

Sustainable Development and the Culture of *uBuntu*

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OPSOMMING

Volhoubare ontwikkeling en die kultuur van uBuntu

Volhoubare ontwikkeling en die bewaring van die omgewing is nie een en dieselfde begrip nie. In die lig van die historiese agtergrond van die ontwikkeling van die begrip, word dit verstaan dat dit ten minste die sentrale elemente van “*intergenerational and intragenerational*” ekwiteit beliggaam en behels die integrasie van die drie pilare van volhoubare ontwikkeling, naamlik ekonomiese groei, die bewaring van die omgewing en sosiale ekwiteit.

Hierdie artikel doen aan die hand dat kultuur as ’n vierde pilaar in die volhoubare ontwikkeling vergelyking bygevoeg moet word en kennis moet hiervan geneem word in enige poging om volhoubare ontwikkeling teweeg te bring. Die inheemse reg kultuur is in die konteks van ’n multikulturele samelewing in Suid-Afrika verseker, en moet daarom in ag geneem word in die volhoubare ontwikkeling-dialoog. Daar word voorgestel dat omdat *ubuntu* die kern inheemse waarde-sisteem beliggaam, dit ’n betekenisvolle rol in die bereiking van volhoubare ontwikkeling kan speel.

Die idee van *ubuntu* word bespreek sowel as die rol wat dit reeds in die ontwikkeling van die reg in Suid-Afrika vertolk het. Omdat kultuur sosiale gedrag inlig, moet strategieë om volhoubare ontwikkeling te implementeer in lyn wees met die heersende waardes van die betrokke gemeenskap. Terwyl dit kan werk in ’n homogene samelewing, kan daar moontlik probleme ontstaan waar daar ’n multikulturele samelewing is soos die van Suid-Afrika en hier word dit voorgestel dat harmonisering ’n oplossing mag bied.

Die konsep van volhoubare ontwikkeling soos wat dit ontwikkel het moet nie geneer word nie maar moet ingelig en verryk word deur die inheemse filosofie van *ubuntu*. Nie alleen sou dit in die belang van volhoubare ontwikkeling dien nie, maar dit sou ook polities dienstig wees indien volhoubare ontwikkeling die Westerse sowel as die Afrika etos reflekteer en dit sou in lyn wees met die visie wat in die aanhef tot die Grondwet van die Republiek van Suid-Afrika, 1996 vervat is: ‘Ons, die mense van Suid-Afrika, ... Glo dat Suid-Afrika behoort aan almal wat daarin woon, verenig in ons verskeidenheid.’

1 Introduction

“People, planet and prosperity”, the catchphrase used by the then Minister of Environmental Affairs and Tourism in the recently published

National Framework for Sustainable Development,¹ suggests the idea of an interrelationship between a vulnerable planet, its peoples and their well-being. In the context of sustainable development this is seen as development that protects the environment while enhancing the quality of life for all, more particularly for those who are most affected by poverty and inequality.

Historically the concept has evolved to recognise the interconnectedness and interdependence² of three dimensions often referred to as the three E's: protection of Environment, development of the Economy and the realisation of social Equity. In other words, sustainable development involves sustaining the natural resource base while growing the economy, and at the same time, meeting basic social and human needs in the interest of both present and future generations,³ a paradigm also regarded as integral to the South African vision for future development.⁴ In what follows the evolution of the concept of sustainable development and the notion of interdependency is outlined. It is argued that culture should be seen as a fourth dimension. This being so, the significance of *ubuntu*, a philosophy widely recognised as being part of the indigenous culture in South Africa should be considered. In what follows, this will be discussed and the reference to it in South African jurisprudence⁵ set out.

1 *National Framework for Sustainable Development* (July 2008) available at http://www.environment.gov.za/?q=content/documents/strategic_docs/national_framework_sustainable_development (accessed on 2012-09-16).

2 See in general *National Framework for Sustainable Development* (2008).

3 In the United Nations Secretary-General's High-level Panel on Global Sustainability (2012) *Resilient People, Resilient Planet: A future worth choosing* New York: United Nations it is stressed that "sustainable development is not a synonym for 'environmental protection'".

4 In the words of the Director General of the Department of Environmental Affairs and Tourism Nosipho Jezile-Ngcaba it defines the "social, economic, environmental and governance parameters and explicitly recognises the constraints that decision-makers must take into account when policies aimed at growing the economy, sustaining our natural resource base and meeting basic social and human needs are adopted"; Department of Environmental Affairs and Tourism "National Framework for Sustainable Development (NFSD) announced" 10 July 2008 available at <http://www.info.gov.za/speeches/2008/08071111451001.htm> (accessed on 2012-10-30).

5 Jurisprudence here is used in the wide sense to include not only writings on legal philosophy and other legal literature but also judicial decisions. Reference to judicial decisions is by way of example and not comprehensive. In this regard a recent publication by Cornell & Muvangua *Ubuntu and the Law* (2012) is notable. As stated in the blurb "this is the first comprehensive casebook to address the relationship of *ubuntu* to law. It also provides the most critical articles on the use of *ubuntu*, both by the Constitutional Court and by other levels of the judiciary in South Africa".

2 The Concept of Sustainable Development: Historical Progression

Sustainable development has increasingly gained international recognition as a conceptual framework for national development and, as is clear from the following historical overview, while there has been progression in determining the content of the concept and its implementation, the sustainable development discourse is ongoing. Nonetheless it is generally agreed that the concept encapsulates the core elements of intergenerational⁶ and intragenerational equity⁷ and involves the integration⁸ and the interdependencies of economic growth, social equity and environmental integrity, sometimes termed the three pillars⁹ of sustainable development.

