

Child Maintenance and Environmental Rights

How the failure to pay child maintenance undermines environmental rights and contributes to environmental issues



Overview of the discussion to follow

1. Child maintenance and the duty of support
2. Parent's duty to secure their child's rights
3. Child maintenance as an environmental issue
4. Constitutional Environmental Rights: Section 24 of the Constitution
5. The inter-relatedness of rights and legislation in an environmental context relating to children
6. Recognized constitutional and other rights violated by failure or inadequacy of child maintenance and neglect
7. The impact of failure or inadequacy of maintenance on the environment itself
8. The impact of traditional court proceedings on the environment
9. The nuance of poverty: child maintenance and the environment
10. Grassroots organization to mobilize generational cycles

Child maintenance as a right

- **Common Law & Maintenance Act 99 of 1998**
 - Support by direct provision of needs or by monetary means
 - Securing a home, food, clothes, education and the necessities to sustain a basic lifestyle
 - Bare necessities include a safe environment to live in
 - Maintenance is not limited to bare necessities, but the focus of this webinar is the lack of such bare necessities
- **Children's Act section 18(2)(d):** Duty of support to provide for a child's needs as a parental responsibility.
- **Children's Act section 1(1)(d):** Parents to secure the fulfilment of their child's constitutional rights, including the right to food, shelter and healthcare.

Parents' responsibility to secure their child's constitutional rights

- **Subsections 28(1)(b) and (c) of the Constitution:**
“Every child has the right —
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
(c) to basic nutrition, shelter, basic health care services and social services”.
- ***Government of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 76:** The primary responsibility to ensure that a child's constitutional rights to shelter, food and health care fall on the child's parents and other family.
- Maintenance is therefore a parental responsibility to provide for an adequate *environment* for a child to grow up in, within the parents' means

Definition of 'environment'

- **National Environmental Management Act (NEMA):** 'the surroundings within which humans exist and that are made up of—
 - (i) the land, water and atmosphere of the earth;
 - (ii) micro-organisms, plant and animal life;
 - (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
 - (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.'
- Includes the place of humans in the urban environment and arguably a social environment



Child maintenance as an environmental issue



- Environmental law is not confined to the mere physical environment
- “Environment” encompasses other environmental factors that influence the health of humans
- Negative impacts on human health and well-being is an environmental issue
- The negative impact of living in deplorable conditions can be considered an environmental and constitutional concern

Kidd, 2nd Ed, pg 4

Constitutional Environmental Rights

- **Section 24 of the Constitution of the Republic of South Africa:**

‘Everyone has the right—

(a) to an environment that is **not harmful to their health or well-being**; and

(b) to have the environment **protected**, for the benefit of **present and future generations**, through reasonable legislative and other measures that —

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting **justifiable economic and social development**.’

Types of constitutional environmental rights

- **Two types of environmental rights contained in s24:**
 1. The right of humans to a *safe and healthy environment*
 2. The rights of the *environment itself* not to be degraded
- Our focus will be the right of custodial parent and the child to a safe and healthy environment
- Green rights aimed at the health of the public at large
- Imposes positive obligations on the state to ensure these rights - our focus will be private action via maintenance
- Applies vertically and horizontally - binds natural persons

Detailing our Constitutional Environmental Rights

“Everyone has the right— (a) to an environment that is not harmful to their health or well-being”

- Two aspects:
 1. The right to an environment not harmful to *health*
 2. The right to an environment not harmful to *well-being*
- Right to health to be distinguished from S27 right to access of health care services - but is also relevant as highlighted later
- Right to well-being is open ended and relates to a broader environmental integrity

1.Environmental right to an environment not harmful to health

- Recognized in common law
- Exposure to air pollution or reliance on polluted water sources for drinking water
- Any negative impact on health due to environment
- WHO defines health wider as a “state of complete physical, mental, and social well-being”
- Health therefore overlaps with the notion of well-being



2.Environmental right to an environment not harmful to well-being

- Relates to the integrity of a human's natural environment and 'sense of place' or 'quality of life'
- Not necessarily limited to direct environmental impacts
- For example: *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products* 2004 (2) SA 393 (E): exposure to a 'stench' regarded as being adverse to one's health and well-being
- Can be extended to the child's ability to realize their other rights related to health



