



المؤتمر الدولي حول  
تأثير النشاط البشري على الحق في بيئة صحية وملائمة:  
الممارسات والتحديات والحلول

The International Conference on  
The Impact of Human Activity  
on The Right to a Healthy and Adequate Environment:  
Practices, Challenges and Solutions

الأربعاء 6 سبتمبر 2023 | Wednesday 6<sup>th</sup> September 2023  
المنامة، مملكة البحرين Manama, Kingdom of Bahrain

المؤسسة الوطنية لحقوق الإنسان  
National Institution for Human Rights



## Working Paper

### Practices and challenges related to the impact of urban development on the right to the environment

#### International Conference: The Impact of Human Activity on the Right to a Healthy and Adequate Environment: Practices, Challenges and Solutions

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**Commissioner,**  
**South African Human Rights Commission**

**6 September 2023**

**Manama – Kingdom of Bahrain**

#### **GREETINGS**

1. Greetings to the organisers of this important conference, to all the attendees and fellow speakers.
2. I am JB Sibanyoni, one of eight commissioners appointed by the President of South Africa to lead the South African Human Rights Commission – a national human rights institution.
3. At the South African Human Rights Commission, I lead the focal area dealing with land, environment and food.

#### **PURPOSE**

4. In this short talk I have been asked to talk about “Practices and challenges related to the impact of urban development on the right to the environment”.
5. For fear of repeating what many others will speak on in this conference I have taken the liberty to focus on a very narrow aspect of this topic. That aspect is the power of



law and challenge to the law in protecting the environment from the impacts of urban development.

## **BACKGROUND**

6. The South African Human Rights Commission is created by the Constitution of the Republic of South Africa. The SAHRC has the power to take steps to secure appropriate redress where human rights have been violated. In terms of the South African Human Rights Commission Act, the SAHRC can litigate on its behalf and on behalf of others. These are what I personally call, the biting powers of the Commission.
7. However, it has become customary, that before the SAHRC uses its biting powers that it uses, what I call in my focal area, the barking powers of the Commission. These include but may not be limited to the following:
  - 7.1. make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights.
  - 7.2. request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights.
  - 7.3. must as far as is practicable maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances.
  - 7.4. must review government policies relating to human rights and may make recommendations. These are just some of the barking powers of the commission.

## **PROTECTION OF THE ENVIRONMENT**

8. When it comes to the protection of the environment, the South African Constitution is clear and unequivocal. It says in Section 24 that: “Everyone has the right (a) to an



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environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – i. prevent pollution and ecological degradation; ii. promote conservation; and iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

9. To this end, there are various legislation and regulations that have been enacted to further the aims of the Constitution.

### **THE FIRST CHALLENGE**

10. The first challenge in protecting the environment is the collusion between the government and private business. Usually, private business has no interest in protecting the environment, it seeks only to make profits and at times, at the cost of the environment.
11. This collusion by government and the private sector is seen when government allows certain private entities to conduct its developmental, architectural activities without any regard for the environment and for those who occupy that environment.
12. When the government and these private corporations are challenged, the government most often than not responds with the mighty power of the state – arresting, harassing, suing all those who oppose it or all those who seek to hold the government accountable.
13. It is most important for first world nations whose corporations have business operations in second or third world countries to ensure that those corporations respect the human rights of the nations where they have business activities. A lot of the time,



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smaller nations do not have the power to take on global corporations from bigger nations. It is therefore incumbent on first world nations to have laws that would force their corporations to respect human rights of nations where they have industries.

## **SECOND CHALLENGE**

14. The second challenge in the protection of the environment is the lack of knowledge of the many laws and regulations aimed at protecting the environment.
15. The lack of knowledge starts at the officials working for the state itself. It cripples them from making decisions that are consonant with the protection of the environment.
16. There is also a lack of knowledge in the general population. This lack of knowledge disables people from standing up for themselves. It handicaps peoples' abilities to hold the government and private corporations accountable.
17. There is a need, globally to educate people regarding the many international instruments on the protection of the environment. There is also a need within different nations to ensure that people are educated about their rights, how to enforce them and who to approach when a right has been violated.
18. Education programmes are as important as the creation of the law themselves. For without education, the laws will not be used and will therefore be worthless.

