

**SUSTAINABLE DEVELOPMENT REVISITED:
THE PROTECTION OF SMALL BUSINESS
ENTERPRISES AND THE ENVIRONMENT
AS NATIONAL ASSETS WITH REFERENCE
TO GLOBAL TRENDS AND RECENT
GOVERNMENT POLICY***

1 Introduction and the mainstay of sustainability

In what follows the concept of sustainable development is revisited in the context of the need to protect national assets – economic, environmental and human – and the potential conflict between them. This is done in the light of national and international trends.

In the context of a changing global environmental culture the principle of “sustainable development” means that states must ensure that they develop and use their resources in a manner that is sustainable (see in general Church “Small Business Enterprises and the Changing Environmental Ethos” 2006 *Obiter* 740 *et seq*).

Although the concept of sustainable development means different things to different people depending on their particular perspective and there are various definitions for the term, it is generally recognised as meaning the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations (see Bray “Towards Sustainable Development: Are We on the Right Track?” 1998 *SAJELP* 1; and *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment & Land Affairs* 2004 3 All SA 201 (W) 218).

In this context it has been suggested that there are at least three different models of sustainable development, namely the economic growth-centered model; the environment-centered model; and the social well-being-centered model (Tladi “The Biosafety Protocol and the Promotion of Sustainable Development: With One Hand it Giveth, With the Savings Clause it Taketh Away?” 2006 *CILSA* 83). The World Bank’s World Development Report of 2003 defines sustainable development as “enhancing human well-being through time and society’s ability to enhance or improve human well-being depends on the choices made or preferences of individuals, firms, communities and government on how to use their assets”. The ability of a nation to sustain a consumption flow (and therefore to be sustainable) depends on the change in its stocks of assets. In other words, the assets

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should not be depleted but at least be sustained. As recently pointed out, South Africa does not at present have an over-arching national strategy for sustainable development and a coherent approach to measuring the sustainability of current resource use, human and natural, as well as consumption trends (Draft Policy Paper: A framework for considering market-based instruments to support environmental fiscal reform in South Africa April 2006, National Treasury: Tax Policy Chief Directorate (hereinafter "Policy Paper/Framework")).

2 The protection of national assets

With regard to the protection of national assets it is generally accepted that sustainable development should be grounded on three equally important (although on the face of it conflicting) fundamentals: economic, social and environmental pillars which serve to enhance the national well-being.

Consequently national assets would include human assets, economic and social assets such as business enterprises and cultural institutions, as well as environmental assets such as unpolluted water. The intelligent management of these assets is vital to achieving sustainable development. Such management would involve, for example, legislation, policy directives and public education.

In accordance with this principle, the important World Summit on Sustainable Development (WSSD) held in Johannesburg in 2003, resulted in a plan of implementation (JPOI) determining specific targets aimed at meeting the Millennium Goals. (The eight Millennium Development Goals (MDG) were set at the Millennium Summit held in September 2000. See further <http://www.un.org/millenniumgoals> accessed 10-06-2006 (hereinafter "Millennium Goals").) These included the target that by 2015 the number of people living in poverty, without access to safe drinking water and without basic sanitation, should be halved. In this regard the JPOI highlighted the fact that the eradication of poverty as well as changing unsustainable patterns of production and consumption and managing the natural resource base are essential requirements for sustainable development. A further important target was that by 2005 steps should be taken toward developing and implementing national sustainable development strategies (see WSSD "Plan of Implementation of the World Summit of Sustainable Development", United Nations, Johannesburg; a copy of the implementation plan can be found at http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.doc). Clearly, sustainable development therefore would encompass not only "environmental sustainability" but also "job sustainability".

2.1 *Natural assets*

The concepts of weak and strong sustainability have been formulated to reflect different assumptions about the degree of substitutability of assets. In terms of weak sustainability, sustainable development need not impose strong constraints on growth since assets "consumed" could easily be

substituted for one another to a relatively high degree (that is, they are easily renewable). Proponents of strong sustainability argue that assets cannot be substituted by other assets and that it should not be assumed that developments in technology would provide infinite possibilities for changes in the asset base (Policy Paper/Framework). Accordingly, environmental assets need to be preserved for development to be sustainable and an economic development path that does not consider its environmental consequences is unlikely to be sustainable.

