

“Addressing Human Environment Challenges Related to the Need for Clean Water and Sanitation: A Silent Tsunami ”

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PRESENTATION OVERVIEW

- Sustainable Development 101
- Human Environment Challenges Related to the Need for Clean Water and Sanitation
- Questions
- Constitutional Court of South Africa Experience
- Lessons Learned?

THOUGHT FOR TODAY

“The opposite of love is not hate, it’s indifference. The opposite of art is not ugliness, it’s indifference. The opposite of faith is not heresy, it’s indifference. And the opposite of life is not death, it’s indifference.”

Elie Wiesel, Romanian-born journalist and author

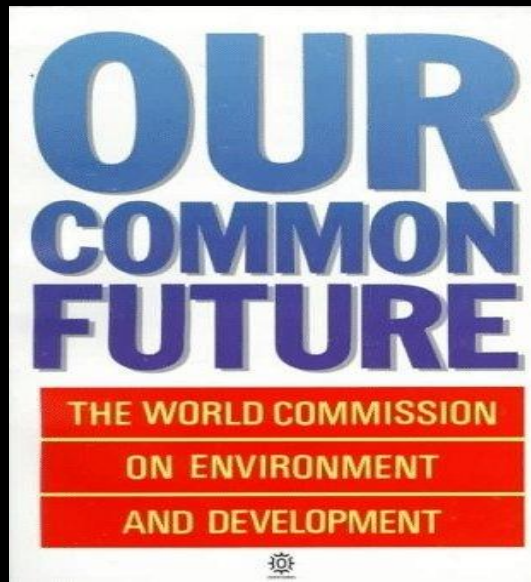
PART ONE

SUSTAINABLE DEVELOPMENT 101



Sustainable Development: Goal to be Achieved

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”



The Sustainable Development Triad

The three pillars of “sustainability” are:

- Economic Development
- Social Development
- Environmental Protection



PART TWO

HUMAN ENVIRONMENT CHALLENGES RELATED TO THE NEED FOR CLEAN WATER AND SANITATION

Planet Water



Human Environment Challenges

Water Access and Water Quality

“More than one billion people lack clean water. Two billion live in water stressed countries, where the demand for water will double in the next 20 years from population growth, expansion of irrigated agriculture, and increased industrial development. Nearly 2.6 billion people – half of the developing world – lack adequate sanitation, which contributes to 900 million cases of diarrheal diseases, 200 million schistosomiasis or bilharzia, and 900 million cases of hookworm each year. Two million children die every year for want of fresh water and sanitation. Cholera, typhoid, and paratyphoid also continue to scourge human populations.”

Durwood Zaelke, et. al. “What Reason Demands: Making Law Work for Sustainable Development” in Making Law Work: Environmental Compliance & Sustainable Development (2005)

United Nations Economic and Social Council

Clean and safe drinking water is a resource that is:

- “fundamental for life and health,”
- “indispensable for leading a healthy life in human dignity,” and
- “a prerequisite to the realization of all other human rights.”

UN ECOSOC, General Comment No. 15: The Right to Water (Arts. 11 and 12)

(1/20/03) at: www2.ohchr.org/english/issues/water/docs/CESCR_GC_15pdf

UN RESOLUTION 64/292 (August 3, 2010)

“Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”

Article 4 of the Constitution (February 8, 2012)

“All people have the right to the access, provision, and sanitation of water for personal and domestic consumption in a form that is sufficient, healthy, acceptable and affordable. The state shall guarantee this right and the law shall define the basis, resources and modalities for the access and equitable and sustainable use of water resources, establishing the participation of the federal, state and municipal entities, as well as the participation of the citizenry for the attainment of these ends.”

PART THREE

QUESTIONS

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- Is the human right to clean water and sanitation an aspirational goal? Or a justiciable right?
- What steps need to be taken to make access to clean water and sanitation a justiciable right by the Nation State because it is so fundamental to human health and reducing poverty?
- What is the extent of the Nation State's positive obligation to provide sufficient clean water and sanitation to "All people" under the constitution?

