

**THE RIGHT TO DEVELOPMENT VERSUS ENVIRONMENTAL PROTECTION IN
SOUTH AFRICA.**

by

DUDUZILE GRACE MAFUNGANYIKA

RESEARCH DISSERTATION

Submitted in fulfillment of the requirements for the degree of

MASTER OF LAW

in

DEVELOPMENT AND MANAGEMENT LAW

in the

FACULTY OF MANAGEMENT SCIENCES AND LAW

(School of Law)

at the

UNIVERSITY OF LIMPOPO

SUPERVISOR: Prof T Scheepers

2009

DECLARATION

I declare that the mini-dissertation hereby submitted to the University of Limpopo for the degree of Masters of Development and Management Law (LLMDEV) has not previously been submitted by me for a degree at this or any other university; that it is my own work in design and in execution, and that all material contained therein has been duly acknowledged.

Miss DG MAFUNGANYIKA
Initials & Surname (title)



09 September 2009
Date

ACKNOWLEDGEMENT

It is great pleasure for me to acknowledge the assistance, guidance and supervision accorded to me by my supervisor, Prof T Scheepers. His strict and critical supervision made this work what it is.

I also wish to acknowledge Mr Bopape the reference librarian for his assistance.

I would like to also appreciate the support and encouragement of my family and Christian Mbajjorgu during the whole period of my study. I would like to thank the Canon Collins Trust and the Ethel and Ernst Eriksen Trust for sponsorship and financial assistance I received during the period of my study.

I am thankful to God for giving me wisdom, understanding, and guiding me through my studies.

DEDICATION

This dissertation is dedicated to my late grandparents Edward and Anniah Mafunganyika and my late father Knox Mafunganyika. It is also dedicated to my mother Adelaide, my grandmother Regina Ndlovu, my little sister Annie my niece Rebecca, my aunts Rebecca (snr) , Annie (snr), Mary and Sylvia, my uncles Freek Braithwaite and Martin and my brothers Innocent, Tony and Samuel Rick.

TABLE OF CONTENTS

CONTENTS	PAGES
Acronyms	vii
Abstract	viii
Chapter One	1
1. Introduction.....	1
1.1. Background.....	1-2
1.2. Problem Statement.....	2
1.3. Hypothesis.....	3
1.4. Objectives of the Study.....	3
1.5. Rationale.....	3-4
1.6. Research Design.....	4
1.7. Research Methodology.....	5
1.8. Organisation of Chapters.....	5
Chapter Two	6
2. The right to development versus environmental protection in South Africa.....	6
2.1. Views on Environmental Protection.....	6-7
2.1.1. The Anthropocentric view.....	7-8
2.1.2. The Ecocentric view.....	8-9
2.2. Views on Development.....	9-10
2.2.1. Traditional view of development.....	10-11
2.2.2. Modern view of development.....	11-13

2.3. The Legislative framework impacting on development and the Environment.....	13-14
2.3.1. The Reconstruction and Development Programme, 1994.....	14-17
2.3.2. The Constitution.....	17-19
2.3.3. The National Environment Management Act, 107 of 1998	19-21
2.3.4. The Environment Conservation Act, 73 of 1989	21-22
2.3.5. The White paper on Environment Management policy for South Africa...	22-23
Chapter Three.....	24
3. Case Study: Diepsloot Township and the concept of public participation in environmental decisions.....	24
3.1. Case Study: Diepsloot Township.....	25
3.1.1. Environmental Impact Assessment of the Diepsloot area.....	25-26
3.1.2. The impact of low-cost housing on the environment at Diepsloot.....	26-27
3.2. The concept of public participation in environment decisions.....	27-28
3.2.1. Public participation in international environmental law.....	28-29
3.2.2. Public participation in South African environmental law.....	30
3.3. Environment programmes and public participation programmes at Diepsloot.....	31-36
Chapter Four.....	37
4. The concept of Sustainable Development.....	37
4. 1.Concept of Sustainable Development in international law.....	38
4.1.1. Declaration of the United Nations Conference on the Human Environment 1972.....	38-39
4.1.2. World Commission on Environment and Development Report 1987....	39-40
4.1.3. Declaration on the Right to Development, 1986.....	40-41
4.1.4. The Rio Declaration on Environment and Development, 1992.....	42-43
4.2. Concept of Sustainable Development in South African law.....	43-44
4.2.1. The Constitution and Sustainable Development.....	44-45
4.2.2. The National Environment Management Act, 107 of 1998 and Sustainable Development.....	45-47

4.2.3. The anthropocentric approach of NEMA to Sustainable Development.....	47-49
4.2.4. The National Environment Management: Biodiversity Act 10 of 2004.....	49-52
Chapter Five	53
5. Conclusions and Recommendations.....	53
5.1. Conclusions.....	53-57
5.2. Recommendations.....	57
REFERENCES.....	58-67
INDEX.....	68.

ACRONYMS

CBD-Convention on Biological Diversity, 1992

CONNEPP-Consultative National Environmental Policy Process

DRD-Declaration on the right to Development, 1986

ECA- Environment Conservation Act 73 of 1989

EIA-Environmental Impact Assessment

ICESCR- International Covenant on Economic, Social and Cultural Rights

IEM-Integrated Environment Management Plan

NEMA-National Environment Management Act 107 of 1998

WCED-World Commission on Environment and Development.

ABSTRACT

This research investigates the relationship between the right to development and the right to the environment. An overview of the legislative framework aimed at facilitating development and environmental protection is discussed. The right to development is aimed at improving the quality of life and living conditions of ordinary people. On the other hand, the right to the environment has as its purpose the conservation and prudent utilisation of natural resources. Theoretically, the two rights are at loggerheads. However, at the centre of these rights is the concept of sustainable development. Sustainable development harmonises the implementation of developmental activities and environmental protection, by compelling government authorities and developers to consider environmental issues when implementing development projects. Public participation is vital in environmental law as it ensures that the public is well informed about development projects that may have adverse effects on the environment. Public participation in development projects is part of the Environmental Impact Assessment process (EIA). A case study of a local township was conducted to illustrate the importance of public participation and the acceptance of the right to development and the right to the environment as justiciable human rights in South Africa. The study revealed that local government officials lack the necessary knowledge and skills to implement development and environmental laws at local community level. This results in non-compliance with the existing environmental laws by developers. It is concluded that right to development and the right to the environment co-exist and are mutual reinforcing. Therefore, failure to ensure proper implementation of the two rights may result in short-lived and unsustainable development, projects and programs. It is concluded further that non-compliance with the EIA procedure defeats the concept of public participation as embodied in environmental law and international environmental instruments. It is recommended that the government should equip its officials and citizens with skills and knowledge on how environmental laws operate and should be implemented.

CHAPTER ONE

1. INTRODUCTION

1.1. BACKGROUND

South Africa comes from a past of great oppression where the majority of the citizens, especially blacks, lived in abject poverty and deprivation.¹ Apartheid laws such as the Native Resettlement Act 19 of 1954 and Bantu/Native Building Workers Act 27 of 1951 distorted access to natural resources and denied the majority of our citizens basic needs such as water, land and clean air.² When South Africa gained independence in 1994, there were serious social, economic, legal, moral and environment problems.³ The post apartheid government had to take immediate action to address these problems.

The government immediately, after being elected, implemented programmes aimed at improving the citizens' quality of life.⁴ These programmes were mostly directed at the realisation of socio-economic rights, which encompass the right to development.⁵ As a result, the government focused on the advancement of socio-economic development and neglected environmental issues.⁶ The Constitution of the Republic

¹ Fuggle RF & Rabie MA *Environmental Concerns in South Africa* (1983) 23-29.

² The Reconstruction and Development Programme: A Policy Framework (RDP) (1994) para 2.10.1.

³ Carlson DH & van Staden F 'Environmental Concern in South Africa: The Development of a Measurement Scale' (2006) *New Voices in Psychology*, Vol 2, Issue 1, 3-7.

⁴ Reconstruction and Development Programme (1994) and Growth, Employment and Redistribution Strategy of 1996.

⁵ Scheepers T *Practical Guide to Law and Development in South Africa* (2000) 17-20, see also Articles 1 and 6(2) of the Declaration on the Right to Development UN Gen Assembly resolution 41/128 of 4 December 1986.

⁶ *Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others* 1996 (3) SA 1095 (Tks) (The case involved a group of people who erected shacks on environmentally sensitive coastal areas with the respondents' permission).

of South Africa, 1996 (the Constitution) protects both the right to development and the right to environmental protection.⁷

The State had two main problems, namely, the realisation of socio-economic rights and protecting the environment.⁸ In order to strike a balance between the two competing rights, the government came up with the White Paper on Environmental Management Policy in May 1998.⁹ In 1998 the government enacted the National Environment Management Act 107 of 1998 (NEMA); an environmental framework law aimed at achieving sustainable development.¹⁰

NEMA provides a framework in which development projects are established in a sustainable manner taking into account their possible negative impact on the environment.¹¹ Section 2(4)(f) of NEMA also makes provision for public involvement in decisions affecting the environment.

1.2. PROBLEM STATEMENT

South Africa as a developing country has embarked on large-scale infrastructural development including the construction of roads, dams, housing and other facilities. These developmental projects will in one way or the other have an adverse effect on the environment. As a result, a carefully planned development process, which will take into account environmental issues, is of necessity. The public is often left in the dark when the planning of development projects is done and this defeats the spirit of public participation.

⁷ Chapter 2 of the Constitution.

⁸ Carlson & van Staden (note 3 above) 4-5.

⁹ See para 4 (Strategic Goal 2 Sustainable Resource Use and Impact Management).

¹⁰ Couzens E 'A Step Closer to Coherence' (1999) *SAJELP*, Vol 6(1) 13, 14-15.

¹¹ Bray E 'Towards Sustainable Development: Are we on the Right Track' (1998) *SAJELP* Vol 5(3), 1, 1-9.

1.3. HYPOTHESIS

The hypothesis, as suggested in the title is that the right to development has to be exercised or given effect to in South Africa in such a manner as to ensure environmentally sustainable development.

1.4. OBJECTIVES OF THE STUDY

1. To link the right to development and the right to the environment to show their mutual, supportive characteristics and illustrate their acceptance as justiciable human rights.
2. To set out the importance of public participation in decisions affecting the development process and environmental issues.
3. To set a guide on how the government and developers can strike an equilibrium between developmental activities and environment management.

1.5. RATIONALE

This research illustrates the need to integrate environmental considerations into development projects in order to ensure the sustainable use of natural resources. In South Africa, the realisation of socio-economic rights usually receives first priority to environmental conservation and environmental rights.¹² The emphasis on the need for development has led to development activities that caused irreparable damage to the environment.¹³ South Africa, as a signatory to international environmental

¹² *Director of Mineral Development, Gauteng Region & another v Save the Vaal Environment & Others* 1999 (2) SA 709 (SCA).

¹³ Ibinini Mara & Michelle Pressend 'Mining, Environment and Sustainable Development: Policy Brief Mining and Environmental Management in South Africa' (August 2001) <<http://www.emg.org.za/resources/mining.htm>>.

conventions,¹⁴ has an obligation to ensure that developmental projects are conducted in a sustainable manner especially at local and community level.

Developers have an obligation to ensure that development projects are conducted in compliance with existing environment legislation. Failure to take measures to ensure that development is sustainable leads to short-term improvement of social and economic needs of the people¹⁵. This, in turn renders development projects meaningless and unsustainable and further results in inefficient use of natural resources. One of the outcomes of this research is to set guidelines for both the State and developers in conducting developmental projects.

1.6. RESEARCH METHODOLOGY

This is qualitative research. Personal interviews with local authority representatives were conducted with respect to the impact of low-cost housing on the environment. The Diepsloot Township was used as a case study. The reason the researcher chose Diepsloot is that she has been a Diepsloot resident since 2001 and has witnessed the benefits and shortcomings of the Diepsloot project. As a result, the researcher saw the need to highlight the flaws of rushed government projects to prevent future unsustainable projects. The researcher also has a personal connection to the whole Diepsloot project as her parents rented a shack for her elder brother in the original Zevenfontein squatter camp.

