

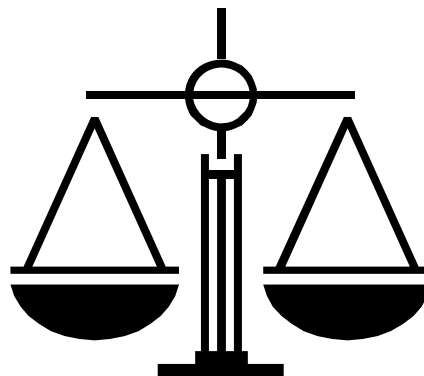
A REVIEW OF LEGISLATION RELAVANT TO PROTECTED FOREST AREAS IN SOUTH AFRICA

for

Department of Water Affairs and Forestry

**A study
commissioned by DIFID
October 2002**

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INTRODUCTION

The intention of this study is to provide a user-friendly guide to relevant protected area legislation concerning indigenous forests in South Africa.

The guide is designed with three levels of detail. The first level is a review analysis using the following criteria: purpose of the act; procedures or clauses enabling declaration of protected areas; and mandates for the management and regulation of protected areas. The second level of detail allows a scrutiny of the actual legislation (using hyper links). The third level hyperlinks to the full text of each Act discussed ([see appendix B](#)).¹

The Department of Water Affairs and Forestry (DWAF) is in the process of developing a national protected areas system (modeled on the IUCN guidelines²) for the country's forests. In this regard there has been a need to review existing legal instrument enabling the declaration of protected areas.

It is evident from this analysis that the South African has inherited a complex, uncoordinated and fragmented environmental legislative system, this is particularly evident with regard to the proclamation of protected areas and the general institutional functioning of environmental conservation. In addition, there are a potentially confusing number of types of protected areas proclaimed under a variety of national Acts or provincial ordinances. The current legislation gives no clear definitions, criteria for classification, or management priorities for the various types of protected areas. Implementation has been hampered by fragmentation, duplication and lack of coordination between the various conservation organizations and levels of government.

The Kumleben report ³ has the following to say:

“The fragmented, polarized, and inefficient administrative structures created by apartheid resulted in no fewer than seventeen government departments having primary responsibility for nature conservation. This situation did not improve with the establishment of new provinces and government structures. Divided responsibilities, together with a duplication of effort, profusion of laws, and most importantly, a lack of coordination, has been major factors hampering the effective conservation of biodiversity. Aggravating this has been a lack of integration of biodiversity considerations into national decision making.”

The Convention on Biodiversity in its call for National Biodiversity Strategy and Action Plans has emphasized the need for a systemized approach to planning and establishment of protected area networks that conserve a representative sample of a countries biodiversity.⁴ This has been

¹ Use return arrow in top left of word to return from a hyperlink. Hyperlinks may not work in earlier version of MS Word

² IUCN (1994) Guidelines for protected area management categories. IUCN commission on National Parks and Protected Areas with the assistance of the World Conservation Monitoring Center. IUCN. Gland.

³ Kumleben M E, Sangweni SS, Ledger JA. 1998. Board of Investigation into the Institutional arrangements for Nature Conservation in South Africa.

⁴ Convention on Biodiversity : Article 6 calls on parties to (a) develop national strategies, plans or programmes for conserving and sustainably using biological diversity; and (b) to integrate, as far as possible, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies

echoed in the white papers on environmental management and biodiversity⁵, and more recently in [Section 40](#) of the draft Biodiversity Bill^{6 7}. It can be argued that a standardized, and preferably internationally recognized approach to protected area classification would facilitate this process.

South African environmental legislation is in the process of transformation. Legislative review is currently being drafted for matters concerning protected areas and biodiversity conservation (see the [Biodiversity Bill](#) and the [Protected Areas Bill](#)). The implementation of the New Forestry Act, Water Act and National Environmental Management Act are currently receiving increasing attention.

These two draft bills address some of the shortcomings inherited from the Apartheid government's protected area legislation, but to varying degrees. Chapter 3 of the Protected Areas Bill addresses the need for a nationally standardized system and register of protected areas with defined criteria ([see section 39](#)). While the bill refers to the approximated IUCN categories, it falls short of entrenching and giving formal legal recognition to the full range of the internationally recognized IUCN protected area categories and criteria. In addition, it is felt that the relationship between protected areas, community-based natural resource management and conservation has not been provided with sufficient legal support.

⁵ See for example the white paper on the Conservation and Sustainable use of South Africa's Biological Diversity. Notice 1095 of 1997.

⁶ Also see: National system planning for Protected Areas. Davey A.D . IUCN Best Practice guidelines Series No. 1. World Commission on Protected Areas (WCPA)

⁷ . Legal issues arising from the implementation of the Convention on Biological Diversity into South African law have been discussed by Witbooi (2000), NRF funded study.

1 BACKGROUND

1.1 Terms of reference

The Department of Water Affairs and Forestry (DWAF) is in the process of developing a national protected areas system (modeled on the IUCN guidelines) for the country's forests.

This is envisaged in two stages:

- Identification & Assessment of areas requiring "Specially protected status" under S. 8 of the National Forests Act (1998). Implementation of Gazzettment process as outlined in sections 9-11 of NFA.
- Assessment of remaining State forest and forest not on state land and providing management designation and guideline objectives for the management of that area as part of a system plan.

However, the NFA is not the only legislation governing protected areas or the conservation of natural areas in South Africa. The effect of this other legislation must be considered when developing the forest protected areas system plan. Furthermore, S.8(1) indicates that the Minister may only declare a specially protected area only if he/she is of the opinion it is not already adequately protected in terms of other legislation.

DWAF therefore requires a review of other environmental, conservation and natural resources legislation of a national and provincial nature to identify areas of complementarities and conflict with the forest protected area system being proposed.

1.2 Review criteria for National Acts

- Purpose of the Act
- All procedures or clauses enabling declaration of protected areas
- Mandates for the management and regulation of protected areas
- The nature of the protection afforded by application of the legislated mechanisms identified

1.3 Scope

The following South African Protected Area legislation was reviewed:

- Protected areas draft bill
- National Environmental Management Act (107 of 1998)
- Environment Conservation Act (73 of 1989) +
- National Water Act (36 of 1998)
- National Parks Act 57 of 1976
- National Forests Act (84 of 1998)
- National Veld and Forest fires Act 101 of 1998
- Development Facilitation Act (67 of 1995)
- World heritage Convention Act 49 of 1999
- National Heritage Resources Act 25 of 1999
- National Monument Act 107 of 1998
- Mountain Catchment Areas Act 63 of 1970
- Conservation of Agricultural resources Act 43 of 1983
- Lake Areas Development Act 39 of 1975
- Defence Act 44 of 1975

- Former and current provincial nature conservation ordinances
- Nature conservation and forestry Acts of the former TBVC states

2 PROTECTED AREAS DRAFT BILL (DRAFT 8)

2.1 Purpose

This Act is to be called the National Environmental Management: Protected Areas Act, 2002, and takes effect on a date determined by the President by proclamation.

The Protected Area draft bill aims to address the need for integration, rationalization and standardization of matters concerning protected areas in South Africa. It should be read with the Biodiversity draft bill, both fall within the framework of NEMA. Specifically, its objectives include: (see [Section 2](#))

- To provide, within the framework of the National Environmental Management Act, for the declaration and management of protected areas ([see section 6](#)).
- To give effect to international agreements on protected areas⁸ which are binding on the Republic ([see chapter 4](#))
- To provide for co-operative governance in the declaration and management of protected areas⁹ ([see section 87](#))
- The State, through its functionaries and institutions implementing this Act, acts as the guardian of protected areas in the Republic ([section 3](#)).

