realise section 24 of the *Constitution*, five

[1859] Councillor E.
[1860] Councillor G.
[1861] Councillor G.
[1862] Councillor G.
[1863] Councillor A.

out of seven councillors across all the participating municipalities (Councillors A, B, D, E, and G) said that they felt comfortable defending the environmental cause in council. However, they were not likely to receive the support of their respective councils. Councillor A said that they could advocate for better environmental governance despite being laughed at by other council members, amongst other things.

The other two councillors (Councillors C and F) expressed reluctance towards defending the environmental cause within their respective councils, especially as their councils do not prioritise the environment.[1864] For instance, Councillor C claimed that a councillor must understand the importance of the environment before they can defend it. The Councillor added that they would rather advocate for improved local environmental governance within municipal officials because they understand environmental issues better than council members. Notably, Councillors C and F said they would rather approach their party caucuses than their respective councils to advocate for responsive local environmental governance. Party caucuses are an essential feature in the functioning of political parties within municipal councils.[1865] As such, both participants expressed that the easiest way to get the council to focus on responsive local environmental governance is to solicit the support of their party caucuses.

Some of the 'innovative' projects discussed by councillors in this section were mere ideas that they thought of as an immediate response during the interviews. It remains unknown whether the respective councillors have carried out or acted upon these ideas in real life.

5.5 Concluding remarks

Although chapter 4 discussed the role of councillors to realise the constitutional environmental right in terms of the *Constitution*, and environmental and local government framework legislation, it was necessary to gain the general perspective

[1864] Councillors C and E.
[1865] Napier and Labuschagne 2017 S*outhern Journal for Contemporary History* 208.

of the participants on the realisation of this right. This chapter aimed to determine seven municipal councillors' perspectives on their role in helping the government to realise section 24 of the *Constitution*. These perspectives drew on the personal interpretation and understanding of this role following semi-structured interviews with a selection of councillors across six different municipalities. The chapter concluded that each participant's perspective and understanding of their role in realising section 24 of the *Constitution* was influenced by the municipality where they serve as councillors. For instance, councillors gain personal insight into environmental governance issues by observing how their own environment within the municipality affects their health and well-being. This is why the study could provide a summary table illustrating key environmental issues in the participating municipalities.[1866]

The availability of municipal resources also influences how much attention is given to environmental governance issues, including capacity building. Firstly, councillors need more training. Although each councillor may supplement this training with tertiary qualification and other education programmes, it is essential that they are provided with adequate and timely training. There is a great shortfall in providing councillors with training on environmental governance matters. This is deduced from the fact that even though no specific question was asked on environmental law, the councillors did not mention general legislation governing the environment in municipalities. The researcher of this study conducted a desktop research investigation that found that the Councillor Handbook used to provide training for these participants inadequately mentions NEMA and does not mention other environmental law, including NWA, WSA, and the SEMAs.

Secondly, although councillors generally agree that municipalities have a duty to protect the environment as well as the environmental rights of local communities, it has not always been easy to achieve this duty. These councillors accord this failure to several obstacles, including that they do not always get adequate support from national and provincial governments. Thirdly, municipalities do not always have

[1866] See table 7 in para 5.4.2.

adequate resources earmarked for environmental governance. In this regard, two councillors from different municipalities expressly said that their budgets do not cater to environmental governance issues. Fourthly, in realising section 24 of the *Constitution*, councillors face resistance from other municipal council members. Some councillors said that it is most likely that other council members will laugh at them if they advance the environmental cause in council meetings. Therefore, when it comes to the duty of councillors to realise section 24 of the *Constitution*, council meetings become a battlefield for resources where the environmental cause often comes last.

The following chapter will conclude this study with a proposed framework that translates the environmental law functions, duties, and mandates of local councils into a detailed analysis of how municipal councillors and the political parties they represent can contribute towards realising the right to a healthy environment in South Africa. It is envisaged that this framework will assist councillors in advancing the environmental cause within their municipal councils, drawing from enabling legislative and other innovative measures. This proposed framework will further consider the interpretation and understanding of councillors of section 24 of the *Constitution* and the personal experiences of councillors towards realising this section.

CHAPTER 6 CONCLUSION

6.1 Research question, objective, and scope of the study

"Politics varies from time to time and from place to place."[1867] Politics in this context is a loaded term.[1868] In the nineteenth century, politics was understood to be a function of the state.[1869] A simple explanation of this was that people understood that states govern. However, the emergence of governance as a decision-making process encompassing various role players reshaped people's understanding of politics and what it can and cannot achieve.[1870] Politics became an independent concept that is capable of metaphorical extension.[1871] Any person or group of people who influence how decisions are taken within a country can be called politicians.[1872] Therefore, IEP emerged as a term that explains the relationship between global political actors and environmental change, emphasising how local politics ultimately influence the environment in which people live and work.[1873]

The politics of and within cities are complex.[1874] Local authorities everywhere grapple with service delivery and other issues that often make it difficult to focus on environmental challenges that transcend national boundaries. South African cities and their local government structures are a case in point. Nonetheless, local authorities must provide people with a safe and healthy environment conducive to their health and well-being.[1875] People's livelihoods depend on a safe and healthy environment. In South Africa, this duty emanates from the *Constitution* and a suite of supporting local government and environmental law.[1876] Yet, the political landscape in South Africa influences how municipal councillors see and execute their duty to realise the constitutional environmental right.