The researcher made use of unstructured open-ended questions for the interviews. Due to time constraints, not all respondents were interviewed. The City of Johannesburg officials were not interviewed. All respondents except Mark Tyrell are

¹⁴ Convention on Biological Diversity (CBD) signed June 1993 and Convention on Wetlands of International Importance, especially as Waterfowl Habitat signed 12 March 1975.

¹⁵ Scheepers (note 5 above) 305.

local government officials of wards 95 and 96 (Region A) of the Johannesburg Metropolitan Council. Three of the respondents, Dorah Mogano, Sam Sikhosana and Abram Mabuke were part of the original Diepsloot squatters. Mark Tyrell is an Australian urban designer who has since submitted a proposal to the City of Johannesburg on developing the Diepsloot waterway into a tourist attraction site. The purpose of the interviews was to determine and discuss at community level measures employed to address the negative impact on the environment caused by the construction of new houses in the area. This method was used to determine the current reality be it in only one area as a case study.

However, the main method used in this research is library research. Primary and secondary sources of law such as legislation, case law, textbooks, journal articles, newspaper reports and the internet were used as sources of information and data.

1.7. ORGANISATION OF CHAPTERS

Chapter one gives a general overview of the research. Chapter two gives the background of how the rights to development and the environment have been viewed in South Africa. The chapter also sets out the legislative framework that has been developed to deal with developmental and environmental issues in South Africa. Chapter three deals with a case study of low-cost houses and their impact on the environment. Chapter three also deals with the importance of public participation in decisions affecting developmental projects and the environment. Chapter four deals with the concept of sustainable development as developed in international law and incorporated into South African law. Chapter five deals with recommendations and contains some concluding remarks based on the preceding chapters.

CHAPTER TWO

2. THE RIGHT TO DEVELOPMENT versus ENVIRONMENTAL PROTECTION IN SOUTH AFRICA

The Constitution refers to three types of rights. The first type are civil and political rights¹⁶ being rights that confer legal recognition and protection upon a person. The second type of rights are the so-called socio-economic rights.¹⁷ These rights require the State to act positively in order to secure the well-being of its citizens. The third type of rights which are relatively new are the so-called 'green rights'. These rights are grouped under socio-economic rights.

The green rights encompass amongst others the right to environmental protection and the right to development.¹⁸ These rights are group rights as they are exercised for the benefit of the public rather than specific individuals.¹⁹

2.1. VIEWS ON ENVIRONMENTAL PROTECTION

The right to the environment is recognised both in the national²⁰ and international sphere.²¹ The right to environment has become a justiciable human right²². The Constitution deals with the right to environmental protection in section 24. A close analysis of section 24, more specifically section 24(b), reveals core environmental principles namely environmental conservation and wise natural resource utilisation.

¹⁶ First generation rights such as rights to life and equality.

¹⁷ Second generation rights such as rights to housing and health.

¹⁸ Chapters 2 of the Constitution, see also Scheepers (note 5 above) 16-18.

¹⁹ Glazewski J *Environmental Law in South Africa* (2000) 80, see also Kidd M *Environmental Law: A South African Guide* (1997) 35.

²⁰ National Environment Management Act 107 of 1998.

²¹ UNCHE (Stockholm Declaration 1972) and UNCED (Rio Declaration 1992).

²² Note 12 above para 719 C-D.

These principles assist one in understanding the context in which the right to environmental protection is viewed.

2.1.1. THE ANTHROPOCENTRIC VIEW

Human beings' obligation to protect the environment emanate from the notion of environmental ethics. Carlson and van Staden²³ define environmental ethics as the intrinsic value of different forms of life both human and non-human and the non-living aspects of the natural environment. These ethics lead to the protection of environmental principles mentioned above. However, this protection exists for various reasons, one of which is the utilitarian rationale.²⁴ The utilitarian reason, which is anthropocentric in nature, is concerned with the usefulness of the environment to human kind.

This approach views the environment as something for the benefit of humans.²⁵ The anthropocentric approach is a human centred approach and emphasises the value of securing natural resources to further social and economic development.²⁶ In terms of this approach, the natural environment is seen as of economic value to human interests, needs and wants.²⁷ The basis of this approach is equitable access to natural resources for all humans both present and future generations.²⁸

In South Africa, the anthropocentric approach is embodied in legislation. Section 2(2) of the National Environment Management Act 107 of 1998 (NEMA) provides that environmental management must place people and their needs at the forefront

²³ Carlson DH & van Staden F (note 3 above) 4.

²⁴ Kidd (note 19 above) 14.

²⁵ Scholtz W 'The anthropocentric approach to sustainable development in the National Environment Management Act and the Constitution of South Africa' (2005) *TSAR*, Issue 1, 69, 70-71.

²⁶ Glazewski (note 19 above) 6-7.

²⁷ Carlson & van Staden (note 3 above) 6.

²⁸ Section 24(b) of the Constitution.

of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

In South Africa as is the notion the world over environmental protection is viewed as a way in which humans can preserve their socio- economic interests. Therefore, in terms of the anthropocentric approach the importance of environmental protection is to secure the well-being and improve the quality of life of humankind.²⁹

In conclusion, the anthropocentric approach is concerned with resource mobilisation for the welfare of human beings. The approach places an obligation on humans to conserve the environment in order to satisfy human needs and wants such as clean air, water and a healthy and hygienic environment.³⁰

2.1.2. THE ECOCENTRIC VIEW

Although the South African approach to environmental protection is mostly anthropocentric; the ecocentric approach is also sometimes followed. The ecocentric approach provides that all organisms and entities in the ecosphere are interrelated as a whole and are equal in intrinsic value.³¹ It extends to non-human life and non-living aspects of nature and seeks harmony between humans and all of nature.³² A point worth noting is that the definition of environment includes the air, land, water, plant and animal life.³³

²⁹ Carlson & van Staden (note 3 above) 5- 10.

³⁰ Ibid 6.

³¹ Ibid.

³² Kidd (note 19 above) 15-17.

³³ Section 1(xi) of the NEMA.

South Africa is famous for its rich fauna and flora life. This calls for an ecological balance between human actions and nature.³⁴ It is therefore important for man to preserve the natural environment in order to survive.³⁵ In South Africa, the need to protect the natural environment is inter alia based on our dependence on tourism. For example, a destruction of our floral life may have a devastating impact on the tourism industry³⁶ and hamper economic growth.

Section 2(4)(a)(i) of NEMA provides that sustainable development requires that disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided are minimised and remedied. This section stresses the need to conserve the non-human life and non- living aspects of nature.

2.2. VIEWS ON DEVELOPMENT

As mentioned above the right to development and the right to environmental protection are both examples of third generation rights. The right to development is closely associated with improving the quality of life and living conditions of people.³⁷ There is a link between the improvement of living conditions and socio-economic rights.³⁸ When it comes to socio-economic rights, the State must strive to achieve certain developmental goals.³⁹

As a result, the State has an obligation to justify its actions as far as socio-economic rights are concerned and the State may not deliberately hamper the realisation of

³⁴ Carlson & van Staden (note 3 above) 7.

³⁵ Scholtz (note 25 above) 72.

³⁶ Van Wyk J 'The impact of development on the environment as part and parcel of integrated development planning?' (2007) *Law, Democracy & Development*, Vol 11, 57, 57-59.

³⁷ Scheepers (note 5 above) 17-18.

³⁸ Article 1(1) and Article 6(2) of Declaration on the Right to Development, United Nations GA Resolution 41/128 of 4 December 1986.

³⁹ *Government of Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 45.

such rights.⁴⁰ In order to understand the views on the right to development one needs to understand the definition of *'development'*.

Scheepers⁴¹ defines development 'as a people-centred process of change depending for its ultimate success on the capacity of people to manage the process through a variety of critical steps and phases within the limits of an institutional and value framework that will guarantee meaningful and lasting improvement of quality of life for all in a peaceful, stable and well-governed environment'.

Development consists of two views namely the traditional view and modern view.⁴² These views are recognised in both South African and international law.⁴³

2.2.1. TRADITIONAL VIEW OF DEVELOPMENT

In terms of this view, development is viewed as an economic growth process that consists of identifiable projects such as the construction of a dam, road or school and specific economic policies.⁴⁴ This view is restrictive and is more concerned with the betterment of the material well being regardless of other supervening factors. Factors such as environmental and social implications of a project are not at the core of this view. In South Africa, the traditional view is sometimes apparent in government policies aimed at improving the citizens' quality of life.⁴⁵

⁴⁰ UN Committee on Economic, Social and Cultural Rights, General Comment 3: 'The Nature of States' Obligations' UN Doc HR1/Gen 1 at 45 para 9 (1990).

⁴¹ Scheepers (note 5 above) 8.

⁴² Bradlow DD 'Differing Conceptions of Development and the content of International Development Law' (2005) *SAJHR*, Vol 21(1), 47, 52.

⁴³ Glazewski (note 19 above) 270.

⁴⁴ Bradlow (note 42 above) 53-66.

⁴⁵ Reconstruction and Development Programme (1994) and Growth, Employment and Redistribution Strategy (1996).

The RDP has as its vision the meeting of basic needs, developing human resources and democratising the State and society.⁴⁶ The purpose of the RDP was to improve the quality of life of all South Africans especially the most poor and marginalised sections of the communities.⁴⁷ The RDP programme was aimed at realising socio-economic rights, which encompass the right to development.

The government's focus on the advancement of socio-economic development led to the neglect of environmental issues. In *Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others*⁴⁸ the respondents permitted the erection of shacks on an environmentally sensitive coastal area. The Transkei Supreme Court ordered the removal of these shacks. The above case exposes the pitfalls of favouring the economic aspects of the traditional view.

2.2.2. MODERN VIEW OF DEVELOPMENT

The modern view of development, describes development as an economically, politically, socially and environmentally integrated process.⁴⁹ Development is viewed holistically with the economic aspects of development being considered together with the social, political, environmental and cultural aspects.⁵⁰ Bradlow⁵¹ states that in conducting development projects the harmful nature of such projects and the ability of the environment to sustain human societies must be carefully considered.

⁴⁶ RDP para 1.4.

⁴⁷ RDP para 2.2.3.

⁴⁸ Note 6 above.

⁴⁹ Bradlow (note 42 above) 67.

⁵⁰ Ibid.

⁵¹ Ibid 67-68.

The right to a clean and healthy environment is no longer treated in isolation of other human rights. This right has become part of the broad spectrum of human rights. In *Director : Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment & others*, Olivier J held that 'Our Constitution, by including environmental rights as justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative process in our country'.⁵²

In South Africa, the modern view is entrenched in legislation. Section 2(3) of NEMA provides that development must be socially, environmentally and economically sustainable. The Local Government: Municipal Systems Act 32 of 2000 defines the concept of 'environmentally sustainable' as the provision of a municipal service in a manner aimed at ensuring that-

- (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
- (b) the potential benefits to the environment and human health and safety are maximised to the extent reasonably possible under the circumstances;
- (c) legislation intended to protect the environment and human health and safety is complied with.

This view reflects the concept of sustainable development that is contained in a plethora of international law instruments since its introduction in 1972 in

⁵² Note 12 above, para 719C-D

Stockholm.⁵³ Sustainable development recognises the fact that the rights to development and environment are mutually reinforcing, interdependent and interrelated.⁵⁴

In *Fuel Retailers Association of SA v Director General, Environmental Management, Mpumalanga & others*⁵⁵ the Constitutional Court held that development cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment.⁵⁶ This case reveals a strong move by our courts in favour of the modern view.

In conclusion, it is argued that taking into account the incorporation of international environmental law into South African law; South Africa tends to favour the modern view in preference to a traditional view of development.

2.3. THE LEGISLATIVE FRAMEWORK IMPACTING ON DEVELOPMENT AND THE ENVIRONMENT.

Environmental conservation laws are not new in South Africa. Actually, for many years the enactment of such legislation was in relation to wildlife.⁵⁷ The aim of environmental protection legislation was to preserve the natural resources for

⁵³ Stockholm is a city in Sweden where the United Nations Conference on the Human Environment was held from 5 June 1972 to 16 June 1972, which led to the adoption, by the United Nations General Assembly of the Stockholm Declaration on the Human Environment (Stockholm Declaration).

⁵⁴ Report of the World Commission on Environment and Development: Our Common Future published as General Assembly document A/42/427 < http://en.wikipedia.org/wiki/Brundtland_Commission > Chapter 2 para 4-8.

