EXPANDING ON LEMINE'S "THE EFFICIENCY OF SECTION 2(4)(L) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT IN THE CONTEXT OF COOPERATIVE ENVIRONMENTAL GOVERNANCE"

1 Introduction

This contribution provides further insights into matters raised in a previously published contribution titled "The Efficiency of Section 2(4)(l) of the National Environmental Management Act in the Context of Cooperative Environmental Governance" (Lemine 2021 42(1) *Obiter* 2162). The earlier contribution focused primarily on ascertaining whether the wetland framework, albeit in different pieces of legislation and policies, was in fact uncoordinated. From that perspective, the institutional challenge was based on the action required arising from such a framework. The new insights offered in this contribution provide a broader basis for the interpretation, application and fulfilment of section 2(4)(*l*) of the National Environmental Management Act (107 of 1998) (NEMA) in the context of wetland resources management.

Lemine's earlier contribution offered significant insights into understanding aspects of wetland management issues in relation to section 2(4)(*l*). However, the authors of the current contribution have extended the scope of the interpretation of section 2(4)(*l*) to include wetlands management in South Africa and as applied elsewhere. It is posited that this triangulation of sciences and perspectives addresses omissions in the previous contribution.

In light of the above, this contribution considers wetland management also through the lens of first-generation rights, rather than exclusively as an issue affecting third-generation rights, for instance. Such a focus provides a platform for considering the relationship between persons with disabilities and specific areas (namely wetlands) that are vulnerable to flood disasters. The note considers the impact on this relationship of the realisation of the two-fold meaning of "environment" (built and natural) (Glazewski *Environmental Law in South Africa* (2023) 4), and contributes towards the importance of the wise use of wetlands.

The "harmonisation of policies, legislation and action" relating to wetland management, and persons with disabilities is a fundamental point in this contribution. "Harmonisation" is considered in an extraterritorial context under existing agreements, protocols, conventions, goals and institutions. This consideration casts the net wider than across only a South African context or a purely environmental perspective, as illustrated by Lemine (Lemine 2021 *Obiter* 169–172). Also, "harmonisation of policies, legislation

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and action" is not limited to coordinated South African legislation and policies to promote the improved management of wetlands (Lemine 2021 *Obiter* 169–172). This note gives consideration to regional and international actors, demonstrating the long reach of section 2(4)(*l*).

2 Section 2(4)(*l*) of NEMA and harmonisation

Section 2(4)(*l*) of NEMA states unequivocally that "[t]here must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment".

Harmonisation has a multifaceted meaning. Gilreath provides a list of synonyms, including harmony, agreement, compatibility, concordance, consonance and unity (Gilreath "Harmonization of Terminology – An Overview of Principles" 1992 19(3) *International Classification* 135). These synonyms emphasise the importance of harmonisation, which is closely linked to scientific progress and relies on effective cooperation and combined efforts (Gilreath 1992 *International Classification* 135). A preferred perspective on harmonisation and law is that "it may not require legislative similarity, but legislation complementarity" (Boodman "The Myth of Harmonization of Laws" 1991 39(4) *American Journal of Comparative Law* 705), or common rules that can create minimum standards and requirements (Zaphirou "Unification and Harmonisation of Law Relating to Global and Regional Trading" 1994 14 *North Illinois Law Review* 407). Legislative complementarity or commonality in rules makes no sense when applied in a national context only. Thus, harmonisation cannot be limited to South Africa's wetland framework; *inter alia*, international and regional perspectives must be implemented to achieve sustainable goals. Therefore, section 2(4)(*l*) applies to South Africa but also reaches into other jurisdictions or organisations with existing agreements.

It is crucial to give meaning to harmonisation to fulfil the legislature's intention. This is supported by the premise that the "intention of the legislature" and "clear and unambiguous statutory language" are couched peremptorily (Du Plessis *Statute Law and Interpretation* 2ed (2011) 36). Section 2(4)(*l*) of NEMA refers to "policies, legislation and actions relating to the environment". In the argument central to this contribution, the "environment" is not limited only to wetlands within South Africa; nor can "environment" simply be interpreted without reference to other international or regional agreements. Section 24 of the Constitution of the Republic of South Africa, 1996 (Constitution) provides for protection of the environment. With reference to section 24(*b*) of the Constitution, a purposive interpretation of the Constitution would require protecting the environment (wetlands) through reasonable legislation and *other measures* that justify the extension of policies, legislation and action within the borders of South Africa, as posited by Lemine (2021 *Obiter* 169–172).