1867 Modebadze 2010 *IBSU Scientific Journal* 39.
1868 Modebadze 2010 *IBSU Scientific Journal* 39.
1869 Alexander 2014 *Philosophy* 274.
1870 Alexander 2014 *Philosophy* 274.
1871 Alexander 2014 *Philosophy* 274.
1872 Alexander 2014 *Philosophy* 274.
1873 See para 2.2.4 above.
1874 Post 2018 *Annual Review of Political Sciences* 117.
1875 See para 4.2.2.1 above.
1876 See para 4.3 and 4.4 above.

The study's research question and objectives concerned municipal councillors' scope of duties to realise the constitutional environmental right and, ultimately, the aims of the body of supporting environmental law. The question and objectives were based on the hypothesis that councillors representing political parties and communities in municipal councils are suitably positioned to contribute towards realising the right promising people life in a safe and healthy environment. Therefore, the study needed to venture into where the powers and functions of councillors in realising section 24 of the *Constitution* begin and end. The following secondary objectives supported this inquiry:

- To briefly reflect on the fit of politics in the causes of and responses to the global environmental crisis at international and domestic levels, generally;
- To explore in-depth and evaluate the historical and contemporary intersection between party politics and environmental governance in the South African context;
- To establish the explicit environmental powers and duties of councillors in terms of the *Constitution* as further manifested in local government and environmental legislation;
- To determine municipal councillors' perspectives on their role in realising section 24 of the *Constitution*; and
- To conclude the study with a proposed framework that translates local councils' environmental law functions, duties, and mandates into a map reflecting on how municipal councillors and the political parties they represent can contribute towards realising the right to a healthy environment in South Africa.

This study was scoped in various ways. To investigate the extent of the duty of municipal councillors as political office bearers in realising the constitutional environmental right in South African local government, the study limited its inquiry to councillors in six municipalities, namely, eThekwini and City of Tshwane metropolitan municipalities (Category A municipalities); Sedibeng and Bojanala Platinum district municipalities (Category C municipalities); and Emfuleni and Rustenburg local municipalities (Category B municipalities). The municipalities from

which councillors were selected have undergone political developments and environmental challenges.[1877] Lastly, in order to get a sense of councillors' understanding and interpretation of the constitutional environmental right and the duties emanating from it, the questions posed to participants in the interview process mainly focused on the contents of section 24 of the *Constitution* and aspects such as intergovernmental relationships and training.[1878]

The semi-structured interviews conducted with councillors happened before the write-up of chapters 3, 4 and 5. These chapters have revealed that, in addition to section 24 of the *Constitution*, the researcher should probably have asked specific questions about the environmental governance duties of councillors emanating from sections 26, 27, 33, and 33 of the *Constitution* and specific provisions in local government and environmental law. Regardless, the interview results showed a need to focus on councillors and their understanding and interpretation of the constitutional environmental right, which is the principal focus of this study.

The study concludes with a proposed framework below that translates local councils' environmental law functions, duties, and mandates into a conceptual map of how municipal councillors and the political parties they represent can contribute towards realising the right to a safe and healthy environment in South Africa.[1879] The framework would not be useful if it regurgitated legislative provisions that are applicable to councillors. An attempt is therefore made to portray how environmental law should be applied and what challenges could be experienced by councillors when applying these laws, as will be seen below.

6.2 Structure of the study and research methods

Chapter two of the study reflected on the fit of politics in the causes of and the responses to the global environmental crisis at an international and domestic level. The chapter provided a historical account of IEP and the different perspectives of IR scholars on the global ecological crisis. Thereafter, the chapter discussed the role

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[1877] See para 5.3 above.
[1878] See para 5.4 above.
[1879] See para 1.7 above.

of city-level politics in global environmental governance. Furthermore, the hapter considered the fit of South African politics in IEP to create a contextual canvas for the South African analysis that followed in chapter three. This chapter was conducted through a desktop literature review of IR, IEP, and international environmental law scholarship.

Chapter three explored and evaluated the historical and contemporary intersection between party politics and environmental governance in the South African context. The chapter chartered historical and contemporary perspectives on party politics and environmental governance in South Africa, focusing on transforming the political landscape, local party politics and its role in environmental governance. This systematic evaluation of historical and contemporary intersections included an analysis of the nature of environmental governance concerning the overhaul of environmental law after 1996. The chapter was general, allowing for an analysis of the constitutional environmental right within the cooperative governance system.

Chapter three was concluded through a desktop literature review of South African history and politics, including instruments of historical political parties. The chapter juxtaposed this analysis with contemporary politics and instruments of current political parties. Following this, the chapter considered the role of the current political landscape in relation to the constitutional set-up where all three spheres of government have environmental legislative and executive authority. This latter part of the chapter was conducted through a literature review of legal scholarship, including the *Constitution*, legislation, journal articles, and case law.

Chapter four detailed specific environmental law powers and duties of councillors. The aim was to establish their explicit and more nuanced environmental powers and duties in terms of the *Constitution*, local government, and environmental legislation. The chapter was conducted using primarily primary sources of law, including the *Constitution*, legislation and case law.

Chapter five provided a limited councillor's perspective on the perceived role of councillors in the promotion and realisation of section 24 of the *Constitution*. This chapter was concluded through semi-structured interviews conducted with

councillors in various municipalities across the country. The questions posed to the participating councillors were transcribed and converted into eight findings around issues of the adequacy of the training and support for councillors to realise the constitutional environmental right; key environmental issues in participating municipalities; the environmental governance duties of municipalities and councillors, generally; the role of councillors in LEG in South Africa; the synergies between councillors and the councils under which they serve; and councillor's relationships with their affiliated political parties or organisations.