The idea of “integration” is not the same as that of “interdependency”.¹⁰ Here “interdependent” is used in the sense that the three pillars of sustainable development are aspects of sustainability which are distinct but mutually reinforcing or dependent on each other. It is suggested that integration should be seen as a process to ensure sustainability. Seen in this way, it follows that “integration” serves to bring about equilibrium. While environment, economic development

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- 6 I.e. “the need to preserve natural resources for the benefit of future generations”; Sands *Principles of International Environmental Law* 2ed (2003) 253.
 - 7 Intragenerational equity “is concerned with the equitable distribution of environmental costs and benefits from developmental activities. In this sense intragenerational equity attempts to achieve justice between nations. In particular, intragenerational equity attempts to achieve justice between rich and poor nations. It requires that there be an equitable distribution of resources and burdens among the world population”. See Tladi “Intergenerational equity: A new name for international justice” 2003 *Fundamina* 197 198.
 - 8 Integration is widely recognised as the core element of or central to sustainable development see for example ILA *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, 2002-04-02 available at <http://cisdl.org/tribunals/pdf/NewDelhiDeclaration.pdf> (accessed on 2012-10-10); Field “Sustainable Development Versus Environmentalism” 2006 *SALJ* 409 413.
 - 9 There are those who hold that culture should be regarded as a fourth pillar as is discussed below. Although the list is not exhaustive the following authors are of this opinion: Hawkes “The Fourth Pillar of Sustainability: Culture’s Essential Role in Public Planning” (2001) available at [http://community.culturaldevelopment.net.au/Downloads/Hawkeson \(2001\) The Fourth Pillar of Sustainability.pdf](http://community.culturaldevelopment.net.au/Downloads/Hawkeson%20(2001)%20The%20Fourth%20Pillar%20of%20Sustainability.pdf) (accessed on 2012-08-10); Nurse “Culture as the Fourth Pillar of Sustainable Development” document prepared for the Commonwealth Secretariat London 2006 available at www.fao.org/SARD/common/ecg/2785/en/Cultureas4thPillarSD.pdf (accessed on 2012-08-10); Du Plessis & Feris “The dissident Sachs J: a rebellious step in the right direction” 2008 *SA J Environmental Law and Policy* 157; Du Plessis & Rautenbach “Legal perspectives on the role of culture in sustainable development” 2010 *PER* 27.
 - 10 See generally Feris “The role of good environmental governance in the sustainable development of South Africa” 2010 *PER* 1; Field 2006 *SALJ* 409.

and equity retain their integrity, at the same time the boundary of each is determined by that of the other two. Thus sustainable development should not be seen as merely a combination or amalgamation of the three recognised “pillars”. Rather it should be seen in the form of a “*gestalt*” that results from viewing issues or situations through the lens of integration. As Kidd¹¹ puts it (albeit in a different context):

By combining concerns with the environment with concerns relating to social upliftment and economic progress, the concept of sustainable development will be much more difficult to sideline. This is why it is critical that ... people ... must remove ... their green-tinted spectacles and respect the three pillars of sustainable development in a way that ensures that there is equilibrium.

Historically, notions of an interrelationship between humankind and the environment are not new and existed in ancient times particularly in the context of religion and culture.¹² However, the concept of sustainable development as denoting such interrelationship is of recent origin. The term was coined in the *Brundtland Report*¹³ in 1987, and the statement that “[e]cology and economy are becoming ever more interwoven locally, regionally, nationally, and globally into a seamless net of causes and effects”¹⁴ is noteworthy.

In principle the notion of integration was already suggested in 1962, when the United Nations General Assembly passed a resolution¹⁵ that governments should not determine their economic development plans in isolation but at the same time should consider natural resource protection measures.¹⁶ However, it was the Stockholm Conference¹⁷ of

11 Kidd “Removing the green-tinted spectacles: The three pillars of sustainable development in South African environmental law” 2008 *SA J of Environmental Law and Policy* 83 101-102.

12 This was reflected in the ancient culture of many indigenous peoples in various countries, evidenced for example in the agricultural practices of the ancient tribes in Sri-Lanka and certain tribes in Eastern Africa, America and Europe, and in Islamic legal traditions; see Marong “From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development” 2003-2004 *The Georgetown Int Environmental LR* 21 23. More particularly, and closer to home, the notion of interrelationships is embodied in the traditional indigenous culture of *ubuntu* that is also referred to in a modern context. This will be discussed below in the context of culture; see too Church 2009 “Societal Responsibility and the balancing of interests: Economic, Environmental and Social: A South African Perspective” *JALTA* 65 69.

13 “Sustainable development” was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”; The Report of the World Commission on Environment and Development: *Our Common Future* 1987. The Brundtland Commission’s Report (hereafter the *Brundtland Report*) is annexed to UN A/42/427 and available at www.un-documents.net (accessed on 2012-09-02).

14 *Ibid* 21.

15 *Economic Development and the Conservation of Nature* G.A. Res. 1831(XVII) available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0193/39/IMG/NR019339.pdf?OpenElement> (accessed on 2012-09-10).

16 See further Marong 2003-2004 *The Georgetown Int Environmental LR* 21.

17 I.e. the United Nations Conference on the Human Environment, held from 5

1972 that laid the foundation for the consideration of environment and development as related issues. The main focus of the conference was on environmental problems of industrialisation.¹⁸ Since the focus of developing countries would have been on development rather than on environmental problems, initially the conference did not generally enjoy the support of these countries. To allay their fears, a conference seminar in their interest, was held in 1971 in Founex, Switzerland. The subsequent report¹⁹ highlighted the interrelationship between environment and development and concluded, among other things, that economic development was the answer to environmental problems in developing countries. While the Stockholm Conference laid the foundation for an integrated approach, it was the 1987 *Brundtland Report*²⁰ that placed these issues firmly on the political agenda and highlighted various problem areas, including population and human resources, food security, species and ecosystems, energy, industry and urbanisation.

Five years later, in 1992, the second global conference²¹ was held in Rio de Janeiro. Here the theme was sustainable development and the focus was on the protection of the environment together with development. Principle 4 of the resultant declaration²² for example reflects an integrated approach and advocates the integration of environmental and developmental concerns and determines that to achieve sustainable development, the protection of the environment must form an integral part of the developmental process.²³

to 16 June 1972 in Stockholm which some thirty years later was referred to as the “linchpin of modern environment and development thinking” by Töpfer at the time the United Nations Under-Secretary General and Executive Director, United Nations Environment Program; Global Environmental Outlook 3 Preface available at <http://www.unep.org/geo/GEO3/english/008.htm> (accessed on 2012-09-02).

- 18 What is commonly referred to as a “North-first” approach the focus would have been on environmental problems of the industrialised nations of the North.
- 19 The *Founex Report on Development and Environment* of 1971, available at <http://www.stakeholderforum.org/fileadmin/files/Earth%20Summit%202012new/Publications%20and%20Reports/founex%20report%201972.pdf> (accessed on 2012-09-02).
- 20 The *Brundtland Report* 1987.
- 21 The United Nations Conference on Environment and Development (UNCED, also known as the ‘Earth Summit’)
- 22 Report of The United Nations Conference on Environment and Development, UN Doc A/CONF 151 26 1992 available at <http://www.un.org/documents/ga/conf151/aconf15126-1.html> (accessed on 2012-09-02) (hereafter “the Rio Declaration”). The Rio Declaration embodies twenty-seven principles with the goal of “establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people”.
- 23 The accompanying document to the Declaration, Agenda 21, UN Doc A/CONF 151 26 (1992) available at http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml (accessed on 2012-09-02) contains the “road-map” for a global partnership with the aim of achieving sustainable development.

