

# **P Vrancken *South Africa and the Law of the Sea* (2011)**

## **Chapter Four Update<sup>1</sup>**

### **Page 99, line 8**

After the full stop, insert footnote number 1A.

### **Page 99, footnote 1A**

*After footnote 1, insert the following footnote:*

See K. Trümpler “Article 8” in A. Proelss (ed.) *United Nations Convention on the Law of the Sea – A Commentary* (2017) 84–96.

### **Page 100, lines 3–4**

Replace “of (a)” with “of: (a)”.

### **Page 100, line 7**

After the word “effect”, insert footnote number 9A.

### **Page 100, line 25**

Replace “not (i)” with “not: (i)”.

### **Page 100, footnote 9A**

*After footnote 9, insert the following footnote:*

The SSA was repealed in 2016 to the extent that it has not been assigned to provinces. See ch. 1 n. 236 above.

### **Page 100, footnote 10**

Replace “7(d)” with “7(1)(d)”.

### **Page 101, lines 5–6**

Replace “Minister of Water and Environmental Affairs” with “Minister responsible for environmental matters”.

### **Page 101, line 10**

Replace “either (i)” with “either: (i)”.

### **Page 101, line 22**

Replace “Minister of Water and Environmental Affairs” with “Minister responsible for environmental matters”.

### **Page 101, line 24**

Replace “restricted (i)” with “restricted: (i)”.

### **Page 101, footnote 17**

Replace “*ibid*” with “Section 13(1)(b) NEMICMA”.

### **Page 102, lines 8–11**

Delete the whole sentence, including footnote number 28.

### **Page 102, lines 14–16**

Delete the whole sentence, but not footnote number 30.

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<sup>1</sup> The research assistance of Mr Hashali Hamukuaya is gratefully acknowledged.

**Page 102, lines 18–22**

*The definition is to read as follows:*

a body of surface water – (a) that is permanently or periodically open to the sea; (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the body of surface water is open to the sea; or (c) in respect of which the salinity is higher than fresh water as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water.<sup>31</sup>

**Page 102, two last lines**

Replace “Minister of Water and Environmental Affairs” with “Minister responsible for environmental matters with the concurrence of the Minister responsible for water affairs”.

**Page 102, footnote 25**

*Add the following:*

See further s. 65(1)(a)(i) and 65(2) NEMICMA.

**Page 102, footnote 28**

Delete the footnote.

**Page 102, footnote 30**

*The second sentence is to read as follows:*

See further para. 3.3.4 above.

**Page 102, footnote 32**

Replace “7(a)” with “7(1)(a)”.

**Page 102, footnote 33**

Delete “as well as Proc. 44 of 2009”.

**Page 103, line 13**

*Add the following:*

The National Estuarine Management Protocol published in 2013<sup>34A</sup> indicates that South Africa “has about 300 functional estuaries that are ... characterized by high biodiversity and productivity and provide a range of environmental and socio-economic benefits”.<sup>34B</sup> They “require integrated cross-sectorial planning and management as they include stakeholders that are involved in land use planning, management of freshwater and marine resources”.<sup>34C</sup> As required, the Protocol sets management standards for estuaries<sup>34D</sup> and minimum requirements for the estuarine management plans.<sup>34E</sup> It also recognises that,

[g]enerally, most estuarine systems occur within the boundaries of a single municipality ... . Local government generally has closer involvement with activities happening within and around estuaries than the other spheres of government, and it is the local people that usually benefit most from the goods and services that estuaries provide.<sup>34F</sup>

On that basis, the Protocol distinguishes, for the purposes of developing the estuarine management plans (EMPs) and coordinating the implementation process, between:

- (a) estuaries located within a protected area or identified as part of a protected area expansion strategy, for which the EMP responsibility lies with “the management authority responsible for the protected area ... in consultation with relevant government departments”;