6.3 Central findings

6.3.1 Councillors have an extensive duty to realise section 24 of the Constitution

The study has established that the *Constitution* is the supreme law from which the powers, functions, and duties of councillors with regard to the environment emanate.[1880] Section 24 of the *Constitution* enshrines people's right to an environment that is not harmful to their health or well-being. Section 24, read with 7(2) of the *Constitution,* instructs councillors to respect, protect, promote, and fulfil the constitutional environmental right.[1881] Section 24(b) obliges councillors to use their legislative and executive authority to prevent pollution and degradation, promote conservation, and secure ecological sustainable development.[1882] Councils also exercise executive authority and have a right to administer governance matters listed in Schedules 4B and 5B of the *Constitution*.[1883] These Schedules outline various functions, including air pollution, stormwater management systems, and water and sanitation services. Besides these specific functions, the duty of councillors to realise section 24 of the *Constitution* is also linked to other rights in the Bill of Rights, including access to adequate housing and sufficient water.[1884] This is part of their duty to address the socio-economic challenges in their municipalities.

[1880] Para 4.2 above.
[1881] See para 42.1 above.
[1882] See para 4.2.2.1 above.
[1883] See para 4.2.2.1 above.
[1884] See para 4.2.2.2 and 4.2.2.3 above.

The application of the substantive rights and concomitant duties in sections 24, 26, and 27 of the *Constitution* also depends on the ability of local communities to hold their councillors accountable through procedural recourses. The applicable procedural rights include the right to information and just administrative action enshrined in sections 32 and 33 of the *Constitution*.[1885]

The duty of councillors to realise section 24 of the *Constitution* is supported by a suite of national legislation.[1886] By analysing local government and environmental law, the study sought to identify potential concrete environmental duties for councillors. The study established that the law does not always distinguish between the environmental duties of a municipal council, the executive mayor, and the administrative officials of a municipality.[1887] This distinction is generally left to councillors and municipal officials to determine the extent of their powers, functions, and duties when interpreting environmental legislation. Such confusion can lead to animosity where one structure of a municipality encroaches on the functions and powers of the other.

The study has sifted through local government and environmental law to develop a categorical understanding of where the powers and functions of councillors in environmental governance begin and end.[1888] For instance, section 16 of the MFMA obliges municipalities to adopt an annual budget that appropriates realistic revenue and expenses concerning the environment and other municipal matters.[1889] A distinction should be made in relation to designing, developing, adopting, and implementing the annual budget. Often, the managing structures of the administration must participate in designing and developing the budget, and it is the municipal council that must adopt this budget.

[1885] See para 4.2.1.4 and 4.2.1.5 above.
[1886] See para 4.3 above.
[1887] See para 4.5 above.
[1888] See para 4.2.3 above.
[1889] See para 4.3.3 above.

6.3.2 South African cities are critical role players in IEP

States can no longer ignore the environmental crisis existing around the world.[1890] This is because IEP has placed global environmental issues at the political forefront.[1891] IEP has evolved parallel to governance. Simply put, IEP came at a time when state power was decentralising from national to sub-national and other government structures.[1892] This was when scholars and policymakers began to recognise the insufficiency of national governments and state powers to solve the global environmental crisis.[1893]

The attitudes of the government in South Africa also evolved with IEP. South African authorities went from being uninterested bystanders in developing the first IEAs by UNEP to hosting the World Summit on Sustainable Development in Johannesburg in 2002.[1894] The study has revealed that the South African government had a narrow focus and understanding of the environment and the country's role in the global environmental crisis until the inception of the *Constitution*.[1895] The *Constitution* has enabled South African cities (local authorities) to participate in IEP. As stated before, the constitutional environmental right has captured the global concern of the deteriorating environment.[1896] This section binds South African cities to improve the environmental health and well-being of communities. Sections 151 and 153 of the *Constitution* have also enabled municipal councils to exercise their legislative and executive powers and functions pursuant to global environmental ideals.[1897]

South African cities are responding to global environmental governance issues. Evidently, these cities have committed to reduce their GHG emissions to contribute to climate change mitigation.[1898] Climate change threatens the ability of municipalities to balance between providing sustainable municipal services and

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1890 See para 2.2 above.
1891 See para 2.2 above.
1892 See para 2.2.3 above.
1893 See para 2.2.3 above.
1894 See para 2.4 above.
1895 See para 2.4 above.
1896 See para 4.2.1 above.
1897 See para 3.6 above.
1898 See para 1.1 and 4.4.5 above.

protecting the environment.[1899] Many municipalities do not have the resources to mitigate the effects of climate change or implement adaptation measures in their areas.[1900] This study has found that municipal councils often look outside their municipalities for assistance.[1901] This confirms that South African cities will grow strong in their role as meaningful actors in IEP in the foreseeable future.

6.3.3 Party politics influence councillors

Party politics is a practice that has permeated various organisations and institutions, including places where no one would think party politics should ever exist.[1902] In essence, two types of politics have been discussed in this study, namely, internal party politics and national and provincial government politics.[1903] Each of these types of politics has influenced the role of councillors to realise section 24 of the *Constitution*.