Immediate needs that must be satisfied for satisfactory health and well-being

1. Adequate nutritional food and water
2. Adequate protective housing
3. Non-hazardous work environment
4. Non-hazardous physical environment
5. Appropriate health care
6. **Security in childhood**
7. Significant primary relationship with others
8. Physical security
9. **Economic security**
10. Safe birth control and child-bearing
11. Appropriate basic and cross-cultural education



The impact of failure or inadequate child maintenance on *health and well-being*

- 1. Housing and Living Conditions:** Substandard housing, overcrowding, or unstable living arrangements - exposure to unhealthy or unsafe living conditions, including *mold, lead, pests, or unsafe neighborhoods*.
- 2. Nutrition and Food Security:** Inadequate access to nutritious food - food insecurity, malnutrition and developmental problems.
- 3. Healthcare Access:** Restricts access to healthcare services, including preventative care, vaccinations, and necessary medical treatments.
- 4. Education:** Inadequate resources for books, school supplies, and extracurricular activities hindering academic progress and future opportunities. Extends to a lack of education about sustainability.



The impact of failure or inadequate child maintenance on *health and well-being*

5. **Social Support:** Social isolation due to a lack of resources for participation in social and community activities.

6. **Stress and Anxiety:** Financial instability and poverty-related stress in the family affects overall mental health and development.

7. **Safety and Security:** Inadequate income may result in living in neighborhoods with high crime rates, exposure to violence and vandalism, or lack of proper safety measures.

8. **Access to Technology:** Limited access to technology and the internet, hindering educational opportunities and social connections in the digital age.



The impact of failure or inadequate child maintenance on *health and well-being*

9. **Exposure to Environmental Hazards:** Living in areas with higher environmental risks, such as *pollution, lead exposure, or proximity to industrial sites.*

10. **Limited Recreational Opportunities:** Restricts a child's access to recreational and extracurricular activities, reducing opportunities for physical and social development.

11. **Inequality and Discrimination:** Social and economic discrimination, with lasting effects on self-esteem, aspirations, and sense of belonging in society.



Health consequences of such impaired ecosystems

- Direct health impacts due to floods, heatwaves, landslides, water shortage, UV-radiation
- Altered-infectious disease risk, reduced food yield, malnutrition and depletion of natural medicines
- Indirect health impacts such as livelihood loss and population displacement

