

# Deadly Air and the Misinterpretation of the Section 24 Environmental Right: The *Groundwork Trust* Case

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## Abstract

The judgment in *Trustees for the Time Being of the Groundwork Trust v Minister of Environmental Affairs* rests on a finding that the right in section 24 of the Constitution consists of two separate rights in subsections (a) and (b), and that the right in section 24(a) is immediately realisable. I argue in this article that this approach is incorrect and that a logical and contextual interpretation of section 24 cannot justify the conclusion that the court reached. I argue that section 24(b) is a qualifying "internal modifier" to section 24(a), and that, in practical terms and due to the modifier in section 24(b), in many situations section 24 would have to be regarded as implementable over time, and not immediately. Such implementation would have to be reasonable. The article also considers the use of the *National Environmental Management: Air Quality Act* to address the unacceptable level of air pollution in the area known as the Highveld Priority Area.

## Keywords

Section 24; progressive realisation; limitation; air pollution.

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To the east of Johannesburg and straddling the border between the provinces of Gauteng and Mpumalanga, is an area of the so-called "Highveld" that has some of the worst air pollution levels in the world.<sup>1</sup> The area contains the towns of eMalahleni, Middelburg, Secunda, Standerton, Edenvale, Boksburg and Benoni. This air pollution ought to be addressed by the law. In order to give effect to the right in section 24 of South Africa's Constitution<sup>2</sup> – the right of everyone to an environment that is not harmful to health and well-being – South Africa has enacted an array of environmental legislation, including the *National Environmental Management: Air Quality Act*.<sup>3</sup> Despite the legislation's having mechanisms available to address the air pollution problems, more than a decade of administrative inaction (in other words, failure to implement these mechanisms) resulted in activists bringing the so-called "Deadly Air" case to court. This case, *Trustees for the Time Being of the Groundwork Trust v Minister of Environmental Affairs*,<sup>4</sup> is the subject of this article. The two main focal areas of the article are the application of section 24 to the facts of the case, its interpretation (or, I will argue, misinterpretation), and the implementation of the Act in order to address the problem.

## 1 Factual context

In 2006 Eskom<sup>5</sup> commissioned a report into the air pollution caused by its operations and the health impacts thereof.<sup>6</sup> It found that at the time "emissions from Eskom and other source (*sic*) quantified during the study

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<sup>1</sup> See, for example, Kings 2014 <https://mg.co.za/article/2014-06-19-power-stations-are-deadly-internal-report-reveals/>; CER 2017 [https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report\\_final.pdf](https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report_final.pdf) (this publication is referred to in *Trustees for the Time Being of Groundwork Trust v Minister of Environmental Affairs* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022) para 48); Greenpeace Africa 2019 [https://www.greenpeace.org/static/planet4-africa-stateless/2019/08/4f7f1afa-sa-briefing\\_-global-air-pollution-map-so2.pdf](https://www.greenpeace.org/static/planet4-africa-stateless/2019/08/4f7f1afa-sa-briefing_-global-air-pollution-map-so2.pdf); Wernecke *et al* 2022 *Clean Air Journal*; and sources referenced in part 1 of the paper below.

<sup>2</sup> *Constitution of the Republic of South Africa*, 1996 (the Constitution).

<sup>3</sup> *National Environmental Management: Air Quality Act* 39 of 2004.

<sup>4</sup> *Trustees for the Time Being of Groundwork Trust v Minister of Environmental Affairs* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022) (hereafter *Groundwork Trust*).

<sup>5</sup> Eskom Hld SOC Ltd is a public utility (state-owned enterprise) which is the largest supplier of electricity in Africa.

<sup>6</sup> Airshed Planning Professionals 2006 <https://cer.org.za/programmes/pollution-climate-change/key-information/eskom> (the Centre for Environmental Rights (CER) requested the report using the *Promotion of Access to Information Act* 2 of 2000).

were predicted to result in 550 deaths per year and ~117 200 respiratory hospital admissions per year".<sup>7</sup> Of these, "Eskom Power Stations were cumulatively calculated to be responsible for 17 nonaccidental mortalities per year and 661 respiratory hospital admissions, representing 3.0% and 0.6% of the total non-accidental mortalities and respiratory hospital admissions projected."<sup>8</sup> The most significant contributors to these figures were found to be the power stations at Kendal (~61%), Matla (~20%), Lethabo (~8%) and Kriel (~7%) – together "these four power stations contributed just over 95% of the non-accidental mortality cases and respiratory hospital admissions predicted to occur as a result of Eskom Power Stations". Other than Lethabo the power stations are all located in the highveld area.<sup>9</sup> A 2017 report commissioned by the non-governmental organisation Groundwork found that more than 2 200 deaths annually were attributable to coal-fired generation in South Africa.<sup>10</sup> According to the Centre for Environmental Rights,

In 2004, the Trade and Industry Chamber released the 'FRIDGE' (Fund for Research into Industrial Development and Growth and Equity) study, and found that industrial sources, such as coal mining, power generation and the petrochemical industry, were by far the largest contributors of emissions on the Highveld, accounting for 89% of PM10, 90% of NOx, and 99% of SO2, all of which are harmful to human health. The levels of these substances in the air on the Highveld significantly exceed World Health Organisation (WHO) recommended levels.<sup>11</sup>

The point does not need to be further laboured,<sup>12</sup> but the bottom line is that the air pollution levels in the highveld area are significant, and they are killing people.

## 2 Legal context

Section 18 of the *National Environmental Management: Air Quality Act* (the *Air Quality Act*)<sup>13</sup> provides for the declaration of Priority Areas: the Minister or MEC may declare an area as a priority area if s/he reasonably believes that (a) ambient air quality standards are being, or may be,

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<sup>7</sup> Airshed Planning Professionals 2006 <https://cer.org.za/programmes/pollution-climate-change/key-information/eskom> 6-3.

<sup>8</sup> Airshed Planning Professionals 2006 <https://cer.org.za/programmes/pollution-climate-change/key-information/eskom> 6-4.

<sup>9</sup> Airshed Planning Professionals 2006 <https://cer.org.za/programmes/pollution-climate-change/key-information/eskom> 6-7.