Botha, quoting *Nyamakazi v President of Bophuthatswana* (1992 (4) SA 540 (BGD)), suggests that a purposive interpretation goes beyond legal rules but, for instance, takes into account the impact and future implications of the construct on future generations (Botha *Statutory Interpretation: An*

Introduction for Students 5ed (2012) 190). As a result, this interpretation lends itself to, for instance, meeting aspirations set for the years 2030 and 2063, as espoused below, to improve lives for present and future (generations).

In light of the above, section 2(4)(*l*) may extend to requiring consideration of agreements, protocols, conventions and plans with states parties and neighbours. The Ramsar Convention (UNESCO *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* 996 UNTS 245 (1971) Adopted 02/02/1971; EIF: 21/12/1975) sets out obligations with which States Parties must comply to meet its objectives. Approaching harmonisation from a complementary legislative perspective may result in lessons on implementation being learned by states through plausible strategies, including gleaning lessons from case studies and their successes and failures. Enhancing national, regional and global cooperation is embedded in the Ramsar Strategic Plan 2016–2024 (Ramsar Convention Secretariat "Ramsar Handbooks for the Wise Use of Wetlands" (2016) https://www.ramsar.org/sites/default/files/documents/library/4th_strategic_plan_2022_update_e.pdf (accessed 2024-01-02)). Using this approach does not disregard or undermine state sovereignty, but could result in achieving unity among States Parties. Furthermore, Chapter 6 of NEMA recognises international obligations and agreements, and states that South Africa should implement such measures. Regarding wetlands, article 2.6 of the Ramsar Convention also emphasises this obligation. This dovetails with and demonstrates the synergies between the sustainable development principles. Section 2(4)(*n*) of NEMA requires that the State discharge its global and international environmental responsibilities in the national interest.

South Africa's national interest is defined as "the protection and promotion of its national sovereignty and constitutional order, the well-being, safety and prosperity of its citizens, and a better Africa and world" (Department: International Relations and Cooperation "Framework Document on South African's National Interest and Its Advancement in a Global Environment" (2022) https://www.dirco.gov.za/wp-content/uploads/2023/01/sa_national_interest.pdf (accessed 2024-09-20)). Such a definition solidifies the synergies between section 2(4)(*l*)'s focus on harmonisation and section 2(4)(*n*) and, potentially, aspirations in the African Union's *Agenda 2063: The Africa We Want* (2014). Interestingly, the Framework Document on South Africa's National Interest identifies wetland degradation (and loss of biodiversity and ecological degradation) as environmental issues that must be addressed in pursuance of the national interest. Thus, section 2(4)(*n*) shines a light on provisions that promote harmony in legislation, policies and actions, as enshrined in section 2(4)(*l*). However appealing this harmonious relationship may appear to be here, there are many barriers that may hinder the achievement of these synergies (some examples of which are discussed under heading 3 1 below).

Applying section 2(4)(*l*) could extend to harmonising the wetland management aspirations of intergovernmental organisations such as BRICS+ (Brazil, Russia, India, China, South Africa, Egypt, Ethiopia, Iran,

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and the United Arab Emirates). For example, Lemine and Chowdhury argue that through its multilateral environmental agreement, BRICS may achieve sustainable wetland management through citizen-science targets (Lemine and Chowdhury "Casting the First BRICS: Towards an Interpretation of the Ramsar Convention Favouring Citizen Science in the Multilateral Environmental Agreement for Wetland Management" 2024 5(1) *South Sustainability* 55). This is critical to understanding how section 2(4)(*l*) promotes intergovernmental organisations through establishing aligned agreements.

On the regional and continental scale, application of section 2(4)(*l*) may promote improved management through the Revised Protocol on Shared Watercourses Protocol in the Southern African Development Community (SADC (7 December 2000)) and attain the goals of soft law, Agenda 2063. The Revised Protocol deals with SADC member states' management, use and protection of shared watercourses (wetlands). Where there is no supporting legislation or policies to achieve harmonisation, a state may agree on action to be taken in strategies that could address this lack and communicate to policymakers and legislative drafters the urgency of making it part of the legislative framework.

