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The Role of Local Government in the Management of Wetlands through the vein of Article 3.1 of the Ramsar Convention: The Experience of South Africa¹

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Bramley Jemain Lemine

Lecturer, Cape Peninsula University of Technology

South Africa

Email: LemineB@cput.ac.za

To my late father-Jeffrey H Lemine

Abstract

South Africa is a signatory to the Ramsar Convention of 1971. This wetland-specific treaty aims to cease the loss or the disappearance of wetlands. The Ramsar Convention has been incorporated into South African law by specific environmental management acts. Article 3.1 of the Convention obligates parties to formulate and implement their planning to promote the conservation of wetlands in their list, and the wise use of wetlands within the territory. “Contracting parties” and “states” are synonymous, and in South Africa- the state includes local government. As a state functionary, they would have to

¹This contribution is a combined adaptation of my theses: *The role of local government in the effective implementation of the National Environmental Management: Integrated Coastal Management Act 2008- a case study of the Draft Cape Town Metropolitan Coastal Protection Zone Management by-Law* (Unpublished thesis UWC, 2012) and *South Africa's response in fulfilling her obligations to meet the legal measures of wetland conservation and wise use* (Unpublished thesis CPUT, 2018).

uphold and implement the requirements of the convention, including article 3.1 of the Ramsar Convention. However, according to the Constitution of the Republic of South Africa of 1996 (Constitution), only the national and provincial governments have shared legislative and executive powers over matters relating to the environment. This study relied on secondary written sources, including international conventions, legislation, books, journal articles and government publications to employ a thematic analysis to ascertain the role of local government in the management of wetlands. This paper aims to set out the two obligations created by article 3.1 of the Ramsar Convention in two distinct legs and addresses each separately. Thereafter, it provides an overview of South Africa's local government and environmental law within the context of article 3.1. The requirements of article 3.1 are then applied to the local governmental law and environmental laws to provide a pathway for ascertaining the role of local wetland management. The study finds that strings must be pulled from various pieces of legislation to provide a holistic view of the role. Further, that the throttling of local government wetlands efforts is not only in the law, but other factors may play a role in disabling them. Finally, the recommendations include categorising the wetland duties through the identified aspects of management.

Keywords: *Local government, Wetland, Wise use, Management, Article 3.1, Ramsar Convention.*

Introduction

The mission of the Convention on Wetlands of International Importance, especially as Waterfowl Habitat 1971 (known as the Ramsar Convention, hereinafter the Convention), is “the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world” (Ramsar Convention Secretariat, 2016:1). This prematurely creates the expectation of local wetland involvement. The Convention came into force on 21 December 1975 in South Africa (ramsar.org/wetland/south-africa). As a state party, South Africa is bound by the enabling provisions of the Convention as there is no indication of any reservations signed to any provision (ramsar.org/wetland/south-africa). Thus, article 3.1 of the Convention finds its application here too. Article 3.1 states unequivocally that “the Contracting Parties shall formulate and implement their planning to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory”. Inherent in article

3.1 are two (1. Wise Use of Wetlands and 2. Designating Wetlands of International Importance) of the three (3. Cooperate Internationally) pillars of the Convention (Ramsar Convention Secretariat, 2016:37). Article 3.1 creates two binding provisions: first, it states the need for optimising the protection of the State's Listed (Wetlands of International Importance) wetlands. Second, the application of wise use to all other wetlands (inclusive of non-listed) within the jurisdiction (Finlayson *et al*:2011:183).

Protecting wetlands is important because it plays a crucial role in food and water security (Lemine, 2020:157). It is home to various species, and important for human and other life (Paterson, 2017: paragraph 13.1.3). Wetlands enable groundwater recharge during flood season, which is beneficial in areas used for agricultural (Turpie, 2009: 45). Furthermore, it has been submitted that there is an inextricable link between a healthy wetland and protecting fundamental human rights (Lemine, 2020:157). Another significant function of a wetland is that it acts as a carbon sink which is a key feature for mitigating climate change (Turpie, 2009: 45). However, this ecosystem's existence is threatened as indicated in the *Revised Strategic Plan 2015/2016 to 2019/2020* of the Department of Water and Sanitation. It states that 65% of wetland ecosystems have been threatened and 48% critically endangered (page 29). The legislative framework, though fragmented, aims to protect some of these functions.

Regarding the United Nations Sustainable Development Goals (SDGs) of Agenda 2030, it has been submitted that "wetlands contribute to all 17 SDGs ...their conservation, wise use, and restoration represents a cost-effective investment" (ramsar.org). To safeguard green infrastructure, nature-based solutions (NBS) bring about the realisation of nature (wetlands) that aid societies in addressing various environmental, social and economic challenges in sustainable ways. More relevant to this paper is that NBS emphasises the significant contribution well-managed ecosystems may offer (Liquete *et al.*, 2016:392).