South Africa has had interesting developments in its political governance system, where the dominant Party, ANC, has lost power in a province and several municipalities. Political commentators predict that the Party will fall below 50 percent in the upcoming national elections of 2024.[1904] This might result in the Party losing governance of more provinces, including Gauteng and KZN, and a possible coalition government in the national sphere.[1905] As observed in this study, the dilution of political interests has resulted in national politics permeating into

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1899 SALGA Councillor Handbook 182.

1900 See para 4.3.3 above.

1901 For example, the European Commission has rolled out funding opportunities for South African cities to accelerate the country's plan to decarbonise the economy. In addition, the United Kingdom (UK) has funded two coal-dependent municipalities, namely eMalahleni and Steve Tshwete Local Municipalities, to assist them in transitioning to renewable energy. See European Union 2022 https://ec.europa.eu/commission/presscorner/detail/en/statement-22- 6664. Also see para 4.3.3 above.

1902 See para 3.5.2.1 above.

1903 See para 3.1 above.

1904 Daily Maverick 2023 https://www.dailymaverick.co.za/article/2022-02-13-the-anc-at-40-in-2024-could-bring-chaos-to-an-already-unsteady-democracy/ and City Press 2023 https://www.news24.com/citypress/news/anc-support-at-41-ahead-of-2024-polls-with-gauteng-and-kzn-up-for-grabs-for-opposition-survey-20231019.

1905 Daily Maverick 2023 https://www.dailymaverick.co.za/article/2022-02-13-the-anc-at-40-in-2024- could-bring-chaos-to-an-already-unsteady-democracy/ and City Press 2023 https://www.news24.com/citypress/news/anc-support-at-41-ahead-of-2024-polls-with-gauteng-and-kzn-up-for-grabs-for-opposition-survey-20231019.

municipal councils and influencing how cities are governed.[1906] City governments have a mammoth task of balancing environmental governance issues and warding off unwanted interference from national and provincial governments.[1907] The task is more difficult when one party controls a municipal council in a province governed by another party. Coalition governance also added a layer of difficulty in governing where one or more parties in government do not view the environment as a priority.[1908]

It is also quite possible that a municipal council governed by an outright majority may fail to realise section 24 of the *Constitution*. This is because, sometimes, party leadership at the national level makes decisions meant to be deliberated and decided on by local leaders in municipal councils, undermining the role of councillors in the local government sphere.[1909] In such instances, councillors find it difficult to challenge national leadership for fear that they may be removed from the partisan lists of the party lists and, subsequently, removed as councillors.[1910] Conversely, when a party leader at national, provincial or local level advocates for the environment, it is easier for the party's structures to realise the constitutional environmental right. This observation also came up during the semi-structured interviews with the councillors.

6.3.4 Councillor training on environmental governance is insufficient

An analysis of the participants' input during the interviews revealed councillors had been insufficiently trained to execute their environmental law duties. Councillors across the country attended a two-week induction programme provided by SALGA. Councillors were given training material, including the Councillor Handbook. This

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1906 See para 3.5.2 above.
1907 See para 3.5.2 above.
1908 See para 3.5.2.2 above.
1909 See para 3.5.2.1 above. Also see for instance Pieterse 2020 *South African Journal of Human Rights* 131; GroundsUp Editors 2018 https://groundsup.org.za/article/cape-town-leadership-cacophy-chaos/; De Vos 2018 https://www.dailymaverick.co.za/opinionista/2018-01-31-party-and-state-conflating-the-two-undermines-democracy/; Pieterse (2018) https://theconversation.com /cape-town-water-crisis-crossing-state-and-party-lines-isnt-the-answer-90861; Shepherd 2019 *Water* 2; Nhamo and Agyepong 2019 *Journal of Disaster Risk Studies* 1-9.
1910 See para 3.7.4.2 above.

handbook was used to induct newly elected councillors into their respective oversight roles. The handbook states that the programme was carefully organised to address "all critical delivery areas that will enable councillors to play their critical role in municipalities."[1911] These critical areas include municipal leadership, governance, oversight, ethics, legislation, policies, finances, and performance management.[1912]

A careful perusal of the handbook revealed that this was insufficient, although it provided a discussion on environmental planning and management. Firstly, the discussion was general and failed to link councillors to specific duties in environmental governance. Secondly, while the handbook made mention of NEMA, it did so once throughout the entire discussion on environmental planning and management. Lastly, the handbook phased the discussion on environmental planning and management against section 24 of the *Constitution* and local government legislation; it did not expressly mention other environmental legislation.

6.3.5 Not all councillors understand their duty to help realise section 24 of the Constitution

The semi-structured interviews with councillors revealed that not all councillors understand their duty to help realise section 24 of the *Constitution*. The questions posed to councillors during the interviews were all linked to the councillors' understanding of section 24 of the *Constitution*. The researcher expected that councillors would provide detailed answers on section 24 of the *Constitution*. Although some councillors knew that municipalities have a role in protecting the environment, they did not link this responsibility to the constitutional environmental right. If anything, the councillors listed various reasons for protecting the environment, including that local government is the closest sphere to local communities and that councillors are responsible for responding to local communities' service delivery issues.

[1911] SALGA Councillor Handbook 8.
[1912] SALGA Councillor Handbook 8.

This study further revealed that councillors generally have a narrow understanding of environmental issues. The cardinal function of local government is to provide municipal services. Therefore, councillors focused on environmentally related service delivery issues, including solid waste removal, water and sanitation, and sewage disposal services. The narrow focus meant that some councillors were unaware of their legal duty in climate change governance, biodiversity protection or cultural heritage preservation. This was evident during the interviews when only one of the seven councillors mentioned climate change. Furthermore, councillors did not speak of their duty to protect the environment as co-trustees of South Africa's natural resources.

