PERSPECTIVES ON THE IMPERATIVE OF THE VALUE CHAIN OF ENVIRONMENTAL JUSTICE

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ABSTRACT

Environmental justice entails that people should be treated equally when making any environmental decision that will be beneficial or harmful to the environment. In a situation where a poor community is targeted as a site for deposit of toxic waste, this is purely perpetration of environmental injustice. Nowadays, deliberately targeting poor and vulnerable people and their communities to perpetuate this injustice is still rampant despite various international, national, regional, and local instruments prohibiting this injustice. This paper revisits the principles of environmental injustice and presents various processes that have the potentials to promote the elimination of environmental injustices that are prominent as a deliberate action in poor communities while the rich communities are exempted. This paper notes that environmental injustices still prevailing and rampant post-1994 South African democratic dispensation. To address this, the current paper reviews the provision of transformative constitutionalism and various pieces of legislation that have been introduced to tackle and combat environmental injustice and foster environmental justice where all people are treated equally with dignity and fairness.

Keywords: *Environment injustices, environmental inequalities, discrimination, black communities, transformative interventions, South Africa*.

INTRODUCTION

The concept of Environmental justice (EJ) entails that all people regardless of their race, color, national origin, or their level of income status, socio-economic status, and development in the society are treated fairly, equitably, and afforded the same opportunity concerning the development, implementation, and enforcement of environmental laws, regulations, and policies (Kubanza and Simatele, 2016). The essence of EJ is to ensure environmental equity, equality, inclusivity, and collectively when it comes to protecting the rights not to be subjected to environment that is degraded and harmful (Bryan and Ejumudo, 2014). For fairness and equity, sharing of the burdens and benefits of the environment should be fair and equitable and more importantly, "no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies" (Laurent, 2011). It is against the backdrop of this that public participation in any environmental decision-making is imperative and people with diverse opinions should be allowed to actively and meaningfully engage and participate in any decision about activities that may affect their environment and

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health (O'Faircheallaigh, 2010). Active participation and contributions from different people and groups have the potential to have significant influence on the regulatory agency's decision on whether to approve or disapprove of a project in a certain area or community (Fung, 2015). Essentially, participating in environmental decision-making connotes that the people and community's inputs and concerns would be considered and factored in the decision-making process before any approval for a project is issued (Armeni, 2016). The essence of these broad participation processes and procedures is to ensure that before regulatory and decision-makers take further steps, there has to be constructive engagements with the people and community that the project will affect. The participation, constructive engagements, and full involvement of people/community from the inception of the project until the final approval is issued is the value chain of broad public participation (Khanyile, 2014). At all times, the chain should be intact and should not be broken. The chain is the treaty agreement between the people/community, the decision-makers and regulators. If the chain is broken, any decision taken will be unfair and unjust and is tantamount to environmental injustice decision-making.

Against the above stated, the processes of Procedural Justice (PJ) where all hands are on the deck and everybody is on the same page should also be informed by active participation on issues about access to information, widespread information, and enlightenment. PJ simply refers to the idea of ensuring there is fairness in the processes that involve resolution of disputes and resource allocation. PJ is a unique principle that, when embraced, it promotes positive organizational change and bolsters better relationships. PR speaks to four principles which are the four pillars of what are considered just and proper namely; fairness in the processes, transparency in actions, opportunities for voice and impartiality in decision making (Donner and Olson, 2020).

Furthermore, tacit consent by all the stakeholders and role-players of the environmental decisions should be made without duress or force and with free informed consent by those whose decisions are to be affected. The importance of free informed consent is critically imperative at all stages of discussions that will impact the environment. Also, the voices of the minorities and vulnerable in the communities must be heard loud and clear according to the requirement of

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procedural justice as enshrined in the Aarhus Convention (the Convention). The Convention is widely recognized as the world's foremost international instrument which guarantees access to information, public participation in decision-making, and access to justice in environmental matters**.** The Convention's aim is "to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being." To achieve this, the Convention established a set of rights for citizens and their associations, which are broken down into three broad categories. These three categories correspond to the convention's pillars which are "the right to know, i.e. receive environmental information held by public authorities ('access to information); the right to participate in decisions to permit certain types of activity that may have a significant effect on the environment and during the preparation of plans, programs, policies and legislation relating to the environment ('public participation in decision-making); and the right to recourse to a court of law to enforce their rights of information and participation, or to challenge public decisions that contravene environmental law ('access to justice')"(Halleux, 2021).