Importantly, if this bill is promulgated (in its current form) it will repeal The National Parks Act 57 of 1976, and the Lake Areas Development Act 39 of 1975 Act 39 ([see section 115](#)).

The Bill provides clear definitions for the purpose of protected areas ([see section 38](#)). Importantly, it points out the need for protected areas to be ecologically viable areas representative of South Africa's biological diversity. The Bill provides criteria for the classification of protected areas (see below).

The Bill requires the minister to maintain a register of Protected Areas with specific information requirements ([see section 40](#)). Specifically, section [40 \(3\)\(c\)](#) calls for the categorization of each protected area and its approximate IUCN category.

2.2 Procedures or clauses enabling declaration of protected areas

The bill provides provisions for the proclamation of the following main types of protected areas ([see section 39 \(1\)](#)), these include:

- Special nature reserves, conforming to IUCN category 1a;
- National parks, conforming to IUCN category 2;
- Nature reserves¹⁰, which include IUCN categories 1b, 3,4 and 6;
- Sites of ecological importance;

⁸ These include Wetlands of International Importance, transfrontier conservation areas, biosphere reserves, World Heritage sites

⁹ The Bill appears to be lacking a clear frame work for this objective particularly with regard to community based natural resource management

¹⁰ Section [50 \(1\)](#) provides for the designation of nature reserves into one of the following categories: wilderness area; a controlled resource use area; a marine reserve; a landscape, ecosystem, habitat or species reserve; or any other kind of nature reserve

- Protected natural environments, which approximate IUCN category 5
- Limited development areas

Note that the bill reclassifies any area declared as a forest nature reserve, forest wilderness area or specially protected forest area (declared in terms of [section 8 of the National Forests Act of 1998](#)), as a 'nature reserve' ([see section 39 2\(a\)](#))

The protected areas mentioned above (section 39 (1)) are not affected by the designation of a protected area in terms of this Act or any other legislation as –

- a wilderness area;
- a specially protected coastal area;
- a marine reserve;
- a specially protected forest area, forest nature reserve or forest wilderness area;
- conservancy or resource use area;
- a Wetland of International Importance;
- a transfrontier conservation area;
- a biosphere reserve;
- a World Heritage site; or
- any other kind of special conservation area. ([See section 39 \(3\)](#))

2.3 Mandates for the management and regulation of protected areas

Under the proposed bill ultimate authority for all protected areas resides with the State through the Minister of Environmental Affairs and Tourism. (The State acts as the guardian of protected areas in the Republic ([section 3](#))).

The Bill binds all organs of state in the national, provincial and local sphere of government in subject to section 146 of the Constitution.

The Minister must assign, in writing, the management of a national protected area to a management authority that must be an organ of state, while the MEC of the province concerned must assign, in writing, the management of a provincial protected area to a management authority that must be a provincial organ of state ([see section 82](#)).

This Bill, except sections [39](#) and [40](#), does not apply to an area declared in terms of section 8 of the National Forests Act 84, 1998, as a specially protected forest area, forest nature reserve or forest wilderness area.

The management authority of a national or provincial protected area must report annually to the Minister or MEC, as may be appropriate, on aspects of the area agreed on in the management plan; and may amend the management plan by agreement with the Minister or MEC ([see section 84](#)).

2.4 The nature of the protection afforded by application of the legislated mechanisms

The designation of a special nature reserve, national park, and wilderness area may not be withdrawn except by an Act of Parliament; while a provincial park, or part of a provincial park, as a wilderness area may not be withdrawn except by an Act of the legislature of the province. (Section 52). The Minister, the MEC of a province or a municipality may withdraw designation of a Protected Natural Environment (section 63).

The nature of protection afforded by the Bill is to a degree implied by the criteria used to classify the protected areas. The bill lays out further consequences for marine reserves and sites of ecological importance.

Criteria include:

Type of Protected area	Criteria for classification	Consequences
Special nature reserves	Section 43.	
National parks	section 46	
Nature reserves	section 49	
Wilderness areas	section 51	
Controlled resource use areas	section 53	
Marine reserves	section 54	Section 55
Sites of ecological importance	section 58.	Section 59
Protected natural environments	section 62.	
Limited development areas	section 65	

3 NATIONAL FORESTS ACT 84 OF 1998

3.1 Purpose

To reform the law on forests; to repeal certain laws; and to provide for related matters.

The purposes of this Act are to—

- promote the sustainable management and development of forests for the benefit of all;
- create the conditions necessary to restructure forestry in State forests;
- *provide special measures for the protection of certain forests and trees;*
- promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes;
- promote community forestry;
- promote greater participation in all aspects of forestry and the forest products industry by persons disadvantaged by unfair discrimination.
- Interpretation

3.2 Procedures or clauses enabling declaration of protected areas

The National Forestry Act 84 Of 1998 provides for three types of specially protected areas in the forestry context. These include Forest nature reserve, forest wilderness area and... "Any type of protected area which is recognized in international law or practice " ([section 8 \(1\)](#))

The clause in section 8(1) iii, "The minister has power to set aside.....any other type of protected area which is recognized in international law or practice", is of particularly relevance to this study and the implementation of IUCN protected area classification system. In addition there is a proviso made in Section 8 (2) that, "the Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation".

The Act also provides a detail procedure for declaring protected areas ([section 9](#))

Note that the Act makes specific mention of 'forest wilderness areas' as a special type of protected area (section 8(1)). A number of wilderness areas were declared in South Africa under the repealed Forest Act and have been preserved by savings provisions of the new National Forests Act. This category of protected area corresponds with the IUCN classification system,

Category I. Although the IUCN system provides a definition of wilderness, there is no domestic legal definition of the term.

In addition, the Minister may declare a particular group of trees, or a particular woodland as protected ([section 12\(1\)](#)).

3.3 Mandates for the management and regulation of protected areas

The Minister of DWAF is responsible for the management, and regulation of the protected area as set out in [section 11](#)

3.4 The nature of the protection afforded by application of the legislated mechanisms

[Section 10 \(1\)](#) sets out the effect of such a declaration which included a prohibition on cutting, disturbing, destroying, or removing forest produce from such a protected area, unless it is conforming with certain stipulated rules or conditions.

The NFA prescribes minimum protection to all indigenous forest, irrespective if they are on state land or not. Chapter 3 Part 1 prohibits the destruction of indigenous trees in any natural forest without a license ([see section 7](#)). This is obviously very difficult to regulate and enforce.

4 THE ENVIRONMENTAL CONSERVATION ACT 73 OF 1989 (ECA)

4.1 Purpose

In short this Act is to provide for the effective protection and controlled utilization of the environment and for matters incidental thereto.

One of primary tools of this Act was the declaration of policies. In S2, Minister is empowered to declare policies (in Gazette) to (inter alia): preserve biodiversity; protect environment from pollution and other negative effects of human activities; promote sustainable use of its resources; promote effective management of cultural resources etc. A Number of policies were passed – eg. General Environmental Policy (in Notice No.51 of 1994 in Government Gazette No. 15428 dated 21 January 1994) – it include a general duty to take into account the potential impact of development projects on the environment and states that a balance must be maintained between environmental conservation and essential development’.

