The Constitution Meets the Climate

What South Africa's Wild Coast Judgment Adds to Climate Constitutionalism

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The climate crisis has reached South Africa's Constitutional Court. In Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others; Natural Justice and Another v Minister of Mineral Resources and Energy and Others, a dispute over offshore oil and gas exploration along South Africa's Wild Coast developed into a much wider constitutional inquiry. The Court brought questions of participation, dignity, culture and environmental protection into conversation with the growing demands of climate responsibility. The judgment illustrates how climate change can acquire constitutional significance without the recognition of a freestanding constitutional right to a stable climate. Instead, existing constitutional rights and values shape environmental decision-making, including who participates, whose knowledge and relationships with nature are recognised, and what the state must consider when authorising development. Read against South Africa's tradition of transformative constitutionalism, *Wild Coast* offers a distinctive account of climate constitutionalism: one in which the constitutional response to climate change is concerned not only with emissions and environmental harm, but also with the processes, relationships and forms of knowledge through which environmentally consequential decisions are made.

From Seismic Surveys to Constitutional Law

The dispute arose on South Africa's Wild Coast, a largely rural stretch of the Indian Ocean coastline in the Eastern Cape province, known for its ecological richness and for coastal communities whose livelihoods, cultural practices and spiritual relationships are closely connected to the ocean. The case was brought by the Sustaining the Wild Coast coalition, members of the Amadiba and Dwesa-Cwebe communities, and environmental organisations, challenging an exploration right for offshore oil and gas exploration. Impact Africa held the exploration right, while Shell intended to undertake the exploration activities. The relevant national authorities had granted and administered the right.

The exploration right covered a large offshore area along the Eastern Cape coast. Shell planned to conduct seismic surveys to search for commercially viable oil and gas deposits beneath the seabed, using repeated high-intensity sound impulses to map geological formations. The applicants challenged the lawfulness of the exploration right on several grounds. Central among them were inadequate consultation with affected communities, environmental risks, insufficient consideration of climate change, and interference with communities' cultural and spiritual relationships with the ocean.

The litigation revealed competing interests and understandings of what was at stake. For the developers and the state, the exploration right concerned the development of offshore petroleum resources. For the affected communities, the ocean could not be understood merely as a site of resource extraction. Members of the Amadiba and Dwesa-Cwebe communities described relationships with the ocean grounded in subsistence, customary practices, healing, ancestors and cultural identity. These relationships became central to the Court's consideration of meaningful consultation.

The dispute travelled through the High Court and Supreme Court of Appeal before reaching the Constitutional Court. The High Court set aside the exploration right. The Supreme Court of Appeal agreed that it was unlawful but suspended the setting-aside order, allowing defects in consultation to be addressed. The

Constitutional Court rejected that remedial approach and restored the High Court's order setting the exploration right aside.

The Constitutional Court was not asked to determine whether fossil fuel exploration is constitutionally permissible as such. The dispute concerned the lawfulness of this exploration right and whether failures in community participation could be remedied after the fact.

Although the dispute was framed through administrative and environmental law concerns, the Court's reasoning gives it wider constitutional significance. The judgment develops an understanding of participation that extends beyond procedural compliance, connecting it to dignity, culture and environmental protection. Consultation could not be reduced to administrative box-ticking. The statutory requirements governing participation had to be understood in context, with affected communities either consulted directly or their interests meaningfully represented. In South Africa, this cannot be separated from histories of exclusion from land, natural resources and decisions concerning their use.

The Court also took seriously the substance of what communities communicated through participation. Their relationships with the ocean were material, cultural, spiritual and ecological. The Court emphasised that cultural and religious practices do not lose constitutional protection simply because they may not be readily understood by others. Participation thus extends beyond whether affected people have an opportunity to speak. As the Court put it, meaningful participation requires more than simply giving affected communities a formal "seat at the table". It also requires a decision-making process capable of recognising their understandings of the environments on which their lives, identities and practices depend. This raises a broader constitutional question: *whose knowledge counts in determining environmental harm and acceptable development?*

Environmental decision-making inevitably draws on scientific and technical expertise. *Wild Coast* does not diminish its importance. The judgment does, however, resist treating such expertise as the only knowledge relevant to environmental governance. A seismic survey may be assessed through its effects on marine ecosystems, but that assessment cannot fully capture what is at stake where the ocean sustains cultural, ancestral, spiritual and livelihood relationships. Environmental harm may disrupt not only ecological systems, but also the relationships through which communities understand, use and value them. Participation consequently operates as a bridge between procedural justice and substantive constitutional protection. Recognising community knowledge gives practical content to dignity, cultural- and environmental rights. The judgment's deeper contribution lies in the relationship it constructs between these constitutional rights, rather than treating them as discrete considerations.