About access to justice, in terms of Article 9(3) of the Convention, as contained in the members' national laws, all members of the public regardless of their status have the right to access administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. More importantly, in terms of remedial actions, Article 9(4) of the Convention provides that the "procedures relied on shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely, and not prohibitively expensive." All these are the attributes of procedural justice. They should be applied holistically and fairly. Anything short of this will amount to procedural injustice and lack of fairness contrary to the Convention.

THE EVOLUTION OF EJ

In the 1970s and 80s, the predominant civil rights and grassroots environmental struggles in the United States (US) by the African-American community where they vehemently fought and resisted the location of toxic, noxious, and hazardous waste sites/facilities and other environmental harms in their communities were considered

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and regarded as unjust projects (Gutkowski, 2020). These intensive environmental activistivism that sought EJ for the black people and their community gradually metamorphosed into EJ movement in the US and eventually succeeded in attracting and drawing attention nationwide as a worthy movement voicing their resistant to the location of harmful waste projects and facilities in the black communities in the US (Bakari, 2019).

Laurent (2011) captured the evolution of EJ thus, "although it emerged as a public concern as early as 1820, the notion of environmental justice was really born in the United States in the mid-1980s, in the context of the struggle for racial equality. It first served to designate at once racial and ethnic inequalities in exposure to environmental risk (pollutions, toxic waste) and the exclusion of racial minorities, especially African-Americans, Hispanics and Native Americans, from the definition and implementation of environmental policies in the US (inequalities and discriminations sometimes characterized as manifestations of environmental racism."

The EJ movement sought and demanded for an equal and equitable distribution of all environmental harms evenly in all the communities in the US regardless of the colour of the skins of those living in those communities as a measure of fair and Distributive Justice (DJ) (Soloway, 2021). The significance of DJ is the recognition of or acknowledge of the existence of EJ where humans are known to be harming the nature, ecosystem, atmosphere and the environment as a whole; but this also extends and recognizes the fact that EJ arises from racial, gender and class discrimination in the US where the black people were disproportionately affected and disadvantaged when it comes to the issue of the location of waste and hazardous facilities (Norgaard and Reed, 2017). In the same vein, the essence of DJ is for perpetrators to be informed of various environmental injustices and discrimination they have perpetrated against vulnerable groups and communities and the need to ensure that justice prevails where environmental benefits and harms are shared and distributed equally and regardless of race or colour (Watts and Hodgson, 2019).

Undoubtedly, in the US, prior to the eruption of the EJ movement, blacks and other people of color were being exposed to environmental hazards than whites (Bryant and Mohai, 2019). This is a historical fact and it was done using laws to perpetuate environmental discrimination against the black people and community

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(Emmett and Nye, 2017). It is against this backdrop that the EJ movement became intensive in order to redress the injustices by opposing the destructive operations of multi-national corporations and vehemently advocating for fair spatial planning in all environmental decision-making.

Over and above, EJ is likely to be achieved in a situation where everyone is subjected to equal degree of protection from environmental that is devoid of health hazards. In the same vein, everyone should also have equal access to the decision-making process where everyone live and work in healthy environment. The law and regulations regarding how the environment is utilised and managed should be fairly applied and everyone must be subjected to the same law. The poor should not be exposed to harmful environment while the rich live in clean environment.

THE PRINCIPLES OF EJ

EJ places the people impacted by the environmental decisions and more importantly activities that will impact the community at the centre of all developmental agenda (Wolch et al., 2014). The protection of rights to well-being and fundamental rights of the people to live in an environment that is safe and healthy is imperative. EJ is also combating environmental injustices such as those emanating from toxic waste being located within a black community (Temper, 2019). The location of the toxic waste in poor black communities violates basic human rights to dignity, clean environment and as such, it is imperative for prompt remediation and prevention. In this regard, EJ brings about broad integrating environmental issues into fundament human rights within the context of ensuring environmental accountability.