While the need for an integrated approach had been recognised earlier,²⁴ it was in 2002, at the World Summit on Sustainable Development (WSSD) held in Johannesburg²⁵ and in the context of globalisation that integration was emphasised. Here consensus was reached that there are three interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection.²⁶ Challenges in all three these areas must be addressed in order for the new “global community” to last.²⁷

Furthermore, it was determined that for globalisation to be sustainable it must be equitable as well as being environmentally sound and the WSSD sought to address social, environmental and economic problems globally in an integrated way. To this end, it was agreed that countries would individually and collectively advance sustainable development locally, regionally and globally.²⁸

24 Ie already in the *Brundtland Report* 1987.

25 The *Johannesburg Declaration on Sustainable Development* (2002) available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm (accessed on 2012-09-01) and the *Johannesburg Plan of Implementation of the World Summit on Sustainable Development (JPOI)* available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_Chapter1.html (accessed on 2012-09-01) were the two main documents adopted at the summit and the focus was on implementation of the relevant principles of sustainable development. Klaus Töpfer, the then Executive Director of the United Nations Environment Programme, declared that the World Summit on Sustainable Development is a “Summit of implementation, the Summit of accountability and of partnership ... represents a defining moment in the efforts of the international community to put our planet on a sustainable path for the future”; *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 2002-09-04, UN Doc A/CONF 199/20 at 162 available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm. (accessed on 2012-09-01). The objects of the summit were to review UNCED and to reiterate a global commitment to sustainable development. See *Johannesburg Plan of Implementation* and the *Report of the World Summit on Sustainable Development*.

26 Paragraph 5 of the *Johannesburg Declaration on Sustainable Development* (2002) reads: “Accordingly, we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection – at the local, national, regional and global levels”. The *Johannesburg Plan of Implementation*, which aims to implement the outcomes of the WSSD, also embraces the integrated approach. See for example paragraph 2 which reads: “... These efforts will also promote the integration of the three components of sustainable development – economic development, social development and environmental protection as interdependent and mutually reinforcing pillars ...”. Here, globalisation, a phenomenon which had barely registered on political agendas in 1992, is dealt with in a separate section.

27 See *Johannesburg Plan of Implementation* (Introduction).

28 This objective was embraced by the New Partnership for Africa's Development (NEPAD) some two years later. NEPAD sought to provide a broad policy framework for addressing challenges in Africa, including sustainable development, eradication of poverty and integration into the

Recently, and with the objectives, *inter alia*, of the securing of renewed political commitment for sustainable development and of addressing new challenges such as climate change, the United Nations Conference on Sustainable Development (UNCSD)²⁹ was held in Brazil. In order to advance the global sustainable development agenda the two themes of the conference were the institutional framework for sustainable development and a green economy in the context of sustainable development and poverty eradication. The notion of integration of the three pillars also permeate the recently published³⁰ outcome document of the conference entitled “*The future we want*”.³¹

According to the *National Framework for Sustainable Development*³² the globally accepted definition of sustainable development as provided by the Brundtland Commission has influenced the understanding of sustainable development in South Africa.³³ The National Framework suggests “a systems approach to sustainability” where:

the economic system, socio-political system and ecosystem are seen as embedded within each other, and then integrated via the governance system that holds all the other systems together within a legitimate regulatory framework.

28 global economy. In this regard the African Union adopted the *Action Plan* in July 2003. Accordingly, the *Action Plan* integrates economic, environmental and social issues; United Nations Environmental Programme *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* available at <http://www.unep.org/dec/online/manual/Compliance/InternationalCooperation/RegionalActionPlans/Resource/tabid/713/Default.aspx>. See too Glazewski *Environmental Law in South Africa* 2ed (2005) 33.

29 Also known as the Earth Summit or ‘Rio + 20’

30 Ie 2012-09-11.

31 See for example paragraph 3 which reads “We therefore acknowledge the need to further mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognising their interlinkages, so as to achieve sustainable development in all its dimensions”, and paragraph 40 which reads: “We call for holistic and integrated approaches to sustainable development that will guide humanity to live in harmony with nature and lead to efforts to restore the health and integrity of the Earth’s ecosystem”. UNCSD *The future we want* 2012 available at <http://sustainabledevelopment.un.org/futurewewant.html> (accessed on 2012-10-10).

32 *National Framework for Sustainable Development* 2008 14.

33 Sustainable development is also entrenched in s 24 Constitution of the Republic of South Africa; 1996. The National Environmental Management Act 107 of 1998 (NEMA) defines sustainable development as “the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations”. While culture is not referred to in the definition of sustainable development, it is referred to in the definition of “environment” in NEMA, albeit to “cultural resources”; see too Du Plessis & Rautenbach 2010 *PER* 27 41. Culture as a fourth pillar will be discussed below.

This is reflected by the following diagram in the document, set out in Figure 1.³⁴

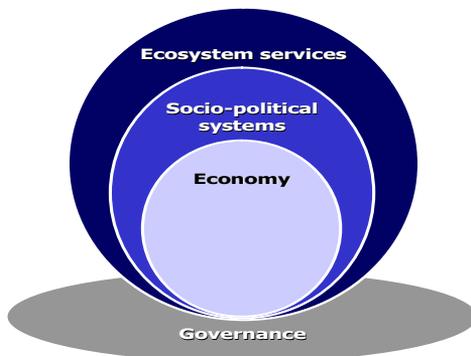


Figure 1³⁵

3 The Pillars or Dimensions of Sustainable Development

Although contemporary notions of sustainable development see it as a tri-dimensional concept, with an interface between environment, economic and social sustainability, originally the focus was on an environmentalism framework that highlighted the need to prevent ecological degradation.³⁶ However, as outlined in the text above, the concept has evolved to recognise the interdependency of the three dimensions of sustainable development with integration as a core element. On the one hand, the economic dimension reflects the need for a perspective that shapes economic activity, including benefits and costs thereof, in line with the limited carrying capacity of the environment and with regard to the preservation of natural resources in order to meet present and future needs.³⁷ On the other hand, the dimension of social sustainability involves meeting social needs equitably. This is not limited to satisfying material or physical needs such as the provision of clean water, food and shelter but would include, for example, spiritual and emotional needs that would give one a subjective sense of life satisfaction.³⁸ Thus not only would the equitable distribution of resources be of importance, ideally with a view to the alleviation of poverty, but also the preservation of political and community values. However, in this regard, since societies differ, strategies, geared to the

³⁴ *National Framework for Sustainable Development* 2008 15.