⁵⁵ *Fuel Retailers Association of SA v Director-General, Environmental Management, Mpumalanga Province & Others* 2007 (6) SA 4 (CC) .

⁵⁶ *Ibid* para 44.

⁵⁷ Kidd (note 19 above) 11-14, see also Lumby A 'Government and sustainable development in South Africa: the environmental legislative framework in historical context' (2005) *SAJEH*, Vol 20(1), 65, 69-79.

economic reasons. A great improvement in South African environmental legislation came with the enactment of the Environment Conservation Act, 73 of 1989 (ECA). The adoption of international environmental instruments such as the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972 influenced the enactment of the ECA. Since then a number of environmental laws have been enacted, NEMA being the most comprehensive of them all.

2.3.1. THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME, 1994 (RDP)⁵⁸

After South Africa became a democratic State in 1994 numerous laws, policies and programmes aimed at social upliftment were adopted and implemented.⁵⁹ The RDP was one of the most prominent programmes that laid down guidelines for the equitable distribution and allocation of natural resources.⁶⁰ The central aim of the RDP was to ensure that the quality of life of all South Africans is improved.⁶¹ At the same time, the RDP recognised the need of ensuring that development processes take cognisance of environmental concerns.⁶²

The RDP still today is the guiding framework for policy making in South Africa. The Gear programme has added emphasis to macro-economic aspects of national policy, but development in South Africa is still guided by the RDP

The need to strike a balance between development and environmental protection was reflected in the vision and objectives of the RDP through the concept of

⁵⁸ White Paper on Reconstruction and Development Gazette 16085, Notice 1954, 23 November 1994.

⁵⁹ Raewyn P & Govender K 'Natural Resources Policies for a New Millennium: Is South Africa Moving Towards a more Sustainable Paths' (2001) *SAJELP*, Vol 8(1), 39.

⁶⁰ RDP para 2.10.2.1.

⁶¹ RDP para 1.4.

⁶² RDP para 2.10.4.

sustainable development.⁶³ The White Paper on the Reconstruction and Development Programme (the RDP White Paper) included in its provisions two vital principles of sustainable development, namely intragenerational equity and intergenerational equity.⁶⁴

Intragenerational equity refers to an equal distribution of natural resources among people and the need to alleviate poverty by giving priority to the needs of the poor. On the other hand, intergenerational equity refers to the sustainable use of natural resources by the present generation and places an obligation on the present generation to preserve such resources for the benefit of future generations.⁶⁵ In the context of the RDP programme, the concepts of intragenerational equity and intergenerational equity were important for the following reasons:

- (a) The aim of Intragenerational equity is to ensure the provision of the basic needs that determine human survival. The principle of intragenerational equity is consistent with the objective of the RDP programme, which was to improve the quality of life of all South Africans especially the most poor and marginalised sections of the community.⁶⁶
- (b) Intergenerational equity ensures that there is preservation of natural resources to further social and economic development. It is common cause that if natural resources are utilised in an unsustainable manner without due regard to their possible exhaustion human survival will be curtailed.

⁶³ RDP para 2.2.1.

⁶⁴ Bray E 'Legal perspectives on global environmental governance: South Africa's partnership role (1)', (2005) *THRHR*, Vol 68 (2) 210, 214-215.

⁶⁵ Tladi D 'Strong sustainability, weak sustainability, intergenerational equity and international law: Using the Earth Charter to redirect the environmental ethics debate' (2003) *SA Yearbook of International Law*, Issue 28, 200, 200-210.

⁶⁶ RDP para 2.2.3.

The RDP had as its mission the provision of basic needs and improvement of quality of life not only for the present generation but also for future generations.⁶⁷ The intragenerational equity and intergenerational equity principles are important in the realisation of RDP priority areas⁶⁸ namely provision of adequate housing, water and sanitation services, energy, electrification and land reform. These are all key areas of development. Therefore, their implementation must be environmentally sustainable.

In the *Fuel Retailers case*,⁶⁹ the Constitutional court defined the concept of sustainable development as follows: “sustainable development is the integration of social, economic and environmental factors into planning, implementation and decision-making for the benefit of present and future generations”. This broad definition incorporates two of the internationally recognised elements of the concept of sustainable development, namely: the principle of integration of environmental protection with socio-economic development, and the principle of inter-generational and intra-generational equity. It is interesting to note the similarity of the principles in the RDP and those highlighted by the Constitutional Court in this case.

In embodying the concept of sustainable development, more especially the principles of intragenerational equity and intergenerational equity, the RDP White Paper laid down a basis for the integration of environmental needs in the implementation of developmental activities.

The RDP White Paper also paved a way for the introduction of the White Paper on Environmental Management Policy of 1998 and eventually NEMA in an effort to

⁶⁷ RDP para 1.3.2.

⁶⁸ RDP para 2.2.5.

⁶⁹ Note 55 above, para 59.

consolidate environment legislation. However, the proper implementation of any legislation depends on good governance.

The RDP promoted a people-driven process that involves the public and all spheres of government.⁷⁰ This means that the successful implementation of any legislation, policy and programme is depended on pooling of human resources.⁷¹ NEMA extends the RDP's spirit of public involvement into developmental projects affecting the environment. The preamble to NEMA provides for procedures and institutions to facilitate and promote cooperative governance and intergovernmental relations including public participation in environmental governance. This gives effect to the principle of public participation in the implementation of development projects and further enhances the harmonisation of developmental needs and environmental needs of such projects.

In conclusion, the RDP laid down a good basis for development processes that are sustainable and mindful of the detrimental effect development projects may have on the environment.

2.3.2. THE CONSTITUTION

The Constitution lays a basis for both the rights to development and environment. Unlike the right to environmental protection, the right to development is not set out in a separate provision in our Constitution. Our Constitution however contains all the components of the right to development hence its implied entrenchment.

⁷⁰ RDP para 1.3.3.

⁷¹ Scheepers (note 5 above) 225.

The aim of the right to development is to improve the quality of life of all people. Socio-economic rights such as the rights to housing, health, food and social security are contained in the Constitution. The main reason for the enshrinement of these rights is to improve the living conditions of citizens. On the strength of the rights the government has on several occasions taken drastic steps to address the citizens' basic needs.⁷²

In *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment & others*, the court held that the *audi alteram partem*⁷³ rule which encompasses the process of public participation was applicable when an application for a mining licence is made to the Director in terms of the then Minerals Act 50 of 1991⁷⁴. The reason for the application of the rule was the enormous damage mining causes to the environment and ecological systems.⁷⁵ It was held further that the respondents had a right to be heard before the mining licence was granted to the Second Applicants.

This case illustrates two important aspects brought to the fore by the Constitution in respect of environmental rights. Firstly, the right to environment is recognised as a fundamental human right.⁷⁶ Secondly, the right to environment is now implemented holistically with other rights including rights in section 38 of the Constitution.

Moreover section 24(b)(iii) makes provision for ecologically sustainable development and use of natural resources while promoting justifiable and social

⁷² *Minister of Public Works v Kyalami Environmental Association* 2001 (3) SA 1151(CC) (the government erected a transit camp for flood victims who had their homes flooded by the Jukskei River in Alexandra. The camp was erected near the Leeuwkop Prison. The respondents objected to the establishment of the camp because it affected the surrounding environment features. The CC held that the government's action was lawful as it acted in terms of its constitutional duty to provide relief to victims of disaster).

⁷³ 'audi alteram partem' is a Latin phrase meaning both sides of the story must be heard.

⁷⁴ Note 12 above para 718G-J.

⁷⁵ Ibid para 719A-C.

⁷⁶ Ibid para 719C-D.

development. This section breaks the old-fashioned notion that the rights to development and environmental protection are inconsistent with each other. To this end, the Constitution promotes the concept of sustainable development as incorporated in international environmental management instruments.

2.3.3. NATIONAL ENVIRONMENT MANAGEMENT ACT 107 OF 1998

The National Environment Management Act 107 of 1998, which came into operation in 1998, is the only environment legislation to date that exhibits the characteristics of generic framework legislation.⁷⁷ The Act is an umbrella law aimed at establishing a unified and integrated environmental management framework⁷⁸ and has transformed all existing environmental laws including the Environment Conservation Act 73 of 1989. NEMA embraces all the principles of good governance set out in the Constitution.⁷⁹

The Act contains several provisions, which ordinarily do not form part of environmental legislation. NEMA contains provisions relating to environmental information,⁸⁰ legal standing to enforce environmental rights⁸¹ and private prosecution of environmental offences.⁸² The Act is one of the most comprehensive, sophisticated and integrated environmental laws in the history of South Africa.

⁷⁷ Du Plessis W & Nel J 'An Evaluation of NEMA based on a Generic Framework for Environmental Framework Legislation' (2001) *SAJELP*, Vol 8(1) 1, 3-37.

⁷⁸ Bray E 'Cooperative Governance in the Context of the National Environment Management Act 107 of 1998' (1999) *SAJELP*, Vol 6(1) 1, 1.

⁷⁹ Ibid 3-12, see also Kidd M 'Environmental Rights' (1997) *SA Human Rights Year Book*, Vol 8, 85, 87

⁸⁰ Section 31 of the NEMA.

⁸¹ Section 32 of the NEMA.

⁸² Section 33 of the NEMA.

Section 2 of NEMA contains environmental management principles, which apply to all actions affecting the environment including actions by government. These principles find their basis in section 2(3), which provides that development, must be socially, environmentally and economically sustainable.⁸³ This subsection incorporates the concept of sustainable development into environment rights and reveals the fact that NEMA is based on the principles set out in the World Commission on Environment and Development report of 1987.⁸⁴

Section 2(4) of NEMA contains a long list of principles that also form the foundation of the concept of sustainable development. Some of these principles are equitable access to natural resources,⁸⁵ environmental justice in distributing natural resources⁸⁶, public participation in environment decisions⁸⁷ and the principle of integration.⁸⁸ Section 2 reveals the need to carefully plan development projects and further that human actions are harmonised with natural processes.⁸⁹

Chapter 5 of NEMA makes provision for an Integrated Environment Management Plan (IEM), and for an Environmental Impact Assessment (EIA) when conducting certain activities. The purpose of the EIA is to ensure that development is long-term and sustainable. The idea is to create a balance between the needs of developers and those of the environment. The EIA regulations⁹⁰ impose an obligation on all

⁸³ See Paterson A 'Fueling the sustainable development debate in South Africa' (2006) *SALJ*, Vol 123(1), 53, 54

⁸⁴ WCED Report (note 54 above) Annexe 1, principle 7 provides that states shall ensure that conservation is treated as an integral part of the planning and implementation of developmental activities and provide assistance to other States, especially to the countries of the global South, in support of environmental protection and sustainable development.

⁸⁵ Section 2(4)(d) of the NEMA.

⁸⁶ Section 2(4)(c) of the NEMA.

⁸⁷ Section 2(4)(f) of the NEMA.

⁸⁸ Section 2(4)(i) of the NEMA.

⁸⁹ Bray E (note 11 above) 1-9.

⁹⁰ EIA Regulations, GN: R385, Gazette 28753 (21 April 2006).

persons intending to conduct any activity listed in section 24(1) to have the ability to manage a public participation process required in terms of the Act.⁹¹

Public participation is inherent in decisions affecting the environment as it assists decision-makers to make informed decisions about the sustainability of a proposed project.⁹² The need to involve the public in development processes lies in the fact that failure to do so may hamper the process or result in undue delays.⁹³

It is therefore clear that NEMA has through the concept of sustainable development attempted to ensure that decisions affecting both environmental and developmental rights are taken in a transparent manner therefore balancing the two rights.

2.3.4. ENVIRONMENT CONSERVATION ACT 73 OF 1989

The Environment Conservation Act 73 of 1989 (ECA) was the first environmental legislation in South Africa that attempted to reconcile socio-economic issues with environmental issues. The relevant provisions of the ECA are contained in Part V and VI of the Act, which provides for an environmental assessment (EIA) and regulations regarding environmental impact reports. The promulgation of the regulations was necessary to assist when conducting an EIA.⁹⁴ The regulations provide for a list of activities in respect of which, scoping, screening and EIA reports are prepared and submitted before the implementation of development projects.⁹⁵

⁹¹ Ibid regulations 56-58.