Kidd in I Currie & J De Waal, Bill of Rights Handbook, 6th Ed, pg 519



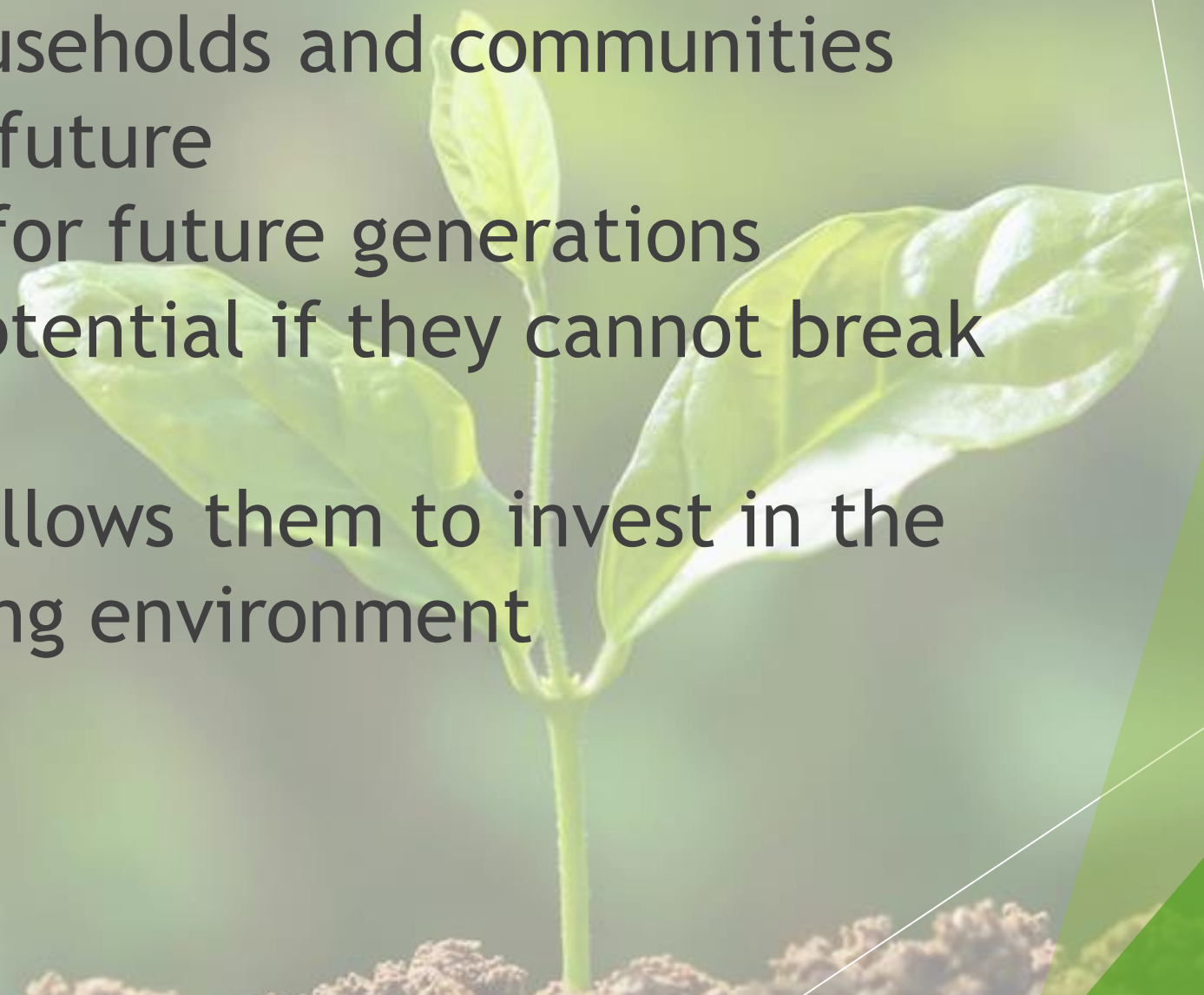
Continued detailing of our Constitutional Environmental Right

“Everyone has the right— (b) to have the environment protected, for the **benefit of present and future generations**, through reasonable legislative and other measures that —
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting **justifiable economic and social development.**”

- Intergenerational equity: Parents as ‘members of the present generation, hold the earth in trust for future generations’ (children)
- Sustainable development

The issue of intergenerational equity in lack of child maintenance, neglect and poverty

- Perpetuation of disadvantaged households and communities
- Lack of opportunities for a better future
- Failure to preserve quality of life for future generations
- Children cannot reach their full potential if they cannot break a cycle of poverty
- A burden on custodial parents disallows them to invest in the child's future and bettering of living environment



Lack of social and economic development in inadequate child maintenance

- Economic instability hinders a family's economic security and development
- Lack of education for better opportunities
- Perpetuation of the cycle of poverty
- Long-term consequences of cognitive development due to poor access to health services
- Psychosocial impact hinders a child to contribute to society's social and economic development
- Struggle to achieve upward economic mobility in adult lives
- Loss of human capital aimed at sustainability in the workforce
- Undermines social cohesion and contributes to social unrest

- These considerations affect many other rights of children

Inter-relatedness of rights in an environmental context

- Violation of environmental rights extends to violation of other human rights - e.g right to water, food, housing, etc.
- These environmental rights can overlap with the right to child maintenance
- Failure or inadequacy of child maintenance also violates other rights that children have and may amount to *neglect*



The nuance of failure or inadequacy of maintenance vs blatant neglect

- Maintenance is dependent on the means of the parents and the needs of the child.
- Neglect is the failure to provide adequate care or support that a parent is legally obligated to provide to a child.
- The duty to maintain exists as a common law principle.
- Neglect can take various forms and can involve failing to provide necessary food, shelter, medical care, education, or protection from harm - which directly overlaps with the duty to maintain.
- Is failure or inadequacy of maintenance a form of neglect where a child's *environment* is harmful as a result?