6.3.6 Political parties can contribute to environmental governance through their councillors

Councillors are politicians first. They carry the mandates of their parties before the *Constitution* and other framework legislation. Therefore, when councillors are uncertain of their role or various issues that arise in council sittings, they often seek guidance from their parties. It was revealed during the interviews that councillors also tend to lobby for the support of their fellow party members in municipal council sittings when they want to raise an issue in these meetings. For instance, two out of seven councillors mentioned that they would rather raise issues with their fellow party members in caucus meetings before they can approach the municipal council.

The study further revealed that some councillors preferred establishing community projects within their political parties instead of working with other members of their municipal councils.[1913] As a result, environmental projects meant to be conducted by municipal councils often happen at the party level. One of the seven councillors, a portfolio member of the environmental management department, mentioned that their political party had monthly clean-up programmes in various wards in their municipality. According to the participant, local communities responded positively to the clean-up programmes initiated by local party leaders.[1914] This reveals that

[1913] See para 5.4.8 above.
[1914] See para 5.4.8 above.

political parties contribute to environmental governance effort through their councillors.

Based on these findings, the study further discovered that, firstly, the role of councillors to realise section 24 of the *Constitution* is not always clearly delineated. Secondly, local government and environmental law give effect to the duty of councillors to realise this right. However, legislation (or the law) does not always distinguish between the duties of "a municipality", "councillors", and "municipal officials" to realise the constitutional environmental right. This has created uncertainty amongst the structures of municipalities. Lastly, political parties are present and active in local communities. However, they could do more to realise people's right to a safe and healthy environment through councillors or community engagement.

6.3.7 Manifestos may be used to solicit funds from potential investors

A political party's manifesto is used to declare a party's position and set out values, principles, and objectives that a party wishes to fulfil if voted into a political office.[1915] The semi-structured interviews conducted in this study revealed that manifestos are also used to solicit funding during campaigning for votes, not only as policy directives for an incumbent government. Therefore, a political party may change its policy stance to fit its potential investor, including its environmental governance position. This implies that, if a potential investor is not pro-environmental governance, the receiver of their investment will likely prioritise the realisation of section 24 of the *Constitution*.

[1915] See para 5.4.7 above.

6.4 Recommendations

This section of the study provides recommendations following the findings.

6.4.1 National government to develop guidelines on local environmental governance

The study proposes that the national government adopt local environmental governance guidelines for municipalities. The guidelines should clearly distinguish between the duties of the councillors, municipal councils, and administrative officials in environmental governance. The proposed framework developed in this study is an example of how these guidelines should look.

The environment is a loaded term. It encompasses various issues, including climate change and energy governance. Section 24 of the *Constitution* was identified in this study as the primary section of the *Constitution* from which the government's powers and functions on the environment flow. However, municipal councillors have legislative and executive duties outlined in Chapter 7 of the *Constitution*. These legislative and executive powers and functions have a bearing on their duty to realise the constitutional environmental right. The *Constitution* has sufficient principles to be used in developing these guidelines. The *Constitution* outlines, for instance, how the spheres of government should cooperate. The principles of cooperation in environmental governance are reiterated in NEMA.[1916] The proposed guidelines should address this.

6.4.2 SALGA and political parties to train councillors on environmental governance

This thesis proposes that councillors should receive more training on environmental governance. This recommendation is aimed at SALGA, political parties, and the councillors. Firstly, this study proposes that SALGA develop training material to enhance municipal councillors' understanding of the LEG duties. The training material should discuss local government and environmental law. This discussion

[1916] See para 4.4.1 above.

should clearly distinguish the duties of councillors from municipal officials, as this is currently unclear. The training should further be enhanced by workshops at different intervals specifically aimed at addressing sector-specific issues in environmental governance, such as green governance, energy governance and climate change governance.

Secondly, political parties must educate their candidates on environmental governance and the pursuit of the constitutional environmental right before nominating them for political office. For instance, the EFF hosted a national political education workshop from the 24th to the 26th of March 2023 aimed at mass political education and voter registration training for its members.[1917] This study proposes that political parties must host similar workshops on environmental governance for their candidates. It is also important for political parties to understand the extent to which they can participate in environmental governance matters of their respective municipalities. This will ensure that parties do not interfere in matters of municipal councils. Therefore, training should also address mechanisms available to political parties for participation.

Lastly, councillors must take it upon themselves to seek training and education on environmental governance matters. Councillors must be aware of the environmental issues affecting their local communities and should seek training to understand what causes the issues and how they can be solved or mitigated. Training includes short courses in class or online hosted by various institutions.

6.4.3 Local stakeholders must engage more in LEG

Municipal councils must facilitate stakeholder engagements in matters of their municipalities. The stakeholders should include local communities, community organisations, private entities, and political parties. Stakeholder engagements are used to identify gaps and opportunities for improved local governance. These engagements should also assess the strengths of various stakeholders and assign responsibilities. For instance, political parties can be assigned the role of

[1917] SABC News 2023 https://www.youtube.com/watch?v=IIcmONQck-s.

environmental education and awareness, and private entities can be encouraged to adopt sustainable ways of doing business.