⁹² EMG 'Public Participation and the Law: An Environmental Activists' Guide' (1999) <http://www.ibt.afrihost.com/boellor/files/public_participation_and_law_1998.pdf>, see also Barnad D *Environmental Law for All* (1999) 111-112.

⁹³ Field T 'Public participation in environmental decision-making: Earthlife Africa (Cape Town) v Director – General: Department of Environmental Affairs and Tourism: notes (2005) *SALJ*, Vol 122(4) 748, 763-764.

⁹⁴ Glazewski (note 19 above) 282-288.

⁹⁵ Ibid.

The provisions of the ECA relating to EIAs are similar to those contained in Chapter 5 of NEMA, which makes provision for an Integrated Environment Management system. The reason the legislature enacted NEMA was because the ECA lacked comprehensive environmental management provisions.⁹⁶

2.3.5. WHITE PAPER ON ENVIRONMENT MANAGEMENT POLICY FOR SOUTH AFRICA

The White Paper was a result of the Consultative National Environmental Policy Process (CONNEPP), which started in Johannesburg in August 1995. The purpose of the initiating conference was to enable the government to come up with a new environment policy for South Africa. The White Paper was gazetted in May 1998⁹⁷ and led to the enactment of NEMA. The White Paper provides for all the provisions set out in NEMA including those of the Rio Declaration and World Commission on Environment and Development report of 1987.⁹⁸

In view of the above, different approaches to environmental protection and development as well as some of the legislation aimed at facilitating development and environmental protection, it can be concluded that:

The anthropocentric approach to environmental protection complements the traditional view to development. The two views centre on human development through the use of the natural environment. According to these views, the natural environment is important to humankind in order to improve their socio-economic interests and ensure their survival.

⁹⁶ Kidd (note 19 above) 169.

⁹⁷ White Paper on Environmental Management Policy Gazette 18894, Notice 749, 15 May 1998.

⁹⁸ Ibid Chapter 2 (vision) and Chapter 4 (strategic goals).

On the other hand the modern view of development reflects the ecocentric view of environmental protection which imposes a duty on humans to conserve both the living and non-living aspects of the environment. The two views are conscious of the fact that the preservation of the natural environment is for human benefit.⁹⁹

However, the modern view of development and ecocentric view of environmental protection maintain the need to preserve the non-living aspects of the environment through the concept of sustainable development.¹⁰⁰ Furthermore, the rights to development and environmental protection are enshrined in legislation and government policies. At the core of all legislative frameworks discussed above is the concept of sustainable development. The concept of sustainable development integrates the social, economic and ecological aspects of development projects and therefore harmonises developmental needs and environmental needs.

Finally, the views on environmental protection and development as reflected in section 24(b) of the Constitution, NEMA and in the provisions of the RDP White Paper, affirm the fact that the rights to development and environmental protection are mutual reinforcing, interdependent and interrelated.¹⁰¹

⁹⁹ Scholtz (note 25 above) 70-75, See also Bradlow (note 40 above) 67-82.

¹⁰⁰ See Preamble and section 2 of the National Environment Management: Biodiversity Act 10 of 2004 (which makes provision for the conservation of South Africa's fauna and flora life).

¹⁰¹ Note 55 above, para 79.

CHAPTER 3

3. CASE STUDY: DIEPSLOOT TOWNSHIP AND THE CONCEPT OF PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONS

Our Constitution entrenches the right of access to housing as one of the most fundamental human rights.¹⁰² This right is part of socio-economic rights, which are aimed at improving peoples' quality of life.¹⁰³ In South Africa, the right of access to housing is integral in bringing about development. When South Africa became a democratic State, the government embarked on large-scale infrastructural development projects including construction of low-cost houses.¹⁰⁴

The construction of these houses, like all development projects, may have adverse effects on the natural environment. As a result, the public must be involved in the planning of development projects to ensure that the implementation of such projects is done in a sustainable, safe and healthy environment. The developers must involve all interested and affected parties including relevant government authorities prior to implementing development projects. Failure to conduct a proper public participation process may have serious consequences for the developer.¹⁰⁵

¹⁰² Section 26 of the Constitution.

¹⁰³ See Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), Article 24 of the African Charter on Human and Peoples' Rights (1981) and Article 25 of the Universal Declaration on Human Rights (1948).

¹⁰⁴ See legislative frameworks on housing such as the White Paper on A new Housing Policy and Strategy for South Africa (1995), Housing Act 107 of 1997 as amended, National Housing Code, RDP (1994).

¹⁰⁵ *Barnet v Minister of Land Affairs* [2007] SCA 95 (RSA) (The case involved the demolishing of 16 cottages constructed on a coastal conservation area which respondents alleged were built unlawfully without proper authority from the Department of Agriculture and Forestry)

3.1. HISTORICAL BACKGROUND: DIEPSLOOT TOWNSHIP

The Diepsloot Township situated south of Pretoria and north of Johannesburg was established in the early 1990's when people who settled in a certain plot in the Zevenfontein area (now commonly known as Honeydew) were moved to Diepsloot. The plight of the Diepsloot settlers (then Zevenfontein squatters) was recorded in three cases.¹⁰⁶ The cases reveal that the establishment of Diepsloot township was greatly opposed by the Diepsloot residents and landowners. The core issues brought before the court by the Applicants were that the establishment of a township would bring about;¹⁰⁷

- (a) Public nuisance, namely an increase in crime.
- (b) Air pollution and other forms of pollution.
- (c) Diminution in the value of properties adjacent to the Diepsloot site and result in economic loss for the Diepsloot residents.

The government (Respondent) argued that the above issues could be avoided or abated by doing, amongst others, the following;¹⁰⁸

- (a) A proper town planning scheme.
- (b) The establishment of roads.
- (c) The supply of fresh water.
- (d) Proper sewage facilities.

¹⁰⁶ Diepsloot Residents' & landowners v Administrator, Transvaal 1993 (1) SA 577 (T), Diepsloot Residents' & landowners Association v Administrator, Transvaal 1993 (3) SA 49 (T), 1994 (3) SA 336 (A).

¹⁰⁷ Diepsloot Residents' & landowners Association v Administrator, Transvaal 1993 (3) SA 49 (T), paras 52I-53A-F.

¹⁰⁸ Diepsloot Residents' & landowners v Administrator, Transvaal 1993 (1) SA 577 (T), paras 582I-583A.

The Appellate Division (now Supreme Court of Appeal) finally resolved the dispute between the Diepsloot residents and the government. As a result, the government settled between 400-500 individuals in the Diepsloot site.¹⁰⁹ The squatter camp was known as the Rhema squatter camp with reference to the Rhema Church that provided food and other relief to the settlers. Save for the provision of electricity, the government fulfilled its promises by providing water taps, removal bucket toilets, and constructing proper gravel roads.¹¹⁰

Four years later in 1999, the first low-cost houses were constructed. Today Diepsloot boasts thousands of these houses. In addition, a number of schools, clinics, community halls, metro police depot, libraries and a shopping mall have been constructed.¹¹¹ Although the development in Diepsloot is most welcome and appreciated by the residents, its environmental sustainability was overlooked.

3.1.1. ENVIRONMENTAL IMPACT ASSESSMENT OF THE DIEPSLOOT AREA.

Diepsloot is situated in a wetland and as a result, a proper Environment Impact Assessment (EIA) was required. Chapter 5 of NEMA as amended makes provision for an Integrated Environment Management system (IEM system).¹¹² The aim of the IEM system is to ensure that the implementation of developmental activities are harmonised with the needs of the environment. This places an obligation on developers to follow the legislative framework aimed at minimising damage to the natural environment in conducting development activities.

¹⁰⁹ The shacks in Diepsloot have increased to thousands; this is because of the removal of Alexander residents affected by floods between 2000 and 2001 to Diepsloot and the settlement of other homeless individuals. This has, further resulted in the existing water and sewage systems being burdened. The health and environment hazards in the Diepsloot squatter camp are appalling.

¹¹⁰ Personal observation.

¹¹¹ Personal observation.

¹¹² See Sections 23 and 24 of NEMA.

In 2006, the Minister of Environmental Affairs and Tourism acting in terms of section 24(5) of NEMA promulgated the EIA regulations¹¹³ to assist in implementing the provisions of the Act. The purpose of the regulations was to assist developers in executing development projects, in order to ensure the sustainability of such projects and the protection of the environment. When Diepsloot was originally established the old regulations under the Environment Conservation Act of 1989 were still operative.¹¹⁴ Therefore, the developers had an obligation to adhere to the said regulations during the construction of the Diepsloot low-cost houses.

3.1.2. THE IMPACT OF LOW-COST HOUSING ON THE ENVIRONMENT AT DIEPSLOOT.

A point worth noting is that Diepsloot was established a year after the 1994 elections. It is common cause that the new government was eager to fulfill its promises of a better life for all and this led to rushed service delivery.¹¹⁵ In Diepsloot the houses were constructed before the construction of roads, installation of stormwater, drainage and sewage systems, an electricity system, streetlights and other facilities that are usually required before a housing project is implemented.¹¹⁶

In Diepsloot, only the main roads are tar roads and this leads to severe erosion when it rains. Sand is washed from the untarred streets to the main roads. As a result, the main roads are damaged and have developed many large potholes. The lack of stormwater systems aggravates the erosion and damage to the untarred roads.

¹¹³ EIA Regulations, GN: 385, GN: 386 and GN: R387, Gazette 28753 (21 April 2006).

¹¹⁴ Paschke R and Glazewski J 'Ex Post Facto authorization in South African Environmental Assessment Legislation: A Critical Review' (2006) 1 *PER* 1, 3-4.

¹¹⁵ RDP para 1.1 -1.5 and Preface.

¹¹⁶ Interview S Mlotywa, Housing Officer, Diepsloot Regional Office (Region A) 2008-07-15.

Diepsloot is overpopulated because of the informal structures and backrooms that have been constructed by homeowners.¹¹⁷ The sewage and drainage systems are frequently blocked leading to waste water flowing into the little stream that runs through the township, creating a serious health hazard.¹¹⁸

Mr Mlotywa¹¹⁹ gave an example of Cosmo City, a township about 7 kilometers from Diepsloot, where the project was well and carefully planned. Accordingly, the houses in Cosmo City consist of low-cost and more expensive houses. The entire housing support infrastructure consisting of stormwater, sewage, drainage, electricity systems and roads were constructed before the houses were built.

In conclusion, lack of proper planning including the failure to comply with the existing EIA system in the Diepsloot project has led to a waste of public funds as the government is now trying to rectify the mistakes of the project. The upgrading of the existing infrastructure is fruitless as there are too many entrenched informal social housing activities taking place.

3.2. THE CONCEPT OF PUBLIC PARTICIPATION IN ENVIRONMENT DECISIONS.

Public participation is the involvement of all parties who may have an interest in any development or project or be affected by it. It entails a wide range of activities that can range from providing information, through consultation to direct involvement of the public in aspects of the decision-making process.¹²⁰

¹¹⁷ Ibid.

¹¹⁸ Personal observation.

¹¹⁹ Note 116 above.

¹²⁰ < http://www.en.wikipedia.org/wiki/public_participation >.

Public participation must take place in accordance with principles of just administrative action as this strengthens its effectiveness.¹²¹ The concept of public participation is recognised in both our municipal law and international law.¹²² Section 25(4) of the Local Government: Municipal Systems Act 32 of 2000 provides that, a municipality must within 14 days of the adoption of its integrated development plan in terms of subsection (1) or (3), (a) give notice to the public-

- (i) of the adoption of the plan
 - (ii) that the copies of or extracts from the plan are available for public inspection at specified places; and
- (b) publicise a summary of the plan.

This concept is part of civic rights such as the rights to information, legal standing, just administrative action and access to courts.

3.2.1. PUBLIC PARTICIPATION IN SOUTH AFRICAN ENVIRONMENTAL LAW.

Principle 10 of the Rio Declaration provides that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective

¹²¹ Kotze LJ 'The Application of Just Administrative Action in the South African Environmental Governance Sphere: An Analysis of Some Contemporary Thoughts and Recent Jurisprudence' (2004) 2 *PER* 1, 13.