Based on the invaluable benefits wetlands provide to communities, its well-management is prudent at a local level, considering that local government (hereinafter LG) is the sphere of government that functions closest to the people (Du Plessis, 2008: 119). South Africa boasts 283 municipalities that completely covers the entire country in a "wall to wall" manner (Nealer and Bertram, 2014: 241).

Local Governments are a distinct branch of government that must execute their duty independently but cooperatively (Constitution, section 41(1)(h)). Their power and functions stem from the Republic of South Africa Constitution of 1996 (hereafter Constitution) and are given effect in the Local Governmental Municipal Systems Act 32 of 2002 (hereafter LGMSA), amongst other legal instruments. The LGMSA provides tools that aid them in effectively implementing and executing their functions. Regarding matters on the “environment”; this is a shared legislative and executive duty of national and provincial government only (Constitution, Schedule 4A). Countries including Uganda, Switzerland and Brazil make explicit provision for the protection of wetlands within their constitutions (De Klemm and Shine, 1999:163-164), and other countries that have considered other strategies, which include the promulgation of wetland-specific legislation and policy by the Republic of India (Wetlands (Conservation and Management) Rules, 2017) and Namibia (Namibia’s Draft Policy on Wetlands, 2004). The enabling provisions are alluded to later in this paper, with specific reference to two African countries, with local government views.

Local government in South Africa enjoys the law-making power to legislate and execute their duties directly or indirectly to matters relating to the environment (Constitution, 1996), as demonstrated later below. They may acquire more wetland duties from the existing, also fragmented, specific environmental management acts (SEMAS), and it has been submitted that the current plethora of laws could be the cause of strangulating local government (Steytler, 2008:518) - never mind the fact that the wetland legislative framework is fragmented. The Constitution, LGMSA and certain SEMAs will form the basis for this paper to discern the role LG plays in the management of wetlands within the context of article 3.1.

Article 3.1 of the Ramsar Convention

Before venturing into the intricacies of article 3.1 and its features within South African law for LG, the meaning of a “wetland” must be clarified for purposes of developing a national wetlands inventory; applying the relevant resource protection laws; and fulfilling management obligations assigned to these, to mention a few. Having said this, Article 1 of the Convention defines a “wetland” as:

areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. (Ramsar Convention, 1971: Article 1)

In South Africa's National Water Act 36 of 1998 (hereafter NWA), a "wetland" is a

land that has transitional and aquatic systems where the water table is usually at or near the surface, or the land periodically covered with shallow water. Land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

The emphasis in the latter definition is on the aspect of "land", which arguably includes all the individual items mentioned in the former definition and could be read as being broader or more inclusive in its application. For example, even though the latter definition does not expressly include the word "artificial", the execution hereof requires land use. Thus, "wetland" must be understood to mean that stated in the NWA for purposes of article 3.1.

Article 3.1 of the Ramsar Convention states that:

the Contracting Parties shall formulate and implement their planning to promote the conservation of the wetlands included in the list, and as far as possible the wise use of wetlands in their territory.

This article refers to two categories of wetlands: listed (Ramsar Sites) and inclusive of non-listed. For those listed, states are obliged (*shall*) to ensure that wetlands conservation is bolstered within their planning. For the other (inclusive of the non-listed) wetlands, states are required to apply the rule of wise use to those within their jurisdiction. No express provision is made the way states who share wetlands should execute their plans. However, the third pillar of the Convention expressly refers to "Cooperation Internationally". Similarly, there is no express provision for wetlands restoration, specifically. However, in South Africa's National Environmental Framework Act, section 28 provides the duty of care and remediation of environmental damage, which infers promoting conservation and restoration.

Regarding the first leg of Article 3.1, the reference here is made to wetlands of international importance (listed/Ramsar Sites). Article 2.2 of

the Ramsar provides that Ramsar Sites are selected based on their “international significance in terms of ecology, botany, zoology, limnology or hydrology”. Furthermore, those wetlands that are of international importance to waterfowl at any season should be included (Article 2.2). South Africa boasts 27 Wetlands of International Importance, with a surface area of 563 005 hectares (ramsar.org/wetland/south-africa). However, it was submitted that their designation does not automatically warrant protection in South African law (Dini and Everard, 2016:3). The recommendation by the Ramsar Administrative Authority in South Africa requires that these be afforded the protections under the SEMA National Environmental Management: Protected Areas Act 57 of 2003 (hereinafter NEMPA) (Dini and Everard, 2016:3). The NEMPA aims to, among other things, provide a framework for declaring and managing protected areas; and, as part of its strategy to manage and conserve biodiversity, effect a national system or register of protected areas. This national register is inclusive of national, provincial and local protected areas. The NEMPA defines a local protected area as “a nature reserve or protected environment managed by a municipality” (NEMPA, definitions list). Local protected areas must be protected, conserved, and managed by developing and implementing a management plan (NEMPA, section 41). Of relevance and discussed later below is that the NEMPA lists world heritage sites (WHS) as part of the protected area system, which has incorporated the enabling provisions of the World Heritage Convention Act 9 of 1999 (WHCA).