The Constitution of the Republic of South Africa, 1996 serves as the cornerstone of environmental law in South Africa and, as pointed out in a recent article (Church 2006 *Obiter* 740), it not only provides a safety net for resolving environmental problems but elevates environmental concerns, traditionally seen to be secondary to other priorities such as economic development, to the level of a constitutional jurisprudence on fundamental human rights. However, in the new constitutional dispensation which protects not only the so-called environmental right but other human rights (social and economic), there will need to be a balancing of interests in certain circumstances. This will be dealt with below.

With regard to constitutional recognition of the environmental right there has already been a fundamental change in environmental legislation during the last decade. One of the most important of the new enactments is the National Environmental Management Act 107 of 1998 (hereinafter "NEMA"), that provides for a framework for environmental governance in the country; the regulation of government activities; the prohibition, restriction or control of activities which are likely to have a detrimental effect on the environment; and those relating to environmental authorisations and enforcement.

The approach to water management has been radically changed by the National Water Act 36 of 1998, one of the most innovative and comprehensive laws regulating water in the world. Other significant environmental law enactments since 1994 include the Marine Living Resources Act 18 of 1998; the Nuclear Energy Act 46 of 1999; the National Nuclear Regulator Act 47 of 1999; the Mineral and Petroleum Resources Development Act 28 of 2002; the National Environmental Management: Protected Areas Act 57 of 2003; the National Environmental Management: Biodiversity Act 10 of 2004; and the National Environment Management: Air Quality Act 39 of 2004.

As pointed out in my previous article, globalisation, international environmental law and international trade have also influenced the environmental ethos in South Africa. South Africa is a signatory to many multilateral environmental conventions that relate *inter alia* to biodiversity, climate change, management of chemicals and hazardous waste. As such it is obliged to meet its international obligations. International law on environmental protection has developed rapidly and the resultant various policies, programmes and strategies must also be implemented in South Africa. International trade practices further engender a culture of compliance with measures protecting the environment (see Church 2006 *Obiter* 748). Paradoxically, however, the same trade practices may lead to a possible

conflict between environmental and economic concerns as will be indicated below.

2.2 *Protection of Small Enterprises*

As already indicated, the intelligent management of national assets such as business enterprises is also vital to achieving sustainable development.

While sustainable development is the ultimate goal and conservation of the environment crucial to government policy, it should not be forgotten that the alleviation of poverty and conservation of the environment are not mutually exclusive in attaining this goal. The need to alleviate poverty and to create employment has been recognised by a government that is also committed to the stimulation and growth of small business enterprises.

All over the world it has been acknowledged that the small business sector plays an important role in the economic and social development of a country. (See White Paper on National strategy for the development and promotion of small business in South Africa GN 213 of 1995-03-20.)

Furthermore, not only is the potential influence of small enterprises on economic growth and development clear from their presence in all sectors of industry and commerce, but research on both national and international level has highlighted their importance. Small enterprises *inter alia* promote economic competition, support big business and produce goods and services efficiently. (See in general Liebenberg 1998 "An exploratory study into the application of environmental management systems in small, medium and micro enterprises (SMME's) on the Highveld in Mpumalanga Province" 20: Mini dissertation PUCHE.) A study undertaken by the International Labour Organisation (ILO) found that the small enterprise sector is important not only with regard to the total number of enterprises but also with regard to the total number of employees employed. Furthermore, it was found that this holds true for the small enterprise sector found in advanced industrial economies, economies in transition and in developing countries (Fromont "Smaller Enterprises Create Most New Jobs" 1996 *World of Work* 27-29.) Of particular significance, therefore, is the role they can play in creating jobs and alleviating poverty. There is much evidence that in South Africa small enterprises are an important force in job creation as the labour absorptive capacity of the enterprise is high and the average capital cost per job created is usually lower than in big business. Moreover its role in fostering technical and other innovation is vital for many of the challenges facing South Africa's economy. (See too White Paper on National strategy for the development and promotion of small business in South Africa GN 213 of 1995-03-20.)

Various countries have recognized the importance of small enterprises in their economies and in job creation and have put various governmental policies and strategies in place in this regard.

In Singapore, for example, SME 21 is a 10-year strategic plan aimed at building up the capabilities of SME's (small and micro enterprises) so as to enhance their contribution to Singapore's competitiveness and economic

growth. (SME profile: Singapore accessed on <http://www.actetsme.org/singapore> on 10 June 2006.)