<sup>10</sup> Holland 2017 <https://cer.org.za/wp-content/uploads/2017/04/Annexure-Health-impacts-of-coal-fired-generation-in-South-Africa-310317.pdf> 15.

<sup>11</sup> CER *Zero Hour* 5-6 (references omitted), citing the Fund for Research into Industrial Development and Growth and Equity Study, 2004.

<sup>12</sup> Also see Altieri and Keen 2019 *Science of the Total Environment* 610, in which the authors posit that reducing exposure in South Africa to PM<sub>2.5</sub> will avoid 28 000 premature deaths in the country.

<sup>13</sup> *National Environmental Management: Air Quality Act* 39 of 2004 (hereafter the *Air Quality Act*).

exceeded in the area, or any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and (b) the area requires specific air quality management action to rectify the situation. Section 19 provides for the (mandatory) preparation of an air quality management plan for such an area. Section 20 provides that the Minister or MEC may prescribe regulations necessary for implementing and enforcing approved priority area air quality management plans, including (a) funding arrangements; (b) measures to facilitate compliance with such plans; (c) penalties for any contravention of or any failure to comply with such plans; and (d) regular review of such plans. Note that section 20 is couched in seemingly permissive terms. It uses the word "may" rather than the mandatory "must". This is important and will be discussed in relation to the judgment below.

In 2007 the Highveld Priority Area (HPA), straddling the highveld area and including those towns described above, was declared in terms of section 18.<sup>14</sup> The HPA Air Quality Management Plan was published in terms of section 19 in 2012.<sup>15</sup> As of 2022 there were no regulations for the HPA, which was the reason for the litigation. To emphasise the timeline, then, it was at least 16 years (probably closer to 20, given that the situation would have been evident prior to the declaration of the HPA in 2007) that the problem was known to the authorities without the use of the regulations which would provide the operational measures to address the air pollution issues in the HPA.

"Ambient air quality standards" are referred to as a trigger for the exercise of the powers in terms of section 18.<sup>16</sup> In 2021 the United Nations Environment Programme (UNEP) published *Regulating Air Quality: The First Global Assessment of Air Pollution Legislation*. The study concludes<sup>17</sup> that a

robust system of air quality governance is one which:

- requires governments to develop and regularly review applicable air quality standards in light of public health objectives;
- determines institutional responsibility for those standards;
- monitors compliance with air quality standards;
- defines consequences for failure to meet them;
- supports the implementation of air quality standards with appropriate and coordinated air quality plans, regulatory measures and administrative capacity;

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<sup>14</sup> GN 1123 in GG 30518 of 23 November 2007.

<sup>15</sup> GN 144 in GG 35072 of 2 March 2012.

<sup>16</sup> The discussion on ambient air quality standards in this and the following paragraphs is based on the chapter entitled "Pollution Control and Waste Management" in the as-yet unpublished third edition of my book *Environmental Law*. The current edition is the 2<sup>nd</sup> edition (Kidd *Environmental Law*).

<sup>17</sup> UNEP *Regulating Air Quality* 76.

is transparent and participatory.

While this paper is not the place to assess whether and to what extent South Africa's air quality legislation meets these criteria, what is clear from the document is that air quality standards are pivotal to robust air quality governance. Air quality standards are provided for in the *Air Quality Act* as follows. Section 9(1) of the Act provides:

The Minister, by notice in the *Gazette*—

- (a) must identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment or which the Minister reasonably believes present such a threat;
- (b) must, in respect of each of those substances or mixtures of substances, establish national standards for ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; and
- (c) may, in respect of each of those substances or mixtures of substances, establish national standards for emissions from point, non-point or mobile sources.<sup>18</sup>

Although the Act does not have provisions that directly implement the emission standards (for example, making it an offence for any person to cause emissions that exceed the standards), the standards are (or are intended to be) used in conjunction with other control mechanisms in the Act, such as priority areas (which is the focus of this paper) and the licensing of activities requiring licences in terms of the Act.<sup>19</sup> National ambient air quality standards have been set in terms of section 9 for the following substances: sulphur dioxide; nitrogen dioxide; particulate matter (PM<sub>10</sub>); ozone; benzene; lead; and carbon monoxide.<sup>20</sup> National ambient air quality standards for particulate matter with an aerodynamic diameter of less than 2.5 micron metres (PM<sub>2.5</sub>) were published in 2012.<sup>21</sup>

One of the most important roles played by air quality standards in the *Air Quality Act* is in relation to the licensing of listed activities which result in atmospheric emissions which have or may have significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage.<sup>22</sup> The listing and licensing regime is not directly addressed in the judgment, but it is important to consider it in relation to the legislative context, because it

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<sup>18</sup> Section 9 of the *Air Quality Act* deals with national standards. Standards may also be set provincially (s 10) and locally (s 11).

<sup>19</sup> See ch 5 of the *Air Quality Act*.

<sup>20</sup> GN 1210 in GG 32816 of 24 December 2009.

<sup>21</sup> GN 486 in GG 35463 of 29 June 2012.

<sup>22</sup> Section 21 and the following sections in the *Air Quality Act*.

would operate as a layer of regulation in addition to that provided for by the priority area regime. The listing of individual activities is accompanied by the relevant air quality standards for that activity. In the relevant government notice<sup>23</sup> provision is made for compliance time frames (the time frames within which plants must comply with the relevant standards). Regulation 9 states that existing plant "must comply with minimum emission standards for existing plant as contained in Part 3 by 1 April 2015, unless where specified" (Part 3 sets out the specific standards for each activity and there are two standards stipulated for the plant status: "new" and "existing"). Regulation 10 provides that existing plant "must comply with minimum emission standards for new plant as contained in Part 3 by 1 April 2020, unless where specified". The listing notice makes provision for applications for the postponement of compliance with the standards, for limited periods.<sup>24</sup> Regulation 12A(c)(i) explicitly provides that the National Air Quality Officer may grant an alternative emission limit or emission load if there is material compliance with the national ambient air quality standards in the area for the pollutant or pollutants applied for. This is what is known in administrative law as a jurisdictional fact – a precondition for the valid exercise of a power (in this case, the granting of an alternative emission requirement). If the precondition does not exist or is not met, the power cannot be validly exercised. It appears as if the measured ambient air quality standards in the HPA in particular are not in conformity and have not been in conformity with the relevant legal standards, meaning that any decision allowing for the postponement and relaxation of the requisite standards (and there have been some decisions of this kind) are invalid.<sup>25</sup>