It was submitted that the WHCA had been incorporated into the NEMPA by listing world heritage sites as a protected area (WHCA, section 9(b)). Part of the WHCA objectives includes providing a framework for the “cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites....” (NEMPA, section 2). In South Africa, the iSimangaliso Wetland Park (previously Greater St Lucia Wetland Park) has been listed as a WHS in terms of the WHCA (<https://whc.unesco.org/en/list/914/>). This WHS boasts four wetlands: St Lucia Lake System, Turtle Beaches/ Coral Reefs of Tongaland, Kosi Bay and Lake Sibaya (<https://whc.unesco.org/en/list/914/>). Section 43(1)(d) of the WHCA provides that the Minister may confer certain powers and functions upon LG. These powers include, but are not limited to, the “identification, protection, conservation, presentation and transmission

of cultural and natural heritage to future generations” (WHCA, section 3). The aspect of “identification” suggests LG’s role in identifying wetlands of international importance as set out in article 2.2 of Ramsar above. A vital tool in the WHCA is the Integrated Management Plans (IMP) for the protection and management of WHS, and these must be in line with LG planning and development plans (WHCA, section 22).

To further bolster the protection of listed (Ramsar Sites) wetlands, and to prevent degradation of the resource, the Montreux Record (MR) has been established as a mechanism for the Ramsar sites that have “undergone, are undergoing, or likely to undergo, an adverse ecological change” (Hamman *et al*, 2018:1493). The purpose is to identify the Ramsar sites for which positive national and international attention is prioritised (Hamman *et al*, 2018:1493). The addition and removal of listed wetlands from the MR are subject to every state- it is voluntary (Hamman *et al*, 2018:1493). It has been submitted that South Africa has placed two of its Ramsar sites (Blesbokspruit and Orange River Mouth) on the MR (ramsar.org/wetlands/south-africa), which is indicative of a positive step towards wetlands conservation and restoration.

Therefore, in conclusion to leg 1 of article 3.1, the inclusion of the Ramsar Sites in parts of the WHCA, NEMPA, and the utilisation of MR represents the state (read to include LG) progressively realising its role in the management of wetlands for planning purposes.

The second leg of Article 3.1 infers all other wetlands (inclusive of non-listed) mentioned above within South Africa. The concept of wise use must be exercised within the state’s territory. According to the 1993 Montevideo Convention, a defined territory is a requirement for forming a state. Generally, territory is not only limited to land but includes air and sea space (Strydom, 2016:38). This too becomes relevant if one considers coastal wetlands, for example. The territory within the framework of LG will be clarified later, therefore following the discussion on wise use.

The wise use of wetlands entails the “maintenance of the ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development” (Birnie *et al*, 2008:674). Two concepts are highlighted here that are expected to coincide: ecosystem approach and sustainable development (Lemine, 2020:157). The “ecosystem approach” is defined as a “strategy for the integrated management of land, water and living resources that equitably promotes conservation and sustainable use” (Paterson, 2018: 524). Sustainable development within South Africa’s legislative framework

means the “integration of social, economic and environmental factors into planning, implementation and decision-making to ensure that development serves present and future generations” (NEMA). Therefore, the application requires wetlands to be managed in an integrated manner by administrators (public and private) charged with the wetland duty whilst balancing social, economic and environmental factors when planning, implementing and decision-making for present and future generations. It has been submitted that a silo-approach to addressing wetland issues cannot exist within this scope (Lemine, 2020:161). It appears that Lemine (2020:161) refers to administrators; however, it should include the holistic approach of the factors by all administrators together.

Considering the second leg, all (inclusive of non-listed) wetlands within South Africa’s defined territory must be realised, mapped, and subjected to the wise use principle. The scope of this paper is narrowed by the application of discerning the role of LG in relation to article 3.1, therefore it is deemed necessary to provide an exposition of LG’s powers and functions limited to wetlands management within the scope of the Constitution of South Africa of 1996, the LGMSA, NEMA and applicable SEMAs.

The Constitution of the Republic of South Africa of 1996

This section provides an exposition of the environmental clause as well as powers and functions of the LG that directly and indirectly affect bearing on wetland management, as recorded in the Constitution.

Section 24: Environmental Clause

Section 24 of the Constitution is dubbed as the environmental clause. “Environment” here is read to include wetlands due to NEMA’s inclusively extensive definition of environment. Section 24(a) provides that no person may be exposed to an environment harmful to their health and well-being. Section 24(b) provides everyone with the right 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.