In a report providing a statistical summary of the nature of small enterprises in New Zealand, it was stated that they are viewed as a source of flexibility and innovation, and make a significant contribution to economies. ("SMEs in New Zealand: Structure and Dynamics" June 2002 *Industry and Regional Development Branch, Ministry of Economic Development New Zealand*.)

In Brunei the government recognises the strategic and significant role that small enterprises play in the overall economic growth and diversification of the country and has stated that the primary role of government is to create a good business environment to strengthen the competitiveness of such enterprises by providing various support mechanisms such as: "Administrative Support; Investment and Trading Opportunities; Technical Assistance Financial Assistance and Incentives". (SME profile: Singapore accessed on <http://www.actetsme.org/brun> on 10 June 2006)

So too in South Africa. The White Paper on National Strategy for the Development and Promotion of Small Business in South Africa (GN 213 of 1995-03-20) and the National Enterprises Act 102 of 1996 *inter alia* clearly reflect the government's commitment to the process of stimulating and promoting of small business and the creation of an appropriate enabling environment.

In section 2 of the Growth and Development Summit Agreement of 7 June 2003, the unemployment problem in South Africa was addressed and it was agreed that a range of "immediate interventions" are required which include small enterprise promotion. It was also recognised that small enterprise promotion, especially the development of black-owned small enterprises, is a crucial component of job creation in the economy. The obvious consequence of job creation is the alleviation of "extreme poverty and hunger", chief among the stated Millennium Goals.

3 Problems facing small, medium and micro enterprises

Much has been written about problems and difficulties experienced by small enterprises generally and those that would impact on the ability of small enterprises to comply with environmental laws. These include lack of financial resources to expand their business and to invest in research and development which in turn may lead to employees having to be multi-skilled and therefore a lack of managerial skills and depth may be experienced. Further constraints relate to access to appropriate technology, the tax burden and especially the legal and regulatory milieu confronting them. (White Paper on National Strategy for the Development and Promotion of Small Business in South Africa GN 213 of 1995-03-20; and Liebenberg "An Exploratory Study into the Application of Environmental Management Systems in Small, Medium and Micro Enterprises (SMME's) on the Highveld in Mpumalanga Province" 1998 Mini dissertation PUCHE 20.) Environmental

compliance therefore has to compete with a range of investment opportunities that may be critical to the survival of the business (Sampson "Environmental legal compliance audit" in Sampson (ed) *The Guide to Environmental Auditing in South Africa* 2002 9.1).

However, non-compliance with environmental law may also threaten the very survival of small enterprises (see further Church 2006 *Obiter* 749 *et seq*).

4 Tension

There would be trade-offs and comprises between the environmental and the economic pillars of sustainable development but it must be emphasized that in this process government should play a pivotal role to ensure that neither the environment nor the economy are sabotaged. This intervention would be in accordance with national goals which include the well-being of both the environment and the economy.

Interestingly enough with regard to such tension, the court in a recent case recognized the environmental right as secondary to the rights of a community to some sort of shelter, albeit in an informal settlement. In the case of *City of Johannesburg v Rand Properties (Pty) Ltd* (2006 2 All SA 240 (W)), the court had to weigh up the applicant's constitutional duty to promote a safe and healthy environment towards the general public and the state's constitutional duty towards the homeless. The municipality applied for the eviction of a large number of people from the inner city. The buildings housing several families were situated in urban densely populated areas and some did not have water and electricity. This led to open fires being created in a densely populated environment and emergency escape points were blocked by waste. The municipality considered the buildings unfit for human habitation.

The court held that the right to housing is a basic human right which should not be lightly denied and the state has a duty to address the issue of adequate housing for its people. Moreover it referred to the social consequences of rendering people homeless, and assessed the applications against that backdrop.

The applicant in this case was found to lack a housing policy which adequately addressed the needs of homeless persons and was directed to devise and implement a suitable programme to realise the respondents' right to adequate housing.

The court, referring to the decision of *Government of the Republic of South Africa v Grootboom* (2000 11 BCLR 1169 (CC)), reiterated that government had a commitment to finding ways of enforcing the social and economic rights guaranteed in the Constitution.

It must be emphasized that in the process of balancing rights, government should play a pivotal role to ensure that neither the environment nor the economy are sabotaged. Moreover this intervention would be in accordance with national goals which include the well-being of both the environment and the economy as well as the meeting of other broad social needs such as housing and the alleviation of poverty.