Part of stakeholder engagement is councillors participating in IEP. Municipal councils must actively seek collaboration opportunities with INGOs, TNCs, and city networks. These international engagements must enhance knowledge sharing on environmental issues, facilitate investment opportunities and assist with the capacity development of councillors and municipal officials.

6.4.4 Councillors should possess minimum educational skills to qualify for political office

This study proposes that councillors must have educational skills that extend beyond basic literacy. Councillors must understand these laws and be critical of them. Only when a councillor comprehends environmental issues and what it would take to solve them can they meaningfully participate in designing and adopting appropriate instruments. Environmental governance is complex and requires councillors to comprehend its complexities. Moreover, selecting the right instruments to respond to environmental challenges in municipalities is not easy, especially where politics frequently destabilise municipal council sittings.

6.4.5 Political parties should retain councillors as part of their succession plan

The study recommends that, where a political party is re-elected in a municipality, a councillor who has worked well with the community must be retained to serve in the incoming council. This will ensure that both the party and municipality retain institutional memory and expedite the adoption of policies that were left unadopted in the previous council. This is critical, given that some policies are designed prior to the end of a council's tenure are not adopted in time. This process can also result in incumbent councillors opposing a policy, either in whole or in part. This may result in delays in adopting a critical instrument. Furthermore, institutional memory is important for senior council members to mentor newly elected councillors.

6.5 Proposed framework detailing environmental duties of councillors

What follows below translates local councils' environmental law functions, duties, and mandates into a map of how councillors and the political parties they represent can contribute towards realising the right to a healthy environment in South Africa. It is envisaged that this framework will assist councillors in advancing the environmental cause within their municipal councils, drawing from enabling legislative and other innovative measures. This proposed framework further considers the councillors' personal interpretation, understanding of, and personal experiences as captured in chapter 5 of this study.

The framework is divided into five components and distinguishable between two parts. The framework will use alphabet letters to distinguish between the components. Components A and B (part one) comprise details of the duties of councillors emanating from local government and environmental law. Therefore, the first component of the framework lists the general duties of councillors emanating from these. Component B discusses the legislative requirements needed to fulfil the duty. The duties listed and discussed in these components emanate from the sifting of local government and environmental law. This discussion will also include innovative measures cabable of being fulfilled through the legislative requirements.

Part two of the framework combines the desktop research and the input of councillors captured in this thesis and which was captured from the semi-structured interviews. Component C identifies express and implied duties of councillors emanating from local government and environmental law as well as innovative measures taken by councillors to fulfil their environmental governance duties. Component D identifies potential challenges councillors face in fulfilling their environmental duties and states potential means to counter them. Councillors of the various participating municipalities raised these challenges. Component E identifies the duty of political parties in environmental governance.

It is worth noting that the data generated and used in components C, D and E was gathered from the various participating municipalities and is therefore not standard or applicable to all councillors. The information merely serves to illustrate possible

innovative measures (component C), challenges that councillors can face (component D), and the role of political parties in different municipalities around the country (component E) in pursuit of realising the constitutional environmental right.

Table 8: The framework on the duties of councillors to realise section 24 of the *Constitution* translated

Duties of councillors	Where does the duty emanate from?	What does the duty entail (including innovative measures)?	Means to counter implementation challenges	Implications for political parties
Spatial planning	The *Constitution*, *Municipal Systems Act* and SPLUMA.	• Need for climate change governance; • Convert some illegal dumpsites into green space.	• Educate councillors on climate change governance; • Optimally use existing laws to counter the deficit on inadequacy in climate change laws.	• Mainstream climate governance issues across local governance instruments; • Train candidates for political office on climate change.
Municipal finance management	The *Constitution*, MFMA and the *Preferential Procurement Policy Framework Act*.	• Municipal budgets, a driver for local environmental governance; • Local environmental governance resources acquisition and alienation; • Municipal investment, a toll to achieve local environmental governance; • Meaningful participation of councillors in designing and	• Distinguishing between involvement and interference; • Flag financial irregularities; • Councillors work with resources acquired by the municipality even when they are dissatisfied with acquired resources.	• Need for more political oversight processes; • Caution between political party interference and public participation in matters of local government; • Caution against interfering through party candidates in matters of council.[1918]

[1918] See para 3.5.2.1 above and De Visser 2010 *Commonwealth Journal of Local Governance* 94.

		adopting budgets. Councillors can also refuse to vote against suspected irregularities; • Lobbying for external investments; • Petition for specific finance for the environment in the municipal council; • Canvassing donations from external donors.		
Public participation	• Chapter 4 of the *Municipal Systems Act*; • Ward councillors as a driver / instrument for public participation.	*Municipal Systems Act* enabling a broad range of public participation instruments.	• Prompt response of councillors to local communities will strengthen relationships; • Use public participation as a process to involve communities, not political grandstanding; • Caution not to use public participation to discredit other municipal council members from a different party.[1919]	• Encourage political parties to participate in matters of local government as representatives of local communities; • Political parties must provide leadership in community projects, including clean-up programmes.
Development of policies, norms, and standards	• Various legislation states the need to develop policies, norms and standards, including NEM:AQA,	• Decisions taken at council sitting require a quorum to be reached before voting;[1920]	• Council tenures are short; • Design achievable environmental governance objectives and implement them timeously.	Political agenda-setting is feeding potential policies, norms and standards.

[1919] A concern raised by Councillor F in Municipality 2, which is governed by a coalition council.
[1920] See section 30 of the *Municipal Structures Act*.