The idea of well-being in section 24(a) denotes a “sense of place” (Kidd, 2011:23). Incidentally, the example here was made with reference to the threat of damage to the natural environment, specifically the Greater St. Lucia Wetland Park (iSimangaliso Wetland Park) (Kidd, 2011:23). Thus, to breathe life into section 24(a), would require that the sense of place created by wetlands must be upheld. The application of “sense of place” for “everyone” applies directly to humans and not the other species within that place.

Section 24(b) is considered a directive principle on the state to protect the environment; make laws and implement other measures to fulfil the requirements under section 24(b) (i, ii, iii). According to the *Government of the Republic of South Africa and Others v Grootboom and Other 2001(1) SA 46 (CC)*, the Constitutional court per Yacoob J stated that passing laws is not enough to ensure constitutional compliance of section 24(b) (para 42). It further says that these laws must be coupled with well-directed policies and programs (para 42). This could specifically aid the LG in delivering their developmental duties and fulfilling their objectives.

The developmental duties include participating in national and provincial development programmes (Constitution, section 153(b)), which could be construed as contributing to “*other measures*”; to promote the economic and social development of the community (Constitution, section 153(a)); and the structuring and management of their administration and budgeting and planning processes “to give priority to the basic needs of the community” (Constitution, section 153(a)). A basic need has been given meaning to as a “legally valid and enforceable environmentally relevant expectation on the part of rights holders”. Given that wetlands provide invaluable social, economic and environmental benefits to communities, it is therefore accepted that its conservation and protection constitute a basic need. Coupled with this, section 152 sets out the objects of LG, which include, but are not limited to, promoting social and economic development (Constitution, 1996:74); encouraging communities and local organisations in matters of LG; and promoting a safe and healthy environment (Constitution, 1996:74) within their powers and functions.

Local Government: Powers and Functions

This section provides a birds view on efforts by two African countries (Uganda and Namibia) as case studies for possible consideration. The Constitution of Republic of Uganda of 1995 makes explicit provision for the protection of wetlands by the State (Constitution of the Republic of Uganda, 1995: section XIII); and confers the obligation upon the Government or local government as indicated by Parliament by law, to protect wetlands for ecological or touristic purposes for the common good of its citizens (Constitution of the Republic of Uganda, 1995: section 237(2)(b)). Namibia's strategy included the establishment of a wetland-specific policy which, under its Policy Implementation provision, requires that the different spheres of government (national, regional and local) roles and responsibilities be detailed, and that the local and basin management committees are strengthened (Namibia's Draft Wetland Policy, 2004). When writing this manuscript, the Annual Performance Plan of the South African national Department of Forestry, Fisheries and Environment makes provision for the drafting of a National Joint Wetland Management Policy, to be adopted by 2024 (<https://www.environment.gov.za/sites/default/files/docs/strategioplan202021to202324.pdf>, accessed on 21 February 2021).

Section 156 of the Constitution confers executive authority upon LG to administer matters listed in Part B of Schedule 4 and Part B of Schedule 5; and those matters which provincial or national government assign to them (Constitution, Section 156(1)(b)). The functional areas contributing directly or indirectly to wetlands management in both schedules shall be considered. Schedule 4 Part B include: air pollution, building regulations, local tourism, municipal planning, and pontoons. Schedule 5 Part B include: beaches and amusement facilities; municipal parks and recreation; and refuse removal, refuse dumps and solid waste disposal. Nowhere in the Constitution is "wetland" listed as a functional area of competency or even mentioned anywhere. Wetlands are included in the constitutions of Switzerland, Brazil, and Uganda, (De Klemm and Shine, 1999: 163-164). However, "wetland" must be interpreted to fall within the meaning of "environment", which is a functional area of concurrent national and provincial legislative competence under Schedule 4 Part A of the Constitution. This does not mean that LG does not partake in this functional area if one considers schedules 4B and 5B, but also considering that section 156(4) of the Constitution confers the

assignment- subject to an agreement- of functions in schedules 4 and 5 parts A by national and provincial governments.

There is currently no wetland-specific policy in South Africa, but these are contained in a plethora of SEMAs. Thus, LG may, within their original and assigned powers, make by-laws (Constitution, section 156(2)) and execute them in a manner that directly or indirectly affects wetland conservation and protection.

To give effect to their powers and functions as envisaged in the Constitution, the Local Government: Municipal Systems Act 32 of 2000 (preceded by the White Paper on Local Government 1998) was promulgated to make provision for tools to be utilised for implementing article 3.1, for instance.

Local Government: Municipal Systems Act 32 of 2000

This vital piece of legislation is utilised to set out powers and functions of LG to gauge the extent of the tools at their disposal to implement wetland efforts broadly, as envisaged in article 3.1. These tools will later be analysed in light of article 3.1 to better develop synthesis to understand the role of LG within the wetland arena. First to consider is the terminology within the LGMSA to offer clarity on functions to be performed by LG regarding wetlands management, thereafter the planning tools. Again, “environment” must be read to include “wetland”.

