

**Sustainable Development:**  
**some environmental legal considerations**

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## Outline of Presentation

- IMBEWU Enviro-Legal Specialists.
- Location of sustainable development in South African law.
- SD and the CDM.
- Carbon Disclosure Project.

### IMBEWU Enviro-Legal Specialists (Pty) Ltd.

- Specialist South African environmental, health & safety climate change (*sustainability*) legal consultancy.
- Johannesburg-based / Eastern Cape satellite office.
- In conjunction with an Attorneys firm (Warburton Attorneys).
- Wide range of South African environmental, climate change health & safety and sustainability legal advice, electronic legal registers, legal training.
- Specialization: issues pertaining to implementation of climate change mitigation projects, e.g., CDM projects, in South Africa:
  - relevance of the international context,
  - project initiation and development,
  - authorisations and consents (including EIA),
  - negotiation and contractual matters (management contracts, agreements for purchase and sale of emissions reductions).

## Location of sustainable development in South African law

## Constitution Act No. 108 of 1996

- "24. Environment  
Everyone has the right -
  - (a) to an environment that is not harmful to their health or well-being; and
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
    - (i) prevent pollution and ecological degradation;
    - (ii) promote conservation; and
    - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

## DEAT Law Reform Process

- Part of a wider "renovation" of South African legislation.
- Objective:
  - overhauling important general environmental legislation, resource and sectoral legislation; and,
  - introducing new environmental legislation and policy documents concerning important aspects relevant to environmental management.

## DEAT law reform: products

- National Environmental Management Act No. 107 of 1998.
- National Environmental Management Principles:
  - apply alongside relevant considerations, including the State's responsibility to respect, protect, promote and fulfill the social and economic rights in the Constitution; and
  - serve as the general framework within which environmental management and implementation plans must be formulated;

## NEMA & sustainable development

- Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- Development must be socially, environmentally and economically sustainable.

Overleaf: NEMA definition of sustainable development

## SD defined

- Sustainable development requires the consideration of all relevant factors including:
  - That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  - That pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  - That the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
  - That waste is avoided, or where it cannot be altogether avoided, minimised and reused or recycled where possible and otherwise disposed of in a responsible manner;

## SD defined(2)

- That the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
- That the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
- That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
- 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.

## NEMA Principles – other highlights

- Integrated environmental management.
- Environmental justice.
- “Cradle-to-grave” (full lifecycle) responsibility.
- Land held by the state in public trust.
- “Polluter pays”.

## SD and the CDM

## Clean Development Mechanism

- The CDM's location in international law is the (much-maligned) Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC).
- A "market-based" mechanism intended to encourage a change in the behaviour of greenhouse gas emitters.
- Permits an entity in a developing country to:
  - implement a project which must achieve *inter alia* greenhouse gas mitigation and sustainable development;
  - generate a so-called "carbon credit"; and,
  - sell this carbon credit into an international market.
- A carbon credit represents the *absence* of one tonne of CO<sub>2</sub> that would - in a business as usual scenario - have been admitted to the atmosphere.

## CDM: Purpose

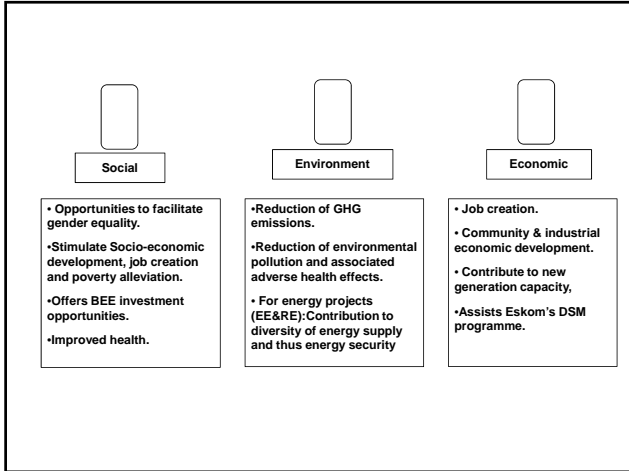
- Kyoto Protocol Art. 12:
  - To assist non-Annex 1 Parties in achieving sustainable development (in accordance with that country's understanding of sustainable development).
  - To contribute to the ultimate objective of the UNFCCC.
  - To assist Annex 1 Parties in achieving compliance with "part" of their Kyoto greenhouse gas emissions reductions targets.
- Lead to the transfer of environmentally safe and sound technology and know-how.