³⁵ As the figure shows, each of the systems though inter-connected are equally important.

³⁶ See Nurse 34.

³⁷ *Ibid.*

³⁸ *Ibid.*

realisation of social sustainability in a particular society, in order to be successful, should accord with the culture³⁹ of that society. This would include that which would serve to enhance the well-being of the people concerned. Not only does the Constitution of the Republic of South Africa,⁴⁰ protect cultural rights⁴¹ but, as will be discussed below, in the framing of the environmental right in section 24, one's "well-being", is explicitly protected.

The three-dimensional sustainable development paradigm, while accepted in mainstream thinking, is not free from criticism. For example, as Nurse⁴² points out, particularly with regard to the concept of development, conceptions have been in line with Western models. So too notions of sustainable development have, in his words, accorded with:

theories of development which prioritises an image and vision of development scripted in the tenets of Western technological civilisation that is often promoted as the 'universal' and the 'obvious'.

Arguing from the methodological standpoint he holds that the central concern with regard to sustainable development is the meaning of sustainability in the different contexts to which it is being applied. He suggests that culture, seen as a total way of life of a community or society,⁴³ including not only the arts and artefacts of such society but also the attitudes, legal and societal institutions as well as the general value system of the particular society, should be regarded as central to sustainable development.

While the three-pillar idea of sustainable development has been recognised as a "bedrock principle of South African law"⁴⁴ there are also those in this country who convincingly argue that a cultural dimension

39 Here "culture" is used in its broad sense to mean the total way of life of a community including for example the political and community value system of such community. See generally Church & Church "The Constitutional right to culture and the judicial development of indigenous law: a comparative analysis of cases" 2007 *Anthropology SA* 56. Culture and sustainable development are discussed more fully below.

40 Constitution of the Republic of South Africa, 1996.

41 For example: s 9 prohibits unfair discrimination on the ground of culture; people have the right to participate in the cultural life of their choice in terms of s 30; people have the right to enjoy their culture with other members of the community and to form, join and maintain cultural, religious and linguistic associations in terms of s 31; a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is to be established in terms of s 181(1)(C).

42 Nurse 34. The relevant research paper was drafted within the international law context and with regard to the problems experienced in the Small Island Developing States (SIDS).

43 Although the terms "community" and "society" have been used interchangeably, "society" here is used in the sense of the larger group.

44 Kidd 2008 *SA J of Environmental Law and Policy* 85 88.

should be added as a fourth autonomous pillar.⁴⁵ In line with this Du Plessis and Feris⁴⁶ depict sustainability as follows in Figure 2:

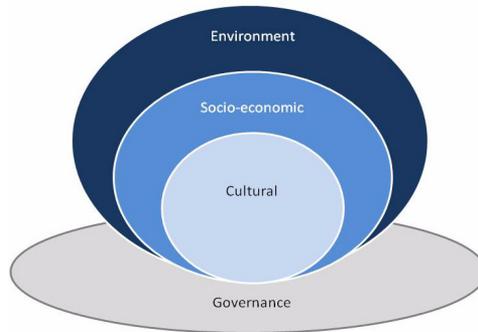


Figure 2⁴⁷

Moreover, in March 2011, during the preparation of the future Earth Summit,⁴⁸ the World Secretariat of the United Cities and Local Governments Committee (UNCL) announced that one of its key messages would be on “culture as the fourth pillar of sustainable development”.⁴⁹ However, it seems that this intention has not yet been realised.⁵⁰

Nonetheless, whether culture is regarded as subsumed by the three pillars of sustainable development,⁵¹ or as a central pillar⁵² or as Du Plessis and Feris⁵³ and others have suggested, a fourth autonomous pillar of sustainable development, there is no doubt that culture must play an integral part in sustainable development.

4 Culture and Sustainable Development and the Significance of *uBuntu*

Culture has been defined and explained in many different ways by

45 Although the list is not exhaustive the following authors are also of this opinion: Du Plessis & Feris 2008 *SA J of Environmental Law and Policy* 157 167; Du Plessis & Rautenbach 2010 *PER* 27.

46 Du Plessis & Feris 2008 *SA J of Environmental Law and Policy* 157 169.

47 *Ibid.*

48 Also known as Rio + 20, held in Rio de Janeiro during June 2012.

49 Available at <http://agenda21culture.net/index.php> (accessed on 2012-05-06).

50 The three pillar idea still features prominently in the outcome document of the conference: *The future we want* 2012.

51 Du Plessis & Rautenbach 2010 *PER* 27 43.

52 Nurse *op cit.*

53 Hawkes *op cit.* See too generally Du Plessis & Feris 2008 *SA J of Environmental Law and Policy* 157; Du Plessis & Rautenbach 2010 *PER* 27.

various scholars and in varying disciplines.⁵⁴ Already included within sustainable development dialogues,⁵⁵ culture should be seen at least to encompass a set of attitudes, beliefs, mores customs, values and practices which are common to or shared by a group.⁵⁶ As already indicated it should be regarded as a total way of life of a community.⁵⁷

The issue of culture⁵⁸ is presently recognised in international law⁵⁹ as evidenced for example in the Universal Declaration on Cultural Diversity of 2001⁶⁰ of the United Nations Educational Scientific and Cultural Organisation (UNESCO), of which South Africa is a member. For example cultural diversity is recognised as a factor in economic and social development,⁶¹ to be preserved, enhanced and handed on to future generations.⁶² Furthermore, traditional knowledge, in particular that of indigenous peoples, must be respected as making a valuable contribution with regard to the protection of the environment and the management of natural resources.⁶³ The Convention for the Safeguarding of the Intangible Cultural Heritage 2003⁶⁴ recognises the importance of an intangible cultural heritage as the mainspring of cultural diversity and a guarantee of sustainable development. Similarly, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of

54 See generally Du Plessis & Rautenbach 2010 *PER* 27.

55 For example at the Mauritius International Meeting for Small Island Developing States (SIDS) (also known as “Barbados + 10”) held in Mauritius in January 2005, the importance of culture in advancing sustainable development was formally recognised in Paragraph 82 Chapter XIX of the *Mauritius Strategy* available at http://portal.unesco.org/en/ev.phpURL_ID=31094&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on 2012-05-10). See too generally Du Plessis & Rautenbach 2010 *PER* 27.