Agenda 2063 is a tool that may create continental harmony when applied together with section 2(4)(*l*). One of its goals is to have "[e]nvironmentally sustainable and climate resilient economies and communities" (by) putting in place measures to … manage the content's rich biodiversity, forests, land and waters (The African Union Commission "Agenda 2063: The Africa We Want" (2015) https://au.int/agenda2063/goals (accessed 2023-12-02)). Thus, Agenda 2063 requires action by the 54 African states to promote the improved management of their wetlands. Although Somalia and Ethiopia have not yet signed and ratified the Ramsar Convention (Ramsar Convention Secretariat "Contracting Parties to the Ramsar Convention" (2023) https://www.ramsar.org/sites/default/files/documents/library/annotated_contracting_parties_list_e.pdf (accessed 2024-09-20)), there is some evidence that they are trying to manage their wetlands effectively (Dixon, Wood and Hailu "Wetlands in Ethiopia: Lessons From 20 Years of Research, Policy and Practice" 2021 41(2) *Wetlands* 1–14). Non-state parties whose wetlands management efforts outshine those of states that have signed and ratified the Ramsar Convention are to be commended rather than derided.

3 Application of harmonisation to South Africa

As interpreted in this contribution, harmonisation extends beyond harmonising wetland and ancillary policies, legislation and action within the Republic of South Africa. Rather, this note considers the peremptory nature of South Africa's international, intergovernmental and regional obligations. Instead of merely harmonising national wetland policies and legislation to ensure actions are aligned (Lemine 2021 *Obiter* 163–164), actions that contribute to improved management may be introduced through existing plans and strategies, and their effectiveness can be communicated to relevant lawmaking bodies.

3 1 Some legislative and practical aspects

Harmonisation can be compromised when vague or unclear information or definitions are used. The definition of wetlands to advance their management may thus add to the conundrum of issues resulting from the current legislative framework. The recent (unreported) case of *Valobex 173 CC v MEC for Economic Development, Environment Agriculture and Rural Development Gauteng Provincial Government* ([2024] JOL (GJ)) is exemplary in understanding the statutory meaning of a wetland (par 6) to ensure that thresholds are not exceeded. Wetlands are accordingly read as being included under the NEMA definition of "environment" (see Lemine "Developing a Strategy For Efficient Environmental Authorisation of Activities Affecting Wetlands in South Africa: Towards a Wise-Use Approach" 2020 41(1) *Obiter* 154–167 and Lemine 2021 *Obiter* 162–164): "(i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being"., The National Water Act (36 of 1998) (NWA) defines a wetland as:

> "land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil".

Similarly, the wetland-specific Ramsar Convention states,

> "for the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres".

It is submitted that the NWA definition is to be preferred because it incorporates wetlands and is broader than the Ramsar Convention but more specific than the broader meaning of "environment" in NEMA.

Regarding the implementation of NEMA and the NWA, the roles and responsibilities of actors are critical to ensure that wetland ecosystems are managed in a more coordinated way (Lemine 2021 *Obiter* 163–164) that considers the best practicable environmental option (see s 1 of NEMA for the definition of "best practicable environmental option"). Based on its aims and tools, NEMA focuses mostly on biodiversity in terms of biotic responses, while the NWA includes the environmental drivers of wetlands that result in abiotic responses among other habitat responses. This management process should be considered to be part of a continuum rather than as operating in a silo; hence, the recommendation of a wetland institution (Lemine, Albertus and Kanyerere "Wading into the Debate on Section 2(4)(*r*) of the National Environmental Management Act 107/1998 and Its Impact on Policy Formulation for the Protection of South African Wetlands*"* 2022 47(1) *Journal for Juridical Science* 77 95). The obligation to consider wetland

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management is not limited to those directly implementing measures of management but also requires others who are drivers of potential loss to engage.

Political pressures and agendas are affected by socio-economic issues and impact intergovernmental relations on wetland management. An example is the de-proclamation of the Driftsands Nature Reserve, which was heavily impacted by the encroachment of informal settlements (Winkler "Reconceptualising Conservation: Towards Updating a Section of the District Plan for Driftsands" 2023 *UCT* 16). This encroachment resulted in the nature reserve being de-proclaimed without submission of proof for an attempt for wetland offsets and losses (Western Cape Provincial Parliament "Report of the Standing Committee on Agriculture, Environmental Affairs and Development Planning on the Withdrawal of the Declaration of the Driftsands Nature Reserve in terms of section 24(1)(b) of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003)" (2022) https://www.wcpp.gov.za/sites/default/files/20220618_SC%20Agri%20and%20Environ%20-%20Report%20Driftsands%2023%20June%202022.pdf (accessed 2023-12-02)). Such measures, without clear consideration for wetlands and for impacts such as flooding, fire and encroachment into wildlife habitats, may lead to further losses and to a reactive management style rather than a proactive one.

