

D.M. KISCH INC.

Sandton

31 May 1996

FINAL CONSTITUTION BILL - SUBMISSIONS MADE IN RESPECT OF ENVIRONMENTAL CLAUSE - CLAUSE 24

I have reviewed the present proposal i.e. Clause 24 of the proposed final constitution, including comments and criticisms of the aforementioned clause, and I submit herewith an amended Clause 24 which I believe achieves what is required and overcomes criticisms by various environmental lawyers and environmental law experts.

The proposed submission will be faxed on the page following this letter.

The Clause 24 now proposed contains the following advantages:

- a) It is based on and includes the present Clause 24;
- b) It clarifies the environmental rights granted i.e. also to groups of persons and to juristic persons;
- c) The environmental right is couched in essentially positive terms;
- d) The reasonable legislative and other measures are not limited to those listed previously;
- e) The promotion of conservation is expanded to comply *inter alia* with International Conventions dealing for example with wilderness areas;
- f) The reference to natural resources is properly clarified to control the exploitation and use thereof;
- g) An obligation is placed on the State to provide a national environmental policy, national environmental standards and reasonable national legislative and other measures;
- h) An obligation is also placed on the State and other governmental organs to ensure compliance with policy standards and legislative and other measures;
- i) An obligation is also placed on all persons to comply with the aforementioned;
- j) Whilst the State is responsible for broad policy and standards, it can delegate control and enforcement to the provinces and metropolitan and local government structures, as a practical measure.

It is submitted that the enclosed clause properly raises all aspects of Environmental Law, although the Court may of course wish to re-word or re-cast specific phrases of any of the five subsections submitted herewith.

I therefore look forward to receiving your acknowledgement of this submission, and to hearing from you herein in due course.

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PROPOSED ENVIRONMENTAL CLAUSE FOR INCLUSION IN THE FINAL CONSTITUTION

SECTION 24

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- (1) Every person or group of persons, including every juristic person, shall have the right-
 - a) to an environment that is healthy and not otherwise damaging; and
 - b) to have the environment protected through reasonable legislative and other measures inter alia to-
 - i) prevent pollution and ecological degradation;
 - ii) promote conservation and provide open spaces and wilderness areas;
 - iii) secure sustainable development; and
 - iv) control the exploitation and use of natural resources.
 - (2) The state shall provide a national environmental policy, national environmental standards, and reasonable national legislative and other measures consistent with the afore-mentioned right(s) and with the provisions of international treaties and conventions to which the Republic/South Africa is a signatory country.
 - (3) The state and all other governmental organs shall ensure that the aforementioned policy, standards, legislative and other measures are implemented and enforced.
 - (4) Every person or group of persons, including every juristic person, the state and all other governmental organs and bodies, including every statal and para-statal body or juristic person, shall be obliged to comply with the afore-mentioned right(s), policy, standards, legislative and other measures.
 - (5) The state shall have the right to delegate certain of its powers of control and enforcement of the afore-mentioned to the provinces, metropolitan and/or local government structures, which bodies shall have the power to pass, control and enforce appropriate and reasonable legislative measures not inconsistent with the afore-mentioned policy, standards, and national legislative and other measures.”