56 See generally Throsby “Culture in sustainable development: insights for the future implementation of Art 13” 143 (2008-01-14 UNESCO Sydney) available at <http://unesdoc.unesco.org/images/0015/001572/157287E.pdf> (accessed on 2012-10-10); Du Plessis & Rautenbach 2010 *PER* 27 36.

57 According to Nurse 5 for example, because culture informs inter alia people’s underlying belief systems, values and outlook that moulds the way people interact with the environment as well as shaping international relations, it should be seen as a “whole way of life” when discussing sustainable development.

58 For a discussion on the meaning of culture in the context of sustainable development see generally Du Plessis & Rautenbach 2010 *PER* 27.

59 For a comprehensive discussion in this regard see generally Du Plessis & Rautenbach 2010 *PER* 27.

60 Available at http://portal.unesco.org/en/ev.php-URL_ID=13179 &URLDO=DOTOPIC&URL_SECTION=201.html (accessed on 2012 -10-10).

61 Article 3 of the Declaration reads: “Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence”.

62 Art 7.

63 Art 14. See too the *United Nations Declaration on the Rights of Indigenous Peoples* 2008 available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed on 2012-10-20), which recognises that “respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”.

64 Available at http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on 2012 -10-10).

2005⁶⁵ acknowledges the important role that culture can play in the achievement of sustainable development⁶⁶ and article 13 provides that:

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

As Throsby⁶⁷ explains, because both developing and developed countries were overlooking opportunities to link cultural and economic development within the framework of sustainable development, article 13 was specifically included in the Convention with the purpose of focusing attention:

on the need to take a holistic view of the development process, bringing the cultural dimensions of development together with economic and environmental objectives within a sustainability framework.

On a regional level, the African Charter on Human and Peoples' Rights (the African Charter)⁶⁸ may inform "a broad understanding of what is necessary from a rights-based perspective to balance the sustainability scale within African countries".⁶⁹ Article 24 entrenches an environmental right as a human right and states that: "[a]ll peoples shall have the right to a general satisfactory environment favourable to their

65 Also known as the Cultural Diversity Convention. The text of the Convention can be found under UNESCO 1995 unesdoc.unesco.org. Increased global awareness and recognition of cultural diversity can be attributed to UNESCO. For example in Jan 1988, Paris, UNESCO launched the World Decade for Cultural Development. The decade was proclaimed in order to encourage countries to reflect, adopt policies and undertake activities to ensure the integrated development of their societies. See http://portal.unesco.org/en/ev.php-URLID=32449&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on 2012-10-10). Ratified in South Africa on 2006-12-21 and came into force on 2007-05-18.

66 The preamble to the convention provides "that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations".

67 Throsby 2008 UNESCO 143. In 2009, the Intergovernmental Committee of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions approved operational guidelines for Art 13. Eight measures related to integrating a diversity of cultural expressions into sustainable development were outlined. The guidelines are available at <http://unesdoc.unesco.org> (accessed on 2012-05-05). Although not clear to what extent, this document already seems to be playing a role in South Africa, albeit in the context of cultural diversity, see further Du Plessis & Rautenbach 2010 *PER* 27 51.

68 The African Charter entered into force on 1986-10-21 and South Africa ratified it on 2002-07-03; available at <http://www.hrcr.org/docs/Banjul/afhr.html> (accessed on 2012-10-10). For a discussion of the African Charter in the context of sustainable development see Du Plessis "The balance of sustainability interests from the perspective of the African Charter on Human and Peoples' Rights" in *The balancing of interests in environmental law in Africa* (eds Faure & Du Plessis) (2011) 35.

69 *Ibid* 35.

development". As Du Plessis explains in a recent publication⁷⁰ article 24 is broadly framed and protection of the environment should be in a way that is favourable to peoples' development. This means that account would have to be taken of environmental factors as well as other factors which would be favourable to people's development. Culture would be one of these factors. Other provisions in the Charter underpin the importance of culture in this regard. Article 29 for example states *inter alia* that the individual shall have the duty to:

preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.

In South Africa, the link between culture and sustainable development lies *inter alia* in the broad way in which the environmental right is framed in the Constitution.⁷¹ Section 24 determines that "Everyone has the right to an environment⁷² that is not harmful to their health or well-being". Here the environment could include *inter alia* one's relationship with natural resources as well as cultural heritage.⁷³ The specific reference to "well-being" makes it clear that culture should play a role in the sustainable development equation.⁷⁴ This being so, it would be necessary to look at the specific culture involved.

5 The Significance of uBuntu

The South African legal culture⁷⁵ is mixed.⁷⁶ Prior to the advent of a new

70 *Ibid* 38, 39.

71 Constitution of the Republic of South Africa, 1996.

72 "Environment" is not defined in the Constitution. NEMA defines "environment" as: "the surroundings within which humans exist and that are made up of –

(i) the land, water and atmosphere of the earth;

(ii) micro-organisms, plant and animal life;

(iii) any part or combination of (i) and (ii) and the inter-relationships among and between them; and

the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being".

73 See in general Glazewski *op cit*.

74 See too generally Glazewski *op cit*; Du Plessis & Feris 2008 *SA J of Environmental Law and Policy* 157; Du Plessis & Rautenbach 2010 *PER* 27. Sustainable development is embodied in s 24(b) Constitution.

75 Legal culture has been described as a "genetic term for attitudes and ideas held by some part of the public, and which are affected by events and situations in the society as a whole and which in turn lead to actions that have an impact on the legal system itself". Church, Schulze & Strydom *Human Rights from a Comparative and International Law Perspective* 2007 26.

76 This is trite but see generally Church & Church "The Constitutional imperative and harmonisation in a multicultural society: A South African perspective on the development of indigenous law" 2008 *Fundamina* 1.

constitutional dispensation, the mix was Euro-centric,⁷⁷ and the system often compared to that of a “three-tiered cake”, with the Roman, Dutch and English law being its layers.⁷⁸ However, the place of indigenous law in the legal system has now been secured⁷⁹ and it may be referred to as the third of “three graces of South African law”.⁸⁰ Widely recognised as central to African philosophy, the notion of *ubuntu*⁸¹ underscores the indigenous value system, which, as will be shown, is part of South African legal culture and for this reason one needs to take account of *ubuntu* in the sustainable development dialogue.