3 2 First-generation rights consideration

To ensure protection for wetlands, Lemine defines "environment" to include wetlands, but limits the definition to the natural environment (Lemine 2021 *Obiter* 162), whereas Glazewski identifies the environment as including both the natural and built environment (Glazewski *Environmental Law in South Africa* 2ed (2005) 4). The latter contribution is important as it introduces constructed/artificial wetlands into the conversation. Employing a human-rights perspective, Basson and Lemine considered the built environment within the operation of the natural environment with a view to the rights of persons with disabilities (Basson and Lemine *Wetlands Resources Management and Housing Persons With Disabilities* Paper presented at 11th Annual Disability Rights in Africa Conference: Centre for Human Rights, Johannesburg (2023) 4). The effect has a positive response to Sustainable Development Principle in terms of 2(4)c of NEMA, which advocates for environmental justice and vulnerable groups of persons.

Since persons with disabilities remain among the most marginalised groups in society, they must not be ignored when it comes to matters of climate change, environmental impacts and new building developments that may affect their well-being. The rights of persons with disabilities are integral to the constitutional imperative of rights to equality and dignity, and this extends to matters of environmental law. The constitutional right to environmental protection directly impacts persons with disabilities with regard to their socioeconomic prospects.

There is a clear and well-established link between socio-economic outcomes for persons with disabilities and their immediate surroundings,

including geographical features and their housing. One marginalisation tactic of South Africa's apartheid government involved implementing geographical vulnerability; and persons with disabilities often bore the brunt of discriminatory spatial planning. As a result, persons with disabilities are often resident in geographically vulnerable areas that are prone to damage through natural disasters and climate events (Harrati, Bardin and Mann "Spatial Distributions in Disaster Risk Vulnerability for People With Disabilities in the US" 2023 87 *International Journal of Disaster Risk Reduction* 1). Persons with disabilities from marginalised socio-economic backgrounds are thus often found living near or even on existing wetlands. Sound management of these wetlands in the context of climate change is imperative in reducing the geographical vulnerability of persons with disabilities in their built environment.

3 3 Scope of legislation

Section 2(4)(*l*) of NEMA requires the "harmonisation of policies, legislation and actions". The argument posited by Lemine refers to the link between actions on the one hand and the policies and legislation guiding such actions on the other (Lemine 2021 *Obiter* 163–164). Lemine sought to demonstrate this through a selected sample of legislation and action where harmonisation appears inadequate (Lemine 2021 *Obiter* 168–172). The discussion below focuses on the legislative aspects of managing wetlands of international importance and other wetlands.

Article 3.1 of the Ramsar Convention, in short, makes provision for states to conserve wetlands of international importance, and for the wise use of all other wetlands. The former category creates an obligation on every State Party to designate suitable wetlands for inclusion in a list of wetlands of international importance (art 2.1 of the Ramsar Convention). It further prescribes the factors to be taken into account for selecting such wetlands (art 2.2 of the Ramsar Convention).

Lemine's earlier contribution commences with a discussion on wetlands of international importance without providing the scope of the Ramsar Convention application within the South African context (Lemine 2021 *Obiter* 164). Regarding "all other wetlands", Lemine refers to some (limited) legislation that promotes the protection of wetlands, including NEMA, the NWA, the National Environmental Management: Biodiversity Act (10 of 2004), the Conservation of Agricultural Resources Act (43 of 1983) (CARA), and the National Climate Change Response White Paper of 2011 (Lemine 2021 *Obiter* 168–174). The scope of applying legislation beyond "international wetlands" and "all other wetlands" is expanded on below.

Wetlands of international importance (Ramsar sites) are discussed within the existing legal framework. South Africa boasts 31 wetlands of international importance (https://www.ramsar.org/country-profile/south-africa (accessed 2023-11-10)). These are protected under the National Environmental Management: Protected Areas Act (57 of 2003) (s 2 and 9(*b*)), and South Africa must report on the state of its Ramsar sites (art 3.2 of

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the Ramsar Convention). The reporting must comply with article 8.2 of the Ramsar Convention, which provides:

> "The continuing bureau [International Union for Conservation of Nature and Natural Resources] duties shall be, inter alia:
> a. …
> b. to maintain the List of Wetlands of International Importance and to be informed by the Contracting Parties of any additions, extensions, deletions or restrictions concerning wetlands included in the List provided in accordance with paragraph 5 of Article 2;
> c. to be informed by the Contracting Parties of any changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;
> d. to forward notification of any alterations to the List, or changes in character of wetlands included therein, to all Contracting Parties and to arrange for these matters to be discussed at the next Conference;
> e. …"

