

## Part 6

### Are the environmental principles really that necessary?

By Ian Cox

I have concentrated in recent articles on the importance of the environmental principles set out in section 2 of the National Environmental Management Act ([NEMA](#)). This is because NEMA says these so called NEMA environmental principles must be applied to all environmental law and decision making.

This is an easy proposition for lawyers to comprehend. But clearly environmentalists find the concept harder to understand. How else do you explain why the NEMA environmental principles are routinely ignored in environmental law and decision making?

This article looks at why this is so and if indeed proper consideration and application of the NEMA principles is as important in practice as the law assumes. Could this be a case where the law is wrong and environmentalists are right?

I think it is a matter of perspective.

Environmentalists brought up in the world of old style command and control permit driven conservation management probably won't see the relevance of a lot of the principles. They are also likely to think that effective environmental management requires experts to educate the public rather than a two way process that includes listening and learning from the public. They may well question whether all this consultation is reasonable or necessary given that they are the experts.

I strongly disagree with this approach, but then I like the [Constitution](#) and its value based approach it espouses. I think the [Constitutional Court](#) is doing a fine job in guiding the development of our law so that it aligns with constitutional values. That is my perspective.

However if one looks at what is happening as opposed to what is said, then I think one can reasonably conclude that my perspective is not shared by the majority of officials, consultants, scientists and lawyers who inform the environmental law and decision making process in South Africa. They appear to prefer a system where government rules supreme.

I think most South Africans thought we have already made that choice in favour of a constitutional approach. However it is becoming increasingly obvious that this system is under attack by those in power who would rather reign supreme. Sadly I think that the environmental management sector is part of this attack.

But is this power based approach working? Are our environmental laws enabling the incremental environmental improvements that people like [Professor Rockström](#) of the [Stockholm Resilience Centre](#) say are essential if irreversible earth system change is to be avoided? It does not look that way to me. I see a lot of law making but very little actual progress. If anything we are still going backwards and this trend seems to be getting worse.

Sustainable development and the ecosystem approach that enables this requires a paradigm shifts in the thinking, values and habits that have informed human behaviour for millennia. You can achieve

rapid change in times of crisis or war but such changes are symptomatic rather than real. People revert to type once the threat is removed or normalised. Crisis driven management is only sustainable in the longer term through violent, oppressive and controlling regimes of the type envisaged by George Orwell in his novel 1984.

Real sustainable change is best achieved in terms of a principled approach whereby the values and habits of a nation are required to interact and adapt to the paradigm shifts like the Constitution. The changes that are taking place in our law as a result of the Constitution are a good example of this kind of evolutionary change. The increasing degree to which the Constitution enjoys public support is an example of how hearts and minds can be engaged in driving that change if it is done properly.

It should come as no surprise therefore that integration is an important NEMA principle. NEMA requires that environmental laws must be integrated, acknowledging that all elements of the environment are linked and interrelated.

The principled approach prescribed by NEMA is essential to this process of integration. This is because it is only by applying these principles and accommodating issues that emerge as a result of doing so that you truly begin to engage with peoples' hearts and minds in ways that promote lasting change.

Unfortunately environmentalists tend to see this process of engagement as a one way street. This is not integration. It is closer to oppression. The exercise of naked power does not encourage sustainable system change. It can in fact have the opposite effect as is illustrated by recent events in the USA and the regime change that has occurred in its Environmental Protection Agency.

This is not good for the environment.

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