In determining the essence and significance of *ubuntu* I refer as a point of departure, to the groundbreaking work *I am because we are – Readings in Black philosophy*. Here the central theme is that in African tradition personal identity cannot be separated from the environment as a whole which encompass the natural, socio-cultural, physical and spiritual environment. The traditional view was that the universe was “a spiritual whole” in which all beings were interrelated and interdependent existing in reciprocal relationship to one another: for example one could not take without giving. Accordingly, instead of Descartes’s “I think therefore I am” in this tradition the maxim is “I am because we are; and since we are, therefore I am”.⁸²

In the South African context, this idea is reflected in the concept of *ubuntu* often expressed by the maxim “*Umuntu ngumuntu ngabantu*” (in Zulu), and translated as “a person is a person through other persons”, thus reflecting a holistic rather than a narrow perspective of human relationships. There are those who hold that the question as to the

77 Here Euro-centric is used to reflect a “western” as opposed to an “indigenous” approach.

78 This was so for various reasons and despite the fact that indigenous law played an intrinsic role in the majority of the lives of South Africans. Indigenous law was recognised only as a special and a personal law that operated outside of and as determined by general law; see Church & Church 2008 *Fundamina* 1.

79 See ss 8(1), 30, 31, 39, 211 Constitution of the Republic of South Africa, 1996; see generally Church & Church 2007 *Anthropology SA* 56; see Church & Church 2008 *Fundamina* 1.

80 Ie the third component of South African law, apart from civil law and common law; see Church Schulze & Strydom chap 4.

81 Although *ubuntu* is not specifically mentioned in the African Charter on Human and Peoples’ Rights which entered into force on 1986-10-21, available at <http://www.hrcr.org/docs/Banjul/afhr.html>, aspects of this philosophy are reflected in the Charter. For example not only are human and people’s rights embodied in the Charter (arts 1-26), but so too their duties (arts 27-29). Not only is the African value system recognised and by implication the philosophy of *ubuntu* particularly in the preamble but art 17(3) enjoins the “promotion and protection of morals and traditional values recognised by the community” by the State. Be that as it may, the discussion of *ubuntu* in this article is confined to the South African context.

82 Hord & Lee “Introduction” in *I am because we are Readings in Black philosophy* (eds Hord & Lee) (1995) 8.

meaning of *ubuntu* is unanswerable⁸³ and those who warn against a too “rosy portrayal of African jurisprudence”.⁸⁴ There is always a danger of “romanticising” and to defend ideals such as *ubuntu* “might be a risky business”.⁸⁵ Nonetheless, with this *caveat*, *ubuntu* is generally accepted as the foundation of sound human relations in African communities, where as explained in the words of Mokgoro J it embodies the:

[k]ey values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.⁸⁶

The importance of group solidarity in the indigenous legal culture is reflected both in the spheres of what may be termed Public Law⁸⁷ and Private Law,⁸⁸ where shared accountability and group participation play important roles. This is sometimes held to imply that the individual is always subordinate to the group but this is not so. The dignity or self-worth of the individual is not negated but is always recognised. As Cornell and Van Marle⁸⁹ explain *ubuntu* is not a “simple form” of communitarianism. In other words, in terms of *ubuntu* the self-worth and dignity of the individual, lies in the fact that how a human being “is and is becoming”,⁹⁰ is shaped by interaction and interdependence with another. In the process of self-realisation through others, the self-

83 Praeg “An answer to the Question: What is [*ubuntu*]?” 2008 *SA J of Philosophy* 367.

84 Van der Walt “Vertical Sovereignty and Horizontal Plurality: Normative and existential reflections on the capital punishment jurisprudence articulated in *S v Makwanyane*” 2005 *SAPL* 253.

85 See Bohler-Müller “Some thoughts on the *Ubuntu* jurisprudence of the Constitutional Court” 2007 *Obiter* 590.

86 Mokgoro J in *S v Makwanyane* 1995 6 BCLR 665 (CC) par 308. In the *Makwanyane* case this was applied to the interpretation of the Bill of Rights in the South African Interim Constitution Act 200 of 1993.

87 See Mahao “*O se re ho morwa 'morwa towel'* African jurisprudence exhumed” 2010 *CILSA* 317 321. As the author shows shared authority was the “*leitmotif*” and the chief governed in conjunction with his Council. In the author’s own words “Democratic accountability in African jurisprudence was embedded in the constitutional principle *morena ke morena ka batho*” which “speaks to the participatory nature of governance which renders it inherently democratic and accountable to the governed”.

88 An example here would be the social responsibility that all homesteads in the community have to assist one another in the planting at the beginning of the summer season. Lovemore, Nyamwe & Mkabela “Revisiting the traditional African cultural framework of *Ubuntuism*: A theoretical perspective” 2007 *Indlinga – African J of indigenous Knowledge Systems* 152 155. Another example is the participation of groups in marriage negotiations; see generally Church, Schulze & Strydom chap 4.

89 Cornell & Van Marle “Exploring *ubuntu*. Tentative reflections” 2005 *African Human Rights LJ* 195 205.

90 As Louw explains, this accords with the ‘grammar’ of *ubuntu* denoting a state of being and one of becoming. In the process of self-realisation *through* others, the self-realisation of others is enhanced. Aug 1998 “20th WCP: *Ubuntu*. An African Assessment of the Religious Other”. Par 3 available at <http://www.bu.edu/wcp/Papers/Afri/AfriLouw.htm> (accessed on 2011-08-18).

realisation of others is enhanced. It may be difficult for one who is steeped in a Western way of thinking to move to this idea of individuality since, as one writer has aptly put it, the move is from “solitary to solidarity, from independence to interdependence, from individuality *vis-a-vis* community to individuality *à la* community”.⁹¹ However, since indigenous law is part of the South African mixed legal system⁹² and *ubuntu* is central to indigenous law, it is argued that the culture of *ubuntu* forms part of South African legal culture.

To my mind, *ubuntu* has already become a justiciable principle.⁹³ Mokgoro J⁹⁴ considered it important to recognise indigenous South African values, more particularly those of *ubuntu*, in constitutional interpretation and decision-making. Referring to the Interim Constitution she opined:⁹⁵

Section 35 seems to acknowledge the paucity of home-grown judicial precedent upholding human rights, which is not surprising considering the repressive nature of the past legal order. It requires courts to proceed to public international law and foreign case law for guidance in constitutional interpretation, thereby promoting the ideal and internationally accepted values in the cultivation of a human rights jurisprudence for South Africa. However, I am of the view that our own (ideal) indigenous value systems are a premise from which we need to proceed and are not wholly unrelated to our goal of a society based on freedom and equality.