A particularly controversial situation is in respect of Eskom, several of whose applications for postponement for its power stations were rejected in late 2021. Eskom and various other bodies have appealed (some against the few positive decisions that Eskom received). Eskom has alleged that the negative decisions are likely to have a serious negative impact on its generation capacity.<sup>26</sup> The Minister has consequently called for applications to constitute a national environmental consultative and advisory forum in terms of section 3A of the *National Environmental Management Act 107 of 1998* (NEMA) to advise her on matters arising from the applications for the suspension and postponement of compliance with the minimum emission standards and the applications for the

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<sup>23</sup> GN 893 in GG 37054 of 22 November 2013.

<sup>24</sup> See regs 11-13 inclusive of GN 893 in GG 37054 of 22 November 2013, taking note in particular of the amendments and insertions made by the 2018 amendment: GN 1207 in GG 42013 of 31 October 2018.

<sup>25</sup> See Euripidou *et al* 2022 *Clean Air Journal*.

<sup>26</sup> See Eskom 2021 <https://www.gov.za/speeches/eskom-receives-dffe%E2%80%99s-decisions-minimum-emissions-standard-15-dec-2021-0000>.

issuance of provisional atmospheric emission licences.<sup>27</sup> The Minister's decision is not easy. The task of balancing concerns of public health and compliance with the law on the one hand with possible interference with an already-tenuous national energy supply is not one to be envied. It must be borne in mind, however, that the air quality standards were a result of consultation with all affected persons and bodies, including Eskom, and Eskom has had more than a decade to get its house in order but has failed to do so.

A final aspect relating to air quality standards is the recommendation of the UNEP study mentioned above that "timely progression towards adoption of the WHO air quality guidelines in legislative AAQS [ambient air quality standards] should be considered and planned in all countries where possible, particularly in relation to PM<sub>2.5</sub>, where protection against unsafe levels of PM<sub>2.5</sub> is urgently required for public health".<sup>28</sup> The South African standards in several respects are more lenient than their World Health Organisation (WHO) equivalents and this is an objective that South Africa ought to take seriously.

The significance of the discussion on air quality standards for this paper and the issue of the delay in relation to the promulgation of the priority area regulations that is the subject of the case under review here is that the Minister and the relevant environmental authorities should be recognised as concurrently engaged in several different but complementary regulatory implementation efforts aimed at addressing air pollution.<sup>29</sup> Section 2 of the *Air Quality Act*, setting out the object of the Act, states:

The object of this Act is-

- (a) to protect the environment by providing reasonable measures for-
  - (i) the protection and enhancement of the quality of air in the Republic;
  - (ii) the prevention of air pollution and ecological degradation; and
  - (iii) securing ecologically sustainable development while promoting justifiable economic and social development; and
- (b) generally to give effect to section 24 (b) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.

Although section 2 speaks of the "prevention" of air pollution, clearly a literal interpretation would be inconsistent with the object of "securing

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<sup>27</sup> GN 2076 in GG 46355 of 12 May 2022.

<sup>28</sup> UNEP *Regulating Air Quality* 76. See Altieri and Keen 2019 *Science of the Total Environment* 610.

<sup>29</sup> See *Groundwork Trust* para 59.2.

ecologically sustainable development while promoting justifiable economic and social development" (which is text taken directly from section 24(b) of the Constitution) – the two objects are mutually exclusive – and the reality of the factual situation on the ground in the HPA. The "prevention" of air pollution in South Africa, and in particular in the HPA, would entail the closure of all electricity generating power stations and all other industry in the area that contributes to air pollution, which is clearly not economically feasible. Looking at the context of the Act as a whole, therefore, "prevention" ought to be interpreted as something akin to "minimisation". As Wolf and Stanley suggest,<sup>30</sup>

The primary function of environmental law is *not* to eliminate pollution, except in the case of a few highly toxic pollutants, but to *balance* the polluting emissions generated by economic activity against the demands of society for a tolerably healthy environment. Polluting emissions must therefore be set, in most cases, by government (or its regulators) at levels which are acceptable to its two major stakeholders: regulated businesses and the public.

It is this balancing act that is central to the regulation of air pollution in South Africa. It is required by the Constitution (I will expand upon this below) and it is dictated by the factual realities that exist in the country. It is also not something that can be done overnight (or "immediately"), which is a point that is absolutely crucial in relation to the discussion of the case below.

### 3 The case

The applicants essentially had two issues for consideration by the court (Collis J). First, they were requesting the court to declare that the "unsafe levels of ambient air pollution in the Highveld Priority area are an ongoing breach of residents' section 24(a) constitutional right to an environment that is not harmful to health or well-being". Second, they were asking the court to order the Minister to make regulations to implement and enforce the HPA Air Quality Management Plan<sup>31</sup> in terms of section 20 of the *Air Quality Act* and the Constitution. More specifically, the court set out the issues for determination as follows:

1. The first issue to be decided upon as per the applicants, is whether there has been a breach of section 24(a) of our Constitution. In this regard the respondents contend that this includes consideration of the following questions:
  - a. Whether the applicants can rely, for their cause of action, directly on section 24(a) of the Constitution in view of the Principle of Subsidiarity;

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<sup>30</sup> Wolf and Stanley *Wolf and Stanley on Environmental Law* 5.

<sup>31</sup> GN 144 in GG 35072 of 2 March 2012.