In South Africa's National Report to Ramsar COP14 submitted in 2021 in relation to Goal 2 ("Effectively conserving and managing the Ramsar Site network"), the following submissions were made: there is no strategy established for the further designation of the Ramsar sites using the Strategic Framework for Ramsar list, but Ramsar sites are designated in line with Ramsar criteria; and the (then 26) Ramsar sites all have formal management plans that are being implemented (Ramsar Convention Secretariat "National Report on the Implementation of the Ramsar Convention on Wetlands" (2021) https://www.ramsar.org/sites/default/files/documents/importftp/COP14NR_South%20Africa_e.pdf (accessed 2024-01-03)).

Lemine's assessment of the NWA focused on water resource protection mechanisms (Lemine 2021 *Obiter* 169–170). However, the discussion here concerns the water management strategies in Chapter 2 of the NWA – specifically, the National Water Resource Strategy (NWRS). The Draft NWRS (III) published in March 2023 incorporates citizen science tools to monitor wetlands and recognises the Ramsar Convention as a mechanism for improving water governance and management of wetlands of international importance by the Department of Water and Sanitation (DWS), the Department Forestry, Fisheries and the Environment (DFFE) and the Department of Agriculture, Land Reform and Rural Development (DALRRD) respectively (*National Water Resource Strategy* 3ed (2023) 55). The NWRS addresses fragmentation issues among the institutions, as highlighted (Lemine 2021 *Obiter* 174). However, it is submitted here that the Draft NWRS (III) should not limit the application of the Ramsar Convention to wetlands of international importance, as the wise use of all wetlands is also required – specifically small wetlands (not defined in Ramsar COP13 *Resolution XIII.21 Conservation and Management of Small Wetlands* (October 2018) https://www.ramsar.org/sites/default/files/documents/library/xiii.21_small_wetlands_e.pdf). This should not be omitted from the framework of the Joint National Wetland Policy.

The introduction of the Joint National Wetland Policy is seemingly welcome, considering the current nature of the wetland legislative framework

and its effect on the operation of the institutions. The key departments are identified as the DWS, DFFE and DALRRD (Lemine 2021 *Obiter* 167). However, departments with mandates that may affect wetlands based on ancillary effects must be considered. For instance, they include the Department of Human Settlements (see heading 3 1 *supra*) and the Department of Health (reasoning under heading 3 2 *supra*) (see also Glazewski's argument on the relationship between departments). These must be taken into consideration by the policy, accompanied by plausible strategies that aid in its implementation.

A recent legislative development for wetlands management in South Africa is the passing of the White Paper on Conservation and Sustainable Use of South Africa's Biodiversity 2023 (White Paper Policy). On the face of it, this is a positive step towards improved wetland management. Nevertheless, it is opined here that a wetland-specific policy would be preferable. Objective 2 of the White Paper Policy essentially aims to halt the loss and degradation of wetlands. The realisation of this includes actions like introducing a national framework, addressing the drivers of the loss and degradation of wetlands, and setting up control measures for the protection and use of wetlands. It is posited that the national framework should allow for the flexibility of drivers and loss coupled with control measures, as these may change in the current climate.

On the topic of biodiversity richness, it should be noted that the coastal environment is a vital ecosystem based on both its direct benefits (tourism and food) and indirect benefits (dunes that act as a buffer against storm surges) (Glavovic, Cullinan and Groenink "The Coast" in Strydom, King and Retief *Environmental Management in South Africa* (2018) 3ed 654–655). The coastal environment has various coastal/marine wetlands, including estuaries, coral reefs, mangroves, open coasts and coastal lagoons (Adeeyo, Ndlovu, Ngwagwe, Madau, Alibi and Edokpayi "Wetland Resources in South Africa: Threats and Metadata Study" 2022 11(6) *MDPI Sustainability* 5). The "coastal environment", as defined in the National Environmental Management: Integrated Coastal Management Act (24 of 2008) (NEMICMA), includes wetlands within its definition. As stated in NEMICMA's Preamble, the Act aims to achieve the integrated and coordinated management (ICM) of the coastal zone, which consists of land, water and living resources. A strategy for wise use also requires the integrated management of land, water and living resources (Secretariat of the Convention on Biological Diversity Montreal, 1992). "Water" is not limited only to freshwater resources and can, therefore, include coastal waters. This consequently places the concepts of wise use and ICM within a mutual relationship to the extent that wetlands fall within the coastal zone, which is supported by Everard (Everard "National Wetland Policy: Ghana" in Finlayson, Everard, Irvine, Mclnnes, Middleton, Van Dam and Davidson (eds) *The Wetland Book* 2018). This aspect is not discussed in Lemine 2021 *Obiter*).