Against the backdrop of the above, the principles of EJ connote that there is need to, ensure that ample environmental protection and safety are provided for the disadvantaged communities and the vulnerable in the society; provide widespread cultural awareness and address potential language barriers regarding communication and engaging in environmental decision making where everyone have the absolute right to be involved and actively participate as equal partners at every level of decision making which requires the consideration of the needs assessment, planning, implementation, enforcement and evaluation; ensure that environmental education is promoted and widespread; broad participation by

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everyone in the environmental decision-making process should be paramount regardless of race, colour or socioeconomic status. EJ also seeks to uphold sanctity and sacredness of the planet and Mother Earth where the environment and all species continue to be sustainable; all legislation and policy should be geared toward mutual respect and justice for all the people and devoid of any form of discrimination, prejudice, exclusion, segregation or bias; all the natural resources should be utilized responsibly, sensibly and sustainably; the protection of the poor and vulnerable communities being used as site for the disposal of toxic/hazardous wastes and poisons that threaten the fundamental right of the people to clean air, land, water, atmosphere, and the environment. EJ demands for remediation and accountability for environmental damage and infractions (Schlosberg and Collins, 2014). It is also about protecting the right of all workers to a safe and healthy work environment without being forced to choose between environmental hazards/unsafe livelihood and unemployment. The victims of EJ should be protected and have the right to receive full compensation and reparations for damages as well as quality health care for health issues caused as a result of the injustice (Kaiman, 2015). If EJ is perpetrated by government action or inaction, this would amount to a violation of international law, the Universal Declaration on Human Rights, and the United Nations Convention on Genocide and other relevant international laws instruments internationally, nationally, regionally and locally; EJ recognizes and demands for stringent application and full enforcement of principles of free informed consent in any environmental decision-making at all stages of the discussions or processes. In the same vein, EJ requires individuals to apply themselves and make choices responsibly to consume natural resources sustainably in a way that produce as little waste as possible in order to ensure that the environment is clean and healthy for all.

Nowadays, economic growth and development have led to the construction of many projects by corporations who are motivated and driven by profit that are negatively impacting the environment (Epstein et al., 2018). To address this, government agencies and legislators have continued to implement policies and enforce the laws to protect the communities and the vulnerable from these activities.

It is pertinent to point out that the utmost influential principle and most recognised concept of environmental regulation and policy-making is without doubt that of sustainable development (Hák et al., 2016). The concept of sustainable

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development gained full recognition at the World Commission on Environment and Development (WCED) in 1987. It is well-established that the definition of sustainability encompasses three main strands, and these are: economic development; environmental protection and conservation; and human equity.

EJ justice entails that the authority does what is just by ensuring that when it comes to the location of projects, the authority should bear in mind DJ, PJ and interpersonal justice also known as public participation and unhindered access to information (MacQueen and Bradford, 2017). If government adheres to these, the citizens will have trust in government and they would be able to support government projects because the government has invoked and entrenched justice in all decisions where the people are involved from the inception to the end. Full disclosure and ability to involve the people would undoubtedly result in broad cooperation (Fung, 2015).

THE INFLUENCE OF INTERNATIONAL LAW INSTRUMENTS ON EJ

International law instruments play significant roles in ensuring and guaranteeing EJ and, as such, their influences have made many countries to take critical precautions in depositing toxic waste in poor communities and neighbourhoods (Faber, 2008). Typically, the Rio Declaration champions the precautionary principle insisting amongst others that should there be any threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Anyshchenko, 2019). The essence of this is to prevent harm to human health and the environment where full effect of a given action is not yet known. The inherent risk in any proposed project needs to be critically examined and factored in to establish whether a threat of harm exists or not before further steps are taken. Undoubtedly, if the project will harm and destroy the environment, it is imperative that full precaution should be taken and by so doing, the promoters of the project would have to adhere strictly to the requirements of the principles of EJ and might therefore do things differently such as ensuring the mitigation of the identified risks or even abandon the project entirely.

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At the international level, even before the EJ movement, the international court has had the opportunity to consider whether a country activities are harmful to the other, such as, whether injustice was not perpetrated by a country that allows noxious emissions to escape from its country and affect another country. The principle of prevention is closely linked to the obligation of states not to cause harm to the environment of other state and this principle have been judicially interpreted in the case of "*Trail Smelter Case* (*United States v Canada*) International court," reports of international arbitral awards April 16, 1938 where the court held that "in 1935 a Canadian based corporation (defendant) owned a smelter plant which emitted hazardous fumes (sulfur dioxide) that caused damage to plant life, forest trees, soil, and crop yields across the border in Washington State in the United States (plaintiff). The United States took Canada to court. The same year, a Convention established an arbitral tribunal consisting of two national members and a neutral chairman. The Tribunal was aided by scientific experts appointed by the governments. In its first decision in 1938, the Tribunal concluded that harm had occurred between 1932 and 1937 and ordered the payment of an indemnity of $78,000 as the 'complete and final indemnity and compensation for all damages which occurred between such dates. The Tribunal's second decision (1941), was concerned with the final three questions presented by the 1935 Convention, namely, responsibility for, the appropriate mitigation and indemnification of future harm." The Tribunal concluded, with respect to future harm, that "no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence" (Trail Smelter Arbitration, Russel Miller, in: Max Planck Encyclopedia of Public International Law, 2007). Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration are potent treaties that enshrined protection for the EJ.