Terminology

Section 73 of the LGMSA provides that LG is expected to provide “municipal services”. The latter means “a service that a municipality in terms of its power and functions provides or may provide to or for the benefit of the local community....” The LGMSA requires municipal service to be “environmentally sustainable”, which

means the provision of municipal service in a manner aimed at securing that-

a) the risk of harm to the environment and human health and safety is minimised to the extent reasonably possible under the circumstances;

- b) the potential benefits to the environment and human health and safety are maximised to the extent reasonably possible under the circumstances; and
- c) legislation intended to protect the environment and human health and safety is complied with.

It is evident from the above mentioned that the functions and powers of LG in terms of the LGMSA, the Constitution and those assigned must promote environmental conservation and human health. Again, there is an inextricable link between wetlands protection and human health and wealth.

Furthermore, the LGMSA defines a “basic municipal service” to mean “a municipal service that is necessary to ensure an acceptable, reasonable quality of life and, if not provided, would endanger public health or safety or the environment”.

What is clear from the above passage is that wetland protection and conservation are basic municipal services that must be environmentally sustainable. Following is a discussion on the tools that guide decision-making within the LGMSA through which powers and functions for wetlands management, for example, may be implemented.

Municipal planning

Leg one of Article 3.1 emphasises the need for planning. Within the LG sphere, municipal planning is listed in Schedule 4 Part B of the Constitution and is a functional area for LG. In the case of *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010(9) BCLR 859 (CC)*, Jafta J held that “planning” in the context of municipal affairs is a term which has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships” (paragraph 57). This is codified in section 24(2) of the Spatial Planning and Land Use Management Act 16 of 2013. Within this architecture which LG aims to create, municipal planning must be developmentally orientated to ensure that they contribute to the “progressive realisation of the fundamental rights contained in section 24 and...27 of the Constitution” (LGMSA, section 23(1)(c), 14).

Municipal planning includes the compilation, endorsement and review of an integrated development plan (IDP), spatial development framework (SDF) and land-use schemes within the municipal area (van Wyk, 2018:1142). The municipal area, boundaries or territory (as stated

in article 3.1) within which to perform their powers and functions are determined, assessed and regulated by Chapter 2 of the Local Government: Municipal Demarcation Act 27 of 1998.

The IDP is a strategic plan setting out the vision and mission for the municipality and requires- for example- strategically aligned with national and provincial sectoral plans and planning requirements that bind the municipality in terms of (SEMAs) legislation (section 26(d)). The IDP is a legally binding tool, and the court in *eThekweni Municipality v Tsogo Sun KwaZulu-Natal* [unreported] 86/2006 (SFA) (2007) held that all development must conform to this tool (paragraph 25).

In the spirit of becoming more developmentally orientated in respect to section 24 of the Constitution and for wetland management, LGs must, within the specific boundaries, be strategic and creative in their functional areas to create the type of wetland environment they aim to achieve. In this sense, they have the potential of providing municipal service that is environmentally sustainable.

The National Environmental Management Act 107 of 1998

The National Environmental Management Act, 107 of 1998 (NEMA), is the national environmental framework act promulgated to give effect to the enabling provisions of section 24 of the Constitution. Here, certain tools and principles that can inform wetland management at a local level will be provided.

Although the “Environment” is a functional area of concurrent national and provincial legislative competence as envisaged in Schedule 4 Part A of the Constitution, LG is expected to execute functions either directly or indirectly in this regard. This has been criticised by Mosdell, as referenced in Murcott (2017:449) that:

arguably, the constitutional designations of governance functions in scheds 4 and 5 were drafted without proper consideration of the role of local government in day-to-day management of environmental issues, and they should be revised to afford a broad environmental competency to local government.

What further exacerbates the issue of this research is that there is no wetland policy directly guiding local wetland efforts, thus pulling strings of functions from local governmental law on the one hand and

environmental laws and policies on the other to efficiently perform their wetland functions, for example.

Section 2 of NEMA sets out a series of (sustainable development) principles that organs of state must observe in executing their duties. There are several principles that apply to wetland management; these include but are not limited to sections 2(4)(a)(i), 2(4)(a)(ii), 2(4)(b) and 2(4)(l). However, the only time “wetland” is mentioned in the NEMA is under section 2(4)(r), which requires that:

sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems, require specific attention in management and planning procedures, especially when subject to significant human resource usage and development pressure.

Planning is a key feature, but more prominent here is “management”- for this section and purposes of this research. Throughout the paper, reference has been made to the role of LG in wetlands management for its conservation and protection. In light hereof, it is crucial to provide a matrix or idea of what management is to provide a platform from which to work from to discern what they need to do to encapsulate Article 3.1 into their role of managing.