	NEM:WA, and NEM:BA.	• Councillor attendance to be meaningful.[1921]		
Councillors as co-trustees of environmental resources	• Various legislation identifies councils as co-trustees of natural resources including NWA; WSA; NEM:BA and NEM:PAA.	Maintain councillor oversight.	Awareness raising in local communities is important.	Political parties should participate in environmental awareness.[1922]
Identifying and responding to needs	*Disaster Management Act* and *Municipal Systems Act*.	• Consistent engagements with local communities; • Councillors work with communities to reduce or alleviate disaster risks; • Oversight is critical to identify imminent threats.[1923]	• Avoid delayed turn-around time by municipal officials from deterring councillors from responding to disaster risks;[1924] • Avoid internal politics in the municipality that affect turnaround time where imminent threats have been reported by the community or councillor.[1925]	• Political parties must consistently raise issues of concern; • Work with local municipalities to address imminent disaster risks; • Guard against overstepping their boundaries by "taking matters into their own hands;"[1926] • Interference leads to the bypassing of important legislation, such as section 76(b) of the *Municipal Systems Act*.[1927]

[1921] See para 5.4.1 for a discussion on the effect of council tenure on designing, developing and adopting municipal instruments.

[1922] A sentiment shared by Councillor G from Municipality 2, where their own Party runs a clean-up campaign.

[1923] Both Councillors F and G said that sewage blockages have resulted in numerous local floods in their Municipality.

[1924] Sentiments shared by Councillor E from Municipality 2 and Councillor F from Municipality 3.

[1925] This challenge was raised by Councillor F from Municipality 3.

[1926] See Pieterse 2021 https://theconversation.com/local-government-in-south-africa-is-broken-but-giving-the-job-to-residents-carries-risks-155970.

[1927] See para 3.7.2.1 above. Also see Pieterse 2021 https://theconversation.com/local-government-in-south-africa-is-broken-but-giving-the-job-to-residents-carries-risks-155970.

Compliance with local government and environmental law	Various pieces of legislation including NEMA, PAIA and NEM:WA.	• Councillor oversight is important to flag non-compliance issues;[1928] • Furnishing information to national and provincial government and other requestors.[1929]		Political oversight becomes applicable where councillor oversight fails.[1930]

This framework addresses three findings made earlier. Firstly, councillors have a duty to realise section 24 of the *Constitution*. The duties of councillors are a testament to the constitutional status of the legislative and executive authority of municipal councils. Secondly, the proposed framework illustrates how councillors can fulfil their duty to realise the constitutional environmental right based on what some councillors already do in their municipalities. Lastly, politics influence the role of councillors to realise section 24 of the *Constitution*. The framework translates how the involvement of political parties in municipal matters can either yield negative or positive outcomes for councillors and the pursuit of the realisation of the constitutional environmental right.

6.6 Future research

It became evident throughout this study that there are some issues and questions that could benefit from further research. These are briefly listed as questions below.

1. Can political parties in South Africa be held legally accountable for the promises they make during elections?
2. What specific / active role should political parties play in fulfilling local environmental governance?

[1928] See para 5.4.4.
[1929] See para 4.2.1.4 above.
[1930] Sentiment shared by Councillor C in Municipality 4. See para 5.4.4 above.

3. How can local government and environmental legislation help filter out destructive politics in local environmental governance matters?
4. To what extent can municipalities adopt internal local policies and by-laws that help direct the environmental governance performance and constructive involvement of councillors and the administration?
5. Does South African politics need a (strong) green party to influence priority setting within municipal councils?
6. Are the courts active enough in holding underperforming political office bearers to account in environmental matters?
7. To what extent do councillors understand and interpret their LEG duties emanating from framework and sector-specific environmental and local government legislation?

ANNEXURES

Annexure A – Interview questionnaire

Concept questions for semi-structured interviews

1. Name of participant: _____
2. Political party affiliation: _____
3. Occupation: _____
4. Municipality: _____
5. Full-time Councillor: Yes / No
6. Number of years serving in Council:
7. Council portfolio (as applicable):
8. Number of years involved in the local government sector:
9. Contact details of participant
    a. Email address: _____
    b. Alternative email address:
    c. Telephone number: _____

Questions

1. When you assumed your position as a municipal councillor, did you have to undergo any form of training relating to your duties as a councillor? If so, what did this training entail and who provided it?

2. Do you think municipalities have a legal duty to protect and manage the environment? Explain.

3. What are the key environmental issues that continue to plague your municipality?

4. To your knowledge, what measures has your municipality put in place to deal with the environmental issues affecting the local community? Provide examples.

5. In terms of the Code of Conduct of Municipal Councillors, municipal councillors have an oversight role on the day to day operations of a municipality, in your view, what does this oversight role entail as far as it concerns environmental matters?

6. According to your understanding, what does South Africa's constitutional environmental right entail?

7. Do you think the realisation and protection of the constitutional environmental right is the responsibility of the national, provincial or local spheres of government? Why?

8. Does the constitution, manifesto or strategies of the political party you are affiliated with indicate how councillors can specifically enhance the environment or the constitutional environmental right? If so, how?

9. Do you think that your political party does enough to advance the constitutional environmental right in South Africa? Does it give prominence to this in its constitution, manifestos, strategies or annual meetings?

10. In your view, what can Councillors possibly do to help advance the environmental cause in the municipality considering the distinct functions and authorities of Councillors and the administration (officials)?