Because of its potential to uphold EJ, the principle of prevention has found expression in many international treaties such as in "Article 3 of the UN Framework Convention on Climate Change" (UNFCC). Article 2 of the "Convention for the Protection of the Marine Environment of the North-East Atlantic" (the 'OSPAR Convention') was signed by the member states in Paris on 22 September 1992. It was adopted together with a "Final Declaration and an Action Plan." Article 4(2) of

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the “Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal” was adopted on 22 March 1989, and Article 14 of the Convention on Biological Diversity (CBD). These international law instruments imposed stringent duty to prevent harm to other States and that they should exercise due diligence by introducing policies, legislation and controls generally aimed at preventing harm and minimising risk of transboundary harm. Undoubtedly, at the international level, the principle of prevention is the most potent tool to address environmental injustices.

SOUTH AFRICAN EJ OUTLOOK

Post 1994 South African democratic dispensation and government have enabled EJ to thrive in South Africa. This assertion is made against the backdrop that pre-1994 apartheid and colonial era entrenched severe environmental injustices through the instrumentalities of laws and policies **(**Noyoo, 2019). The majority black people were segregated and discriminated by situating various harmful and dangerous waste facilities in the poor black communities in various places in South Africa.

Against the above backdrop, post-1994 South Africa have introduced and are implementing transformative progressive laws and policies to undo the injustices of the past and bring about, inclusivity, equality and equity to environmental issues and decisions (Van Wyk and Oranje, 2014). More importantly, the The Constitution of the Republic of South Africa, 1996 clearly provides for EJ in section 24 which states inter that “everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the present and future generations, through reasonable legislative and other measures that.” Essentially, section 24 enjoins the state to protect the environment and also to enact legislation that preserves and ensures sustainable environment.

The Constitution is the foundation of EJ in South Africa and fosters broad realisation of clean environment. To this end, the legislators have enacted many legislation to give effect to section 24 of the Constitution (Pieterse, 2014). Prominent amongst them is the National Environmental Management Act 107 of 1998 (NEMA) and in particular, section 2(4)(c) which clearly provides that EJ “must

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be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged communities."

More importantly, the preamble to NEMA state that "whereas many inhabitants of South Africa live in an environment that is not harmful to their health and well-being; everyone has the right to an environment that is not harmful to his or her health or well-being; and everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation."

SOUTH AFRICAN JURISPRUDENCE FOSTERING EJ

Remarkably, South African courts have been championing EJ and this is reflected in numerous judgements that have been handed down. The courts were able to foster EJ because the Constitution is transformative in nature and enshrined provisions that sought to redress past environmental injustices in South Africa. This section considers some of these judgements and their implications for EJ.

In the case of "*Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province 2007 (6) SA 4 (CC),*" *the Const*itutional Court had the opportunity to look at the issue of an inter-connected approach to environmental rights. More importantly, in this case, the court recognised the significance of interrelationship between the environment and development. Interestingly, the court recognised the need for the protection of the environment while pursuing social and economic developments. To achieve sustainable development, the court highlights the imperatives of the integration of environmental protection and socio-economic development. The court said It envisages that environmental considerations will be balanced with socio-economic considerations through the idea of sustainable development. By so doing, the court was of the view that section 24(b)(ii) which provides that the environment will be protected by securing 'ecologically sustainable development and use of natural resources while promoting justifiable economic and social development would be realisable.

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This case perfectly indicates that regardless of socio-economic needs, if the development would amount to harm to the community and the environment, it is not worth the while to go ahead with such developmental project. Essentially, such project should be relooked and the inherent environmental risks identified should be addressed and mitigated before it can progress.

Essentially, the Constitutional Court considers environmental right holistically and comprehensively and commented on the significance of protecting the environment and by stating thus "the importance of the protection of the environment cannot be gainsaid. Its protection is vital to the enjoyment of other rights contained in the Bill of Rights; indeed; it is vital to life itself. It must therefore be protected for the benefit of present generation who holds the earth in trust for the next generation."