The concept of management incorporates several similar elements by scholars and the International Labour Organization (ILO):

Follett: “Management is the art of getting things done through people.” (Naidu and Rao, 2008:5)

Terry: “Management is a process consisting of planning, organising, actuating and controlling, performed to determine and accomplish the objectives by using people.” (Naidu and Rao, 2008:5)

ILO: “Management is the complex of continuously coordinated activity by means any undertaking administration/public or private service conducts its business.” (Naidu and Rao, 2008: 5).

More recently, Nel and Alberts require the “guiding of people or a process, rather than the leadership..., it generally means the art and science of planning and organising people, resources, processes and activities to achieve *developmental orientated* [own emphasis] goals and objectives *for local wetland management* [own emphasis]” (Nel and Alberts, 2018:11-12).

Working with the definition of Nel & Alberts, a matrix will be created to provide a framework for management within which to encapsulate management as prescribed by Article 3.1

Specific Environmental Management Acts (SEMAs) and local government

To implement and give effect to the NEMA, a series of SEMAs have been promulgated. However, there is no SEMA for wetlands, and it is regulated by a plethora of SEMAs in South Africa. Furthermore, different environmental affairs departments perform their mandates within these spheres, which might have been submitted as troubling the overall management of wetlands protection and conservation (Lemine, 2018). The recommendations for dealing with this do not fall within this paper's scope. This passage, however, provides a brief overview of certain SEMAs applicable to wetland protection and conservation: the National Environmental Management: Biodiversity Act 10 of 2004, the Conservation of Agricultural Resources Act 43 of 1983, National Climate Change Response White Paper of 2011 and National Environmental Management: Integrated Coastal Management Act 24 of 2008, but through the lens of LG.

The National Environmental Management: Biodiversity Act 10 of 2004

The National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA) aims “to provide for the management and conservation of biological diversity within the Republic and of components of such biological diversity; and the need to protect the ecosystem as a whole, including species” (section 2). About aligning and coordinating biodiversity plans, section 48(2)(a-b) provide, respectively, that a municipal IDP must be aligned with the national biodiversity framework (NBF) and bioregional plan (BP), and to incorporate enabling provisions of the BP or NBF that apply to it, in the IDP. Section 54 further requires municipalities to observe and implement the protected lists of ecosystems in the IDP. This demonstrates the clear intersection between local government and environmental law to bolster wetland protection.

The Conservation of Agricultural Resources Act 43 of 1983

The Conservation of Agricultural Resources Act 43 of 1983 (CARA) was enacted to:

conserve natural agricultural resources of the Republic by maintaining the production potential of land, by combating and preventing erosion and weakening of destruction of the water sources, and by protecting the vegetation and combating weeds and invader plants.

Glazewski (2017, para 16.3.5) argues that wetlands jurisdiction of the CARA extends to certain environmental affairs departments. The CARA establishes the designation of executive officers, which could include the local authority to promote the conservation of water sources, amongst others (section 4). The nature of the role here is more on the side of enforcement than planning *per se*.

The National Climate Change Response Paper of 2011

The National Climate Change Response Paper of 2011 (hereinafter NCCRP) states that municipalities' planning is crucial for building climate change resilience by incorporating climate change considerations into the IDP, and municipal service delivery programmes (National Climate Change Response Paper of 2011:37). The NCCRP makes further provision for specific and ***not generic*** (own emphasis) powers for mitigating and adapting actions through, for example, natural resource stewardship (National Climate Change Response Paper of 2011:37). Regarding the submitted function of wetlands in climate change adaptation and mitigation as well as NBS, wetland stewardship becomes exponentially important (National Climate Change Response Paper of 2011: 37). The wetland-stewardship-climate change response is encompassed in the Draft Climate Change Bill of 2018, which the NCCRP aim to inform. The Bill's long title aims to advance the agenda of developing an environmentally sustainable development framework. If this Bill is adopted as is in an Act of Parliament, municipalities will be required to develop and implement a climate change response plan that must be integrated into their IDP (section 9(5)). These combined may be used strategically to promote local wetland conservation.

The National Environmental Management: Integrated Coastal Management Act 24 of 2008

The National Environmental Management: Integrated Coastal Management Act 24 of 2008 (NEMICMA) has been promulgated to bolster coastal management and mitigate and adapt to climate change.

Furthermore, the NEMICMA provides for the protection and management of coastal wetlands within a coastal zone. Section 48(1)(a) of the NEMICMA empower municipalities to prepare and adopt a coastal management programme (CMP) (policy directive) for managing the coastal zone or parts thereof. Section 50 of the NEMICMA empowers municipalities to make by-laws for the implementation, administration and enforcement of their CMP. It has been submitted that instead, the IDP should be used as a mechanism to promote coastal efforts instead of standalone by-laws (Lemine, 2012: 35). Again, crosscutting, but only applicable to coastal municipalities.