11. In your view, what are the chief obstacles or challenges for Councillors to contribute to good local environmental governance in the municipality?

12. Do you feel comfortable in fending the environmental cause in the municipal council? If not, why not?

Purpose of questions

Question 1 will determine the level of competence that a participant has in performing their role and function as a councillor in environmental management.

Question 2 will ascertain if the participant has a general understanding of what environmental management in the local government sphere means and entails.

Question 3 seeks to determine the current state of the environment in the municipality and possible issues causing imminent threats to the livelihoods of people in the municipality

Question 4 looks at current measures in place to solve the environmental issues facing the municipality? The question will highlight the general environmental challenges faced by South African municipalities.

Question 5 will determine the participant's understanding of the oversight role of municipal councillors. The focus will be on their oversight role in environmental matters.

Questions 6 cover the content of the constitutional environmental right. The question seeks to determine the councillor's general understanding of the contents of section 24 of the Constitution.

Question 7 will determine if the councillor is aware of the obligations that the constitutional environmental right places on the local government sphere.

Question 8 and 9 seek to identify synergies between the constitutions, manifestos and strategies of a political party and section 24 of the Constitution. The questions will determine if there is a potential conflict or complementary aspects between a political party's constitutions, manifestos and strategies and the local environmental governance legal framework.

Question 10 aims to determine if there are any innovative projects that councillors can or have adopted to help advance the environmental cause in their municipalities.

Question 11 seeks to identify the general challenges or obstacles councillors face in realising the constitutional environmental right.

Question 12 aims to determine the general appreciation of a municipal council for advancing the environmental cause.

Annexure B

Informed Consent Form

Study title:

The duty of municipal councillors to realise South Africa's constitutional environmental right

Research conducted by:

Nonhlanhla Ngcobo

Study supervisors:

Professor Anél Du Plessis

Professor Oliver Fuo

Institutional affiliation:

Faculty of Law, North-West University

Ethics number: Law NWU-01504-19-S3/02

Please carefully read the following explanation before you agree to participate in this study. This explanation serves to describe the purpose, risks, discomforts, and precautions of the study. It also sets out your right to withdraw from this study. Lastly, note that no assurances or guarantees can be made as to the findings or outcomes of the study.

Study description

The researcher is undertaking a study towards the completion of a Doctor of Philosophy in Law thesis, and the research for this degree relates to the duties of municipal councillors in advancing South Africa's constitutional environmental right in the local government sphere. The researcher intends to gather information

through semi-structured interviews, which will help to ascertain municipal councillor's general understanding of the state of the environment in South Africa; their interpretation of the constitutional environmental right as well as accompanying legislative environmental duties; the environmental stance of the political parties these councillors represent; and the priority given to matters of environmental protection within the context of the socio-economic pressures confronting local government across the country. The main objective of the study is to investigate the scope of the duty of municipal councillors as political office bearers in enhancing the constitutional environmental right in South Africa's municipalities. The interviews are designed to gather information from priorly identified participants who currently occupy the position of a municipal councillor.

Risks and discomforts

Your participation in this study will not expose you to risks such as prosecution. The duration of the interview could last anything from 30 minutes to 1 hour – all depending on the answers provided.

Benefits

The possible benefit of the study is that it will evaluate the status, duties, functions, and mandates of local government in terms of South African constitutional, environmental and local government law. This will be done in order to contribute to the overall objective of the study, which includes drafting a conceptual framework. The framework will translate the environmental law functions, duties, and mandates of local councils into a detailed analysis of how municipal councillors and political parties they represent can contribute toward realising the right to a healthy environment in South Africa.

Confidentiality

The information gathered during this study will remain confidential. The identity of the participants and relevant third parties will remain confidential during and after the completion of the interviews and research. Information obtained via the research will be used for research purposes only, will remain anonymised and will

be stored safely. The research results will be presented in the format of a descriptive thesis that will be submitted to the North-West University for the degree PhD in Law and Development. The researcher may further publish academic articles emanating from the research. The confidentiality arrangements will remain intact for all publications forthcoming from the PhD study.

Withdrawal without prejudice

Participation in this study is voluntary and refusal to participate in this study will not be prejudicial. Every participant is free to withdraw from the interview and / or to discontinue participation at any given moment during or before the conclusion of the study.

Sharing of study results

The research findings will be made available to any participant interested therein.

Financial information

There will be no costs involved for taking part in this research study, and participants will not be remunerated for participating in the interviews. I am aware that this study forms part of the work of the South African Research Chair in Cities, Law and Environmental Sustainability funded by the National Research Foundation (NRF). (Grant number: **115581**).

Questions or concerns

Participants may contact the researcher Nonhlanhla Ngcobo at nonhlanhlangcobo9@gmail.com or 072 196 0740 if they have any questions concerning this research study. If any questions or complaints arise from the interview, participants may also contact Professor Anél du Plessis at anel.duplessis@nwu.ac.za or 018 299 1969 who is the study supervisor; or Dr Braam Klaasen at braam.klaasen@nwu.ac.za who is the Chair of the Ethics Committee of the Faculty of Law, North-West University.

Consent

I the undersigned, have read this document and the scope and design of the study have been explained to me. I had an opportunity to ask questions and my questions have been answered. I am aware who I should contact in the event that I have further questions. I voluntarily agree to participate in the study as described above and received a copy of this consent form.

Full name of Participant: _____

Signature of Participant: _____ Date: _____

Signature of Researcher:_____ Date: _____

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