- (b) estuaries located in a harbour,<sup>34G</sup> for which the EMP responsibility lies with the Department responsible for environmental affairs in consultation with the National Ports Authority “or other managing organs of state for a harbour and relevant municipalities”;
- (c) other estuaries located within the boundary of a single local municipality, for which the EMP responsibility lies with the municipality “in consultation with the relevant government departments”;
- (d) other estuaries within the boundary of more than one local municipality, for which the EMP responsibility lies with the district municipality “in consultation with the affected local municipalities, provincial and national government departments”,<sup>34H</sup>
- (e) other estuaries within the boundary of more than one district municipality, for which the EMP responsibility lies with the provincial environmental department “in consultation with the affected district municipalities and the relevant national government departments”;
- (f) other estuaries which cross the boundaries between provinces, for which the EMP responsibility lies with the Department responsible for environmental affairs “in consultation with the Provincial Lead Agencies for the [NEMICMA] and other relevant national government departments”; and
- (g) estuaries which cross a State boundary, for which the EMP responsibility lies with the Department responsible for environmental affairs “in collaboration with the responsible authority of the affected state/s ... in consultation with relevant government departments of the affected states”.<sup>34I</sup>

The Protocol sets out the EMP development three-step process, which involves a scoping phase and an objective setting phase before the actual development of the implementation plan<sup>34J</sup> and must include active engagement with “all the relevant stakeholders including government department[s], non-government organizations and civil society”.<sup>34K</sup> EMPs developed in the local or provincial sphere of government may only be formally adopted after they have been approved either by the MEC of the relevant provincial department or by the Minister responsible for environmental affairs.<sup>34L</sup> Once adopted, all EMPs must be incorporated into the respective coastal management programmes and reviewed at least every 5 years.<sup>34M</sup>

In contrast to international law, estuaries are not part of the internal waters in South African law. This was implied in the definition of the term “coastal waters” in section 1(1) of the NEMICMA and is now stated explicitly in the definition of the term “South African waters” in section 1 of the Marine Spatial Planning Act, 2018 (MSPA).<sup>34N</sup>

**Page 103, footnote 34A**

*After footnote 34, insert the following footnote:*

See GN 341 of 2013 in GG 36432 of 10 May 2013.

**Page 103, footnote 34B**

*After footnote 34A, insert the following footnote:*

*Ibid.*, 9 (footnote omitted). See further A.K. Whitfield *Available Scientific Information on Individual South African Estuarine Systems* (2000).

**Page 103, footnote 34C**

*After footnote 34B, insert the following footnote:*

*Ibid.*

**Page 103, footnote 34D**

*After footnote 34C, insert the following footnote:  
Ibid., 12.*

**Page 103, footnote 34E**

*After footnote 34D, insert the following footnote:  
Ibid., 15.*

**Page 103, footnote 34F**

*After footnote 34E, insert the following footnote:  
Ibid., 13 (footnote omitted).*

**Page 103, footnote 34G**

*After footnote 34F, insert the following footnote:*

For the purposes of the Protocol, the term “harbour” means “a harbour proclaimed in terms of any law and managed by an organ of state” (s. 1(1) NEMICMA). See further para. 4.4 below.

**Page 103, footnote 34H**

*After footnote 34G, insert the following footnote:*

The Protocol allows the district municipality to agree in writing “with the relevant local municipality/ies that the latter shall be responsible for developing an EMP”.

**Page 103, footnote 34I**

*After footnote 34H, insert the following footnote:  
Protocol (n. 34A) 13–14.*

**Page 103, footnote 34J**

*After footnote 34I, insert the following footnote:  
Ibid., 16–18.*

**Page 103, footnote 34K**

*After footnote 34J, insert the following footnote:  
Ibid., 18.*

**Page 103, footnote 34L**

*After footnote 34K, insert the following footnote:  
Ibid., 18–19.*

**Page 103, footnote 34M**

*After footnote 34L, insert the following footnote:  
Ibid., 19.*

**Page 103, footnote 34N**

*After footnote 34M, insert the following footnote:  
Act 16 of 2018.*

**Page 104, footnote 40**

*The footnote is to read as follows:*

Adopted: 24.08.1996; EIF: 06.07.1998. Available at  
<[http://www.sadc.int/files/7613/5292/8370/Protocol\\_on\\_Transport\\_Communications\\_and\\_Meteorology\\_1996.pdf](http://www.sadc.int/files/7613/5292/8370/Protocol_on_Transport_Communications_and_Meteorology_1996.pdf)>. See further ch. 10 below.