91 *Ibid.*

92 Indigenous law is recognised as such in ss 8(1), 30, 31, 39, 211 Constitution of the Republic of South Africa, 1996; see too Church & Church 2008 *Fundamina* 1; Church & Church 2007 *Anthropology SA* 56. See footnote 79 above.

93 Although discussion of whether this is so is beyond the scope of this article, Cornell & Van Marle 2005 *African Human Rights LJ* 195 present persuasive arguments that this is the case. For example, in the case of *Tshabalala-Msimang v Makhanya* 2008 3 BCLR 338 (W) Jajbhay J stated (par 2) that “[i]n South Africa *ubuntu* must become a notion with particular resonance in the building of our constitutional democracy”. Although reference to *ubuntu* in South African case law may at times have been superficial and perhaps the concept not analysed, the fact that *ubuntu* has pervaded various court decisions and has been referred to in order to settle legal disputes is clear. The following may serve as examples: *Port Elizabeth Municipality v Various Occupiers* 2004 12 BCLR 1268 (CC); *Bhe v Magistrate, Khayelitsha*; *Shibi v Sithole*; *SA Human Rights Commission v President of the RSA* 2005 1 BCLR 1 (CC); *City of Johannesburg v Rand Properties (Pty) Ltd* 2006 6 BCLR 728 (W); *Dikoko v Mokhatla* 2007 1 BCLR 1 (CC); *Tshabalala-Msimang v Makhanya* 2008 3 BCLR 338 (W); *Masetlha v the President of the Republic of South Africa* 2008 1 BCLR 1 (CC); *The Citizen 1978 (Pty) Ltd v McBride* 2011 8 BCLR 816 (CC); *Le Roux v Dey* 2011 6 BCLR 577 (CC). At an *uButnu* workshop, held at the University of Pretoria on 2011-08-02 (proceedings on file with author) former Justices Mogoro and Sachs and Justice O’Reagan agreed that *ubuntu* is a constitutional value.

94 See *S v Makwanyane* 1995 6 BCLR 665 (CC) par 304.

95 Here with reference to s 35 Interim Constitution; now s 39 Constitution of the Republic of South Africa, 1996.

The value system embodied in *ubuntu* has also been used in legal development⁹⁶ in fields other than public law. In the private law sphere for example *ubuntu* played a significant role in the determination of the quantum of damages in an action based on defamation. In determining whether the Roman-Dutch remedy of *amende honorable* (apology by the defendant) is still part of South African law, Justice Mokoro,⁹⁷ stated that:

Whether the *amende honorable* is part of our law or not, our law in this area should be developed in the light of the values of *ubuntu* emphasising restorative rather than retributive justice.

Justice Sachs also relied on the values of *ubuntu* and stated that courts should “explore the wide and creative possibilities afforded by restorative justice as contemplated by the indigenous values of ubuntu or both”.⁹⁸

Policies in other fields of law have also been informed by it. In the context of corporate law for example the culture of *ubuntu* was highlighted in the King Report,⁹⁹ more specifically in the context of corporate governance and the protection of the environment. In this context it was stated, that *ubuntu* provides a “cultural hot-bed” for important values such as “creative co-operation, empathetic communication and team-work” and serves as a basis for “corporate culture on African soil”. In the context of corporate governance, good corporate citizenship was held to include corporate responsibility with regard to social issues. This meant *inter alia* making business decisions linked to ethical values, legal compliance and respect for communities and the environment.¹⁰⁰

If as argued culture is a fourth pillar of sustainable development, the notion of *ubuntu* will have to be considered in the implementation of

96 See generally Bennett “An African equity” 2011 *PER* 30.

97 *Dikoko v Mokhatla* 2006 6 SA 235 (CC) par 69. Mokoro J and Sachs J, were in the minority in the determination of quantum. Moseneke J, writing for the majority on quantum recognises the “persuasive ... line of reasoning” advanced by Mokgoro J and Sachs J in their separate but concurring dissenting judgments on quantum. However, he opines that as issues that were not confronted by the trial court were raised, they did not properly arise before the court. In this case there was no attempt at apology.

98 *Dikoko v Mokhatla* 2006 6 SA 235 (CC) par 86.

99 King Committee *King II Report on Corporate Governance* 2002 (hereafter *King II*).

100 *King II* 129. *King II* was followed by the third report on corporate governance in 2009, *King III Report on Corporate Governance* 2009 (hereafter *King III*). In consequence of the *King Reports* and significant changes to the Companies Act 71 of 2008 and particularly with regard to sustainable development, directors could be held liable if they fail to discharge their duties in terms of the code as laid down by the *King Report*. *King II*, (and the author submits by implication *King III*) may not merely be a voluntary code but a legal injunction. See too the discussion in Esser & Delpont “The duty of care, skill and diligence: The King Report and the 2008 Companies Act” 2011 *THRHR* 449.

sustainable development. It is also of interest to note that parallels do exist between the notions of sustainable development and *ubuntu*.

For example in both the notion of inter-dependence plays an important role. The philosophy of *ubuntu* encompasses an holistic rather than an individual approach while sustainable development also requires an holistic approach¹⁰¹ as integration is a core element.

Sustainable development encapsulates both inter¹⁰² and intra-generational equity,¹⁰³ natural resources must be used and allocated equitably and must be preserved for the benefit of present and future generations. Inter-generational equity, intrinsic to the notion of sustainable development, involves looking from the interest of the present to that of the future, in other words forward looking from the self to the other. Similarly, intrinsic to the notion of *ubuntu* is looking away from the self without negating the self. Like sustainable development the culture of *ubuntu* encapsulates both inter-generational and intra-generational equity. Analogous to intra-generational equity *ubuntu* as a social ethic prescribes that members of a community should care for one another and where one suffers all suffer. Instead of only serving the advancement of the self, there is a preference for co-operation or group work¹⁰⁴ which serves the advancement of all as well as the empowering of the other in order to “become”. Because of this relational focus there would be less tolerance for economic inequality. As put by Metz and Gaie¹⁰⁵ “a sense of togetherness is difficult to foster when some have much greater wealth than others”. The culture of *ubuntu* also recognises

101 Throsby 2008 UNESCO 3 for example refers to the principle of interconnectedness as one of the principles that underlies sustainable development. In terms of this principle “economic, social, cultural and environmental systems should not be seen in isolation; rather, a holistic approach is required”. This as outlined in this article is in line with the concept of *ubuntu*. Furthermore he opines that “in terms of the principle of intergenerational equity: development must take a long-term view and not be such as to compromise the capacities of future generations to access cultural resources and meet their cultural needs; this requires particular concern for protecting and enhancing a nation’s tangible and intangible cultural capital”.