To return to the small business enterprise and the potential for conflict between economic and environmental concerns, clearly because government is committed to both the protection of the environment and the promotion of the small business enterprise as an economic growth engine to alleviate poverty, government policy must take cognisance of the fact that small business may not survive within the constraints of a new environmental ethos.

In a recent research paper, Singh points out that for a company it makes business sense to follow an integrated approach with regard to environmental and economic concerns; a one-sided approach is uneconomical and often fails because it ignores the mutual dependency of business and environmental concerns. He shows that these concerns are interdependent and should be co-ordinated to ensure both production cost savings and environmental compliance (Singh "Making Business Sense of Environmental Compliance" 2000 *Sloan Management Review* Vol 41 91-100 accessed on [www. http://web2.epnet.com](http://web2.epnet.com) on 2006-03-29). While this principle applies in microcosm, I believe that such an integrated approach on a macro level with regard to the environment and the economy should be followed.

In a more recent article, Tladi also recognizes the importance of an integrated process. In his article on the Cartagena Biosafety Protocol he highlights the fluid nature of the integration process and the "constant give and take involving the values of sustainable development". Referring to the Protocol he shows that on the one hand environmental concerns appear to trump trade and in this way economic concerns are inferior, on the other hand, the preambular recitals subordinate the protocol to the World Trade Organisation Treaty with the apparent elevation of economic concerns. This in effect, he states, "demonstrates the embedded superiority of economic considerations in international law and policy" (Tladi 2006 *CILSA* 83).

5 Possible governmental interventions

These may be directives as well as incentives to ensure environmental compliance. For example the recent Draft Policy Paper: A framework for considering market-based instruments to support environmental fiscal reform in South Africa (Policy Paper/Framework) outlines the role that market based instruments, specifically environmentally-related taxes and charges, *could* play in supporting sustainable development in South Africa and determines a framework for considering their potential application. It focuses on options for environmental fiscal reform as well as on the policies and measures which could contribute to both revenue requirements and environmental objectives. By analogy the principles underlying the reforms suggested could be applied in the context of the small business enterprise *vis-a-vis* the environment.

Also highlighted is the importance of research for policy-making decisions. For example, environmental assets are usually not priced in the conventional sense, as they are generally not traded in markets like other goods and services, and this can lead to the non-recognition of environmental issues in

everyday market activities. In this regard there should be an economic valuation of environmental goods and services. There are various evaluation techniques which will not be detailed here, but what I do want to highlight is that economic evaluation in environmental policy-making has to date not featured prominently in South Africa. There is a dearth of scientific data on this issue and the importance of further research cannot be overemphasized (Policy Paper/Framework 22).

Although government has also intervened in the interest of small enterprises, to my knowledge there are as yet no specific measures legal or otherwise which would assist small enterprises to overcome constraints and particularly to empower them in order to comply with environmental laws. Such measures would be in accordance with the avowed government policy of empowering disadvantaged groups and creating an enabling environment for the growth and sustainability of small business enterprises.

On the international front such initiatives have been taken (some of which have already been mentioned). Others include advisory services as well as education programmes and counseling and network services. For example, a network in New York helps small business comply with environmental laws (Gressani *New network Business Journal serving Southern Tire, CNY, Mohawk Valley, Finger Lakes, North* 26 June 1995 7 accessed on [www. http://web2.epnet.com](http://web2.epnet.com) on 2006-03-29) and the New Hampshire Small Business Development Centre (NHSBDC) has an environmental assistance programme which offers free and confidential business counseling and environmental assessments (New Hampshire Small Business Development Centre (NHSBDC) "Worried about your company's environmental compliance?" *New Hampshire Business Review*, 24 April 1998 11A accessed on [www. http://web2.epnet.com](http://web2.epnet.com) on 2006-03-29).

6 Conclusion

Reducing unemployment, eradicating poverty whilst at the same time maintaining the integrity of the environment and sustainable development are critical challenges currently facing South Africa. As has been shown, meeting these challenges might not only create tension between environmental and economic concerns but threaten the survival of the small business enterprise. It is suggested that national government policy be developed, enabling and empowering these enterprises to comply with environmental laws, thereby ensuring their sustainability as engines of economic growth. In this regard the importance of research for policy-making decisions is of vital importance and the need for multi-disciplinary research by academics, for example, is real.

Jacqueline Church
University of Pretoria