QUESTIONS (cont.)

- What does the phrase, “All people have the right to the access, provision, and sanitation of water for personal and domestic consumption,” mean as a practical matter?
- What does the phrase, “in a form that is sufficient, healthy, acceptable and affordable,” mean as a practical matter?
- What steps should be taken by the Nation State to ensure that decisions about covering the costs of clean water and sanitation be decided through a participatory process that ensures that the needs of the poor are met?

QUESTIONS (cont.)

- For reasons of human health, the economy, and environmental sustainability, what steps should be taken to ensure that the Nation State invests more resources in the infrastructure for water distribution?
- What is the appropriate role of the courts in human rights (economic and social rights) jurisprudence?

PART FOUR

CONSTITUTIONAL COURT OF SOUTH AFRICA EXPERIENCE

CASE

Mazibuko, et. al. v. City of
Johannesburg, Johannesburg
Water LTD, and Minister for
Water Affairs and Forestry

(CCT 39/09) (ZACC 28)
(decided October 8, 2009)

Section 27 of the Constitution (adopted in 1996)

“(1) Everyone has the right to have access tosufficient food and water....

“(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

Section 152 (1)(b) of the Constitution

“The object of local government are....

(b) To ensure the provision of services to communities in a sustainable manner.”

Water Services Act

Section 3 provides that:

“(1) Everyone has a right to basic water supply and basic sanitation.”

Section 1 provides that:

“‘basic water supply’ means the prescribed minimum standard of water supply services necessary for a reliable supply of a sufficient quantity and quality of water to households.... to support life and personal hygiene.”

National Water Standards Regulations ("Free Basic Water Policy")

Regulation 3 provides that:

"The minimum standard for basic water supply is....

(b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month...."

FACTS

- Water piped into Phiri community of Soweto since the 1940s. Charged a nominal flat rate for 20 kilolitres of water per household per month
- Shortfall in revenues since poor residents did not pay
- The city implemented in 2004 a plan to change the water usage in Soweto with the Free Basic Water policy, and pre-paid meters

FACTS (cont.)

- 5 poor residents of separate households sued arguing that:
 - (a) the city's policy of supplying 6 kilolitres per month per household of free water violated section 27 of the Constitution; and
 - (b) the installation of pre-paid meters was unlawful

HOLDING

Constitutional Court declared that:

- (1) the city's water policy of 25 litres per person per day or 6 kilolitres per household per month was "within the bounds of reasonableness" and was, therefore, constitutional; and
- (b) the city's installation of pre-paid meters was lawful

PRIOR COURT DECISIONS

- Johannesburg High Court in 2007 determined that 50 litres per person per day was the appropriate amount, and that the pre-paid meters had no basis in law.
- Supreme Court of Appeal in 2009 determined that 42 litres per person per day was the appropriate amount, and that pre-paid meters were unlawful. City given 2 years to bring water policy in line with the “reasonableness requirement” of the Constitution.

PART FIVE

LESSONS LEARNED?

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- Public interest lawsuits will be filed by international/local human rights NGOs
- International human rights standards (“minimal core” approach) are helpful for constitutional analysis but courts may need to develop a more flexible “reasonableness” doctrine

LESSONS LEARNED? (cont.)

