

## Environmental governance during and beyond Covid-19

To date the Covid-19 pandemic appears not to have been accompanied, in South Africa, by environmental attrition at a scale drastically in excess of that which routinely prevails in the country. In this regard due credit must be afforded to national and provincial environmental governance agencies for identifying and accrediting essential personnel, as provided for in the Disaster Management Regulations, to remain operationally active during lockdown. In the same vein, operational officials, and in particular environmental law enforcement personnel actively functioning at ground-level on a “business as usual” basis, merit considerable credit as individuals, as do officials who are confined to their homes, but continue to perform administrative duties with commitment - as opposed to all but, or completely, renegeing on them, which has been asserted to be the case in various instances.

The State’s identification of essential environmental personnel has not been without blemish, certain critical role-players having contentiously been omitted from selection, with predictable ensuing legislative violations in line with corresponding reduced deterrence, and the opportunism which this facilitates. But mercifully we have been spared sweeping suspension of environmental law enforcement of the kind recently announced by the United States Environmental Protection Agency, the premise for which was the agency’s recognition that *challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact the ability of regulated facilities to meet all federal regulatory requirements*. In what has been termed *a nationwide waiver of environmental rules for the indefinite future and an abdication of the agency’s duty*, companies have effectively been advised that they will not face penalties for emitting unlawful air and water pollution if their transgressions can be linked to the pandemic.<sup>1</sup> On the other hand, in an attempt to protect fishing crew and coastal communities from Covid-19, there has been wide-scale relaxation of important monitoring and surveillance measures in fisheries around the world. This is held to be *paving the way for increased illegal, unreported and unregulated fishing, which could be devastating to already overfished species*.<sup>2</sup>

In order to *curtail the threat posed by the COVID-19 pandemic and to alleviate, contain and minimise the effects of the national state of disaster* the Minister of Forestry, Fisheries and the Environment has published directions under the Disaster Management Regulations, but their scope is confined to ensuring fair licensing, public participation, appeal and reporting processes, and the provision of waste management services, during lockdown conditions, given the restrictions they place on the movement of people.<sup>3</sup> More ominously, the Minerals and Energy Minister has reportedly indicated that *a portion of rehabilitation reserves* could be used to address the risks of the pandemic.<sup>4</sup> These reserves constitute mandatory financial provision made by mining companies for environmental and social

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<sup>1</sup> <file:///E:/Covid-19/EPA%20suspends%20enforcement%20of%20environmental%20laws%20amid%20coronavirus%20%20TheHill.html>

<sup>2</sup> *Legalbrief Environmental Law and Justice Watch*, Issue No. 652, 28 April 2020.

<sup>3</sup> Government Notice No. R. 349 of 31 March 2020, *Government Gazette* No. 43190.

<sup>4</sup> <https://www.msn.com/en-za/money/politics/lockdown-easing-picking-the-winners-and-losers/ar-BB12KvWL?ocid=spartandhp>

rehabilitation after mines are closed. It remains to be seen whether they are diverted for purposes related to the pandemic, and to what extent, if they are.

The same Minister also stands accused of using the state of disaster to escape accountability for publishing, on the first day of lockdown, amendments to the Mineral and Petroleum Resources Development Act which effectively strip mining-affected communities of key rights.<sup>5</sup> Similarly, concerns have been raised about the Environmental Minister's gazetting, during the midst of a viral pandemic with potentially fatal respiratory risks for humans, sulphur dioxide aerial emission standards which are twice as weak as preceding standards. This despite research being presented to the Minister which shows that 3,300 premature deaths would be caused by doubling the standard for Eskom's coal-fired power stations alone, as a result of increased risk of lower respiratory infections and strokes, and increased risk of death from diabetes.<sup>6</sup>

However the real test of the State's response to the pandemic, from an environmental perspective, is surely yet to come. Many will argue that a raft of decisions and stances in the past few years which have entailed the subjugation of compelling environmental concerns by questionable political and/or economic motives reflect the government's true disposition towards the environment, notwithstanding that it has been under its watch that the many elegant and visionary environmental provisions which grace the country's statute books have come into existence. Such perceptions stand to be reinforced by the manner in which the State addresses the economic contagion which is playing out hand-in-hand with its viral counterpart. The Mining Minister's utterances regarding the mining rehabilitation reserves provide a pointer to the direction in which the government has set its sights, but these are early days, and it would do well to consider, meticulously, calls for express departures from pre-pandemic ways of doing things environmentally, and for the charting of new paradigms.

Several lines recur consistently in calls for alternative ways forward. One is that whilst windows of opportunity for timeous rectification of our environmental ways remain open, they are shutting rapidly, as thresholds are approached beyond which we will be unable, as a species, to reign in our destiny, and along with it, that of many other life-forms and the natural resources upon which we collectively depend. As with Covid-19, stern reaction holds out the possibility of a potential runaway situation being managed, albeit not without significant interim fallout. But the comparison ends at the point where we persist with, or, worse, bolster, a trajectory which will inevitably yield a grim outcome.