102 Principle 3 of the *Rio Declaration* 1992 embodies the idea of inter-generational equity and reads: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. This has already been effected in South African legislation and jurisprudence: For example s 4 World Heritage Act 49 of 1999; Church & Church “Heritage” in *LAWSA* (ed Kühne) 10(2) (2005) par 582; *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation and Land Affairs* [2004] 3 All SA 201 (W) 218-219; Church 2009 *JALTA* 65 71.

103 Principle 5 *Brundtland Report* 1987 provides that “All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world”.

104 Louw 4.

105 Metz & Gaie “The African ethic of *Ubuntu/Botho*: implications for research on morality” 2010 *J of Moral Ed* 273 277.

the important link between the past, present and future generations where all three levels of existence are recognised and the present living, the living dead and future unborn are all equally important stakeholders.¹⁰⁶

To return to the main argument, as culture is important to sustainable development, this would mean that: First, account should be had of the culture of the relevant community involved prior to taking any decision regarding sustainable development; secondly it should be determined how culture might serve to further the process of sustainable development. By taking cognisance of the cultural ethic of a particular community, strategies to implement sustainable development could be facilitated.

There are concrete examples of how this might be and is being done. For example *ubuntu* was taken into account with regard to corporate governance.¹⁰⁷ So too this has been done in the “Working for Wetlands” programme.¹⁰⁸ The culture of the people living at the wetland is taken into account and strategies are developed to protect the environment as well as the culture and economic survival of the people. For example women from two craft groups – Ikhowe and Thubaleth’elihle – have been assisted to sustainably harvest wetland reeds which are used to produce crafts which are then sold. While the culture of *ubuntu* may not specifically include the protection of the environment, taking cognisance of this culture may well assist in environmental governance¹⁰⁹ and in the implementation of strategies to achieve sustainable development.

6 Conclusion

In South Africa, in the interest of “people planet and prosperity”, cognisance should be taken of the indigenous culture of *ubuntu*, both in theory and when determining sustainable development strategies in this country. Furthermore ideally, since culture informs social behaviour,

106 Edozien “Cultural Divergence and Education towards Sustainable Development – An African Viewpoint” 2007 *Bildung für nachhaltige Entwicklung Journal BNE-Journa* available at http://62.50.45.117/coremedialgenerator/pm/de/Ausgabe_002/01_Beitr_C3_A4ge/Edozien_3A_20Cultura_l_20Divergence_20and_20Education_20towards_20Sustainable_20Development_20_E2_80_93_20An_20African_20Viewpoint.html; Louw (1998) par 1: For example, at a “*calabash*”, a ritual involving the drinking of beer, when a little bit of beer is poured on the ground for consumption of ancestors.

107 See discussion above.

108 This is a government programme dedicated to the rehabilitation, protection and sustainable use of South Africa’s wetlands.

109 That is with regard to strategic planning for sustainable development. As already outlined the philosophy of *ubuntu* encompasses co-operation, partnership and sharing and participation. These values as informed by *ubuntu* could play a role in the implementation of sustainable development, for example participation by the community in the case of impact assessments or community involvement which is typical of the culture of *ubuntu*, as in the case of the Wetlands project.

these strategies should be in line with the prevailing value system of a particular community within the South African society. While this would hold true where the society is culturally homogeneous, there might be problems where a society is multi-cultural as in South Africa. However, here harmonisation¹¹⁰ may be a solution. In this context, for example, in the case of *S v Makwanyane*,¹¹¹ *ubuntu* was used in the interpretation of the western-oriented concept of the human right to dignity and in a process of what has been termed harmonisation¹¹² greater content was given to it. Here *ubuntu* that focuses on the commonality and interdependence of members of the community was held to converge with the constitutional right to dignity where the focus is on the individual's status as a human being.¹¹³ This is not to say that the notion of sustainable development, as it has evolved over the last decades and more particularly within a western context, should be negated. Rather it should be informed and enriched by the indigenous philosophy of *ubuntu* as has happened in the case of *S v Makwanyane*¹¹⁴ and *Dikoko v Mokhatla*.¹¹⁵

It is trite that South Africa has a mixed legal culture and that the African Customary Law component is constitutionally entrenched.¹¹⁶ Moreover, there is reference to *ubuntu*, the central tenet of indigenous law in the jurisprudence of the courts in various fields. It has, at least in the view of some, been recognised as a constitutional value and, notably in the words of Sachs J,¹¹⁷ *ubuntu* is "intrinsic to and constitutive of our constitutional culture" and it "feeds pervasively into and enriches the fundamental rights enshrined in the Constitution".¹¹⁸

As already indicated *ubuntu* could be used to inform and implement environment policies and strategies in various fields. It has been shown that moves in this direction have already been made. Interaction with and respect for the environment in the process of sustainable development would be in line with *ubuntu* as would community participation in development projects which, managed intelligently, could serve to alleviate poverty.¹¹⁹

110 See in general Church & Church 2008 *Fundamina* 1 2.

111 *S v Makwanyane* 1995 6 BCLR 665 (CC). Here the court had to determine whether or not the death penalty was unconstitutional.

112 Church & Church 2008 *Fundamina* 1 4.

113 *Idem* 5.

114 In *S v Makwanyane* 1995 6 BCLR 665 (CC) par 364 Sachs J states that "[t]he secure and progressive development of our legal system demands that it draws the best from all the streams of justice in our country" (emphasis added).

115 *Dikoko v Mokhatla* 2006 6 SA 235 (CC).

116 See generally Church, Schulze & Strydom chap 4.

117 *Dikoko v Mokhatla* 2006 6 SA 235 (CC) par 113.

118 *Ibid.*

119 Such as the "Working for Wetlands" programme which as shown above would serve not only environmental protection but also economic growth and social equity.

Finally it would be politically expedient if sustainable development reflected both the Western and the African ethos. Where the value system of a community is respected and incorporated in policies and strategies and social needs are met, there would be a greater likelihood that they would be embraced by the people concerned. This would be in line with the vision as stated in the preamble to the Constitution:¹²⁰ “We, the people of South Africa, ... Believe that South Africa belongs to all who live in it, united in our diversity”.

¹²⁰ Constitution of the Republic of South Africa, 1996.