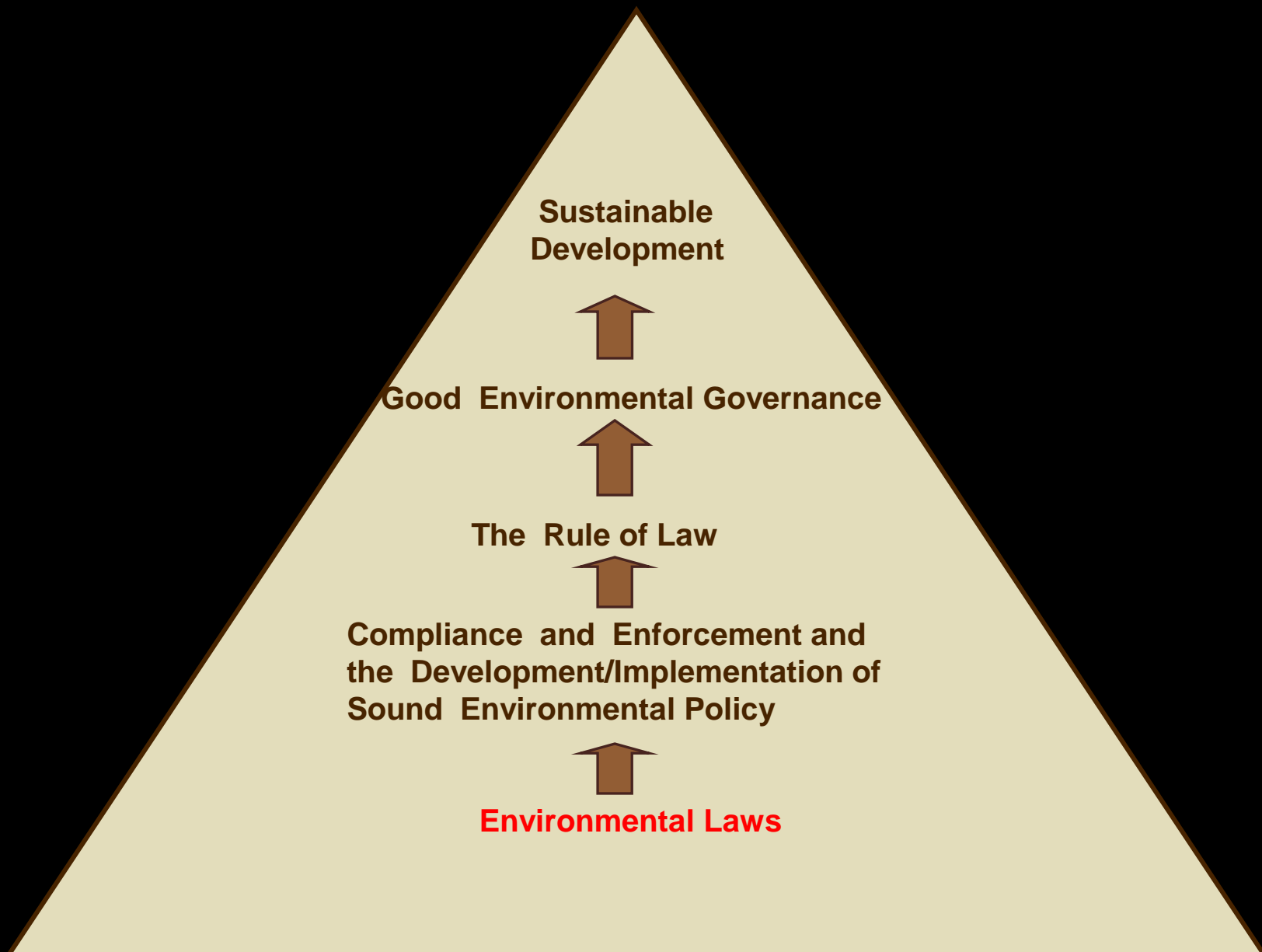
- Federal, state and municipal governmental entities will be required to continually develop/ implement/review water policy decisions in response to public interest litigation
- Federal, state and municipal governmental entities will be required continually to justify their water policy decisions

LESSONS LEARNED? (cont.)

- Federal, state and municipal governmental entities will be required to continually explore the extent of participatory and deliberative democracy
- The courts will play a crucial role in determining the constitutionality of the decision-making and implementation of the government's water policy

LESSONS LEARNED? (cont.)

- The realization of the human right to clean water and sanitation (economic and social rights) will be a bumpy ride but a worthwhile ride nonetheless



THANK YOU