Another recurring line is that the extraordinary mobilizations which the pandemic has engendered attest to the fact they are achievable in the face of consensus that nations across the globe have to deal with a common, dire threat. A by-line here is that science matters, and where it is persuasive, it must be heeded. On this, it is noteworthy that the authors of the most comprehensive planetary health check ever undertaken, which was published in 2019 by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), concluded that *human society was in jeopardy from the accelerating decline of the earth's natural life-support systems*. More notable is that the authors of that report, together with the scientist who is compiling the next IPBES assessment, have warned that *the coronavirus pandemic is likely to be followed by even more deadly and destructive disease outbreaks unless their root cause – the rampant destruction of the natural world – is rapidly halted*.

The position they advance is that the pandemic *is a direct consequence of human activity – particularly our global financial and economic systems, based on a limited paradigm that prizes economic growth*

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<sup>5</sup> <file:///E:/Mining/Mantashe%20uses%20State%20of%20Disaster%20to%20escape%20accountabilit...html>

<sup>6</sup> <https://cer.org.za/news/amidst-the-covid-19-pandemic-government-locks-sa-into-deadly-air-pollution>

*at any cost, and that we have a small window of opportunity, in overcoming the challenges of the current crisis, to avoid sowing the seeds of future ones. Rampant deforestation, uncontrolled expansion of agriculture, intensive farming, mining and infrastructure development, as well as the exploitation of wild species, are regarded as having created a 'perfect storm' for the spillover of diseases, by bringing more people into contact and conflict with animals, from which 70% of emerging human diseases originate. Within this context, urbanisation and the explosive growth of global air travel enabled a harmless virus in Asian bats to bring untold human suffering and halt economies and societies around the world. This combination of circumstances is viewed as the human hand in the emergence of the pandemic, while it is perceived that there is a risk that future pandemics will happen more frequently, spread more rapidly, have greater economic impact and kill more people if we are not extremely careful about the possible impacts of the choices we make today.*<sup>7</sup>

On the matter of post-Covid economic recovery pathway choices, it is unsurprising, some would say, that looking to the world's superpowers for cues provides cold comfort. A recent report on global coal plant construction has disturbingly noted that *responses to Covid-19 in China, Southeast Asia, and South Asia are substantially impacting the coal plant pipeline. In an apparent move to stimulate its domestic economy, China has surged its new coal plant permitting. From 1 to 18 March 2020, authorities in China permitted more coal-fired capacity for construction (6.6 GW) than they did in all of 2019 (6.3 GW).* This despite the enormous environmental repercussions of the coal extraction-incineration chain, and the fact that China already has a huge energy surplus.<sup>8</sup> On a similar note, the United States recently approved a \$2 trillion stimulus bill, \$500 billion of which is yet-to-be-leveraged loans to *bail out corporate America, including the most polluting industries like airlines and oil and gas companies, without any conditions to stem emissions.* In contrast, *relief and subsidies for the ailing clean energy industry were summarily blocked.*<sup>9</sup>

Calls in opposition to such pathways abound, with UN Secretary-general Antonio Guterres having reportedly joined a *growing chorus for world leaders to use the recovery from Covid-19 to move towards a greener future and prevent the planet's 'unfolding environment crisis'.*<sup>10</sup> Echoing this, the IPBES authors contend that *only stimulus packages that offer incentives for more sustainable and nature-positive activities must be deployed, and that this must co-occur with strengthening and enforcement of environmental regulations.* On the back of this they motivate for a 'one health' approach at all levels of decision-making – from the global to the most local – on the basis that *the health of people is intimately connected to the health of wildlife, the health of livestock and the health of the environment, and the proposed system would ensure that better decisions are made that take into account long-term costs and consequences of development actions – for people and nature.*

Ultimately though, it is argued, what is required is *transformative change –fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values, promoting social and environmental responsibilities across all sectors.* As daunting and costly as this may sound, they aver, *it pales in comparison to the price we are already paying.* Capping this, they urge that *responding to the COVID-19 crisis calls for us all to confront the vested interests that oppose transformative change, and to end 'business as usual'. We can build back better and emerge*

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<sup>7</sup> <https://www.theguardian.com/world/2020/apr/27/halt-destruction-nature-worse-pandemics-top-scientists>

<sup>8</sup> <https://amabhungane.org/stories/comment-digging-dung-in-the-time-of-corona/>

<sup>9</sup> <https://news.trust.org/item/20200407084129-xbpbnh/>

<sup>10</sup> <https://www.independent.co.uk/environment/coronavirus-lockdown-pollution-earth-day-climate-change-india-italy-us-a9477801.html>

*from the current crisis stronger and more resilient than ever – but to do so means choosing policies and actions that protect nature – so that nature can help to protect us.*<sup>11</sup>

The South African government, and indeed all governments, need to take full account of these perspectives in formulating their post-pandemic economic recovery mechanisms.

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<sup>11</sup> [file:///C:/Users/s1200015/Documents/Covid-19/IPBES%20Guest%20Article\\_%20COVID-19%20Stimulus%20Measures%20Must%20Save%20Lives,%20Protect%20Livelihoods,%20and%20Safeguard%20Nature%20to%20Reduce%20the%20Risk%20of%20Future%20Pandemics%20\\_%20IPBES.html](file:///C:/Users/s1200015/Documents/Covid-19/IPBES%20Guest%20Article_%20COVID-19%20Stimulus%20Measures%20Must%20Save%20Lives,%20Protect%20Livelihoods,%20and%20Safeguard%20Nature%20to%20Reduce%20the%20Risk%20of%20Future%20Pandemics%20_%20IPBES.html)