**Page 105, footnote 46**

Replace “portowenyc.co.za/boat10.html” with “http://www.gideonstates.co.za/sailing/new-marina-regulations”.

**Page 105, footnote 47**

- (a) Replace “to (a)” with “to: (a)”.
- (b) Replace “to (i)” with “to: (i)”.

**Page 105, footnote 51**

*The footnote is to read as follows:*

Published by GN 824 of 2009 [GG 32480 of 6 August 2009]. See further para. (b) below.

**Page 106, footnote 53**

*Add the following:*

An invitation to submit proposals for the review of the Policy and the NaPA was published by GN 361 of 2018 [GG 41745 of 29 June 2018].

**Page 106, footnote 55**

- (a) Replace “must (a)” with “must: (a)”.
- (b) Replace “control (i)” with “control: (i)”.

**Page 108, line 4**

Replace “further (i)” with “further: (i)”.

**Page 108, lines 23–24**

Replace “at least (a)” with “at least: (a)”.

**Page 110, footnote 78**

*Add the following:*

The Maritime Transport and Services Industry Sub-Sector Code for BBBEE was published in terms of s. 9(1) of the BEEA by GN 1162 of 2009 [GG 32511 of 21 August 2009].

**Page 111, line 20**

Replace “that (i)” with “that: (i)”.

**Page 112, footnote 99**

Replace “2008 JDR 0561 SE 13 and 18” with “2008 ZAECHC 42, 2008 JDR 0561 SE 13 and 18”.

**Page 114, footnote 101**

Replace “74(1)” with “74(2)”.

**Page 116, line 23**

Replace “unless (i)” with “unless: (i)”.

**Page 116, footnote 121**

*Add the following:*

At the end of 2018, a new statute had still not been enacted.

**Page 116, footnote 127**

*Add the following:*

The Act will be repealed in terms of s. 29 of the Critical Infrastructure Protection Act, 2019 (Act 8 of 2019), when the latter comes into effect.

**Page 117, line 6**

Replace “1958” with “1958 (C108)”.

**Page 117, footnote 131**

Replace “<www.ilo.org/ilolex/cgi-lex/convde.pl?C108>” with “<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C108>”.

**Page 117, footnote 135**

Replace “Act 5 of 2002” with “Act 16 of 2002”.

**Page 118, line 2**

Replace “are (i)” with “are: (i)”.

**Page 118, line 13**

Replace “level, (i)” with “level: (i)”.

**Page 118, line 21**

Replace “undertakes (i)” with “undertakes: (i)”.

**Page 118, footnote 144**

(a) Replace “obtained (a)” with “obtained: (a)”.

(b) Replace “of (a)” with “of: (a)”.

**Page 119, lines 1–2**

Replace “Minister of Water and Environmental Affairs” with “Minister responsible for environmental matters with the concurrence of the Minister responsible for water affairs”.

**Page 119, footnote 146**

*Add the following:*

See further ch. 10 below.

**Page 119, footnote 147**

Replace “Churchill & Lowe (n. 4) 61” with “Churchill & Lowe (n. 4) 61; Trümpler (n. 1A) 90”.

**Page 120, footnote 149**

Replace “See ch. 5 below” with “See Trümpler (n. 1A) 89 and 96 and ch. 5 below”.

**Page 120, footnote 153**

Replace “Churchill & Lowe (n. 4) 63” with “See art. 300 LOSC. See further Churchill & Lowe (n. 4) 63; K. O’Brien “Article 300” in Proelss (n. 1A) 1942–1943”.

**Page 120, footnote 154**

Replace “Churchill & Lowe (n. 4) 63” with “See art. 300 LOSC. See further Churchill & Lowe (n. 4) 63”.