Of particular relevance here, is the *Policy for the Classification of Terrestrial and Marine Protected Areas (Notice No. 449 in GG No. 15726 dated 9 May 1994)* – based largely on the six IUCN (International Union for the Conservation of Nature) categories in the ‘Guidelines for Protected Area Management Categories’ (initially begun in 1972 but revised version released in 1994). Despite the repeal of section 2 of ECA, this policy is still in force.

The legal effect of policy (vs. law) is not as strong as law, but in some cases either the policy or the section in the Act permitting the publication of the policies has been relied on to justify reaching certain decision. These policies set the parameters within which the state must remain when it comes to activities affecting the environment. If the state does anything that contravenes the policy it will be contravening the Act. The Act also provides for steps to be taken to ensure compliance with the policy: ‘the Director-General shall ensure that the policy is complied with by each Minister and competent authority (s3(1)).....and if s/he is of the opinion that the said policy is not being complied with...s/he may take steps as deemed fit in order to ensure that the policy is complied with. In addition this the Act stipulates the need to ensure that policy is complied with by each local authority and government institution. Note that if a government organ failed to comply with the policy and the Director-General did not exercise powers under s 3 of the Act, that action could be challenged in terms of the requirements for administrative legality.

A short coming of policy is that it is determined administratively, rather than by legislature, and should have been articulated clearly and unequivocally in the Act itself as a matter of substantive law, thereby establishing a conservation ethic as a legislative guide to interpretation and administration for our courts and all government agencies at all levels. Policy determined by legislature has advantages over administrative determined policy in that it is more effective and more enduring (Kidd, 1997)¹¹

It should be noted that the Environmental Conservation Act is the only relevant environmental statute, which provides for the authorities determination of policy and for sanctions where such policy is not complied (Rabie & Burgers, 1997).

Much of 1989 ECA been repealed by 1998 NEMA (Act 107), but many provisions been explicitly saved by NEMA (S 50 (1) and (2)). Section 2 repealed by NEMA but policies are still valid in terms of [S 51 of NEMA](#)

4.2 Procedures or clauses enabling declaration of protected areas

The Environmental Conservation Act 73 of 1989 provides for four kinds of protected areas: Protected Natural Environments (PNE's), and Special Nature Reserves. There is also a proviso for Limited Development Areas.

4.2.1 PNE's

PNEs are aimed at promoting the preservation of specific ecological processes, natural systems, natural beauty or species of indigenous wildlife or the preservation of biotic diversity in general. Provisos for declaring PNE are given in section 16 (1) (a) of the ECA. Refer to link [section 16](#). The first four PNE's were established under the Physical Planning Act 88 of 1967 (prior to the ECA of 1989), these were referred to as Nature Areas, included the Magaliesberg Nature Area, Cape Peninsular Nature Area, Rietvlei Nature Area and the Langebaan Nature Area.

It is important to note that areas declared as Nature Areas under the Physical Planning Act 88 of 1967, resulted in the freezing of land-use (implying that no unauthorized changes in land use were permitted). With the advent of the ECA, the concept of Nature Areas was modified so that existing land-use was no longer frozen¹², and the name changed from Nature Areas to PNE's. (See [section 43 of ECA](#), where the definition of a Nature Area is deleted). After the enactment of the ECA a number of further PNE's were declared, including The Blaauberg PNE, and the Cape Peninsular PNE (which has been recently subsumed into the Cape Peninsular National Park, administered by the SA National Parks Board)

4.2.2 Special nature reserves

Special nature reserves are protected areas that provide for 'maximum protection in extreme circumstances' as evidence by the provision that no person shall gain admittance to a special nature reserve or perform any activity therein (section 6, with exceptions provided in s 7 for scientific projects). It is apparent that this is meant for areas of scientific importance (refer to ECA [section 18](#)). Under the IUCN Protected Area classification system this falls under Category of I a: Strict nature reserve or wilderness area managed mainly for science).

¹¹ Kidd M. 1997 Environmental law: A south African guide

¹² While PNE do not freeze land use under the ECA, limitations are placed on the purpose of land use so that they are in accord with the general policy and objectives of the ECA. The Act makes provision for compensation as a result of losses suffered by landowners as a consequence of these limitations. Compensation being recoverable only for 'actual loss suffered' so that loss of anticipated profits or income is not recognized.

For example include the Price Edward and Dassen Islands, declared as special nature reserves. Other examples include the various wilderness areas declared under the repealed Forest Act 84 of 1984, for example the Cederberg Wilderness Area, currently maintained under the National Forestry Act 84 of 1998.

4.2.3 *Limited Development Areas*

Part V of the ECA also empowers a competent authority to declare any defined area as a limited development area ([section 23](#)).

Part V of the ECA deals with environmental assessment; the consequences of declaration of an LDA are that any development or activity in such an area is subject to environmental assessment. Apparently to date no limited development areas have been declared under this section (Glazewski 2000¹³).

It is interesting to note that Fuggle and Rabie¹⁴ suggest “ the time is ripe for a reconsideration of all legislation dealing with protected areas, with a view to rationalizing the situation by establishing an Act dealing comprehensively with all such areas”

4.2.4 *Protected areas recognized under international instruments*

Sections of the ECA (section 28(c) & Section 38 (1) and (2)) that enabled...” The State president by proclamation in the Government Gazette to add to the Environmental Conservation Act any schedule containing the provisions of an international convention, treaty or agreement relating to the protection of the environment which has been entered into or ratified by the Government of SA”, have been repealed by [section 50 \(1\)](#) of NEMA Act 107 of 1998.

4.3 ***Mandates for the management and regulation of protected areas***

With respect to S2 of ECA, the minister is empowered to declare policies for biodiversity conservation whereby the...”Director-General shall ensure that the policy is complied with by each Minister and competent authority “ (s3(1))....and if s/he is of the opinion that the said policy is not being complied with...s/he may take steps as deemed fit in order to ensure that the policy is complied with. In addition this the Act stipulates the need to ensure that policy is complied with by each local authority and government institution [S 51 of NEMA](#)

With regard to PNE’s . Mandate is conferred on a ‘competent authority’ to assign the control and management of a protected natural environment to such local authority or government institution (see [ECA section 18 \(4\)](#))

With regard to special protected areas....’ The Minister may assign the control of a special nature reserve to any competent authority, local authority or government institution” (refer to section ECA [18 \(4\)](#)) also the declaration of a special nature reserve shall not be withdrawn or the boundaries thereof altered except by resolution of Parliament.

4.4 ***The Nature of the protection afforded by application of the legislated mechanisms***

The nature of the three types of protected areas afforded by the Act is not specified, but is alluded to. This is discussed under section 5.5 of this rapport.

¹³ Glazewski J. 2000. Environmental Law in South Africa. Butterworth . Durban.

¹⁴ Fuggle, R.F. & Rabie M. A. 1996. Environmental Management in South Africa. Juta Cape Town.

5 MOUNTAIN CATCHMENT AREAS ACT 63 OF 1970

5.1 Purpose

To provide for the conservation, use, management and control of land situated in mountain catchment areas, and to provide for matters incidental thereto.