¹²² Kidd M 'The National Environment Management Act, 107 of 1998 and Public Participation' (1999) *SAJELP*, Vol 6(1), 2, 22, see also Bray E 'Public Participation in environmental law' (2003) *SAPL*, Vol 18(1), 121, 121-138.

judicial and administrative proceedings, including redress and remedies, must be provided for. This places an obligation on States to ensure that information is available to the public regarding development projects.

Public participation in South Africa is entrenched in legislation. Public involvement in the decision-making process is part of civic rights such as the right of access to information, legal standing, access to just administrative action and access to justice.¹²³ In environmental law, the concept of public participation is vital as it ensures that the public is well-informed about development projects that may have adverse effects on the environment.¹²⁴ It helps developers to identify factors that may hamper the development process, which may then result in opposition to such projects.¹²⁵

Public participation in development projects is part of the EIA process. The EIAs are an integral part of the Integrated Environment Management system described in Chapter 5 of NEMA.¹²⁶ Section 2(4)(f) of NEMA provides that the participation of all interested and affected parties in environmental governance must be promoted and people must be given an opportunity to develop the understanding, skills and abilities necessary for equitable and effective public participation. Section 33 of NEMA makes provision to access to environmental information held by the State and any person where such information is necessary to fulfill the duties in terms of the

¹²³ Hamann R 'South African Challenges to the Theory and Practice of Public Participation' (2003) *SAJELP*, Vol 10, 21, 23-24.

¹²⁴ van Wyk J (note 36 above) 59-71.

¹²⁵ Kotze LJ & van der Walt A 'Just Administrative Action and the Issue of Unreasonable Delay in the Environmental Impact Assessment process: A South African Perspective' (2003) *SAJELP*, Vol 10(1), 39, 45-66.

¹²⁶ Sampson I 'So near yet so far with environment impact assessments' (2007) *Juta's Business Law*, Vol 15(2), 77, 77-82, see also Kruger E & Chapman OA 'Quality aspects of Environmental Impact Assessment reports in the Free State Province South Africa' (2005) *South African Geographical Journal*, Vol 87(1), 52, 52-57.

Act. The Promotion of Access to Information Act 2 of 2000 as amended (PAIA),¹²⁷ which gives effect to the constitutional right of access to information complements this section.

The Promotion of Administrative Justice Act 3 of 2000 is also vital in making environmental decisions as most of these decisions constitute administrative actions and are subject to judicial review. Section 32 of NEMA contains a provision on legal standing and allows persons with sufficient interest to institute legal action if they think there has been a violation of their right of access to environmental information.

There are other laws that affect the right of access to information and public participation such as the Development Facilitation Act 67 of 1995 (DFA).¹²⁸ The above-mentioned Acts are important in safeguarding the right of access to environmental information and, this in turn, enables us to protect environmental rights.

In conclusion, public participation involves the civil society (public), developers and decision-makers (government authorities). The involvement of all these parties in environmental decisions will ensure that people enjoy sustainable improvement of the quality of their lives.

¹²⁷ See sections 9, s11(1) & (3) and s18-49 of PAIA.

¹²⁸ The purpose of the DFA is to speed up the implementation of reconstruction and development programmes and projects in relation to land. In Chapter IV the Act makes provision for land development objectives and the procedures relating to the manner in which the public and interested parties shall be consulted in the setting of land development objectives.

3.2.2. ENVIRONMENT PROGRAMMES AND PUBLIC PARTICIPATION PROGRAMMES AT DIEPSLOOT.

As stated above in paragraph 3.1.1 Diepsloot is situated in a wetland and therefore a proper EIA should have been done before development in the area commenced. However, due to lack of knowledge or negligence on the part of the developers and government authorities no EIA process was conducted.

The fact that no comprehensive environmental programmes are in place in the township aggravates the impact of a poorly planned development project on the environment. Diepsloot does not have an environmental protection programme.¹²⁹

The only environmental program in place is the pick-it-up program, which consists of municipal workers cleaning up the township by picking up litter and disposing of it.

The lack of environment programmes has lead to irreparable damage caused to the environment. People who are desperate for houses have erected shacks at the edge of the wetland.¹³⁰ At the time of the interview,¹³¹ some remedial action had been taken in that the shacks next to the wetland were demolished, alternative land had been found for the shack occupiers and a palisade fence erected around the open space next to the wetland.

Ms Mogano¹³² informed the researcher that alternative land for people to erect shacks is a problem due to squabbles between ward councilors. It is also difficult to raise environment awareness, as residents have no interest in environmental

¹²⁹ Interview D Mogano, Community Development Worker, Diepsloot Regional Office (Region A) 2008-07-14.

¹³⁰ Ibid.

¹³¹ On the 14-07 2008 with Dorah Mogano.

¹³² Note 129 above.

protection or management. However, the imposition of fines for those dumping rubbish in open spaces has reduced the dumping of waste next to the wetland.

The MEC for Environmental Affairs and Tourism in Gauteng has during a meeting held in 2007, expressed the need to draft a comprehensive environmental programme for the Gauteng province especially for environmental protection in townships.¹³³ Diepsloot has an environmental protection forum called *Bontle Ke Thlago Environment Forum*, which has as its aim to promote environment education and awareness. The forum finds it difficult to perform its functions as there are no formal guidelines on how to implement environment education or program.¹³⁴

Mr. Mabuke¹³⁵ admitted that the lack of a formal environment plan makes it difficult to implement public participation programmes. Public involvement as far as environmental protection is concerned in Diepsloot is minimal. The local government hosts environment awareness weeks twice a year in the township with the help of Pick-it-up and City Parks.¹³⁶ The attendance by residents is very poor due to lack of interest and lack of knowledge regarding the benefits of a clean and healthy environment.

Since 2007, Diepsloot has been working with Global Studio, a non-governmental organisation comprising of students from all over the world.¹³⁷ The object of the organisation is to integrate, developmental planning and urban design with

¹³³ Interview A Mabuke, Environmental Officer, Diepsloot Regional Office (Region A) 2008-07-15.

¹³⁴ Ibid.

¹³⁵ Note 133 above.

¹³⁶ A programme consisting of municipal workers who are responsible for keeping the municipal parks and gardens clean.

¹³⁷ Interview S Sikhosana, Community Development Worker, Diepsloot Regional Office (Region A) 2008-07-15.

environmental protection and socio-economic upliftment.¹³⁸ The Global Studio team have already identified the Diepsloot wetland and tabled a proposal to the City of Johannesburg authorities on transforming the wetland into a tourist attraction.¹³⁹ The wetland is rich in fauna and flora most of which have been destroyed by wastewater flowing into it.

Global studio together with City of Johannesburg hosted a cultural and environment awareness day on the 19th July 2008 to enhance public knowledge about the importance of a healthy and clean environment through stage plays and songs. There was also a mini tour to the newly established bottle-recycling depot.¹⁴⁰

The lack of public participation programmes in Diepsloot is inconsistent with the right of access to information and fair administrative action as enshrined in the Constitution. This also defeats the purpose of the environmental management principles contained in section 2 of NEMA more specifically section 2(4)(f), section 2(4)(h) and section 2(4)(k). The aim of these sections is to enhance public knowledge and participation with regard to environmental issues. They embody civic rights such as the right of access to information and the right to fair administrative action.

The above discussion of the relationship between the right to environmental protection and the right of access to housing and the importance of public participation in decisions affecting development projects and the environment through Environmental Impact Assessment procedures, leads to the following conclusions.

¹³⁸ For more information visit < <http://www.globalstudio.com> >.

¹³⁹ Interview M Tyrrell, Australian Urban Designer and Masters Student University of Sydney, Diepsloot 2008-07-17.

¹⁴⁰ Personal observation.

The right to environmental protection is part of the human rights enshrined in Chapter 2 of the Constitution. Therefore, this right cannot be read in isolation of other rights. The right to environmental protection must be considered in light of all rights in the Bill of Rights and the Constitution as a whole.¹⁴¹ Since the right to environmental protection is part of the human rights contained in the Bill of Rights, it is interrelated and mutually supported by all such rights.¹⁴²

The realisation of socio-economic rights such as the right of access to adequate housing affects the right to environmental protection. It is also affected by civic rights such the right of access to information and right to fair administrative action. As shown above the construction of low-cost houses may have an adverse impact on the environment due to non-compliance with existing legislative frameworks aimed at facilitating development projects carried out by developers.¹⁴³

In South Africa, lack of knowledge on environmental issues and poor monitoring by government authorities have resulted in ineffective EIA procedures and non-enforcement of existing developmental and environmental laws. For instance, poor planning of the Diepsloot project has resulted in it being environmentally not sustainable.

The project was rushed and the government failed to monitor the developers and plan for future adverse consequences that may occur because of the effect the project may have on the environment and health of the residents. The project's shortcomings are as a result of the government's promise to provide a better life for citizens and the fact that the government did not want to disappoint the electorate by

¹⁴¹ Note 39 above, para 22.

¹⁴² Ibid para 23, see also section 39 of the Constitution.

¹⁴³ Kotze & van der Walt (note 125 above) 40- 43.

failing to immediately deliver on its promises. The sudden influx of people to the Diepsloot site also made the government to rush the project to provide accommodation.¹⁴⁴

The government should also give effect to environmental laws and ensure their practical implementation by equipping its officials and citizens with skills and knowledge on how such laws operate and should be implemented.

As shown in the discussion above the rights to environmental protection and development co-exist with other rights such as the rights of access to housing and access to information, which is integral to public participation. Therefore failure to ensure proper implementation of the two rights may result in unsustainable and short-lived improvement in the quality of life and living conditions of people.

Finally, public participation is vital when implementing developmental projects as it balances the right to environmental protection and developmental rights. Section 29(1) of the Local Government Municipal Systems Act 32 of 2000 provides that, the process followed by a municipality to draft its integrated development plan, including its consideration and adoption of the draft plan, must-

(b) through appropriate mechanisms, processes and procedures established in terms of Chapter 4, allow for-

- (i) the local community to be consulted on its development needs and priorities.
- (ii) The local community to participate in the drafting of the integrated development plan; and

¹⁴⁴ See note 109 above.

The government must ensure that developers follow the EIA procedures set out in legislative frameworks, as they require a public participation process.¹⁴⁵ This will ensure that environmental interests are harmonised with social and economic development and, in turn cater for the developers' needs to implement developmental activities.

As a result, a proper public participation process in decisions affecting the development process and environmental issues will also give effect to the right to public participation as embodied in international environmental instruments and in South African environmental laws.

¹⁴⁵ Kotze & van der Walt (note 125 above) 44- 65. See also Bray (note 122 above) 123-131.

CHAPTER FOUR

4. THE CONCEPT OF SUSTAINABLE DEVELOPMENT.

Unplanned development can have a negative biological and geological impact on the environment and lead to short-lived improvement on peoples' quality of life.¹⁴⁶ In many instances, human beings' failure to harmonise their actions with natural processes lead to environmental degradation.¹⁴⁷ To cater for the harmonization between nature and human needs, the international community coined the concept of 'sustainable development'.¹⁴⁸ The concept of sustainable development consists of two words namely;

- (a) Sustainable means to support or hold and;
- (b) Development means to make or become bigger or better or to come gradually into existence.¹⁴⁹

When read in their ordinary context the above words entail that sustainable development is development that takes time to come into existence and that has a lasting effect. In short, sustainable development means an integration of social, economic and ecological viability of a project.¹⁵⁰

¹⁴⁶ Kidd (note 19 above) 163, see also Fuggle RF & Rabie MA (note 1 above) 3-4.

¹⁴⁷ Bray (note 11 above) 1.

¹⁴⁸ WCED Report (note 54 above) Chapter 2 'Towards Sustainable Development'.

¹⁴⁹ Oxford School Dictionary, New Edition (2005).

¹⁵⁰ Bray (note 11 above) 6-9.

4.1. CONCEPT OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW.

The concept of sustainable development has its basis in international law¹⁵¹. In international law the concept of sustainable development consists of four principles namely; the principle of intergenerational equity, sustainable use, equitable use and integration.¹⁵² These principles have been developed throughout the years and laws have been enacted to give effect to them.