In the case of "*Mining and Environmental Justice Community Network of South Africa and others v Minister of Environmental affairs and others* (50779/2017) [2018] ZAGPPHC 807; [2019] 1 ALL SA 491 (GP); "an application was brought in terms of which the "applicants seek to have decisions of the Minister of Environmental Affairs and the Minister of Mineral Resources to permit coalmining activities in a protected wetlands area reviewed and set aside. There were numerous grounds of reviews relied on by the applicants, the principal of which is the Ministers' failure to observe the provisions of sections 3 and 4 of the Promotion of Administrative Justice Act No 3 of 2000 (PAJA). The Ministers conceded non-compliance with these provisions but contended that they were justified in departing therefrom. A further question central to the matter was the proper interpretation of the relevant statutory provisions governing the requisite consent of the Ministers."

The court ordered as follows "the decision to grant written permission to conduct commercial mining in the Mabola Protected Environment (MPE) in terms of section 48(1)(b) of the National Environmental Management: Protected Area Act, No. 57 of 2003 (NEMPAA) is reviewed and set aside. In reconsidering the written permission to conduct commercial mining in the Mabola Protected Environment in terms of section 48(1)(b) of NEMPAA, the court directed that the issuing authorities should consider all relevant considerations and-to comply with sections 3 and 4 of the Promotion of Administrative Justice Act, No. 3 of 2000; to take into account the interests of local communities and the environmental principles referred to in section

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2 of the National Environmental Management Act, No. 107 of 1998 (NEMA); not to consider the granting of permission to conduct commercial mining in the Mabola Protected Environmental in terms of section 48(1)(b) of NEMPAA until a management plan for the MPE has been approved in terms of section 39(2) of NEMPAA and to consider the contents thereof."

In the case of "*Wildlife Society of Southern Africa and Others v Minister of Environmental Affairs and Tourism*1996 (3) SA (TKS)," the case relates to the "grant of rights of occupation and the allocation of sites within the Transkei coastal conservation area to private individuals and the construction of structures on such sites which resulted in the environmental degradation of the area which was vehemently restricted by the applicants on the ground that there was coastal conservation area which placed restrictions on development and building within that area."

The court held that "where a statute imposed an obligation upon the State to take certain measures in order to protect the environment in the interests of the public, a body such as the First Applicant whose main object was to promote environmental conservation in South Africa should have *locus standi* at common law to apply for an order compelling the State to comply with its obligations in terms of such statute. The Court held that to afford *locus standi* to a body such as the First Applicant in circumstances such as the present case would not open the floodgates to a torrent of frivolous or vexatious litigation against the State by cranks or busybodies." The court granted the application for mandamus compelling the state to comply with its obligations to protect environment imposed by statute.

The case of "*Khabisi No and Another v Aquarrella Investment (Pty) Ltd Others*, 2008 (4) SA 195 (T)" considers the "property clause encapsulated in section 25 of the Constitution against the right to the environment which is not harmful to the health or well-being of the people as embodied in section 24 of the Constitution. The issue in this case is perhaps not so much which right is paramount above the other but how to interpret the two competing rights in such a manner that there is harmony instead of conflict." The court held that "in terms of section 24(b)(iii) of the Constitution, the applicants owe the public a duty to ensure ecologically sustainable development and the use of nature resources which is consonant with the ethos of the Constitution. In his compliance notice (STC 15), second applicant stated it clearly

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and unequivocally, that the type of development undertaken by the respondents are likely to result in serious damage to the environment, as it was taken place on sensitive ridge ecosystem and related biodiversity and Red Data Plant Species. Notwithstanding this, the respondents elected to persist with their development, ostensibly for commercial reasons. One shudders to imagine the amount of damage to the environment and ecology which would result if all people who owned properties were to develop them as they wished, much against any objections raised by a competent environmental authority. The court aptly remarked that our fledgling and nascent democracy with its promise of a healthy environment to the people, cannot afford such conduct."

The court also held that "Constitution of a healthy environment is for everyone. It is not in dispute that applicants, as officials responsible for a healthy environment have a duty to promote sustainable development which are underpinned by the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that all developments serve present and future generations and not only the economic and commercial needs of property owners or developers. (see the Preamble to the National Environmental Management Act 107 of 1998). A failure to adhere to this vision would regrettably result in serious environmental disaster."