The legislation discussed thus far typically provides direct protection. However, ancillary legislation also supports wetland protection – for example, the National Veld and Forest Fire Act (101 of 1998) (NV&FFA).

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However, veldfire (whether replicated by man in a controlled environment or not) has many ecological benefits, such as stimulating new growth in vegetation and improving habitat for wildlife (Green, Roloff, Heath and Holekamp "Temporal Dynamics of the Responses by African Mammals to Prescribed Fire" 2015 79(2) *The Journal of Wildlife Management* 235).

Nevertheless, an uncontrolled veldfire poses an environmental risk to the existence and proper functioning of wetlands. A "veldfire" is defined as "veld, forest, or mountain fire" (s 2(ixi) NV&FFA), and "veld" is defined in the CARA Regulations as "land which is not being or has not been cultivated …" (GN R1048 in *GG* 9238 of 1984-05-25, commencement date 1984-06-01). The relevance of this is that "veld" includes "land", which is critical for the management of wetlands, specifically through the lens of wise use.

Keeping land management as a component of wise use in mind, note that section 3(1) of the NV&FFA makes provision for the establishment of fire protection associations (FPAs), which may be formed by landowners who agree to coordinate and cooperate in their efforts to predict, prevent, manage and extinguish veldfire. FPAs play a critical role in spearheading initiatives for promoting wetland management through the lens of veldfire management.

3 4 Theoretical development

The wise use of wetlands is an international obligation imposed on each State Party (art 3.1 of the Ramsar Convention). As a party to the wetland-specific convention, South Africa must implement the enabling provisions of the Ramsar Convention. Article 3.1 requires the wise use of wetlands, which entails the "maintenance of the ecological character, achieved through the implementation of ecosystems approaches, within the context of sustainable development" (Finlayson, Davidson, Pritchard, Milton and MacKay "The Ramsar Convention and Ecosystem-Based Approaches to the Wise Use and Sustainable Development of Wetlands" 2011 14 (3–4) *Journal of International Wildlife Law & Policy* 176). The "ecosystems approach" is defined by the Convention on Biological Diversity (United Nations Environment Programme 1760 UNTS 79, 31 ILM 818 (1992). Adopted: 05/06/1992; EIF: 29/12/1993) as a "strategy for the integrated management of land, water and living resources that promotes the conservation and sustainable use in an equitable way". The earlier contribution by Lemine extended the boundaries of "wise use" by demonstrating where the gaps are in the legislation without assuming that it goes against the grain of wise use if provisions are in different pieces of legislation. This insight showed the ties between wise use and NEMA's section 2(4)(*l*). However, in the current contribution, an understanding of wise use in South African wetland law is extended through section 2(4)(*l*) in light of regional, continental and international aspirations and obligations. This is due to an interpretation of harmonisation to fulfil the obligation of section 2(4)(*l*) that casts the net broader. This in effect means that strategies about "land", "water", and "living resources" are affected not only by factors within the geographical area of South Africa but include extraterritorial standards.

Moving away from a purely environmental perspective, Basson and Lemine (Paper presented at 11th Annual Disability Rights in Africa Conference: Centre for Human Rights) demonstrate the extension of the theory to focus on wetlands resource management and persons with disabilities. This point has been further developed in this contribution.

4 Conclusion – (trying to) get the octopus into the jar

Understanding the gaps between law and practice is critical for improving the realisation of the requirements of NEMA's section 2(4)(*l*), specifically within a wetlands management context. "Mandate stoppers", which end one wetlands management mandate and initiate another, should be reconsidered in achieving a continuum in the wise use system. For wetlands management, section 2(4)(*l*) is not only about efforts within South Africa, but also about the broader ecosystem: regional, continental and global, balancing rights interests of socio-economic development and legislation that may indirectly affect wetlands. Although there are synergies in the other NEMA principles, alongside section 2(4)(*l*), the trade-offs and other limitations should be known, and case studies could bolster the realisation of successful harmonisation.

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