4.1.1. DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT (STOCKHOLM DECLARATION), 1972.¹⁵³

The concept of sustainable development originates from the Stockholm Declaration¹⁵⁴ held in Stockholm from 5 to 16 June 1972. The aim of the Stockholm Conference was to integrate environmental protection and development.¹⁵⁵ At the Conference, principles relating to environmental protection and development were tabled.¹⁵⁶ The aim of the principles was to link the right to environmental protection and development. The preamble of the Stockholm Declaration emphasises the need to conserve natural resources in order to improve man's quality of living.

The Stockholm Declaration reflects the core elements of sustainable development and the importance of protecting the environment in order to advance human

¹⁵¹ Tladi D 'Intergenerational equity: A new name for International Environmental Justice' (2003) *Fundamina: A Journal of Legal History*, Issue 9, 197, 197-202.

¹⁵² Glazewski (note 19 above) 14-15.

¹⁵³ Declaration of the United Nations Conference on the Human Environment <<http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>>.

¹⁵⁴ Principle 2 of the Stockholm Declaration.

¹⁵⁵ Tladi (note 151 above) 199.

¹⁵⁶ The Stockholm Declaration consists of twenty-six principles.

economic development. An obligation is imposed on governments to ensure that development projects are carefully planned.¹⁵⁷

The careful planning of development projects will prevent negative biological and geological impacts on the environment, which may lead to short-lived improvement on the citizens' quality of life and living conditions.¹⁵⁸ In adopting the Stockholm Declaration, the nations of the world recognised the need to preserve natural resources in order to sustain human economic needs.¹⁵⁹

4.1.2. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT REPORT, 1987.¹⁶⁰

As already stated the rights to development and environmental protection are internationally recognized.¹⁶¹ In 1987, the World Commission on Environment and Development coined the concept of sustainable development and defined it as follows; sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This concept consists of the following two concepts namely;

- (a) The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority must be given; and

¹⁵⁷ Preamble to the Stockholm Declaration para 6, see also principles 2, 4, 8 and 12 which makes provision for the integration of economic development and environmental management.

¹⁵⁸ Fuggle and Rabie (note 1 above) 3-4.

¹⁵⁹ Lumby (note 57 above) 67-69.

¹⁶⁰ Note 54 above.

¹⁶¹ Bray E, Tladi D & Moodley I '2002 World Summit on Sustainable Development-food and legal thought' (2003) *Codicillus*, Vol 44(1), 10, 11-13.

(b) The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.¹⁶²

The WCED definition of sustainable development represents the three core principles of sustainable development namely the principle of intergenerational equity, intragenerational equity and integration.¹⁶³

The principle of intergenerational equity provides that in utilising natural resources the present generation must ensure that the environment is preserved for future generations to enable them to benefit from the natural environment.¹⁶⁴ The principle of intragenerational equity provides for an equal distribution of natural resources among people.¹⁶⁵ The principle of integration requires an integration of economic, social and ecological issues when considering development.¹⁶⁶

4.1.3. DECLARATION ON THE RIGHT TO DEVELOPMENT, 1986.

The concept of sustainable development is also contained in the Declaration on the Right to Development (DRD).¹⁶⁷ Article 2(3) provides that States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals based on their active, free and meaningful participation in development and in their fair distribution of the benefits resulting therefrom. This article echoes the contents of

¹⁶² WCED Report (note 54 above) Chapter 2 para 1.

¹⁶³ See discussion on pages 11-23 above.

¹⁶⁴ Tladi (note 151 above) 198, Glazewski (note 19 above) 18, see also Tladi D 'International Monetary Fund Conditionality, Debt and Poverty: Toward a Strong 'Anthropocentric' Model of Sustainability' (2004) *SA Mercantile Law Journal*, Vol 16(1), 31, 32

¹⁶⁵ Note 151 above, Bray (note 11 above) 1-9; see also Bray (note 64 above) 215, Fn 30.

¹⁶⁶ *Ibid*, see also Tladi (note 164 above) 32.

¹⁶⁷ Declaration on the Right to Development adopted by General Assembly resolution 41/128 of 4 December 1986 <<http://www.unhchr.ch/html/menu3/b/74.htm>>.

principle 7 of the WCED report, which provides that States must treat environmental conservation as an integral part of planning and implementation of development activities.

The DRD also reflects the concept that the right to development must be understood holistically with other existing human rights.¹⁶⁸ The DRD exhibits the characteristics of the modern view of development.¹⁶⁹ This is apparent from the provisions of the DRD, which incorporates international environmental law and human rights law principles into the development process.¹⁷⁰ This, in turn promotes the concept of sustainable development, which incorporates both the traditional view and modern view of development.¹⁷¹

The preamble to the DRD and Article 1(2) reflects the integration principle of sustainable development which is central to the modern view of development.¹⁷²

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR)¹⁷³ provides that a State Party to the covenant must recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The improvement of peoples' living conditions cannot be achieved on a deteriorating environment.¹⁷⁴ As a result, an integration of economic, social and environmental issues is of absolute necessity.¹⁷⁵

¹⁶⁸ Note 38 above.

¹⁶⁹ Bradlow (note 42 above) 73-82.

¹⁷⁰ Ibid 74-76. See also paras 3-5 and Article 1(2) of the DRD.

¹⁷¹ WCED Report Chapter 2 para 4-15.

¹⁷² Bradlow (note 42 above) 67.

¹⁷³ International Covenant on Economic, Social and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 <http://www.unchr.ch/html/menu3/b/treaty4_asp.htm>.

¹⁷⁴ Note 55 above.

¹⁷⁵ Bradlow (note 42 above) 74-76.

4.1.4. THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (RIO DECLARATION), 1992.¹⁷⁶

The Rio Declaration was a result of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. This Declaration expanded the Stockholm Declaration and sets out twenty-seven principles to guide the international community in achieving sustainable development. The importance of the Rio Declaration is entrenched in its preamble, which provides for environmental governance.¹⁷⁷ This Declaration further echoes the provisions of the DRD that place human beings at the centre of the development process.¹⁷⁸

Furthermore, Principles 3 and 4 provides that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. When read with principle 25, these principles entails that the rights to development and environmental protection are mutually supporting.

Principles 2 and 15 provides for precautionary measures in the exploitation of natural resources by States in order to prevent environmental degradation and also impose a duty on States not to cause harm to other States in exploiting such resources. The duty imposed on States by the Rio Declaration is that States are

¹⁷⁶ Rio Declaration on Environment and Development <<http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163>>.

¹⁷⁷ Bray (note 64 above) 210-225, see also Bray E 'Legal perspectives on global environmental governance: South Africa's partnership role (2)', (2005) *THRHR*, Vol 68 (2), 357, 357-373.

¹⁷⁸ Principles 1,5,10 and 27 of the Rio Declaration see also Article 1 and Article 2 of the Declaration on the Right to Development.

responsible for all public and private activities within their jurisdiction or control which can cause harm to the environment.¹⁷⁹

Principle 10 provides for one of the most important components of the concept of sustainable development namely public participation. Public participation in environmental law has become a requirement in both domestic¹⁸⁰ and international law.¹⁸¹ This is because of the close relationship between democracy and sustainability.¹⁸² Substantive rights such as the rights to information and access to administrative justice will enable citizens to question, challenge and influence decision -making which will enhance transparency and environmental justice.

The active involvement of citizens is fundamental in improving their quality of life. Public participation improves the governance process as it assists citizens to articulate their own needs, helps in improving ownership of processes and improves the legitimacy of government projects.¹⁸³

4.2. CONCEPT OF SUSTAINABLE DEVELOPMENT IN SOUTH AFRICAN LAW.

As I already discussed and outlined above the concept of sustainable development has its origin in international law. International law does not automatically become part of our national law.¹⁸⁴ In order for international law to form part of South African

¹⁷⁹Principles 11, 13-19 of the Rio Declaration.

¹⁸⁰ See note 117above.

¹⁸¹ Steele J 'Participation and deliberation in Environmental Law: Exploring a Problem-solving Approach' (2001) *Oxford J of Legal Studies*, Vol 21(3), 415, 415-419.

¹⁸² Ibid 424.

¹⁸³ Sogen Moodley 'Public participation and deepening democracy: experiences from Durban, South Africa' <http://cpp.org.za/publications/critical_dialogue/vol3no1_2007/chapter1.pdf>.

¹⁸⁴ Dugard J *International Law: A South African Perspective*, 3ed (2005) 47-79.

law such law must be incorporated into our law through accession, ratification or signature.¹⁸⁵

Although international law has many sources¹⁸⁶ for the purposes of this research, I will only deal with international environment agreements/treaties more specifically those pertaining to sustainable development as incorporated into South African law.¹⁸⁷

4.2.1. THE CONSTITUTION AND SUSTAINABLE DEVELOPMENT

In South Africa, the Constitution is the cornerstone of all laws including legislative frameworks.¹⁸⁸ Sections 231, 232 and 233 of the Constitution deal with the incorporation of international law into domestic law.¹⁸⁹ Section 231 outlines the procedure, to be followed in incorporating international agreements into our domestic law. Section 232 deals with the common law principle that international customary law is part of our law unless it is inconsistent with the Constitution or an Act of parliament. Lastly, section 233 provides that when interpreting any legislation every court must prefer any reasonable interpretation of that legislation that is consistent with international law to any alternative interpretation that is inconsistent with it.

Moreover, section 24 of the Constitution must be applauded for recognising the right to environmental protection as a justiciable human right.¹⁹⁰ This recognition places the right to a safe environment on the same level with the rights to housing, health,

¹⁸⁵ Ibid.

¹⁸⁶ Akehurst M A *Modern Introduction to International Law*, 6th ed (1986) 23-42.

¹⁸⁷ Note 120 above.

¹⁸⁸ Section 2 of the Constitution

¹⁸⁹ See also sections 25-26 of the NEMA.

¹⁹⁰ Kidd (note 19 above) 37-46

life and legal standing.¹⁹¹ Section 24(b)(iii) contains the concept of sustainable development which is at the core of environmental law. Sustainable development integrates all rights be it civil rights, socio-economic rights and 'green' rights.¹⁹²

4.2.2. NATIONAL ENVIRONMENT MANAGEMENT ACT 107 OF 1998 AND SUSTAIBALE DEVELOPMENT

The National Environment Management Act, 107 of 1998 cannot be discussed in isolation without reference to section 24 of the Constitution and the White Paper on National Environment Management Policy of 1998 (The White Paper).¹⁹³ The White Paper is the foundation of NEMA and all the principles contained in the Act. In the past few years the Constitution together with the NEMA, ECA and other environmental laws have been used to determine whether development projects are environmental 'friendly'.

In *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs*¹⁹⁴, the court held that the concept of sustainable development is the fundamental building block on which environment legal norms have been fashioned as reflected in section 24(b)(iii) of the Constitution.¹⁹⁵

The White Paper, which preceded NEMA, also contained the concept of sustainable development and its principles. According to its vision, the White Paper sought to achieve integrated sustainable development as set out in the WCED Report. The

¹⁹¹ Glazewski (note 19 above) 84-87.

¹⁹² Ibid 87-121.

¹⁹³ The White Paper on National Environment Management Policy of 1998 <<http://www.environment.gov.za/PolLeg/WhitePapers/EnvMgmt.htm>>.

¹⁹⁴ *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 (5) SA 124 (W).

¹⁹⁵ Ibid para 144B, see full discussion of the concept of sustainable development as developed through case law in Paterson (note 83 above) 53-62.

definition of sustainable development as defined in the WCED Report was incorporated into the White Paper.

The foreword by the then Deputy Minister of Environmental Affairs and Tourism and Chairperson of CONNEPP Management and Advisory Team Mr Peter Mokaba echoed the principles contained in the Rio Declaration. The minister emphasised the need to preserve the environment in order to improve the citizens' quality of life.

The White Paper contained its own definition of sustainable development, which read as follows 'in the context of this policy sustainable development is defined as development which seeks to integrate environmental, social and economic concerns, now and in the future and to keep within the carrying capacity of the environment'.

An overall analysis of the White Paper reflects principles such as good governance, public participation, sustainable resource use, precautionary principle; polluter pays principle and principle of integration all of which are at the heart of the concept of sustainable development.

These principles have been incorporated into the Local Government: Municipal Systems Act. Section 26 provides that an integrated development plan must reflect (d) the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation., (e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality.