Children's Act and environmental rights regarding neglect

- **Section 305(3) - Offences:** A parent who deliberately *neglects* or abandons a child is guilty of an offence.
- **Section 305(4) - Offences:** A parent who is legally liable and able to maintain a child is guilty of an offence if they fail to provide the child with *adequate* food, clothing, shelter and medical assistance.
- **Section 7 - Best Interests of the Child:** If environmental conditions are detrimental to a child's well-being, those conditions could be considered in determining what is in the child's best interests.
- **Section 10 - Child Participation:** This section recognizes a child's right to participate in matters affecting them. While this doesn't directly address environmental rights, it can be applied to situations where a child's voice and concerns about environmental issues may be relevant.

Maintenance Act and offences relating to neglect

- **Section 31(1):** Failure to pay maintenance in accordance with an order is an offence.
- **Section 31(2):** Lack of means is not a defense where it is due to unwillingness to work or misconduct
 - The seriousness of failure to maintain a child justifies the penalty and/or criminalization.
 - The failure to maintain may therefore amount to a form of neglect and violation of many other *human rights*.

Recognized constitutional rights violated by failure or inadequacy of child maintenance

- **POD: Right to an Environment Not Harmful to Health or Well-being (Section 24 of the Constitution):** Children living in *impoverished* and often *unhealthy environments*, affecting physical and mental health - indirectly infringes upon right to an environment not harmful to health or well-being.
- **Right to Sufficient Food and Water (Section 27(1)(b) of the Constitution):** Lack of access to a sufficient and nutritious diet, can negatively impact the right to food and water, as well as their health.
- **Right to Basic Education (Section 29 of the Constitution):** Child's limited access to education and lacking the resources necessary for school attendance, such as school uniforms, transportation, and school supplies.

Recognized constitutional rights violated by failure or inadequacy of child maintenance

- **Right to Health Care Services (Section 27(1)(a) of the Constitution):** Hinders access to healthcare services, including necessary medical treatments and vaccinations.
- **Right to Protection from Environmental Harm (Section 24 of the Constitution):** When children are exposed to environmental hazards due to *inadequate housing or unsafe living conditions* resulting from insufficient child maintenance.
- **Right to Social Security (Section 27(1)(c) of the Constitution):** Adequate child maintenance is a form of social security for children. When this support is lacking, it can lead to children living in *impoverished conditions* and struggling to meet their basic needs.
- **Right to Equality and Non-discrimination (Section 9 of the Constitution):** Exacerbates economic and social inequalities, as children from low-income households may not have the same opportunities and access to resources as their more financially secure peers.

Two-fold environmental impact of an inefficient maintenance system

- Direct impact on the health and well-being of the child and custodial parent
- Direct impact of neglect on the social and economic development of society
- Indirect impact on the environment itself
- Direct impact that the inefficiency of courts have on the environment



Impact of households with inadequate maintenance on the environment itself

- **Resource Consumption:** The need to make difficult choices about resource allocation, cutting back on energy-efficient appliances, water-saving devices, or eco-friendly products, resulting in higher resource consumption and environmental impact.
- **Food and Waste:** Food insecurity may force families to resort to purchasing lower-cost, processed, or non-sustainable food options, contributing to increased food waste, packaging waste, and environmental degradation.
- **Healthcare and Environmental Costs:** Lacking access to adequate healthcare and susceptibility to illnesses and impacting well-being. This places additional burdens on the healthcare system, with environmental costs related to energy, waste, and resource use.