- b. If so, whether in law a mere state of affairs, without relying on positive or negative conduct on the part of the First and Second Respondent, can constitute a breach of the right in section 24(a) of the Constitution, or whether in law some conduct is required which is in conflict with the correlative obligations of such right;
  - c. If so, whether in law the right in section 24(a) of the Constitution is of such a nature that it is immediately realisable or progressively realisable;
  - d. If so, whether in law the right in section 24(a) of the Constitution is qualified, either by its context in section 24(a) thereof and/ or by the other fundamental rights in the Bill of Rights and/ or by the suite of Environmental Legislation enacted to give effect to section 24 thereof;
2. The second issue this court was called upon to determine (*sic*), concerns the proper interpretation of section 20 of the Air Quality Act. It is whether section 20 provides for discretionary power to make regulations or whether it provides for an obligation or duty to do so as per paragraph 2 of the Notice of Motion.<sup>32</sup>

The court characterised as "common cause" that the high levels of ambient air pollution in the HPA are, in general, harmful to human health and wellbeing;<sup>33</sup> ambient air pollution continues to exceed the national ambient air quality standards;<sup>34</sup> government has failed to achieve the HPA Plan's goals;<sup>35</sup> the required five-year revision of the Highveld Plan had not occurred as the plan had not been updated, nine years on;<sup>36</sup> the Minister's predecessors had made no effort to create section 20 regulations to implement the Highveld Plan; the Minister had initiated a process to draft regulations, with some draft text having been produced but having not yet been released for public comment and with no timeline for producing the final regulations;<sup>37</sup> and the department's own internal socio-economic impact assessment confirmed the necessity for the implementation of the regulations and the ongoing threats to health and well-being caused by air pollution in the HPA.<sup>38</sup>

The court's conclusion that on the "conspectus of the evidence presented and having regard to the available authorities, I am as a result satisfied that the applicants have established a breach of section 24(a) of the Constitution, as a result of the Ministers' failure to promulgate the regulations for the Highveld Priority Area"<sup>39</sup> is based heavily on the

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<sup>32</sup> *Groundwork Trust* para 11. Numbering not in original.

<sup>33</sup> *Groundwork Trust* para 12.1. See paras 71 to 75 of the judgment.

<sup>34</sup> *Groundwork Trust* para 12.2. See paras 64 and 65 of the judgment.

<sup>35</sup> *Groundwork Trust* para 12.3.

<sup>36</sup> *Groundwork Trust* para 13.

<sup>37</sup> *Groundwork Trust* para 14.

<sup>38</sup> *Groundwork Trust* para 15.

<sup>39</sup> *Groundwork Trust* para 183.

applicants' arguments. These were to the effect that, first, section 24(a) provides an "immediate, unqualified right" to a "safe environment here and now" and that the levels of air pollution in the HPA continue to breach the right.<sup>40</sup> In support of this it was argued that section 24 is distinguishable from other socio-economic rights, such as those in section 26 and section 27, which have explicit progressive realisation clauses. Along these lines, there was argument following *Governing Body of the Juma Masjid Primary School v Essay*,<sup>41</sup> which dealt in section 29(1) with the right to basic education. It was argued that since section 29 did not contain any wording to the effect that it is progressively realisable, and because neither does section 24, this meant that section 24 was not progressively realisable and had to be realised immediately.<sup>42</sup> A second argument was based on the principle that "the 'negative' component of all socio-economic rights – the right to be free from interferences in the enjoyment of that right – is always unqualified and is not subject to any requirements of reasonableness". The "negative" element of section 24 would be infringed in cases where people lived in conditions in which their health and wellbeing was harmed by dangerous levels of air pollution.<sup>43</sup>

The applicants argued that there was a distinction between section 24(a) and 24(b) in that the former "sets the basic minimum for environmental protection: an environment that is not harmful", whereas section 24(b) "goes further, requiring the state to take reasonable steps to protect the environment even where human health and well-being are not immediately threatened".<sup>44</sup> Section 24(b), so the argument went, was added "with the clear purpose of enhancing the scope and content of the environmental rights, beyond merely protecting human beings against harmful conditions", and, as such, section 24(b) is "an addition to, not a subtraction from, the unqualified section 24(a) right".<sup>45</sup>

Counsel for the Minister, on the other hand, argued on the basis of the principle of subsidiarity ("where legislation has been enacted to give effect to a fundamental right, a litigant should rely on that legislation in order to give effect to the fundamental right or alternatively challenge the legislation as being inconsistent with the Constitution"),<sup>46</sup> and that the existing suite of environmental legislation, including NEMA and the *Air Quality Act*, had been enacted to give effect to this right and thus barred any direct reference to section 24(a). Counsel also argued that the section

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<sup>40</sup> *Groundwork Trust* para 32.

<sup>41</sup> *Governing Body of the Juma Masjid Primary School v Essay* 2011 8 BCLR 761 (CC).

<sup>42</sup> *Groundwork Trust* paras 156-163. Also see para 82.

<sup>43</sup> *Groundwork Trust* para 38.

<sup>44</sup> *Groundwork Trust* para 43.

<sup>45</sup> *Groundwork Trust* para 46.

<sup>46</sup> *Groundwork Trust* para 85.

24(a) right "is not an absolute but relative right, which is qualified and limited".<sup>47</sup> One of the reasons for this was that the section 24(a) right was limited by the "conjoined environmental right as provided for in section 24(b) thereof, embodying a constitutional imperative for sustainable development".<sup>48</sup>

In reaching the decision, the court did not directly address the argument relating to the bifurcated right in section 24 or, in other words, that section 24(a) and section 24(b) are separate rights. It may be impliedly regarded as having been accepted due to the court's rather bald finding that, on "the evidence that has been presented before this court, I cannot but conclude that the respondents have failed to justify any limitation to the section 24(a) right by placing reliance on section 36 of the Constitution".<sup>49</sup> There is no express reference to a limitation provided by section 24(b), but if there is a finding that there is no limitation, then that would include a limitation in terms of section 24 itself.

It would appear that the essential basis of the court's decision in relation to section 24's applicability and its interpretation – the *ratio decidendi*, if you will – is the reliance on the "plain wording" of section 24, in that the section as phrased is "entirely unqualified and this is supported by the omission of any reference being made to '*progressive realisation*' in the text of the section itself".<sup>50</sup> In support of this conclusion, the court relied on the Constitutional Court's interpretation of the section 29 right to basic education in the *Juma Masjid* case, on the basis of the "similar wording" of section 29 and section 24.<sup>51</sup> Not only was the right entirely unqualified; it was also "immediately realisable".<sup>52</sup>

In response to the argument relating to the subsidiarity principle, the court reasoned that the subsidiarity principle generally applied in two circumstances: first, where the Constitution itself required the enactment of specific legislation "to effectively codify rights" (the example given being section 33 – the right to administrative justice); and, second, where legislation "covered the field" by providing "clear procedures, dedicated forums and specific statutory remedies for constitutional rights violations such as labour legislation".<sup>53</sup> As for section 24 and the suite of environmental legislation that has been enacted to give effect to section 24 (this can be seen readily from the preambles to these Acts), the court held that section 24(a) "fails to place a specific obligation on Parliament to

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<sup>47</sup> *Groundwork Trust* para 121.