National Environmental Management: Waste Act 59 of 2008

The National Environmental Management: Waste Act 59 of 2008 (NEMWA) aims to prevent ecological degradation and pollution and secure sustainable development, as envisaged in section 24(b)(i-iii) of the Constitution. Waste management mechanisms must be employed to prevent pollution or harm by utilising the wetlands as a dumpsite. The Schedules in the Constitution expressly confer upon LG duties for waste management, for example: the provision for domestic wastewater and sewage disposal systems; refuse removal, refuse dumps and solid waste disposal. To give effect hereto, Chapter 3 of the NEMWA titled "Institutional and Planning Matters" provides that municipalities who bear waste management services must designate a waste management officer from its administration to take on responsibility for purposes of co-ordinating matters relating to waste management in their municipal jurisdiction (section10(3)). Although this flows directly from their original functions, the result is to protect the environment and uphold human health.

The above-mentioned design of SEMAs for LG in the management of wetlands provides a clear exposition of Steytler's position on the strangulation of LG, but on the other hand, validates Mosdell's argument above about the revision of LG's environmental competency. Nemutamvuni *et al* submit that the difficulties local authorities may have experienced in conserving and protecting wetlands include conflicting legal obligations, amongst others. Within this context, how South Africa's current wetland conservation legislation is designed (fragmented), perpetuates fragmentation to the grassroots level of government as envisaged above. For this paper, the next step requires the application of article 3.1 to the selected wetland legislative

framework to provide a clearer picture of the role and showcase any gaps within the system.

The application of Article 3.1 to local government powers and functions

Regarding fulfilling leg one of Article 3.1, LG is expected to develop management plans for wetlands forming part of the local protected area; and set out the framework for their management. In this practical scenario, the iSimangaliso Wetland Park IMP (2022-2031) concerns the jurisdictional district municipalities of uMkhanyakude and King Cetshwayo. In terms of this IMP, their IDPs must integrate Park planning. Furthermore, to protect the World Heritage values, the said municipalities must also participate in planning the buffer zone through its IDPs; and they must ensure that their IDP aligns with the IMP, overall. Planning here directly or indirectly affects on the protection of wetlands within the municipal jurisdiction. Concerning wetlands in protected areas but not WHS, they do not automatically fall within the ambit of leg one at this juncture, but based on their later contribution, could.

Instead of making several by-laws for every functional area (which they are constitutionally empowered to) in relation to the listed wetlands (Ramsar Sites), the provision for these wetlands in the applicable municipalities' IDP must be itemised as an objective in a strategic focus area and strategically coupled with other functional areas for better streamlining. Within this context, LG should realise their original powers in terms of Schedules 4 and 5 B of the constitution, by combining "Local tourism", "Municipal parks and recreation" and "waste removal" within their IDP under the strategic focus area which listed wetlands fall. Even though the LGMSA prescribes the streamlining of the IDP with national and provincial sectoral plans (IMP), the purpose is to do so cooperatively whilst respecting institutional integrity.

Regarding the application of leg two of article 3.1- from the onset, it is clear that wetland management for LG in South Africa is scattered in various legislative imperatives. The ecosystem approach requires land, water, and living resources to be integrated strategically. Having said this, the LGMSA, NEMBA, CARA, NCCR and NEMICMA represent these three elements but must operate as an integrated whole. It has been submitted that the legislative framework is fragmented, resulting in

action for or implementation of wetland management by organs of state becoming problematic (Lemine, 2020). The former issue may or may not be resolved by promulgating the National Joint Wetlands Policy for 2024. In the meantime, these gaps must be acknowledged and addressed. About promoting wise use within the territory of the respective municipality, the legislative and policy framework all point to a common or central point of planning: the IDP- for implementing wetlands efforts, for example.

Notwithstanding the above mentioned, certain municipalities in South Africa must be lauded for their effort in implementing wetland awareness and protection by way of their partnership with the International Council for Local Environmental Initiative (ICLEI) Local Action for Biodiversity: Wetlands South Africa (LABWSA); maybe with the view of taking a progressive step towards achieving environmentally sustainable local developmental goals. This project has been implemented by 11 municipalities (cbc.iclei.org/project/lab-wetlands-sa/). The objective of this project is “to protect priority natural wetland resources, thus enabling the supply of ecosystem services and promoting resilient communities under a changing climate within South Africa” (cbc.iclei.org/project/lab-wetlands-sa/).

The LABWSA programme aims to improve LG and citizen understanding of the value of biodiversity in the local context; integrate biodiversity into LG planning and decision-making; and implement on-the-ground wetland projects and develop proposals for wetland project funding (cbc.iclei.org/project/lab-wetlands-sa/). This partnership with its programmes and projects flowing from these brings to fruition the requirement of “other measures” in the constitution and *Grootboom case*, for wetlands.