Impact of households with inadequate maintenance on the environment itself

- **Access to Green Spaces:** Fewer opportunities to engage in outdoor activities and enjoy green spaces, affecting connection to the environment and overall environmental awareness, leading to careless pollution and disregard for the ecosystem.
- **Urban Planning and Mobility:** Limited access to public transportation and higher dependency on personal vehicles, contributing to urban congestion, air pollution, and greenhouse gas emissions.
- **Inequality and Environmental Justice:** Poverty perpetuates social and economic inequalities - intersects with environmental justice issues, as marginalized communities are more likely to bear the burden of environmental pollution and degradation.

Courts' impact on the environment

- **Paper Consumption:** Paper-based court processes consumes natural resources and energy, and the disposal of paper waste contributes to landfills, contributing to deforestation and greenhouse gas emissions.
- **Energy Consumption:** Paper-based system requires substantial administrative resources, including physical storage space and energy for printers and copiers, increasing resource consumption and energy use.
- **Travel-Related Emissions:** Inefficiencies in the court process necessitates multiple in-person court appearances. This travel contributes to carbon emissions where individuals have to commute long distances to attend court hearings.

Courts' missed opportunities for digital maintenance solutions

- The reliance on paper-based systems may delay the adoption of more efficient and environmentally-friendly digital solutions for court proceedings.
- Electronic filing systems, video conferencing for hearings, and online communication can significantly reduce paper usage and energy consumption associated with traditional court processes.
- Digitalization of the maintenance system can also assist in the efficacy of traditional systems and address environmental harms that courts may cause.
- Innovative developments must be implemented to reach poor communities.

Impact of poverty on the environment

- **Overexploitation of Natural Resources:** Reliance on the immediate use of natural resources for survival, such as deforestation for firewood or unsustainable farming practice, resulting in overexploitation and depletion of these resources and causing long-term environmental damage.
- **Unsustainable Agriculture:** Subsistence farming and unsustainable agricultural practices. Lack of access to modern farming techniques can result in soil degradation, loss of biodiversity, and reduced agricultural productivity, ultimately harming the environment.
- **Lack of Access to Clean Energy:** Inadequate access to clean and efficient energy sources, resulting in use of traditional biomass fuels like wood for cooking and heating. This contributes to deforestation, air pollution, and negative health impacts.



Impact of poverty on the environment

- **Improper Waste Management:** Leads to the disposal of waste in ways that harm the environment, such as open dumping, littering, or the release of untreated wastewater into rivers and oceans.
- **Urbanization and Slum Development:** Unplanned urbanization and growth of slums with inadequate infrastructure and sanitation facilities. This contributes to pollution, overcrowding, and unsanitary living conditions that harm both the local environment and public health.
- **Poaching and Illegal Resource Extraction:** Poaching, illegal logging, and mining as a means of survival, resulting in the depletion of wildlife populations and deforestation, causing significant environmental harm.



Impact of poverty on the environment

- **Vulnerability to Environmental Risks:** Increased exposure to impacts of natural disasters and climate change due to lack of resources and infrastructure.
- **Lack of Environmental Education:** Limited access to environmental education, leading to a lack of awareness and understanding of sustainable environmental practices.
- **Loss of Biodiversity:** Habitat destruction and biodiversity loss, due to engagement in activities that encroach upon natural habitats to meet immediate needs.



The issue of poverty in child maintenance

- Maintenance is dependent on the means of the parents
- A poor parent is hindered from maintaining their child/ren adequately
- Private action is key, before one relies on an overburdened social grant support system
- Encourage better days to come, instead of waiting for them to happen

Social creativity is needed to overcome these generational struggles:

- Activism independent of traditional power structures
- Green-entrepreneurship and willingness to make work for income
- Organic and volunteer-based community organizing and development initiatives
- Building community-based support networks

Grassroots approach to addressing environmental and social justice issues from child maintenance

- Community education and awareness, a bottom-up approach
- Interim maintenance orders
- Legal Aid Clinics
- Partnerships with Environmental Organizations
- Class actions by using S24 as a trigger for locus standi
- Community engagement and lobbying to better the maintenance system by policy recommendations
- Advocacy for children's rights
- Promotion of sustainable development and just transition to clean energy
- Focus on inclusivity and non-discrimination
- Ubuntu



Thank you - Dankie - Enkosi

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Watch this space for more
webinars on environmental
education!

