

## Part 13

### Aliens and the Constitution

By Ian Cox

Alien is not a nice word. The word describes something that is foreign and accordingly does not belong. It can even be something that is disturbing or distasteful.

It is worth bearing this in mind when considering the definition of alien species in the National Environmental Management Biodiversity Act or NEMBA. You see NEMBA makes [alien](#) any species that **is** introduced into South Africa or an area within South Africa by human beings or as a result of human activity. This is at any time during the two to three hundred thousand years of human existence.

This begs a very important question. If our environmental laws make every living thing we introduce into our environment alien, then what does that make us. South Africa may have a claim to be the cradle of mankind but human beings very definitely did not originate from South Africa. We all come from another place originally. And we all brought stuff with us. In fact nearly everything we farm comes from another place and is thus alien.

Are we also to be treated as undesirable foreigners in the country we live in because we come from another place? It seems that we are at least in terms of NEMBA. This is because NEMBA makes it a criminal offence to possess or use or otherwise benefit from any alien species unless the Minister of Environmental Affairs has exempted the species or has granted you a permit to possess, use and benefit from specimens of that species.

This is an extraordinary law. No other country in the world has ant law remotely like it. What makes this law even more surprising is that South Africa has a human rights based constitution which seeks to unite South Africans in their diversity on terms that require environmental lawmakers to place the interest of people uppermost.

How on earth, then did a law get onto our statute books that assumes once foreign always foreign and which makes simple basic things like growing food or owning livestock a criminal offence unless government says it is not?

I do not think that there can be any doubt that the way NEMBA defines and deals with alien species is truly repugnant to our Constitution. The notion once alien always alien may be a central tenant of invasion ecology thinking but it is utterly foreign to the rights based culture of mankind enjoying an innate right to dignity that is underpinned by the Constitution.

I have searched long and hard to find how this happened. I am embarrassed that we as lawyers did not pick it up and complain when the Biodiversity Bill was first published for comment. We must have been fast asleep, blind. Or perhaps we were all so bewitched with the idea that green is good that we did not think that the idea that the environment can be used to greenwash some truly horrific ideas about how people should be governed.

I think I know how it is this foreign concept of mankind as alien to nature got into our statute books. It speaks to the deep philosophical and ethical divisions that exist among environmentalists about

how man relates to nature. I considered this in a broader context in an article entitled: “Are we part of nature”.

I postulated: “The left biocentric idea of human activity as polluting in DEA’s draft Biodiversity Offset Policy sits right on top of this nexus. It speaks to powerful taboos that perceive man as alien to nature. These can encourage nascent and pejorative instincts around otherness that resonate powerfully in South African society. The South African roots of these instincts are inherently national socialist in character even when expressed from a socialist or communist or even environmental perspective. They can be traced back far too easily to powerful but fallacious ideas around scientific racism.”

Powerful and controversial stuff! But stuff, I think, that explains the constitutional anomaly or even insult that is how NEMBA deals with alien species.

The more I look at South Africa’s environmental laws both in their form and in the manner of their implementation, the more I see a scheme afoot aimed not at protecting biodiversity as part of an endeavour to ensure everyone an environment that is not harmful to their health and wellbeing but rather a process of bringing all natural resources and the right to use and enjoy those resources under state control.

Why else do we have a law that makes growing food unlawful unless government says it is not?

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