Section 25 of the Local Government: Municipal Systems Act, provides that an integrated development plan adopted by the municipality must be compatible with

the national and provincial development plans and planning requirements binding on the municipality in terms of the legislation.

Sections 25 and 26 of the Local Government: Municipal Systems Act reflect the integrated environment management principles set out in Chapter five of NEMA, which have as its purpose to promote the application of appropriate of environment management tools in order to ensure the integrated environmental management of activities.¹⁹⁶

4.2.3. THE ANTROPOCENTRIC APPROACH OF NEMA TO SUSTAINABLE DEVELOPMENT.

Since NEMA is founded on the Constitution and the White Paper, it is common cause that the international concept of sustainable development is imported into the Act. In the Act, sustainable development is defined as the integration of social, economic and environmental factors into planning, implementation to ensure that development serves present and future generations.¹⁹⁷

Section 2(2) of NEMA provides that environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably. The definition of sustainable development in NEMA when read with section 2(2) echoes the utilitarian reason for protecting the environment. As discussed in Chapter two above the utilitarian reasoning is anthropocentric in nature and therefore human-centred.

¹⁹⁶ Section 23(1) of the NEMA.

¹⁹⁷ Section 1(xxix) of the NEMA; see discussion on the concept of 'sustainable development' on pages 11-23 and 37-46 above.

This approach is more concerned with human survival.¹⁹⁸ Although it is argued that sustainable development seeks to strike a balance between environmental protection and development, one cannot ignore the fact that environmental instruments place human beings at the forefront of this concept.¹⁹⁹

Paragraph 2 to the preamble of the Stockholm Declaration reads as follows the protection and improvement of the human environment is a major issue, which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all governments. The implication of this preamble is that the main reason humans conserve the natural resources is to enable them to benefit from such resources and to improve their quality of life.²⁰⁰

Section 2(4) of NEMA contains a list of principles that are vital for achieving sustainable development. Principles relating to integrated environment management, environmental justice in order to ensure that adverse environmental impacts are fairly distributed, equitable access to natural resources by humans to meet their basic needs, life cycle responsibility of projects, public participation in decisions affecting the environment are all human-centred.

Section 2(4)(o) provides that the environment is held in public trust and the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.

Section 32 of NEMA attempts to move away from the Act's anthropocentric approach to sustainable development by providing that a person may seek relief in terms of the

¹⁹⁸ Scholtz (note 25 above) 69-76.

¹⁹⁹ Principles 1-5, 8 and 10 of the Rio Declaration and WCED Report Chapter 1 principles 1-3.

²⁰⁰ See Principles 2, 4, 7, 8, 11, 12 and 13 of the Stockholm Declaration.

Act or any statutory provision concerned with environmental protection in the interest of the environment.²⁰¹

Section 2(4)(a)(i)-(viii) also attempts to lean towards the ecocentric approach to environmental protection. The shortfall with this section is that it aims to prevent the degradation and damage of ecosystems and biological diversity for human benefit. This is so because South Africa's flora and fauna life is good for tourism and is a huge economic boost for the country.²⁰²

In conclusion, NEMA must be heralded for ensuring that unsustainable development practices are minimised and that developmental projects are balanced against the environment through the integration of social, economic and environmental factors.²⁰³

4.2.4. NATIONAL ENVIRONMENT MANAGEMENT: BIODIVERSITY ACT 10 OF 2004.

In discussing the concept of sustainable development as contained in Act 10 of 2004 (the Act) it is important that this research briefly refers to the White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (the White Paper)²⁰⁴ which formed the basis of the Act. The White Paper was based on the concept of sustainable use of and conservation of biological life set out in the Convention on Biological Diversity (CBD), 1992 that was adopted at United Nations

²⁰¹ Section 32(1)(e) of the NEMA.

²⁰² Le Maitre DC, O'Farrell PJ & Reyers B 'Ecosystems services in South Africa: a research scheme that can engage environmental, economic and social scientists in the development of sustainability science? : Commentary (2007) *South African Journal of Science*, Vol 103(9) & (10), 367, 368-376.

²⁰³ Field T (note 93 above) 761-763.

²⁰⁴ The White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (Draft Paper, May 1997) <www.environment.gov.za/PolLeg/WhitePapers/Biodiversity/Contents.htm>.

Conference on the Environment and Development in 1992. The CBD had three objectives namely;²⁰⁵

- (a) The conservation of biodiversity
- (b) The sustainable use of biological resources
- (c) The fair and equitable sharing of benefits arising from the use of genetic resources.

The above objectives were incorporated in the White Paper and are found in section 2 of the Act, which sets out its objectives. The anthropocentric approach of the sustainable development is apparent in the Vision and Mission statement of the government as set out in the White Paper.²⁰⁶ When read together the Vision and Mission statement provides that the government will conserve the nation's biological resources for the benefit of the people through the ecologically sustainable, socially equitable and economically efficient use of the biological resources.²⁰⁷

The White Paper also contained some of the most common components of sustainable development namely; public participation, fair and equitable distribution of benefits, precautionary principle, duty of care and intrinsic value.²⁰⁸ The Act also incorporates all the environment management principles set out in NEMA²⁰⁹ including those contained in international agreements²¹⁰ affecting biodiversity to which South Africa is a party.²¹¹

²⁰⁵ Article 1 of the Convention on Biological Diversity <<http://www.cbd.int/convention/articles.html?=-cbd-01>>.

²⁰⁶ Note 204 above (para 2.2 and 2.3.)

²⁰⁷ See also section 3 of Act 10 of 2004 and Article 10 of the Convention on Biological Diversity.

²⁰⁸ Note 204 above (para 2.4).

²⁰⁹ Section 6 of Act 10 of 2004.

²¹⁰ South Africa is also a party to the Convention on Wetlands of International Importance, especially as Waterfowl Habitat signed 12 March 1975, see also Glazewski J & Witbooi E 'Environmental Law' (2005) *Annual Survey of SA Law*, 416-442.

²¹¹ Section 5 of Act 10 of 2004.

In conclusion, Act 10 of 2004 has given effect to the CBD in South African law and the provisions of the convention now bind the Republic.

Having discussed the concept of sustainable development through some of the most important international environmental law instruments and South African environmental laws the research justify the following conclusions.

Since the introduction of the concept of sustainable development in the Stockholm Declaration in 1972 up to the Johannesburg World Summit on Sustainable Development in 2002, this concept has evolved from being human-centered to being environmental tolerant.

The Rio Declaration and the WCED report of 1987 affirm the need to integrate developmental issues and environmental issues in order to achieve optimal improvement in peoples' quality of life.²¹² The integration of developmental issues and environmental issues in international law has lead to the incorporation of the concept of sustainable development into our national law.

The Constitution specifically enshrines the concept of sustainable development in section 24(b)(iii). Furthermore, the National Environment Management Act, 107 of 1998 is founded on the concept of sustainable development as developed in international environmental law.²¹³ The inclusion of the concept of sustainable development in the Constitution and NEMA has lead to both the anthropocentric view and ecocentric view of environmental protection being enshrined in our national

²¹² Principle 1, 4, 8, 10 and 15 of the Rio Declaration, see also WCED Report Chapter 2 para 4-15.

²¹³ Section 2 of NEMA.

law. Section 2(3) of NEMA is more anthropocentric in nature while section 2(4)(a)(i)-(viii) favour the ecocentric view of environmental protection.²¹⁴

Section 24(b) of the Constitution makes provision for secure ecological sustainable development and use of natural resources. In including such a provision in the Constitution, the drafters sought to strike a balance between the realisation of socio-economic rights, which are integral in the development process, and environmental protection. Throughout the years, the Constitution and NEMA have played a vital role in cases involving developmental issues and environmental issues.

In a recent case of *Fuel Retailers*, Ngcobo J held as follows the Constitution and environmental legislation introduce a new criterion for considering future developments. Pure economic factors are no longer decisive. The need for development must now be determined but its impact on the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these factors into decision-making and make decisions that are informed by these considerations.²¹⁵

This indicates an improvement from the traditional view of development, which is more anthropocentric in favour of the modern view, which complements the sustainable development principle of integration as embodied in South African environmental laws and in international environmental instruments.

²¹⁴ In 2004, the legislature enacted the National Environment Management: Biodiversity Act 10 of 2004, which, gives effect to the provisions of the Convention on Biological Diversity of 1992.

²¹⁵ Note 55 above paras 79-82.

CHAPTER FIVE

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. CONCLUSIONS

As discussed in Chapter one the aim of this research was to achieve three objectives namely:

- (a) To link the right to development and the right to the environment to show their mutual, supportive characteristics and illustrate their acceptance as justiciable human rights.
- (b) To set out the importance of public participation in decisions affecting the development process and environmental issues.
- (c) To set a guide on how the government and developers can strike equilibrium between developmental activities and environment management.

In Chapters two and four it was shown that, the concept of sustainable development is at the core of the right to development and the right to environmental protection. The principles of sustainable development more specifically, the principle of integration, intergenerational equity and intragenerational equity are vital in the optimal achievement of a long-term, sustainable quality of life and the improvement of the citizens' living conditions.

Sustainable development harmonises developmental issues and environmental issues by moving away from the traditional view of development, which is anthropocentric and people-centered towards the modern view, which is environment tolerant. The adoption and enactment of environmental laws and

policies including the adoption of international environmental instruments ensures the integration of environmental factors into social and economic development.

In South Africa the National Environment Management Act 107 of 1998 (NEMA) was enacted to ensure that in implementing development projects developers and government authorities take cognisance of the natural environment. This means that theoretically the natural environment is catered for in the implementation of development processes in South Africa.

Accordingly, proper implementation of the rights to development and environmental protection through the Environmental Impact Assessment (EIA) procedure may lead to the realisation of the 'RDP priority areas' as discussed in paragraph 2.3.1 above..

However, as shown in Chapter three the practical application of environmental laws and policies aimed at facilitating development is inadequate. The EIA procedure contains the concept of public participation, which is vital in the implementation of development processes. Failure to conduct a proper public participation process may have adverse effects on a proposed development project and further lead to unsustainable development as shown in Chapter three above.

Compliance with the EIA regulations is seldom due to lack of necessary skills on the part of government authorities to implement environment laws and policies. As a result, developers conduct development projects without proper monitoring and supervision and this defeats the whole process of public participation required in the EIA procedure. Public participation is part of the broad concept of environmental governance. Public participation in the environmental sphere is a process of consultation between decision makers and interested and affected parties.

Section 2(4)(f) of NEMA provides that the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop their understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured. This means public participation includes government authorities, developers and the public (local community). In other words, public participation embraces the concept of co-operative governance as embodied in the Constitution and NEMA.

In South Africa, the government is divided into three spheres namely: the national, provincial and local spheres of government. It is common cause the environmental protection falls within the functional area of the national and provincial spheres. However, the implementation of environmental laws takes place within the local sphere through municipalities. Local government officials must ensure that the local communities are involved in the planning of development projects, which may have adverse effects on the environment.

In South Africa, the concept of public participation has been integrated into legislation. Regulation 56(6) of the 2006 EIA Regulations provides that when complying with this regulation, the person conducting the public participation process must ensure that (a) information containing all relevant facts in respect of the application is made available to potential interested and affected parties ; and

(b) participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application. The objectives of public participation with regard to environmental matters are amongst others the following:

- It leads to more informed decision-making by compelling government officials to take into consideration public views before making decisions.
- It leads to transparency and enables the public to challenge unreasonable decisions regarding environmental issues.

However as mentioned above in Chapter three, local government officials often fail to ensure that a proper public participation process is conducted by developers due to the following factors:

- Lack of environmental education and awareness on the part of communities.
- Incompetence or lack of skills and knowledge on the part of local government authorities with regard to environmental laws and policies.
- Lack of supervision and monitoring by the national and provincial governments, to ensure that public participation procedures as contemplated in the EIA procedures are complied with, by the local government authorities and developers in the implementation of development projects.

In conclusion, lack of knowledge by government authorities more specifically local government officials in implementing environmental laws and policies has lead to unsustainable and short-term development which is meaningless in improving the citizens' quality of life. The whole purpose of adopting developmental and environmental laws has become redundant.

Another problem, which has lead to unsustainable development in South Africa, is the need to alleviate poverty. The government places more emphasis on quantitative infrastructural development and in the process environmental protection is overlooked. This results in the unsuccessful implementation of development

projects and defeats one of the main objectives of the RDP, which was to improve the quality of life of the people by meeting their basic needs.