**Page 120, footnote 155**

Replace “597” with “597; Trümpler (n. 1A) 90”.

**Page 121, footnote 162**

Replace “Table Bay” with “Table Bay (reg. 3)”.

**Page 122, last line**

Replace “arrival” with “arrival to the Harbour Master”.

**Page 123, footnote 171**

Add the following on the first line after the second full stop:  
See K Bartenstein “Article 211” in Proelss (n. 1A) 1430–1431.

**Page 123, footnote 172**

Add the following:  
See further ch. 14 below.

**Page 125, lines 16–18**

Replace “Unless foreign ships exercise their right of innocent passage, they may not enter the South African internal waters other than harbours and fishing harbours<sup>187</sup> unless” with “Unless foreign ships exercise their right of innocent passage, they may only enter the South African internal waters other than harbours and fishing harbours<sup>187</sup> when:”.

**Page 126, footnote 190**

Replace “may (i)” with “may: (i)”.

**Page 126, footnote 193**

Replace “See M.H. Nordquist” with “See R.A. Barnes “Article 18” in Proelss (n. 1A) 185; M.H. Nordquist”.

**Page 127, footnote 206**

Replace “www.imo.org/Safety/mainframe.asp?topic\_id=875” with “http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.9.49(23).pdf” and “www.cmi2008athens.gr/sub1.2.pdf” with “https://comitemaritime.org/wp-content/uploads/2018/05/Refugee.pdf”.

**Page 128, footnote 207**

Replace “contain (i)” with “contain: (i)”.

**Page 129, footnote 218**

Replace “Churchill & Lowe (n. 4) 65” with “Churchill & Lowe (n. 4) 65. In *The ARA Libertad Case (Argentina/Ghana)* 2012 ITLOS Reports 332, the Tribunal confirmed that “a warship enjoys immunity, including in internal waters” [at 95]”.

**Page 130, footnote 223**

*The second sentence to read as follows:*

See also J. Dugard & D. Tladi “Law of the sea” in J. Dugard, M. du Plessis, T. Maluwa & D. Tladi (eds) *Dugard’s International Law* (2018) 545.

**Page 131, footnote 228**

- (a) Replace “Dugard (n. 223) 359” with “Dugard & Tladi (n. 223)”.
- (b) Replace “176 LNTS 199” with “176 LNTS 199; adopted: 24 May 1934; EIF: 8 January 1936”.
- (c) Replace “(2005) 44 ILM 803” with “(2005) 44 ILM 803; adopted: 2 December 2004; EIF: not yet”.

**Page 132, line 12**

Replace “including (a)” with “including: (a)”.

**Page 132, lines 14–15**

Replace “include (i)” with “include: (i)”.

**Page 133, line 6**

Replace “to (a)” with “to: (a)”.

**Page 133, footnote 237**

Replace “question (a)” with “question: (a)”.

**Page 133, footnote 238**

Replace “state (a)” with “state: (a)”.

**Page 134, line 25**

Replace “process (i)” with “process: (i)”.

**Page 134, footnote 239**

*Add the following:*

In *Government of the Republic of Zimbabwe v Fick & Others* 2013 5 SA 325 CC, 2013 10 BCLR 1103 CC, the Constitutional Court held that “Zimbabwe’s agreement to be bound by the [2001 Protocol on the Tribunal in the Southern African Development Community], including article 32, constitutes an express waiver in terms of section 3(1) of the Immunities Act. It is a waiver by Zimbabwe of its right to rely on its sovereign immunity from the jurisdiction of South African courts to register and enforce decisions of the Tribunal made against it” [at 35].

**Page 136, line 7**

Replace “if (a)” with “if: (a)”.

**Page 136, footnote 260**

Replace “439 UNTS 193” with “439 UNTS 193; adopted: 10 May 1952; EIF: 24 February 1956” and “available at <[www.unctad.org/en/docs/imo99d6.pdf](http://www.unctad.org/en/docs/imo99d6.pdf)>” with “2797 UNTS 3; adopted: 12 March 1999; EIF: 14 September 2011”.