The State owns only 15 % of mountain catchments while 85 % are privately owned. One of the main objectives of the MCA was to provide a means of controlling land use in privately owned mountain catchment area. Prior to this Act reliance was placed on the Conservation of Agricultural resources Act (CAR Act) 42 of 1983, particularly with reference to controlling soil erosion. Today the CAR Act continues to apply to the overwhelming proportion of privately owned mountain catchments.¹⁵

The minister formulated more specific objectives in a policy memoranda¹⁶. These include the two primary objectives of the MCA Act, namely; the maintenance of an optimal sustained yield of water of the highest quality possible; and the maintenance of biological diversity and adequate plant cover in order to prevent soil erosion. Among the secondary objectives are the preservation of aesthetic resources, outdoor recreation and the regulation of certain economic uses such as grazing and the harvesting of natural flora, provided that such land use is not in conflict with the primary objectives¹⁷.

The problem with the above objectives is that almost none of them are readily evident from the Acts provisions. Moreover, policy memoranda as quasi legislation cannot serve to impose obligations on individuals, although they would be binding on the administration concerned¹⁸.

Rabie & Burgers (1997) feel that the above uncertainty regarding the Acts purpose must impact negatively on the implementation of the MCA Act. Specifically where nature conservation agencies, responsible for administration of the Act, may be uncertain whether they can use the Act to protect biodiversity per se or whether they may seek to control or prohibit development impacts purely on aesthetic considerations. This uncertainty also gives rise to uncertainty as to which agency is constitutionally responsible for its administration.

Note that the Environmental Conservation Act is the only relevant environmental statute, which provides for the authorities determination of policy and for sanctions where such policy is not complied (Rabie & Burgers, 1997).

5.2 Procedures or clauses enabling declaration of protected areas

The Act empowers the Minister of Water Affairs and Forestry to declare a mountain catchment area and to define its boundaries by notice in the Gazette ([section 2](#))

Of the 85 % of privately owned mountain catchments, only 6 % have been thus far declared as protected by virtue of the MCA Act, while the remaining 94 % are administered in terms of the

¹⁵ Rabie A & Burgers C 1997. The Mountain Catchment Areas Act and its implementation. SA Public Law vol 12 (1) .

¹⁶ Seydack CF. 1986. Policy memorandum for the management of mountain catchment areas in the Southern Cape and Tsistikama forest regions. DEAT

¹⁷ A similar policy was formulated in 1991 by the Counsel for the Environment in its National Policy and Guidelines for the Conservation and Management of Mountains and Mountain areas in South Africa.

¹⁸ Rabie & Van Zyl Smit 1989 The nature and effect of legislative and quasi-legislative administrative Acts. SA Public Law 74. 76-78

CAR Act and other legislation. The provisions of the Act may only be activated in respect of declared catchment areas.

5.3 Mandates for the management and regulation of protected areas

The Department of Water Affairs and Forestry administered the Act from its inception, in 1970. In 1986, the declaration and management of certain mountain catchment areas was assigned to the Administrators of the then four provinces. Rabie & Burger (1997) point out that the term managements used in the assignment, caused some confusion, as there was uncertainty about which provisions of the Act were to be encompassed by the term 'management'

Although the MCA Act empowers the Minister of Water Affairs and Forestry to declare mountain catchments, this has been assigned to the provinces, and the power is vested in the Premiers of the respected provinces. Once declared the Premier has powers to declare directions regarding the conservation, use, management, and control of land in such catchments, the prevention of soil erosion, the protection and treatment of natural vegetation and related matters. ([Section 3](#))

There is a long-standing debate concerning the question whether there is a need for a separate statute dealing with mountain catchments. There is an implied overlap of responsibilities between the CAR act (administered by the Department of Agriculture), and the MCA Act (administered by the Department Water Affairs and Forestry). In order to avoid this overlap, provisions of soil conservation (administered by the Department of Agriculture), do not apply to declared mountain catchment areas.

During the last decade, much debate has surrounded suggestions made to repeal the MCA Act and rely only on the provisions of the CAR Act to achieve the aims of the mountain catchment conservation. Administrations concerned with forestry, water and nature conservation supporting the retention of the MCA Act and its continued administration by a conservation agency, and those responsible for agriculture pleading for the repeal of the Act and the application of the CAR Act also to maintain catchment areas declared by virtue of the MCA Act.

Rabie & Burger (1997) conclude that while there are no critical shortcomings in the MCA Act, there are a few problems. However the major difficulty has been the lack of political will to effectively implement the Act.

5.4 The nature of the protection afforded by application of the legislated mechanisms

It seems that the approach of Integrated Catchment Management will in future determine the administration of water resources. In this respect continued reliance will have to be placed on the MCA Act, and its administration by a conservation agency, but operating within the framework of regionalized management by representative catchment management agencies, under the auspices of DWAF.

6 NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

6.1 Purpose

To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will Promote co-operative governance and procedures for co-coordinating environmental functions exercised by organs of state; and to provide for matters connected therewith.

Based on 18 key principles, all of which are rooted in and elaborate on, the concept of sustainable development ([see Chapter 1 of NEMA](#))

The preamble to the Act specifies, “sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations “.

6.2 Procedures or clauses enabling declaration of protected areas

Not specified

6.3 Mandates for the management and regulation of protected areas

Not specified

6.4 The nature of the protection afforded by application of the legislated mechanisms

NEMA largely imposes environmental management system and principles ([see Chapter 1 of NEMA](#)) on organs of the state, but yet also imposes some duties and obligations on the general public. The duty of care ([see section 28 \(1\)](#)) imposes a duty on every person who causes, has caused or may cause significant pollution/degradation of the environment and- to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring

Some mechanism that NEMA employs to protected the environment include:

- Obligations to develop Integrated Environmental Management Plans ([chapter 5](#)).
- Control of emergency incidents (section 30)
- Preventive principle: ([section 2\(4\)\(a\)\(i\)-\(iv\)](#)).
- Precautionary principle: ([section 2\(4\)\(a\)\(vii\)](#))
- Polluter pays principle: ([section 2\(4\)\(p\)](#))

7 NATIONAL PARKS ACT 57 OF 1976

7.1 Purpose of Act

To consolidate the laws relating to national parks.

7.2 Procedures or clauses enabling declaration of protected areas

[Section 2A](#) of the Act provides various mechanisms for the establishment of national parks. Firstly, the Minister may declare state land to be a park provided the concurrence of various ministries who have an interest in the area concerned is obtained. In addition, there are specific provisions regarding the declaration of land where a prospecting or mining right has been granted. Further provisions state that once a park is established. No prospecting or mining of any nature shall be undertaken on land included in the park (refer to [Section 2B](#)).

Apart from establishment of national parks on state land, the Act also provides for so called ‘contractual parks’ where an agreement is entered into between the South African National Parks Board and the landowners concerned (Schedule 2B)

This Act enables the establishment of IUCN category II protected areas(National parks and equivalent area)

7.3 Mandates for the management and regulation of protected areas

National Parks are administered and managed by the South African Parks Board.

The functions and power of the Board are to control and manage and maintain the parks for the objectives described (see below).

7.4 The Nature of the protection afforded by application of the legislated mechanisms

National parks are proclaimed and protected under national legislation of the National Parks Act 57 of 1976.

The object of the constitution of a park is the establishment, preservation and study therein of wild animals, marine and plant life and objects of geological, archaeological, historical, ethnological, oceanographic, educational and other scientific interests and objects relating to the said life or the first-mentioned objects or to events in or the history of the park, in such a manner that the area which constitutes the park shall, as far as may be and for the benefit and enjoyment of visitors, be retained in its natural state.

