

# LEGAL ASPECTS OF MARINE SPATIAL PLANNING IN SOUTH AFRICA

INSTITUTE FOR COASTAL AND MARINE RESEARCH SYMPOSIUM

RACHAEL CHASAKARA

LLM CANDIDATE

# Focus of this research will be on some aspects of:

- ▶ **Constitutional Law:** the founding document of South Africa which all law should be in line with in order to be valid
- ▶ **Human Rights Law:** MSP stems from section 24 of the Constitution which is one of the rights found in the Bill of Rights
- ▶ **Environmental Law:** as it offers valuable guidance in environmental management
- ▶ **Planning law:** as planning is a crucial element of the marine spatial planning process

# Marine Spatial Planning (MSP)

## Definition of MSP in South Africa

- ▶ *MSP is the governance process of collaboratively assessing and managing the spatial (space) and temporal (time) distribution of human activities [at sea] to achieve economic, social and ecological objectives.*
- ▶ Documents to date:
  - ▶ **Draft MSP Bill, 2016; its Annexure: Annexure 1** – has recently been approved by Cabinet for public comment and was tabled at the National Economic Development and Labour Council (NEDLAC) on the 19<sup>th</sup> of July 2016
  - ▶ **Draft National Framework for MSP:** completed in order to designate the ocean for specific use and avoid user conflict.
  - ▶ This research will assess the consistency of these documents with the existing aspects of constitutional, human rights, environmental and planning laws.

# Constitutional Law Aspects

- ▶ Territory of South Africa in the ocean space: to what extent does South Africa have power to exercise authority at sea?
- ▶ MSP Bill clause 1; applies in the internal waters, territorial waters, economic exclusive zone, contiguous zone and continental shelf
- ▶ Could this mean territory extends to all maritime zones?
- ▶ What does the Constitution; United Nations Convention on the law of the sea say about the State's territory at sea?
- ▶ Is the MSP Bill consistent with the aspects of the territory as highlighted in the Cons and United Nations Convention on the law of the sea ?

# Principle of Cooperative Government

- ▶ South Africa's government authority constitutes three spheres namely: national; provincial; and local
- ▶ Their powers being legislative, executive and judiciary
- ▶ This distribution of powers requires cooperation between these spheres of government which is known as cooperative government
- ▶ Are the MSP documents recognizing the separation of powers and cooperative government principles?

# Human Rights law

- ▶ Need to develop MSP is derived from an environmental right in section 24 of the Constitution
- ▶ This right incorporates several other rights that could potentially be affected by the MSP process these are:
  - ▶ Right to access to information (section 32)
  - ▶ Right to just administrative action (section 33)
  - ▶ Right to freedom of trade, occupation and profession (section 22)
- ▶ Would the MSP laws pass constitutional muster in terms of limiting these rights (section 36 provides the extent of rights limitations)

# Environmental Law

- ▶ Basic premise on which MSP is based is section 24 which is the environmental right
- ▶ Everyone has a right “to have their environment **protected** for the benefit of present and future generations, through reasonable legislative and other measures that ... secure ecologically **sustainable** development and use of natural resources while promoting justifiable economic and social development”
- ▶ Are the MSP documents realizing this obligation to the environment?
- ▶ Ecosystem-based approach v economic development?
- ▶ Environmental issues are a national and provincial legislature's competence, are the MSP documents clearly articulating this?

# Planning law

- ▶ An emerging discipline which is still in its developmental stage
- ▶ Directive Principle section 24 (b) (iii) of the Constitution
- ▶ It originated for the control and regulation of land
- ▶ Lessons to be learnt from land use planning?
- ▶ Planning paves the way for implementation

# Conclusion of research

- ▶ To provide:
- ▶ Solutions to shortcomings;
- ▶ Recommendations;
- ▶ Interpretive directions;
- ▶ For the MSP documents so that MSP will be implemented successfully in South Africa and that the MSP laws will be consistent with the Constitution

# Sources....

- ▶ The United Nations Convention on the Law of the Sea, 1982
- ▶ The Constitution of the Republic of South Africa, 1996
- ▶ The Maritime Zones Act 15 of 1994
- ▶ Draft Marine Spatial Plan Bill, GN 347 in GG 39847 of 2016-03-24
- ▶ Draft National Framework for Marine Spatial Planning in South Africa, GN 936 in GG 40219 of 2016-08-19

*That's all folks....*