In conclusion, South Africa's environment and development laws are meaningless and ineffective without proper implementation.

5.2. RECOMMENDATIONS

In view of the conclusions as set out above, it is recommended that the government should enhance the skills and knowledge of its environment practitioners in order to ensure proper implementation of these laws.

A further recommendation is that the government should employ practitioners who are conversant with international environmental instruments and further conduct workshops in order to improve the skills of its current practitioners.

A further recommendation is that the government, more specifically the local government must promote environmental awareness among citizens through educational programmes and public participation programmes in their areas.

The researcher recommends the following specifically for the Diepsloot Township government authorities;

- (a) That a proper water drainage system be constructed along the existing main roads to prevent erosion and damage to the roads as the continuous revamping of the roads is a waste of government funds.
- (b) That an environmental and development policy be drafted specifically for the Diepsloot Township to cater for the needs of Diepsloot residents. Further, that the policy should contain a public participation programme to enable the

citizens to be informed about their rights of access to information especially with development activities taking place in the Township. This will assist in challenging government decisions and actions when it comes to the sustainability of development projects.

- (c) That the local government officials should monitor developers who have been charged with the construction of new low-cost houses in the existing Extension 7 squatter camp. This is crucial since the houses are being constructed in existing stands with shacks. This may cause health hazards to the occupants, since it is common cause that EIA procedures may not be properly conducted because there are too many social activities around the stands. Taking into account the number of low-cost houses that have collapsed over the years due to improper construction, the government should be vigilant in monitoring the developers.
- (d) That the government increase the number of bucket toilets and water taps in the Diepsloot Extension 1 and 12 squatter camps, as lack of adequate sewage and drainage facilities leads to health hazards and is detrimental to the environment as waste from the existing toilets washes down to the Diepsloot waterway.
- (e) That the government should limit the number of informal houses and backrooms in formal stands. The reason being the existing sewage, drainage and electricity facilities are inadequate to cater for the current population in formal stands.

REFERENCES

TABLE OF STATUTES

SOUTH AFRICA

1. Bantu/Native Building Workers Act 27 of 1951.
2. Constitution of the Republic of South Africa, 1996.
3. Development Facilitation Act 67 of 1995.
4. Environment Conservation Act 73 of 1989.
5. Housing Act 107 of 1997.
6. Local Government: Municipal Systems Act 32 of 2000.
7. Minerals Act 50 of 1991.
8. National Environment Management: Biodiversity Act 10 of 2004.
9. National Environment Management Act 107 of 1998.
10. Native Resettlement Act 19 of 1954.
11. Promotion of Access to Information Act 2 of 2000.
12. Promotion of Administrative Justice Act 3 of 2000 .

TABLE OF CASES

<i>Barnet v Minister of Land Affairs</i> [2007] SCA 95 (RSA).....	24
<i>BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs</i> 2004 (5) SA 124 (W).....	46
<i>Director of Mineral Development, Gauteng Region & another v Save the Vaal Environment & Others</i> 1999 (2) SA 709 (SCA).....	3,12,18
<i>Fuel Retailers Association of SA v Director-General, Environmental Management, Mpumalanga Province & Others</i> 2007 (6) SA 4 (CC).....	13,16,53
<i>Government of Republic of South Africa v Grootboom</i> 2001 (1) SA 46 (CC) para 45.....	9,35
<i>Minister of Public Works v Kyalami Environmental Association</i> 2001 (3) SA 1151(CC).....	18
<i>Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism & Others</i> 1996 (3) SA 1095 (Tks).....	1,11

BIBLIOGRAPHY

BOOKS

1. Akehurst M A *Modern Introduction to International Law*, 6th ed (1986).
2. Barnad D *Environmental Law for All* (1999).
3. Dugard J *International Law: A South African Perspective*, 3ed (2005).
4. Fuggle RF & Rabie MA *Environmental Concerns in South Africa* (1983).
5. Glazewski J *Environmental Law in South Africa* (2000).
6. Kidd M *Environmental Law: A South African Guide* (1997).
7. Scheepers T *Practical Guide to Law and Development in South Africa* (2000).

JOURNAL ARTICLES

1. Bray E 'Towards Sustainable Development: Are we on the Right Track' (1998) *SAJELP* Vol 5(3) 1.
2. Bray E 'Cooperative Governance in the Context of the National Environment Management Act 107 of 1998' (1999) *SAJELP*, Vol 6(1) 1.
3. Bray E 'Public Participation in environmental law' (2003) *SAPL*, Vol 18(1) 121.
4. Bray E, Tladi D & Moodley I '2002 World Summit on Sustainable Development- food and legal thought' (2003) *Codicillus*, Vol 44(1), 10.
5. Bray E 'Legal perspectives on global environmental governance: South Africa's partnership role (1)', (2005) *THRHR*, Vol 68 (2) 210.
6. Bray E 'Legal perspectives on global environmental governance: South Africa's partnership role (2)', (2005) *THRHR*, Vol 68 (2), 357.
7. Bradlow DD 'Differing Conceptions of Development and the content of International Development Law' (2005) *SAJHR*, Vol 21(1), 47.

8. Carlson DH & van Staden F 'Environmental Concern in South Africa: The Development of a Measurement Scale (2006) *New Voices in Psychology*, Vol 2(1), 3.
9. Couzens E 'A Step Closer to Coherence' (1999) *SAJELP*, Vol 6(1) 13.
10. Du Plessis W & Nel J 'An Evaluation of NEMA based on a Generic Framework for Environmental Framework Legislation' (2001) *SAJELP*, Vol 8(1) 1.
11. Field T 'Public participation in environmental decision-making: Earthlife Africa (Cape Town) v Director –General: Department of Environmental Affairs and Tourism: notes (2005) *SALJ*, Vol 122(4) 748.
12. Glazewski J & Witbooi E 'Environmental Law' (2005) *Annual Survey of SA Law*, 416.
13. Hamann R 'South African Challenges to the Theory and Practice of Public Participation' (2003) *SAJELP*, Vol 10, 21.
14. Kidd M 'Environmental Rights' (1997) *SA Human Rights Year Book*, Vol 8, 85
15. Kidd M 'The National Environment Management Act, 107 of 1998 and Public Participation' (1999) *SAJELP*, Vol 6(1), 2.
16. Kotze LJ 'The Application of Just Administrative Action in the South African Environmental Governance Sphere: An Analysis of Some Contemporary Thoughts and Recent Jurisprudence' (2004) 2 *PER* 1, 13.
17. Kotze LJ & van der Walt A 'Just Administrative Action and the Issue of Unreasonable Delay in the Environmental Impact Assessment process: A South African Perspective (2003) *SAJELP*, Vol 10(1), 39.
18. Kruger E & Chapman OA 'Quality aspects of Environmental Impact Assessment reports in the Free State Province South Africa' (2005) *South African Geographical Journal*, Vol 87(1), 52.

19. Le Maitre DC, O'Farrell PJ & Reyers B 'Ecosystems services in South Africa: a research scheme that can engage environmental, economic and social scientists in the development of sustainability science? : Commentary (2007) *South African Journal of Science*, Vol 103(9) & (10), 367.
20. Lumby A 'Government and sustainable development in South Africa: the environmental legislative framework in historical context' (2005) *SAJEH*, Vol 20(1), 65.
21. Paterson A 'Fueling the sustainable development debate in South Africa' (2006) *SALJ*, Vol 123(1) , 53.
22. Paschke R and Glazewski J 'Ex Post Facto authorization in South African Environmental Assessment Legislation: A Critical Review' (2006) 1 *PER* 1
23. Raewyn P & Govender K 'Natural Resources Policies for a New Millennium: Is South Africa Moving Towards a more Sustainable Paths' (2001) *SAJELP*, Vol 8(1), 39.
24. Sampson I 'So near yet so far with environment impact assessments' (2007) *Juta's Business Law*, Vol 15(2), 77.
25. Scholtz W 'The anthropocentric approach to sustainable development in the National Environment Management Act and the Constitution of South Africa' (2005) *TSAR* (1), 69.
26. Steele J 'Participation and deliberation in Environmental Law: Exploring a Problem-solving Approach' (2001) *Oxford J of Legal Studies*, Vol 21(3), 415.
27. Tladi D 'Strong sustainability, weak sustainability, intergenerational equity and international law: Using the Earth Charter to redirect the environmental ethics debate' (2003) *SA Yearbook of International Law* (28), 200.

28. Tladi D 'Intergenerational equity: A new name for International Environmental Justice' (2003) *Fundamina: A Journal of Legal History* (9), 197.
29. Tladi D 'International Monetary Fund Conditionality, Debt and Poverty: Toward a Strong 'Anthropocentric' Model of Sustainability' (2004) *SA Mercantile Law Journal*, Vol 16(1), 31.
30. Van Wyk J 'The impact of development on the environment as part and parcel of integrated development planning?' (2007) *Law, Democracy & Development*, Vol11,57.

REGIONAL & INTERNATIONAL INSTRUMENTS

1. African Charter on Human and Peoples' Rights (1981)
2. Convention on Biological Diversity (1992)
3. Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar convention) (1971)
4. Convention on Access to information, public participation in decision –making and access to justice in environmental matters (25 June 1998)
5. Declaration on the Right to Development (1986)
6. Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972).
7. International Covenant on Social, Economic and Cultural Rights (1966)
8. Rio Declaration on Environment and Development (Rio Declaration) (1992)

9. Universal Declaration on Human Rights (1948).

INTERNATIONAL POLICIES

1. UN Committee on Economic, Social and Cultural Rights, General Comment 3 :
'The Nature of States' Obligations' (1990)
2. World Commission on Environment and Development Report (1987)

NATIONAL POLICIES

1. Growth, Employment and Redistribution Strategy (1996)
2. National Housing Code
3. White Paper on Environmental Management Policy (May 1998)
4. White paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (May 1997)
5. White Paper on Reconstruction and Development Programme (23 November 1994)
6. White Paper on A new Housing Policy and Strategy for South Africa (1995)

REGULATIONS

1. Environment Impact Assessment Regulations, No. R. 385 (21 April 2006)

INTERNET/WEBSITES

1. < <http://www.globalstudio.com> >.
2. < http://www.en.wikipedia.org/wiki/public_participation >.

3. DEAT (2005) *'Environmental Assessments of International Agreements, Integrated Environmental Management Information'*, Series 19, Department of Environmental Affairs and Tourism, Pretoria <<http://www.deat.gov.za>>.
4. EMG 'Public Participation and the Law: An Environmental Activists' Guide' (1999) <http://www.ibt.afrihost.com/boellor/files/public_participation_and_law_1998.pdf>.
5. Ibinini Mara & Michelle Pressend *'Mining, Environment and Sustainable Development: Policy Brief Mining and Environmental Management in South Africa'* (August 2001) <<http://www.emg.org.za/resources/mining.htm>>.
6. Sogen Moodley *'Public participation and deepening democracy: experiences from Durban, South Africa'* <http://cpp.org.za/publications/critical_dialogue/vol3no1_2007/chapter1.pdf>.

INTERVIEWS

1. Abram Mabuke, Environmental Officer, Diepsloot Regional Office (Region A) 2008-07-15.
2. Dorah Mogano, Community Development Worker, Diepsloot Regional Office (Region A) 2008-07-14.
3. Mark Tyrrell, Australian Urban Designer and Masters Student University of Sydney, Diepsloot 2008-07-17.
4. Sam Sikhosana, Community Development Worker, Diepsloot Regional Office (Region A) 2008-07-15.
5. Sipiwe Mlotywa, Housing Officer, Diepsloot Regional Office (Region A) 2008-07-15

INDEX

Anthropocentric approach	7-8, 22-23, 48-50, 53-54
Development	10
Ecocentric approach	8-9, 23, 52
Environmental ethics	7
Environmentally sustainable	12
Intergenerational equity	15, 41, 54
Intragenerational equity	15, 41, 54
Modern view	11-13, 23, 42, 53
Principle of integration	41, 47, 52-53
Public participation	17, 21, 27-37, 44, 55-57
Sustainable development	14, 15-16, 20, 38, 40, 46-54
Traditional view	10-11, 22, 48, 53