8 THE WORLD HERITAGE CONVENTION ACT 49 OF 1999

8.1 Purpose

South Africa ratified the 1972 UNESCO World Heritage Convention, in July 1997, and has enacted the World Heritage Convention Act 49 of 1999, to give it domestic effect as required by the constitution.

The UNESCO Convention states that... 'it is for each State Party to this Convention to identify and delineate the different properties situated on its territory.... namely cultural and natural¹⁹ heritage, which are of outstanding universal value.... each contracting party.

The South African World Heritage Convention Act of 1999 aims to: provide for the incorporation of the World Heritage Convention into South African law; the enforcement and implementation of the World Heritage Convention in South Africa; the recognition and establishment of World Heritage Sites; the establishment of Authorities and the granting of additional powers to existing organs of state; the powers and duties of such Authorities, especially those safeguarding the integrity of World Heritage Sites; where appropriate, the establishment of Boards and Executive Staff Components of the Authorities; integrated management plans over World Heritage Sites; land matters in relation to World Heritage Sites; financial, auditing and reporting controls over the Authorities; and to provide for incidental matters.

8.2 Procedures or clauses enabling declaration of protected areas

The Minister of Environmental Affairs and Tourism administers the act and is responsible for overseeing the nomination process. A written motivation for the declaration of a place as a World

¹⁹ *Cultural heritage* includes monuments, architectural works, art, caves dwellings, inscriptions, combination of outstanding historical, artistic, ethnological, anthropological, archeological or scientific features of universal value.

Natural heritage includes natural features or sites of outstanding scientific or aesthetic universal value. Areas with habitat of threatened species of plants and animals of outstanding universal scientific or conservation value (abbreviated definition from 1972 World Heritage Convention, Art 3)

Heritage Site must be prepared and kept by the Department in accordance with the requirements of the UNESCO World Heritage Site Convention and its operational guidelines.

Details of procedures for identification and nomination of World Heritage Sites are discussed in [Chapter 1 section 6](#) of the WHC Act.

Procedures and clauses enabling the declaration of World Heritage Sites are discussed in [Chapter 2 Section 7](#).

Note that any interested person may submit a proposal in writing for the inclusion of a site on the World Heritage List. (Section 6 (2))

8.3 Mandates for the management and regulation of protected areas

The Act, which is administered by the Minister of Environmental Affairs and Tourism, places great emphasis on conservation and public participation. This requires that there is consultation with the provinces and other organs of state.

[Chapter II section 8, 9, 10](#) sets out the provisions for the establishment of management authority.

The Act emphasizes the need for integrated environmental management of the World Heritage Sites by devoting a chapter to this aspect ([sections 21-28](#)). Every Authority “...is obliged to prepare and implement an integrated management plan (IMP) for the WHS site under its control...to fulfill the obligations of the Convention. The IMP needs to be reviewed every five years or if opportunities or threats arise, in addition the Authority is required to submit an Annual Report to the minister. Under ‘General Matters’ (Section 32-35), powers of delegation are provided.

The Act also requires harmonizing and integration with the National Environmental Management Act, 1998, the National Heritage Resources Act, 1999, the Cultural Institutions Act, 1998 (Act No. 119 of 1998), the Development Facilitation Act, 1995, and the National Parks Act, 1976 (Act No. 57 of 1976)

[Chapter V](#) of the act entitled “Land”, provides for the purchase, expropriation, transfer and alienation of land concerning World Heritage Sites

8.4 The nature of the protection afforded by application of the legislated mechanisms

The objectives of the Act are to be implemented by a set of elaborate principles (section 4) that cross-reference the principles in NEMA, as well as the principles in the principles in the Natural Heritage resource act. The Act makes it clear that in cases of conflict, the principles of NEMA and the Natural Heritage Resources Act 25 of 1999 will prevail.

9 THE NATIONAL HERITAGE RESOURCES ACT 25 OF 1999

9.1 Purpose

This Act has its primary objective in the conservation of what it terms the National Estate. It includes a vast array of mechanisms to conserve heritage resources, including provisions for the establishment of various types of protected areas.

Some of its aims include: to lay down general principles for governing heritage resources and their management; identification, assessment and management of the heritage resources of South Africa; to set norms; protect heritage resources of national significance; control the export of

nationally significant heritage objects; and to provide for the protection and management of conservation-worthy places and areas by local authorities

9.2 Procedures or clauses enabling declaration of protected areas

The Act provides for four categories of specific protected areas to give effect to the overall objectives of the Act. These categories include:

- national and provincial heritage sites ([section 27](#));
- protected areas ([section 28](#));
- heritage areas ([section 31](#));
- archeological, palaeontological sites, shipwrecks and meteorites ([section 35](#)).

The Act also makes it possible to declare provisional protection status of up to two years ([section 29](#)).

Of particular significance to indigenous forest that often have cultural and spiritual significance to local communities is the special provision for protection of burial grounds and graves ([section 36](#))

(Case study: Kaapsehoop in Mpumalanga, is the natural habitat of the endangered blue swallow. An area has been declared a protected area under the National Heritage Resources Act, however it has been expressed that the area deserves a higher conservation status and may soon be declared a Protected Natural Environment under the Environmental Conservation Act.)

9.3 Mandates for the management and regulation of protected areas

Responsibilities and competence of heritage resources authorities and local authorities are dealt with in [Chapter I Section 8](#) of the Act.

There is a three-tier system for heritage resources management, in which national level functions are the responsibility of South African Heritage Resource Agency (SAHRA), provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities. Heritage resources authorities and local authorities are accountable for their actions and decisions and the performance of functions under this system.

9.4 The nature of the protection afforded by application of the legislated mechanisms

The Act specifies that SAHRA, in consultation with the Minister and the MEC of every province, establish a system of grading, each with devolved authority responsibility for their identification and management, these include:

Grade I: Heritage resources with qualities so exceptional that they are of special national significance (responsible agent: SAHRA).

Grade II: Heritage resources, which, although forming part of the national estate, can be considered to have special qualities, which make them significant within the context of a province or a region (: provincial authority).

Grade III: Other heritage resources worthy of conservation (responsible agent: a local authority).

Section 28 (2-4) describes the type of protection regulations afforded by the Act.

10 THE LAKE AREAS DEVELOPMENT ACT 39 OF 1975

10.1 Purpose

To provide for the establishment of lake areas under the control of a Lake Areas Development Board, and for matters connected therewith.

This legislation was primarily enacted to control and manage the various lakes in the Wilderness area and later the Knysna lake area.

10.2 Procedures or clauses enabling declaration of protected areas

[Section 2](#) of this Act provides for the establishment of lake areas under the control of a lake Areas Development Board. It provides that the Minister of Environmental Affairs and tourism, by notice in the Gazette, Subject to the provisions (of subsection 2), may, declare any land on or near a tidal lagoon, a tidal river or any part thereof, or any other land comprising or adjoining a natural lake or a river or any part thereof, which is within the immediate vicinity of a tidal lagoon or a tidal river, to be a lake area under a name to be assigned to it in that notice.

Provision is also made for acquisition of private land within a lake area. If unable to acquire the land by purchase, the minister may expropriate the land, but subject to the provisions of the Expropriation Act 63 of 1975.

10.3 Mandates for the management and regulation of protected areas

Two boards were constituted: the Knysna Area Lakes Development Board and the Wilderness Area Lake Development Board. The powers, duties and administration of these two Boards were subsequently transferred to the SA National Parks Board from 1983.²⁰

The Act focuses on tidal lagoons and tidal rivers (as defined in the Sea Shores Act of 1935).