Recommendations and conclusions

Planning has been a central theme throughout this paper. Whether as part of a process or a tool, planning proves vital within the ambit of management. This paper has aimed to ascertain the role of LG in managing wetlands. The following recommendations provide a framework for advancing and possibly to clarify the role of LG in wetland management.

- **Developmental wetland duty**- the core of section 153 of the Constitution refers to action by LG for the benefit of the

community, save for participating in national and provincial programmes. But as a distinct branch of government and strengthening or being developmental, community and community-based organisation involvement should be encouraged. Here the utilisation of environmental management co-operation agreement as envisaged in section 35 of NEMA could be utilised as a tool for LG development and achieving section 152 of Constitution objectives, for the community. This creates the extension of the public trust doctrine, which creates the obligation of the state to protect the environment for the people and that it should protect the public's interest. Read with the extension it is for the people, their interest, by the people.

- **Grassroot cooperative management-** local-, provincial-, national government and other stakeholders should manage together from a grassroots level to enable growth as a unit, instead of national or provincial acting as an overarching or delegating function to LG. Evidently, the Schedule 4 competency for "Environment" can no longer be read to exclude LG. Although these spheres are distinct, they are interrelated and co-dependent. Therefore, their relations with various other organisations and the communities they service may be utilised to strengthen each other. In this way, the LG is strengthened to deal with matters (Schedule 4) that were not initially intended for them and perpetuated in the non-environmental law (LGMSA) by obliging them to deliver municipal services that are "environmentally sustainable".
- **Progress instead of regress** - the reality is that implementing wetland efforts cannot happen overnight. Various factors within the spectrum of management may delay the implementation, but the Court in *Minister of Health and Others v Treatment Action Campaign and Other (No 2) (CCT8/02) [2002] (10) BCLR 1033* held that "the State is not obliged to ... realise these rights immediately" (paragraph 32). Therefore, keeping a record of local wetland objectives and the achievement thereof within one cycle, and subsequently indicating the increase or improvement in service delivery for the ensuing cycles. Furthermore, fragmentation within the current wetlands legislative system must be addressed to provide a clearer pathway for LG. This, therefore, welcomes the development and adoption of the

wetlands policy, which could create a platform for streamlining legislation and governmental action (Lemine, 2018).

- **From strangulation to empowerment-** instead of becoming the stockpile of the government, the two applicable management elements as per Nel & Alberts must be employed and fulfilled to enable efficient wetland management; reference here is made specifically to “people” and “resources”
- **Design for strategic focus area in the IDP-** by categorising the enabling provisions for local wetland management under the auspices of the term “management” as envisaged by Nel & Alberts under the following headings: 1. *People*, 2. *Resources*, 3. *Processes* and 4. *Activities*.

Goal: The protection, conservation and rehabilitations of wetlands within the municipal area

1. People	1.1 trained and qualified staff; 1.2 environmental affairs departments representing land, water and living resources from local, provincial and national to cooperate horizontally; 1.3 non-profit organisations/ community-based organisations; 1.4 local communities; 1.5 LG representation in Ramsar Administrative Authorities (DEFF); 1.6 ICLEI Partnerships; and 1.7 the South African Local Government Association.
2. Resources	2.1 understanding the juridical meaning/ definition (NWA) of a wetland; 2.2 developing and maintaining a wetland inventory (listed and not-listed wetlands); 2.3 understanding the NBS (value) of wetlands; 2.4 budgeting and funding alignment in terms of section 153(a); 2.5 legislative resources: Constitution; NEMA; LGMSA (IDP); NEMBA (NBF/BP and IDP); CARA (enforcement); NCCR (IDP and natural resources stewardship); NEMICMA (coastal municipalities) (CMP/IDP); and NEMWA (waste management). 2.6 Article 2.2 of Ramsar.
3. Processes	3.1 drafting legislative prescribed plans/programmes in terms of 2.5 above, within the prescribed time frame; 3.2 reviewing and revising the said plans and programmes; and 3.3 amending the necessary plans and programmes within the confines of law and policy.
4. Activities	4.1 enabling projects and programmes as an "other measure" constitutional imperative; 4.2 section 24 (b)(i-iii) of the Constitution; 4.3 creating a sense of place (section 24(a)); 4.4 combining functions in Schedules 4B and 5B; 4.5 acknowledge and address legal issues (gaps in law and policy); 4.6 joint monitoring and evaluation; and 4.7 co-management agreements with 1.3 and 1.4

	above. 4.8 identifying wetlands of international importance, linked to 1.1 above.
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Table created by BJ Lemine

9 Conclusion

The above-mentioned strategy in no way suggests being a closed list of items, but rather a framework to build on to adopt new measures and discard those that no longer contribute to the protection and conservation of wetlands. Since South Africa aims to uphold article 3.1 of the Ramsar, the necessary aid for implementing tools at the grassroots level requires ongoing support for LG to progressively achieve the goals for protecting and conserving wetlands.

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