<sup>48</sup> *Groundwork Trust* para 121.

<sup>49</sup> *Groundwork Trust* para 176.

<sup>50</sup> *Groundwork Trust* para 156. Emphasis in original.

<sup>51</sup> *Groundwork Trust* para 163.

<sup>52</sup> *Groundwork Trust* para 163.

<sup>53</sup> *Groundwork Trust* para 168.

pass specific legislation to codify environmental rights" and that the legislation does not provide procedures and remedies for addressing air pollution impacts. Consequently, the principle of subsidiarity does not apply.<sup>54</sup> The court also made the observation that "sustainable development further requires that measures put in place to achieve economic development should not sacrifice the environment and human life and wellbeing and it must be that a balance should be struck", and that where "one trumps the other, it cannot be said the right of section 24(a) has been achieved".<sup>55</sup>

In relation to the second issue in the case, relating to the interpretation of section 20 (the power to make regulations relating to priority areas), the legal issue for determination was whether, in the circumstances of the HPA, section 20 constitutes a discretionary power on the part of the Minister, or whether it is a duty, in which case the Minister would be required to issue such regulations.<sup>56</sup> The court recognised jurisprudence to the effect that in appropriate cases it was legally permissible for a clause phrased in seemingly discretionary terms (by using the word "may") to be interpreted as a duty. Influenced by the fact that the current Minister had already commenced on a process of drafting regulations for the HPA, the court concluded that this demonstrated that regulations were necessary for the purposes of the objectives set out in section 20, and concluded that the Minister was under a duty to make such regulations.<sup>57</sup>

In considering appropriate remedies, the court issued the requested declarators, and held that it was "just and equitable" to require the Minister to publish regulations within six months of the order of the court.<sup>58</sup> In addition to this, the court ordered that the Minister must have regard to various specified considerations in preparing the regulations – eleven in all.<sup>59</sup> The specificity of the order may be regarded as infringing on the separation of powers doctrine, but I will not venture further opinion on this for the present purposes.

## 4 Analysis

In analysing the decision the following aspects will be considered in turn: first, the splitting of the section 24 right into two rights – section 24(a) and section 24(b); second, whether the right in section 24 is immediately

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<sup>54</sup> *Groundwork Trust* para 169.

<sup>55</sup> *Groundwork Trust* para 175.

<sup>56</sup> See above, part 3, for the text of the section, where I observed that s 20 is couched in seemingly permissive terms (use of the word "may" rather than the mandatory "must").

<sup>57</sup> *Groundwork Trust* para 216.

<sup>58</sup> *Groundwork Trust* para 235.

<sup>59</sup> *Groundwork Trust* para 241.

realisable; third, whether a "mere state of affairs" can constitute a breach of section 24; fourth, whether the right in section 24 is subject to limitations; and, finally, the court's approach to interpreting section 20 of the *Air Quality Act*.

#### **4.1 Section 24 – two rights or one?**

It is clearly evident from the applicants' list of issues for determination by the court,<sup>60</sup> that there is consistent reference to only section 24(a) of the Constitution, instead of to the whole section. The argument that section 24(a) and section 24(b) are essentially separate rights is certainly a novel one, and it is therefore unfortunate that the court did not provide clear reasons (if any) as to why this argument was accepted. Not only is the argument a novel one, but it is also wrong.

The first problem with this approach is that it ignores prior academic and judicial interpretation. Feris, for example, stated in 2008<sup>61</sup> that

In essence the section [s 24] has two general aims. Paragraph (a) guarantees a healthy environment to everyone in general, while paragraph (b) mandates the state to take certain measures in order to realise the guarantee proclaimed in the first part of the section.

Glazewski does not expressly deal with this aspect, but he does not argue that section 24 consists of two separate rights, which one would expect if this were so.<sup>62</sup> Du Plessis in 2011<sup>63</sup> argues that

The positive obligations inherent in section 24 must be executed through 'reasonable legislative and other measures.' The legislature must enact and adopt laws towards the fulfilment of the entitlements in section 24. Unlike what we see in any of the other socio-economic rights, section 24(b)(i)–(iii) guides the legislature in 'how to' implement it by including a list of explicit objectives that the legislative and other measures of the state should be aimed at.

In 2016 Humby argued emphatically for the "integrated" nature of the right, although in a more nuanced way than the approaches mentioned above:<sup>64</sup> Section 24, in her view, is

an integrated and multi-dimensional right to development-in-environment with the associated obligation of balancing the complex set of variables that sustain and advance development, with maintaining the integrity and functioning of complex and adaptive natural systems.<sup>65</sup>

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<sup>60</sup> *Groundwork Trust* para 11 of the judgment. This is set out above under section 3 of this article, at 8-9.

<sup>61</sup> Feris 2008 *SAJHR* 36. See also Feris 2008 *SAPL* 194.

<sup>62</sup> See Glazewski *Environmental Law*. The author deals with the Bill of Rights and environmental law in ch 5.

<sup>63</sup> Du Plessis 2011 *SAJHR* 299.

<sup>64</sup> Humby 2016 *SAJHR*.

<sup>65</sup> Humby 2016 *SAJHR* 226.