A Transformative Constitutional Reading

The Court's approach is particularly significant when read against South Africa's tradition of transformative constitutionalism. The 1996 Constitution was conceived as not only a constraint to public power, but also as an instrument for transforming legal and social power relations inherited from colonialism and apartheid. *Wild Coast* reflects this ambition by illustrating how constitutional commitments must shape the exercise of public power over environmental and development decisions. The Court itself invites this reading by recognising that the case implicates a broader "catalogue of rights", including environmental protection, participation, culture, equality and transformation. This places the dispute within the country's broader constitutional project. The judgment is transformative in the way it gives existing constitutional commitments practical effect through the interpretation and application of environmental and administrative statutory powers. In a context shaped by historical exclusion from decisions over land and natural resources, this brings questions of power and recognition into the constitutional assessment of environmental governance.

Wild Coast presents environmental constitutionalism as concerned with more than restraining environmentally harmful state action. It also concerns how

public power over the environment is exercised and whose interests are recognised in that process. Climate change adds a further dimension to this inquiry, particularly as the content of domestic constitutional obligations increasingly develops in conversation with international climate law.

Climate Change and Constitutional Responsibility

In interpreting section 24 of the Constitution, which aims to protect the environment for present and future generations while recognising the pursuit of justifiable economic and social development, the Court situates South Africa's constitutional environmental obligations within an evolving body of international climate law.

Particularly significant is the Court's engagement with recent climate advisory opinions of the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights and the International Court of Justice. It situates these developments within an emerging body of jurisprudence reflecting a "global reckoning with the legal and anthropological implications of climate change". The ICJ's 2025 Advisory Opinion is especially important. The Constitutional Court draws on its articulation of states' obligations to prevent significant environmental harm, exercise due diligence, and account for the foreseeable consequences of greenhouse gas emissions for present and future generations.

International climate law thus informs the contemporary meaning of existing constitutional environmental obligations. The Court interpreted section 24 in light of both the scientific realities of climate change and the evolving international legal obligations responding to them. In this respect, Wild Coast extends an existing trajectory in South African climate litigation. Earlier litigation brought climate impacts into environmental authorisation for a proposed coal-fired power station; connected severe air pollution to the constitutional environmental right; and brought climate impacts and the interests of youth and future generations into the review of energy planning. Together, these cases have developed climate accountability through existing environmental, administrative and constitutional law. *Wild Coast* carries this trajectory into the Constitutional Court.

Here, transformative constitutionalism and climate constitutionalism converge. Constitutional commitments are given effect through the exercise of public power, while their content remains responsive to changing environmental conditions and international law. *Wild Coast* strengthens climate constitutionalism by recognising that climate change alters the conditions under which public power is exercised. As climate science and international law develop, so too does the standard against which environmental governance must be assessed. The climate crisis demands more of existing constitutional institutions, powers and obligations, rather than simply adding another consideration to governmental decision-making.

What the Wild Coast contributes to Climate Constitutionalism

Wild Coast broadens the scope of climate constitutionalism. It shows that climate accountability is not confined to emissions targets, climate-specific rights or challenges to climate law or policy. It also reaches the ordinary exercise of public power over development and natural resources. Its particular contribution lies in bringing climate responsibility into a constitutional framework attentive to participation, culture and different forms of environmental knowledge. The judgment suggests that climate constitutionalism is concerned not only with whether states respond to climate change, but also with how they make environmentally consequential decisions, whose knowledge informs those decisions, and whose relationships with the environment are recognised.

For an evolving global climate constitutionalism, this is an important contribution from South Africa: climate accountability can be embedded within existing constitutional rights and institutions while remaining responsive to the social, cultural and ecological contexts in which climate decisions are made.

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