## **THIRD CHALLENGE**

19. The third challenge is the deliberate act of weakening state institutions created to protect against the violation of rights. This happens at multiple levels, the first is at the appointment stage. Where incompetent people are appointed or people with no interests in protecting rights are appointed.
20. The second level at which this happens is at the funding stage. Many national human rights institutions are funded by the government. Governments are notorious for not providing enough funding for national human rights institutions to function.



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21. The third level is at the human resource level and skills. The protection of the environment requires a particular set of skills and it requires a sizable amount of workers. Without these, national human rights institutions are weakened.
22. There is a need at this conference and beyond for national human rights institutions to share with one another best practices, strategies for dealing with this challenge.
23. When it comes to the SAHRC, we have a challenge of being ignored when we issue certain directions for the protection of a human right. The State, private individuals and the corporations ignore our directives. This then means that we need to go to Court to legally force compliance.
24. As already stated above, finances for going to Court are not always available and this poses a big challenge.
25. It is said state of affairs because the Commission's reports and directives are at times ignored and not complied with. At times when the Commission follows-up, there is an impression that a particular report will be complied with and when the Commission follows-up we realize it has been ignored.
26. This none-compliance with these reports disables the Commission's power to make an effective, and timeous impact in protecting rights especially the right to a healthy environment.
27. This challenge of none-compliance has now been given legal legitimacy in South Africa through certain judgments that have held that the SAHRC does not have the constitutional and legislative power to make binding directives. That our directives are merely recommendations until a Court of law, after being approached enforces compliance.
28. This is a seminal challenge for the SAHRC human and financial resources. It also amounts to a Judicial weakening of the Commission's power to take steps to secure



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appropriate redress. In a way, this also weakens the Commission's legitimacy as an institution created to support constitutional democracy.

29. One of these judicial pronouncements on the power of the Commission stems from a report issued by the Mpumalanga Provincial office of the SAHRC where the Commission issued directives to a farmer. In essence, the report directed that the Farmer refrain from stopping occupiers of his farm from accessing clean water. The report stated that the farmer must have a meaningful consultative session with those occupiers regarding the efficient management of water on the farm. Moreover, that the farmer must provide the occupiers with all relevant documentation regarding how much farmer has spent in developing, digging, maintaining of the farm's borehole.
30. The report was ignored and the Commission had to approach a Court of law.
31. We were told by a Court of law that:
  - 31.1. That there is a hierarchy of chapter 9 institutions based on how they appear in the Constitution. That this hierarchy suggests that the SAHRC cannot have power to make binding directives.
  - 31.2. We were told that the Commission cannot make binding directives because the Commission does not have coercive power it has co-operative power.
  - 31.3. That Court also said that the directive to the farmer to refrain from interfering with the Occupiers access to water was not binding but that the directive to the farmer to have a consultative session and to provide the relevant financial information is binding.
32. This is part of the challenge that the Commission faces in respect of its work, especially its investigative reports.



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33. If this judicial approach to the powers of the SAHRC is confirmed by the Supreme Court of Appeal and or the Constitutional Court this will pose financial and human resource challenge for the Commission.
34. In respect of finance and human resources, the Commission does not have enough of those resources in order to approach a Court every single time a report has been ignored or every time there has been a violation. These judgments have the effect that the Commission has to now approach a Court every single time. Truth be told though; the Commission does not have the human and financial resources to do this.

### **CONCLUSION**

35. The environment, like all other rights, can best be protected when national human rights institutions are strengthened and when there are a vast number of human rights education programmes aimed at equipping people with knowledge of their rights and when there are strong laws to force corporations to respects human rights of all the nations in which they operate.

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