In my earlier discussion of section 24 I have observed that section 24(b) clearly envisages that the "legislative branch of government (at whatever level, provided it has the necessary Constitutional competence) is required to enact appropriate legislation in order to give effect to the substantive right".<sup>66</sup> Moreover, I have supported the approach taken in the *HTF Developers* case (see below) and suggested that the yardstick by which the reasonableness of the measures taken ought to be evaluated is the approach set down by Yacoob J in *Grootboom*,<sup>67</sup> discussed further below in relation to immediate realisation.<sup>68</sup>

In the courts, Claassen J in the *BP Southern Africa* case in 2004 observed that

[Government departments] are required to carry out [the duty imposed by 24(a) of the Constitution] by means of adequate legislation and other programmes. Section 24(b) expressly obliges the State to take reasonable legislative *and* other measures to protect the environment.<sup>69</sup>

In *HTF Developers*, Murphy J stated that

Section 24(a) entrenches the fundamental right to an environment not harmful to health or well-being, whereas s 24(b) is more in the nature of a directive principle, having the character of a so-called second-generation right imposing a constitutional imperative on the State *to secure the environmental rights by reasonable legislation and other measures*. Despite its aspirational form, or perhaps because of it, section 24(b) gives content to the entrenched right envisaged by specifically identifying the objects of regulation, namely: the prevention of pollution and environmental degradation; the promotion of conservation; and the securing of ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>70</sup>

Even though there may be some criticism of the characterisation of section 24(b) as a directive principle that is "aspirational",<sup>71</sup> the bottom line is that section 24(b) is seen in this dictum as being supportive of and directly related to section 24(a).

The second problem with the *Groundwork Trust* court's approach is that, even if one were to regard the two subsections as self-standing rights, they are clearly not alternative rights, or rights that can be applied in specific situations independently of each other – such as the right in section 33 to reasons vis-à-vis the right to administrative action that is

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<sup>66</sup> Kidd "Transformative Constitutionalism" 119.

<sup>67</sup> *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) (hereafter *Grootboom*).

<sup>68</sup> Kidd "Environment" 522.

<sup>69</sup> *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 5 SA 124 (W) 142E-F.

<sup>70</sup> *HTF Developers (Pty) Ltd v Minister of Environmental Affairs* 2006 5 SA 512 (T) para 17, emphasis added.

<sup>71</sup> Feris 2008 *SAPL* 194.

lawful, reasonable and procedurally fair. If one were to accept that the rights in section 24(a) and 24(b) are separate rights, it would nevertheless not be constitutionally valid to regard them as alternative rights. I am unable to think of an example of a situation where both sections would not invariably apply simultaneously – it would not be open for a court (or anyone else) to choose whether to apply section 24(a) or 24(b). If both of them apply, then the only way in which one can make sense of their simultaneous application is to regard subsection (b) as relating to the fulfilment of subsection (a). This means that the measures adopted (primarily by the state) would have to be reasonable and would have to ensure that the measures "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development". It is difficult to fathom how this requirement is not a qualification of the right in subsection (a).

Moreover, if one were to regard the two subsections as separate, intergenerational rights would be relevant only in relation to subsection (b). It appears to me to be amply clear that part of the purpose of subsection (b) is to emphasise that the right in section 24 is applicable not only to "everyone" who is alive today, but also to future generations.

Overall, then, the approach to regarding section 24 as comprising two separate rights has no academic or judicial support, and it is not supportable from the perspective of logic. It also excludes the application of intergenerational equity from section 24(a).

#### **4.2 *Is section 24 immediately realisable?***

In deciding that the section 24 right is immediately realisable the court focussed only on the "plain wording" of the text (and the comparative text in section 29 of the Constitution), and the absence of words referring to progressive realisation without considering the context in which the right operates. As Currie and De Waal have argued, constitutional interpretation is often "about establishing the context within which a particular constitutional provision must be given meaning".<sup>72</sup> In the *Juma Masjid* case the Constitutional Court compared the section 29 right with other socio-economic rights that did include progressive realisation qualifiers (e.g. section 27) and this comparison was entirely appropriate because the realisation of these rights involves the provision of infrastructure and related resources. The right in section 24 is different. For the most part, the state is not required to provide infrastructure but to regulate aspects that infringe the section 24 right. In some cases the right could well be immediately realisable. An example could be a burst sewage pipe causing a threat to health or well-being in an area. This could conceivably be

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<sup>72</sup> Currie and De Waal "Interpretation of the Bill of Rights" 134.

repaired within a matter of hours. In other circumstances, however, the factual circumstances affecting people's section 24 right would not be that quick to repair. The example raised by the *Groundwork Trust* case is a good example. People living in the HPA are exposed to unacceptably high levels of pollution that are a significant health risk. That fact is uncontroverted, according to the judgment. This is clearly a situation (from a factual perspective) where those people are living in an environment that is harmful to health and well-being. In other words, from a factual perspective the right in section 24 is being infringed. If the right in section 24 is unqualified and immediately realisable (as the court found it is), the pollution must be halted or at least significantly reduced to acceptable levels immediately. A significant amount of that pollution emanates from electricity generation, which means that realising the right immediately would significantly reduce South Africa's electricity-generation capacity with probable extremely adverse consequences, not just to the economy, but also to people's health and well-being. Many environmental impacts that are harmful to human health and the environment are produced by activities that have a social and economic benefit, which means that regarding the section 24 right as immediately realisable and unqualified is not factually realistic. That is why section 24(b) is there – it operates as an internal modifier to section 24(a), setting out how section 24(a) is to be achieved – through reasonable legislative and other measures that meet the objectives set out in that part of the right. Not only is section 24(a) qualified by section 24(b), but it is also subject to the limitations clause in section 36. Is the limitation of the right in section 24(a) by electricity generation "reasonable and justifiable" as envisaged by section 36? While it may not be over time, because electricity can be produced through non-polluting (or, at least, less harmful) means, it surely is now. It would not be reasonable and justifiable to shut down South Africa's electricity generation capacity immediately because the alternatives will take time to come on board. So, the court's conclusion that it "cannot but conclude that the respondents have failed to justify any limitation to the section 24(a) right by placing reliance on section 36 of the Constitution" is misguided.