10.4 The nature of the protection afforded by application of the legislated mechanisms

The Act sets out the objectives and powers of the board which is to “ control, manage and develop any State Land situated within any lake area and made available to the Board by the Minister” ([see section 11](#)) .

11 NATIONAL WATER ACT 36 OF 1998

11.1 Purpose

To provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith.

This Act repeals and replaces over one hundred previous Acts dealing with water so that there are now have two consolidated Acts, the National Water Act and the Water services Act.

²⁰ Section 30 C of the national Parks Act 57 of 1976

The 1956 Water Act retained distinction between public and private water, the New National Water Act (36 of 1998) abolished this distinction so that the national government is public trustee of all the nation's water resources and is to regulate/manage use of water for benefit of all.

Sustainability (with specific cognizance of the ecology and the hydrological cycle) and *equity* (racial, gender and intergenerational equity) are identified as central guiding principles in recognizing the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water ([section 2](#)).

The Act is based on the rationale that the national government is the public trustee of the nation's water resources and is to ensure that water is protected, used developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all persons and in accordance with its mandate ([see section 3](#))

11.2 Procedures or clauses enabling declaration of protected areas

The NWA 36 of 1998 has no specific provisions for declaring protected areas.

11.3 Mandates for the management and regulation of protected areas

Not specifically applicable, as no protected areas can be proclaimed under the NWA. However in theory application of the concept of integrated catchment management should confer a measure of protection status on vegetation cover and biodiversity within catchment areas, (Vegetation cover is critical for the maintenance of water quality and quantity arising from mountain catchments). In this regard the [Mountain Catchments Act 63](#) of 1970 is particularly relevant to the environmental aspects of water resource management and the declaring of protected areas.

The Act is administered by the Department of water Affairs and Forestry. The Act refers to the "responsible authority", this term is defined as a Catchment Management Agency, whose power has been assigned to it, or to the Minister where it has not, where this agency will administer the licensing requirement (in Chapter 4 of the Act).

11.4 The nature of the protection afforded by application of the legislated mechanisms

Although the National Water Act 36 of 1998 has no specific provisions for declaring protected areas, it is evident that the Act places great emphasis on conservation as well as ecological aspects of water management. This has implications for the protection of catchment areas. These are discussed below.

Firstly, the underpinning concept in all the national water management strategy in South Africa is water catchment management ([see part 2 sections 8-10](#)). This places great emphasis on environmental considerations. The Act also prescribes the establishment of Catchment Management Agencies. This aims to decentralize and promotes local participation in decision making towards integrated catchment management.

Secondly, the Act obliges the Minister to prescribe a system for classifying water resources; important to this is the concept of the Reserve²¹ ([see section 16-18](#)). This classification system is

²¹ The Reserve applies to rivers, groundwater, and wetlands. It is defined as the quantity and quality of water required—

(a) to satisfy basic *human needs* by securing a basic water supply and

(b) to protect aquatic *ecosystems* in order to secure ecologically sustainable development and use of the relevant water resource'

based solely on environmental considerations (see section 15). More specifically the concept of the Reserve gives statutory acknowledgement to the fact that ecological integrity of water resources needs to be maintained while accommodating basic human needs.

Thirdly, the Act provides for the carrying out of environmental impact assessment directly or indirectly in specific cases. Indirectly: the list of activities requiring environmental assessment²² (promulgated under the Environmental Conservation Act 73 of 1989), specifically relate to impacts of abstraction, damming or diversion of flow, issues integral to the National Water Act. Direct reference in the NWA Act is also made with regard to license application procedure, includes a discretionary provision empowering a responsible authority to carry out “...an assessment by a competent person of the likely effect of the proposed license on the resource quality:. It also provides for the independent review of the assessment by an acceptable person In addition chapter 11 of the ACT, dealing with government waterworks²³ requires environmental impact assessment to be carried out before the construction of government waterworks ([section 110 \(1\)](#)).

Fourthly, the Act has provisions for ‘prevention and remedying effects of pollution’: An owner of land, a person in control of land or a person who occupies or uses the land on which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring ([section 19](#)). This is similar to Section 28 of NEMA (duty of care and liability). The Catchment Management Authority (CMA) can direct the responsible person to take various measures to avoid, prevent or remedy the source and effects of the pollution. If this is not complied with the CMA can take measures to recover costs (section 19(6)).

12 NATIONAL MONUMENTS ACT 28 OF 1969

12.1 Purpose

The National Monuments Act provides for the preservation of certain property (of historic, aesthetic or scientific interest), both immovable and movable, as national monuments. The Act also establishes National Monument Council.

Criteria for listing or qualifying for the registrar by the National Monuments Counsel do not appear to be specified in the Act (?)

12.2 Procedures or clauses enabling declaration of protected areas

The National Monuments Council has the power, inter alia, to declare any immovable property in respect of which it is investigating the desirability of recommending as a national monument, provisionally to be a national monument. (Section 5(1) c)

²² List of activities that form part of the September 1997 environmental assessment regulations promulgated under the ECA 73 of 1989 include the following activities (specifically relating to water):

- a) canals & channels, including diversions of normal flow of water in a river bed and water transfer schemes between water catchment and impoundments
- b) dams, levees or weirs affecting the flow of a river
- c) reservoirs for public water supply
- e) schemes for the abstraction or utilization of ground or surface water for bulk supply purposes
- d) sewage treatment plants and associated infrastructure.

²³ Water works is defined as any borehole, structure, earthwork or equipment installed or used for water use

Whenever the minister considers it to be in the national interest that any immovable or movable property of aesthetic, historical or scientific interest be preserved, protected and maintained, he may on the recommendation of the council by notice in the Government Gazette declare such property to be a national monument (section 10 (1)). However he may not do so with property belonging to a person other than the state or the council, without the consent of this person, unless the Minister is satisfied that the council has at least one month before making its recommendation, served upon the owner a written notice advising him of the proposed recommendation and calling upon him to lodge objections with the council within one month of such service (section 10(3))

12.3 Mandates for the management and regulation of protected areas

The National Monuments Council is empowered to compile and maintain a register of immovable property which it regards as worthy of conservation on the grounds of its historic, cultural or aesthetic interest and to supplement, amend, delete and entry into the register

The National Monuments Council may with the approval of the Minister, make by-laws regulating, inter alia admission, safe guarding of monuments and conservation areas from damage, and conditions of use. Authority may, with the approval of the minister, and the Council, be deferred to a local Authority. Who may make such by-laws in respect of the monuments under its control, as well as conservation areas (section 18 (2)). Such by-laws made, may prescribe fines for contravention.

12.4 The nature of the protection afforded by application of the legislated mechanisms

The nature of protection is not specified but is implied to be control primarily of land use activities that may pose any threat to the objects or conservation area that have been designated as a national monument by the National Monuments Council.

Any planning authority and the owner of immovable property appearing in such a register, or of a conservation area, are required to consult with the Council in respect of planning which affects such immovable property or such a conservation area (section 12 (1A)).

13 THE DEFENCE ACT 44 OF 1975

13.1 Purpose

To provide for the defence of the Republic and for matters incidental thereto.