In the case *of* "*Silvermine Valley Coalition v Sybrand van der Spuy Boerderye and Others* 2002 (1) SA478 (C),"the court highlights the significant of the activities of one of several NGOs in bringing law suits to protect the environment and as such, even if the law suit failed, no cost would be awarded against the NGOs; the court observed that "in further support of this particular conclusion it seems to me that NGOs should not have unnecessary obstacles placed in their way when they act in a manner designed to hold the State and indeed the private community accountable to the constitutional commitments of our new society, which includes the protection of the environment." To support this assertion, the court invoked section 32(2) of NEMA which provides as follows "a court may decide not to award costs against a person who, or a group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision including a principle of this Act or any other statutory provision concerned with the protection of the environment or the use of natural resources if the court is of the opinion that the person or group of persons

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acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought."

The case of "*South Durban Community Environmental Alliance v Head of Department: Department of Agriculture and Environmental Affairs*2003 (6) SA 631 (D)" demonstrates that the government officials in administering and implementing environmental legislation should ensure due diligence and efficiency. The court held that the officials were complicit and found wanting in their duties by allowing environmental harmful project to be conducted and continued. The court admonished thus "what is the issue here is simply the validity of this purported exemption granted in terms of section 28A of the Environment Conservation Act 73 of 1989. In fact, what is the issue is the seriousness and trustworthiness with which officials in South Africa approach their duties in terms of environmental legislation. The environmental impact assessment, imperfect a tool as it may be, is the best safeguard currently available for ensuring that the needs, interests and constitutional rights of people are taken into account when development takes place." Furthermore, the court held that "environmental Law-Environmental Conservation Act 73 of 1989, section 28A-validity of exemption granted in terms of section 28A-review brought under section 36 of Environmental Conservation Act. Application for and granting of exemption must be in writing. Purported exemption not valid as it was not given in writing nor was it based on written application wherein reasons were given for exemption."

In the case of **"***Harmony Gold Mining Company Ltd v Regional Director: Free State Department of Water Affairs and Others* (971/12) [2013] ZASCA 206; [2014] 1 All SA 553 (SCA); 2014 (3) SA 149 (SCA) (4 December 2013)," the court considered the "Directive in terms of section 19(3) of the National Water Act 36 of 1998-whether directive: (a) became invalid or unenforceable vis-à-vis gold mining company that was required to take anti-pollution measures when it ceased to be a person who owns, controls, occupies or uses land on which gold mining operations were undertaken that caused pollution (b) is invalid for want of specifying date by which the anti-pollution measures must be completed; (c) in its own terms is infinite and therefore invalid; or (d) of itself by implication came to an end." The court held

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that "the principles enumerated in section 2 of NEMA apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and guide the interpretation, administration and implementation of [NEMA], and any other law concerned with the protection or management of the environment. These principles must be observed as they are of considerable importance to the protection and management of the environment." One principle is "that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied." And another is that "the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment."

In the case of "*Minister of Health and Welfare v Woodcarb (Pty) Ltd and Another* 1996 (3) SA 155 (N)," the applicant sought an interdict to prevent a saw-milling plant to continue to carry on "operations on the ground that certain provisions of the Atmospheric Pollution Prevention Act 45 of 1965 had not been complied with. The court found that the respondent had been operating the burning process without the required certificate. The court also held that 'the generation of smoke in these circumstances, in the teeth of the law as it were, is an infringement of the right of the respondents neighbours' right to an environment which is not detrimental to their health or well-being as enshrined in the Interim Constitution."

CONCLUSION

EJ demands that environmental benefits and harms should be shared equitably and equally. Considering that what normally triggers resistant to EJ is the deliberate stance to site toxic waste in the communities where poor people live because they are considered not deserving of enjoyment of clean environment and wellbeing. As such, EJ and human rights are closely linked. As a matter of fact, EJ is a component of the human rights to dignity, clean environment and human well-being and health as enshrined in various international, national, regional and local instruments including the South African Constitution and legislation. The Constitution is alive to the fact that in South Africa, despite the post-1994 democratic dispensation, there is tendency by those who have the responsibility to implement EJ to turn bind eyes and perpetrate EJ against the poor and vulnerable. To address this,

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the courts in South Africa have been living up to their responsibility of providing judicial leadership when called upon to adjudicate issues pertaining to EJ. The remarkable pronouncements of the courts have given impetus to uphold the human rights of the poor, indigents, vulnerable and not to be discriminated or deliberately treated as if they are less humans.

The realisation of EJ is significant and it is important that the environment is protected and taken care of so that it can also take care of the well-being and health of the people. Development projects should not just be for economic benefit but should be sustainable by looking at how it will impact people and the environment and how we can prevent such.

More importantly, free informed consent is needed before any environmental decision-making regarding developmental projects' location and implementation. If this is lacking, the court would not hesitate to rule the decision invalid.

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