In the *Groundwork Trust* judgment the court observed that a violation of section 24(a) "necessarily violates other constitutional rights, including the rights to dignity, life, bodily integrity and the right to have children's interests considered paramount in every matter concerning the child".<sup>73</sup> In many cases this would undoubtedly be correct. In this light, could it be argued that the inextricable links between section 24(a) and the associated rights mentioned by the court, the derogation of which would be more difficult to justify than the derogation of other rights, would

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<sup>73</sup> *Groundwork Trust* para 76.

suggest that section 24(a) is a separate right requiring immediate realisation? This argument would be based on the notion that the progressive realisation of section 24 would necessarily involve the progressive realisation of rights such as equality and dignity involved in the circumstances, which require immediate realisation. In my view this argument does not hold water, since it could be equally argued that the progressively realisable rights to housing and access to water (for example) also invariably encompass other rights such as dignity, equality and children's rights, not to mention the right to life. Progressive realisation is an idea that is based ultimately on practicalities, not principle, and the same approach would apply in relation to section 24.

In short, section 24 is a "package deal" – one cannot consider section 24(a) as a standalone right, since section 24(b) indicates how section 24(a) is to be fulfilled by government (which seems to be quite clear from the "plain wording" of the section). It does not use the term "progressively realisable" because in some cases the right may be fulfilled immediately and may not require progressive realisation (as in the sewage example mentioned above). In many other cases, however, if one considers factual context, the section 24 right must be realisable over time (not necessarily progressively realisable in the socio-economic rights sense).<sup>74</sup> Section 24(b) is an internal modifier to section 24(a), which is also potentially limited by section 36 of the Constitution, as all other rights are too.

This is why I have argued that the approach taken in the *Grootboom* case is relevant to section 24.<sup>75</sup> In order to determine whether the legislative and other measures required by section 24(b) are reasonable (in the context of their realisation over time),

The State is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The State is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programs implemented by the Executive. These policies and programs must be reasonable both in their conception and their implementation. The formulation of a program is only the first stage in meeting the State's obligations. The program must also be reasonably implemented. An otherwise reasonable program that is not implemented reasonably will not constitute compliance with the State's obligations.<sup>76</sup>

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<sup>74</sup> See the essentially same argument made by Pejan, Du Toit and Pollard "Using Progressive Realization" 316.

<sup>75</sup> Kidd "Environment" 522.

<sup>76</sup> *Grootboom* para 42. See the discussion of *Grootboom* in the context of s 24 of the Constitution in *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 5 SA 124 (W) 142 per CJ Claassen J.

Such programmes must be "balanced and flexible".<sup>77</sup> This is discussed further below, in relation to the HPA.

#### **4.3 Can a mere state of affairs constitute a breach of section 24?**

Counsel for the Minister argued that "a mere state of affairs, which is not attributed to the conduct of the Executive or an Organ of State, cannot in logic or law constitute the breach of a fundamental right, as it requires either positive or negative conduct from the duty-bound person in conflict with the correlative duty".<sup>78</sup> Common sense "dictates that a breach must either be positive conduct (by action in conflict with the correlative duty or obligation calling) or negative conduct (by inaction in conflict with the correlative duty or obligation), but some form of human conduct there must be as a most basic requirement", and the "idea that one can legislate a state of affairs in physical reality away, is absolute unrealistic or nonsensical".<sup>79</sup> This argument misses the point. The situation in relation to the HPA is not a mere "state of affairs" - there *is* negative conduct on behalf of the Minister. The state of affairs – the air pollution situation in the HPA – is a situation that the law requires the Minister to address. The Minister has the legal mechanisms to do so (in the *Air Quality Act*, which was enacted to give effect to section 24 of the Constitution) and she and her predecessors have failed to use these mechanisms. Their failure to do so has led to consequences (health impacts) that are infringing on people's section 24 rights from a factual perspective. The Minister and her predecessors are (and have been) in essence unreasonably delaying a decision to address this problem.

#### **4.4 May section 24 be limited?**

This analysis is based on regarding section 24 as one right, not separate rights in subsections (a) and (b). The court concluded that there is no limitation in terms of section 36 on the right in section 24.<sup>80</sup> This is an astounding conclusion. It completely ignores the requirements of sustainable development and the factual context within which the problems of air pollution arise in the HPA. As observed above, environmental law's main function is not to eliminate pollution but to balance the polluting emissions generated by economic activity against the demands of society for a tolerably healthy environment.<sup>81</sup> As I have observed before, this balancing act must accept the reality that certain levels of pollution are inevitable in modern life: "If the law allowed no pollution there would be no industry, no modern agriculture, no sewage

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<sup>77</sup> *Grootboom* para 43.

<sup>78</sup> *Groundwork Trust* para 106.

<sup>79</sup> *Groundwork Trust* para 106.

<sup>80</sup> *Groundwork Trust* para 176.

<sup>81</sup> Wolf and Stanley *Wolf and Stanley on Environmental Law* 5.

purification, the only transport would be non-fuel burning and, with the current technology used in South Africa, there would be very little electricity".<sup>82</sup> The decision as to strike the balance must be informed by the attempt to achieve sustainable development, itself an element of section 24. In the *Fuel Retailers* case<sup>83</sup> the Constitutional Court observed that "socio-economic development invariably brings risk of environmental damage as it puts pressure on environmental resources". It also puts pressure on human health and well-being.

The process of determining a balance between emission generated by economic activity and a "tolerably healthy environment" involves limitations at two levels when it comes to section 24. First, the legislative and other measures to be adopted to give effect to section 24(a) must "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".<sup>84</sup> This is what could be called an internal modifier in section 24, and its intended role would be excluded by regarding section 24(a) as a standalone right. In addition, section 36 – the limitations clause – also applies, as it does to all other rights in the Bill of Rights, which includes section 24. In terms of section 36, rights in South Africa's Constitution may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. The effect of this is that the section 24 right may be limited by laws that are designed to give effect to the very right they are limiting. Counsel for the respondent argued this, correctly in my view, in the *Groundwork Trust* case.<sup>85</sup>

The *Air Quality Act*, if it is to be consistent with section 24, cannot "prevent" air pollution, as it exhorts in section 2. It is inevitable that the Act will allow some air pollution because it must recognise the dictates of "promoting justifiable economic and social development".<sup>86</sup> What is important, then, is that the balance be struck to avoid unacceptable impacts on human health, which is not the case at present. This brings us to how to interpret the *Air Quality Act*.

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<sup>82</sup> Kidd "Transformative Constitutionalism" 119.