13.2 Procedures or clauses enabling declaration of protected areas

Extensive powers are conferred by the Defence Act 44 of 1957 upon the Minister of Defence to do or cause to be done all things which in his (sic) opinion are necessary for the efficient defence and protection of the country (see [section 76](#)). He may prohibit or restrict access to land, which is subject to military control (see [section 89](#)).

These controlled areas are used primarily for training and testing purposes. However, it is declared policy that the areas be managed scientifically with a view to nature conservation as a secondary objective.

13.3 Mandates for the management and regulation of protected areas

The Act gives the Minister of Defence extensive powers to regulate land under state control, this and because it is declared policy that nature conservation is a secondary objective, it can be a potentially useful Act for environmental protection. While some forms of military training activity can have high impacts on the environment, they are often surrounded by large low impact buffer areas.

13.4 The nature of the protection afforded by application of the legislated mechanisms

Not specified.

14 THE CONSERVATION OF AGRICULTURAL RESOURCES ACT 43 OF 1983

14.1 Purpose

To provide for control over the utilization of the natural agricultural resources of the Republic in order to promote the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants; and for matters connected therewith.

Key objective of this act is the 'maintenance of the production potential of the land, by preventing soil erosion, weakening or destruction of water resources, and by the protection of vegetation from overgrazing and invader weeds'.

The Act does not apply to the South African Development trust land, nor does it apply in the former self-governing TBVC states. The Act also does not apply to any land situated in urban areas (except in connection with weeds and invader plants); and land situated within a mountain catchment area. The State President may extend the operation of the Act to the trust areas (section 2 of the Abolition of Racially Based Land Measures Act 108 of 1991).

14.2 Procedures or clauses enabling declaration of protected areas

Not specified.

14.3 Mandates for the management and regulation of protected areas

Not specified.

14.4 The nature of the protection afforded by application of the legislated mechanisms

The Minister of Agriculture is empowered to prescribe control measures which land users shall adhere to, these include restrictions on the cultivation of virgin soil, and of land of a certain slope, the utilization and protection of cultivated land, restoration and reclamations of eroded land, protection of vleis, marches, water sponges and water courses, regulating the flow and pattern of run-off water, the utilization and protection of veld, the grazing capacity of veld, the number of animals that may be kept on the veld, and the prevention and control of veld fires ([see section 6\(2\), regulations 2 to 14](#)).

Of importance to forestry is that the Act allows for policy regulations prescribing that no landowner, which includes the state and thus state forestry, may cultivate any soil, which has not been cultivated in the previous ten years. Further prescriptions are that no soil with a slope of

more than 20 degrees may be cultivated. To do so requires the prior written permission of the department of Agriculture (Government notice GG 9238 25 may 1984)²⁴

The Minister may provide financial assistance through a subsidy for construction of soil conservation works and the restoration of eroded land ([see section 8](#)). The land users are responsible for the maintenance of such constructions at their own cost.

Apart from the Minister of Agriculture, the Act envisages a number of other control officials and bodies. The Act creates an executive officer; regional conservation committees; and the Conservation Advisory Board.

Although the Act is largely built on the idea of compliance through persuasion rather than coercion, the Act provides for severe penalties for certain offences, which include failure to comply with control measures and directions.

The implementation of the Act is of concern due to lack of enforcement personnel; and that it does not apply to South African Development trust land, nor does it apply in the former self-governing TBVC states, where soil erosion is a big problem.

Soil conservation is also addressed in other legislation such as the New Water Act, the New Forest Act, the Mountain Catchment Areas Act 63 of 1970; the Common pastures Management Act 82 of 1977; the Subdivision of Agricultural land Act 70 of 1970 and the National Roads Act 54 of 1971.

15 THE NATIONAL VELD AND FOREST FIRE ACT 101 OF 1998

15.1 Purpose

The purpose of this Act is to prevent and combat veld, forest and mountain fires throughout the Republic. The Act provides for a variety of institutions, methods and practices for achieving the purpose.

(Interestingly the Act does not refer to the management of veld fires, although the burning of veld and forest is a recognized form of maintaining vegetation (many species of fynbos depend on fire for seed germination).

15.2 Procedures or clauses enabling declaration of protected areas

Not specified.

15.3 Mandates for the management and regulation of protected areas

Not specified.

15.4 The nature of the protection afforded by application of the legislated mechanisms

The Act centers around the establishment of fire protection associations provided for in chapter 2.

²⁴ Smith F.H. 1998. The role of State Forestry in managing and conserving ecological systems. SAJELP 1995 (1) .

The duties of the fire protection association are set out and include the development of a veld fire management strategy, provision for co-ordination of actions in the event of fires crossing boundaries, the identification of ecological conditions that affect the fire danger rating ([section 5](#)).

The Minister is obliged to prepare and maintain on a continuous basis, a fire danger rating system in association with the South African Weather Bureau and fire protection associations.

The Act also placed emphasis on landowners taking precautions in preventing veld fires through firebreaks. It imposes a duty to prepare and maintain firebreaks (section 12), and to be prepared to fight fires with the necessary equipment on hand (see section 17). Provision is also made for the notification by owners if there is a reason to believe that adjoining owners may be affected by fire as well as a right to enter on to land to combat fire ([see section 18](#)).

16 DEVELOPMENT FACILITATION ACT 67 OF 1995

16.1 Purpose

To introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic; to provide for the establishment of a Development and Planning Commission for the purpose of advising the government on policy and laws concerning land development at national and provincial levels; to provide for the establishment in the provinces of development tribunals which have the power to make decisions and resolve conflicts in respect of land development projects; to facilitate the formulation and implementation of land development objectives by reference to which the performance of local government bodies in achieving such objectives may be measured; to provide for nationally uniform procedures for the subdivision and development of land in urban and rural areas so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses; to promote security of tenure while ensuring that end-user finance in the form of subsidies and loans becomes available as early as possible during the land development process; and to provide for matters connected therewith.

According to the Green paper on South African Land Policy (February 1996): 'In the context of land reform, the prime purpose of land development policy is to establish a framework and procedures to facilitate the speedy release of land for urban and rural development programmes which will benefit those who were marginalized by previous apartheid policies.

One of the consequences of a scarcity of land for low income housing is the increased incidence of land invasions. The DFA is seen as a means of balancing the public interest with private property rights

16.2 Procedures or clauses enabling declaration of protected areas

Not specified.

16.3 Mandates for the management and regulation of protected areas

Not specified.

16.4 The nature of the protection afforded by application of the legislated mechanisms

The promotion of 'sustained protection of the environment' is laid down as a factor to be taken into account in the promotion of 'sustainable land development' ([see section 3 \(b1\) viii](#)).

The Act also provides for the establishment of the National Development and Planning Commission to advise the Minister on certain matters, including the integration of environmental and heritage conservation with planning at certain levels of government ([see section 14 \(a\) \(vii\)](#))

The Act provides that local government bodies may set land development objectives (LDO's) for specific areas. Important to this is the issue of sustained utilization of the environment and the 'optimum' utilization of natural resources. The functionary in question may also require the bodies or person determined by him to carry out environmental evaluation in order to assess the likely impact of any land development objective on the environment (see section [28 \(1-2\)](#))

In a set of regulations issued under the Act ²⁵, stipulates that unless the designated officer otherwise directs, a land development applicant shall include in the application an initial environmental evaluation prepared in accordance with the integrated environmental management guidelines.

