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\textsuperscript{th} 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?
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 Maritime Zones Act 15 of 1994
- Draft Marine Spatial Plan Bill, GN 347 in GG 39847 of 2016-03-24
That’s all folks....