<sup>83</sup> *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 6 SA 4 (CC) (hereafter *Fuel Retailers*) para 58.

<sup>84</sup> Section 24(b)(iii) of the Constitution.

<sup>85</sup> *Groundwork Trust* paras 93, 121 and 125.

<sup>86</sup> See, for example, *Fuel Retailers* para 44.

#### 4.5 Interpretation of section 20 of the Air Quality Act

In short, the court found that the apparently discretionary power to make regulations in relation to the HPA was mandatory. In my view, and based on a different approach to that adopted by the applicants in the case, this is an appropriate conclusion. My approach would have been to rely on unreasonable delay in terms of section 6(3) of the *Promotion of Administrative Justice Act*,<sup>87</sup> arguing that the factual situation – constituting a factual infringement of the right in section 24 – requires the Minister to exercise the discretionary power in section 20. Essentially this converts the power into a duty, much as was decided in this case, but without having to rely directly on the constitutional right.

The section 24 right is used to support the interpretation of section 20 of the *Air Quality Act* as imposing a duty in the circumstances. If the right in these circumstances is (in appropriate factual circumstances) realisable over time, as I have already argued, then the exhortation of Yacoob J in the *Grootboom* case is apposite – that in realising a right, it is insufficient merely to pass legislation and insufficient merely to draw up a programme (or plan) for realising the right. As Yacoob J observed,

The formulation of a program is only the first stage in meeting the State's obligations. The program must also be reasonably implemented. An otherwise reasonable program that is not implemented reasonably will not constitute compliance with the State's obligations.

In this case the declaration of the HPA and publication of the HPA Air Quality Management Plan constitute the "programme" mentioned in the quote above. But it is 10 years since the publication of the Plan, and there has been no implementation of measures to ameliorate the situation. This flies in the face of the *Grootboom* requirement and justifies the court's

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<sup>87</sup> *Promotion of Administrative Justice Act* 3 of 2000. Section 6(3) provides –  
"If any person relies on the ground of review referred to in subsection (2)(g) [where the administrative action concerned consists of a failure to take a decision], he or she may in respect of a failure to take a decision, where—  
(a) (i) an administrator has a duty to take a decision;  
(ii) there is no law that prescribes a period within which the administrator is required to take that decision; and  
(iii) the administrator has failed to take that decision,  
institute proceedings in a court or tribunal for judicial review of the failure to take the decision on the ground that there has been unreasonable delay in taking the decision; or  
(b) (i) an administrator has a duty to take a decision;  
(ii) a law prescribes a period within which the administrator is required to take that decision; and  
(iii) the administrator has failed to take that decision before the expiration of that period, institute proceedings in a court or tribunal for judicial review of the failure to take the decision within that period on the ground that the administrator has a duty to take the decision notwithstanding the expiration of that period." In the case under discussion in this article, s 6(3)(a) would apply."

regarding section 20 of the *Air Quality Act* as a duty rather than a discretionary power.

## 5 Conclusion

Lest I be misunderstood, I do support the outcome of the *Groundwork Trust* case. Litigation in order to ensure that the reasonable implementation of environmental law as required by *Grootboom* is often likely to be necessary in the face of government inertia. While the decision was greeted with widespread approval,<sup>88</sup> I would be surprised if it were not taken on appeal and parts of the reasoning set aside.

Irrespective of the decision in *Groundwork Trust*, though, the situation in the HPA is exactly the sort of situation for which section 24 was designed, and there must be a way to address the widespread air pollution that constitutes a severe threat to human health. It is clearly inimical to both the spirit and the letter of section 24 that activities necessary for South Africa's economic stability (if not growth) are killing people. This is particularly true when there are alternative methods to producing electricity that do not burn fossil fuels. From a factual perspective it is obvious that section 24 is being infringed, and on an ongoing basis. Although section 24 of the Constitution is qualified, neither the internal modifier in section 24(b) nor the limitations clause in section 36 can lawfully permit the indefinite infringement of section 24 in the HPA context. On the other hand, it is clearly not possible for the immediate realisation of the right in these circumstances, for reasons set out earlier. Although section 24 may not be "progressively realisable" in the same way as the more conventional socio-economic rights, it is realisable over time and the comments in *Grootboom* are entirely apposite to section 24. In the case of the HPA, the legislative and other measures taken have not been reasonable. There is a legislative framework providing for further legislation (regulations) and thereafter the implementation thereof, neither option having yet been utilised. The fact that the problem has been evident for so long (more than likely for some time before the HPA was declared in 2007) makes it clear that the state has been remiss in its contravention of the right in section 24 through the measures envisaged in the *Air Quality Act*. The relevant economic and other considerations are complicated and exacerbate the delay that has already been allowed. The urgency of addressing the HPA situation and dealing with the related issues concerning the ongoing issues of polluting fossil fuels cannot be understated. It is clear, however, that one cannot solely rely on the Environment department to change the status quo.

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<sup>88</sup> See, for example, Hugo 2022 <https://www.dailymaverick.co.za/opinionista/2022-03-21-if-barbara-creecy-appeals-against-the-deadly-air-judgment-it-will-not-be-a-good-look-for-government/>.

## **A tribute to Willemien du Plessis**

I have been in academia for more than 30 years and have known Willemien du Plessis for most of that time. Not only is she a top scholar, but she has consistently put down the marker for collegiality. She has always been willing to examine dissertations and review articles, a task she inevitably carries out efficiently and well within the deadline. What has been noteworthy for me is that she has always included younger members of the academy and is clearly a good mentor. There are several colleagues today who have made their mark in the South African academy whom I first met accompanied by Willemien at a conference. I could say that her contribution to the field and generosity of spirit will be missed, but I expect that the only change that retirement will bring for Willemien is that she continues to bring all this to the table, only now without earning a salary for it. I offer my very best wishes for Willemien's retirement and look forward to continuing our friendship and academic collaboration.

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## List of Abbreviations

CER	Centre for Environmental Rights
HPA	Highveld Priority Area
MEC	Member of the Executive Council
NEMA	National Environmental Management Act 107 of 1998
SAJHR	South African Journal on Human Rights
SAPL	Southern African Public Law
UNEP	United Nations Environment Programme
WHO	World Health Organisation