## Designated National Authority

- "Host" country designates a national authority for the CDM.
- Custodian of CDM in that country.
- Regulatory function:
  - CDM project evaluation and approval in accordance with the international rules, including confirming that the project assists in the achievement of sustainable development in South Africa.
- Promotional function:
  - To promote and facilitate the development of CDM projects in South Africa.
  - Secure an adequate share of CDM investment in South Africa.
  - To promote CDM projects of a developmental nature.
  - Ensure that the mechanism is in the national interest.

## SD Criteria

- DNA follows the NEMA lead in regard to sustainable development.
- SD Criteria
  - **Economic:** Does the project contribute to national economic development?
  - **Social:** Does the project contribute to social development in South Africa?
  - **Environmental:** Does the project conform to the National Environmental Management Act principles of sustainable development?
  - [Cultural]?



SD Criteria...cont	
Criteria	Indicator
<b>Environmental</b>	Impact on local environmental quality Change in usage of natural resources Impacts on biodiversity and ecosystems
<b>Economic</b>	Economic impacts Appropriate technology transfer
	Alignment with national provincial and local

# Carbon Disclosure Project

- ## Context
- Increasing international awareness of the potentially adverse effects of climate change.
    - Inconvenient Truth;
    - The Stern Review;
    - IPCC Fourth Assessment Report.
  - Coming into being of an international commodities market trading in carbon credits.
  - Increasing corporate awareness of the need to curtail greenhouse gas emissions.
  - Rise of "ethical investment".

## CDP

- An initiative to have FT500 and other companies to disclose their greenhouse gas emissions profiles.
- Began in 2000 – a request to companies to report.
- Motivation to respond: letter of request is sent under the auspices of 155 signatory investors representing US\$ 21 trillion.
- Investors include: ABN Amro Asset Management, BNP Paribas Asset Management, Generation Investment Management, Merrill Lynch Investment Managers and Morley Fund Management.
- Relates closely to the effect on a company's value due to the reality of a "carbon constrained" future.

## Carbon Disclosure Project (CDP4) Greenhouse Gas Emissions Questionnaire

- 2006 General: How does climate change represent commercial risks and/or opportunities for your company?
- Regulation: What are the financial and strategic impacts on your company of existing regulation of GHG emissions, and what do you estimate to be the impact of proposed future regulation?
- Physical risks: How are your operations affected by extreme weather events, changes in weather patterns, rising temperatures, sea level rise and other related phenomena both now and in the future? What actions are you taking to adapt to these risks, and what are the associated financial implications?

- Innovation: What technologies, products, processes or services has your company developed, or is developing in response to climate change?
- Responsibility: Who at board level has specific responsibility for climate change related issues and who manages your company's climate change strategies? How do you communicate the risks and opportunities from GHG emissions and climate change in your annual report and other communications channels?
- Emissions: What is the quantity in tones CO<sub>2</sub>e of annual emissions of the six main GHG's produced by your owned and controlled facilities in the following areas, listing data by country?
  - Globally.
  - Annex B countries of the Kyoto Protocol.
  - EU Emissions Trading Scheme.

Direct Equity, Million Tonnes CO <sub>2</sub> Eq (Includes CO <sub>2</sub> , CH <sub>4</sub> , N <sub>2</sub> O)	2003	2004	2005
Global Corporate Emissions	137	138	138
Annex B Countries	94	94	91
EU ETS Covered Facilities	18	18	18

- ❖ **Products and services:** What are your estimated emissions in tones CO<sub>2</sub>e associated with the following areas and please explain the calculation methodology employed.
  - Use and disposal of your products and services?
  - Your supply chain?
- ❖ **Emissions reduction:** What is your firm's current emissions reduction strategy? How much investment have you committed to its implementation, what are the costs/profits, what are your emissions reduction targets and time-frames to achieve them?
- ❖ **Emissions trading:** What is your firm's strategy for, and expected cost/profit from trading in the EU
- ❖ **Emissions Trading Scheme, CDM/JI projects and other trading systems, where relevant?**
- ❖ **Energy costs:** What are the total costs of your energy consumption, e.g. fossil fuels and electric power? Please quantify the potential impact on profitability from changes in energy prices and consumption

Text of the UNFCCC / Kyoto Protocol / Marrakech Accords:

<http://www.unfccc.int>

UNFCCC CDM website:  
<http://www.unfccc.int/cdm>

Other:

[www.pointcarbon.com](http://www.pointcarbon.com)  
[www.ieta.org](http://www.ieta.org)  
[cdmwatch.org](http://cdmwatch.org)  
[cd4cdm.org](http://cd4cdm.org)

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THANK YOU!  
  
QUESTIONS