While the intentions of the inclusion of environmental considerations in this Act are commendable. There is cause for concern that the actual consideration of the necessity of an environmental impact report preceding development is left up to the discretion of officials. Given that one of the primary aims of the Act is to expedite land development procedures, it may be seen that the preparations of EIA's is seen as a cause of delay in the procedure and hence left out.

17 NATURE CONSERVATION ORDINANCES OF THE FORMER PROVINCES

The nature conservation ordinances of the four former provinces provide for the establishment of various forms of protected areas.

Generally speaking, there are prohibitions of varying degrees in any of these areas relating to the killing, injuring or disturbing of animals or picking of indigenous plants.

17.1 Cape province: Nature and Environmental Conservation Ordinance 19 of 1974

The following protected areas can be established under this ordinance:

- Provincial: proclaimed by the administrator, in terms of section 6
- Local: proclaimed by a local authority in terms of section 7 (1)
- Private reserves: established by the landowner with the approval of the administrator in terms of section 12

17.2 Natal Nature Conservation Ordinance 15 of 1974

The following protected areas can be declared all in terms of section 1 of this ordinance:

- Commercial game reserves
- Game parks
- Game reserves
- National parks
- Nature reserves
- Private nature reserves

²⁵ GN R1412 GG17395 30 August 1996

- Private wildlife reserves

The degree of protection afforded is dealt with in section 15(1) and 60

17.3 Orange Free State: Nature Conservation Ordinance 8 of 1969

The ordinance allows for the following protected areas

- Provincial nature reserves: declared by the Administrator
- Private nature reserves: declared by the Administrator on application by the landowner

The degree of protection afforded is dealt with in section 35 and 36

17.4 Transvaal: Nature Conservation Ordinance 12 of 1983

Section 14 of this ordinance allows for the establishment of 'Nature reserves'

The degree of protection afforded is dealt with in section 19 (1)

18 NATURE CONSERVATION ORDINANCES OF THE CURRENT PROVINCES

18.1 Mpumalanga: Eastern Transvaal Parks Board Act, No. 6 of 1995,

18.2 North west parks and Tourism Board Act 3 of 1997

18.3 Northern Province nature conservation Bill (Limpopo Bill)

18.4 Gauteng New Nature Conservation ordinance 15 of 2000

19 NATURE CONSERVATION & FORESTRY LEGISLATION OF THE FORMER TBVC STATES

19.1 Nature conservation

South Africa consists of nine provinces. Seven of these include land of the previous four provinces, the former self –governing territories, TBVC states (Transkei, Venda, Bophuthuatswana and Ciskei) as well as the former south African Development Trust Land. In all of these areas different legislation, proclamations and ordinances pertaining to environmental issues were promulgated. This has led to legal pluralism and confusion.²⁶

In terms of section 30 read with schedule 1 of the Self -Governing Territories Constitution Act 21 of 1971, the self –governing territories had the competence to promulgate their own legislation or to amend or repeal existing South African legislation regarding certain matters. Some of the self-governing territories issued their own legislation with regard to the environment and nature conservation. Each of the ten territories had their own nature conservation legislation , although similar, they contained differences regarding the protection of plants and animals and the establishment of protected areas. As enforcement of these measures was not allowed outside

²⁶ Du Plessis W. 1995. Integration of existing environmental legislation into the Provinces. SAJELP 1995 (1).

the boundaries of the different territories, this often lead to illegal trade in protect species across boarders.

The nature conservation Acts of the former TBVC states all provided for the conservation of biodiversity and the establishment of nature and game reserves. The relevant Acts include:

- Transkei: Nature Conservation Act 6 of 1971 (repealed); Environment Conservation Decree 9 of 1992.
- Venda: Nature Conservation and national Parks Act 20 of 1986.
- Ciskei: Nature Conservation Act 7 of 1976.
- Bophuthatswana: Nature Conservation Act 3 of 1973.
- Gazankulu: Nature Conservation Act 5 of 1975.
- KaNgwane: Nature Conservation Act 3 of 1981.
- KwaNdebele: Agricultural Development Act 7 of 1982.
- QwaQwa: Nature Conservation Act 5 of 1976.
- Lebowa: Nature Conservation Act 10 of 1973.
- Kwazulu: Nature Conservation Act of 1975; Nature Conservation Act 6 of 1992.

19.2 Forestry

The forestry Acts of the former TBVC states mainly provide for the reservation of land for plantations, demarcation, protection, management and use of forests and plantations, the protection of trees and forest products, soil conservation, and veld fire control. In most cases the indigenous trees and plants in the government's forests were protected. The following Acts exist:

- Transkei: Transkei Forest Act 6 of 1969 amended by Act 7 of 1974 and Act 15 of 1983; Forest Council Act 15 of 1984
- Ciskei : Ceskeian Forestry Act 6 of 1976
- KanNgwane: Forestry Act 4 of 1981
- Lebowa: Forestry Act 13 of 1978
- Kwazulu: Forestry Act 15 of 1980

The system of self governing states of the pre 1994 South Africa created a complicated system of legislation pertaining to the environment. The integration and rationalization of old and new legislation pertaining to the environment is currently underway. Application of framework legislation such as NEMA, the protected areas bill and biodiversity bill are urgently needed to avoid confusion and chaos.

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APPENDIX A: TABLE OF PROTECTED AREA TYPES

TYPE OF PROTECTED	LEGISLATION	ADMINISTRATION	Approximated IUCN category
National Park	National Parks Act 57 of 1976	National Parks Board	Category II
Lake Area	Lake Areas Development Act 39 of 1975	National Parks Board	
Mountain catchments	Mountain catchment Areas Act 63 of 1970	Assigned to provinces	Category VI
Protected Natural Environment	Environment Conservation Act 73 of 1989	Assigned to provinces	Category V
Special Nature Reserve	Environment Conservation Act 73 of 1989	Assigned to provinces	Category Ia & b
Limited Development Area	Environment Conservation Act 73 of 1989	Delegated to local authority/government institution	
National Botanical Garden	Forest Amendment Act 1991	National Botanical Institute	Category III
State Forest	Forest Act 122 of 1984	DWAF: delegated to Provinces	Category II
Forest Nature Reserve and Wilderness Area	Forest Act 122 of 1984	DWAF delegated to Province	Category Ia & b Category II
National Monument	National Monuments Act 28 of 1969	National Monuments Council and provinces	Category III
Conservation Area	National Monuments Act 28 of 1969	National Monuments Council and provinces	Category III
Defence Area	Defence Act 44 of 1957	South African National Defence Force	
Marine Reserve	Sea Fishery Act 12 of 1988	DEAT: Directorate of Sea fisheries, and Provinces in respect of coastal zone and specified resources	
Restricted Area	Sea Fishery Act 12 of 1988	DEAT: Directorate of Sea Fisheries, and provinces in respect of coastal zone and	

Most South African islands	Sea Birds and Seals Protection Act 46 of 1973	DEAT: delegated to provinces in respect of sea birds	
Provincial, Local and Private Nature Reserves	Various provincial ordinances administrations, numerous	provincial numerous local authorities, private landowners	Category II
Ramsar Site	No legal status (Proposed Wetland Conservation Act)	DEAT and conservation authorities	
Private Conservancies	No legal status	Farmers	Category IV or V or V1
Community conservancies	No legal status (?)	Community co managed with local authority (?)	Category or V or V1
Biosphere Reserves	No legal status	Conservation authority/neighbors	All possible
Sites of Conservation Significance	No legal status	Private landowners	
Natural Heritage Sites	Not legally enforceable	Private landowners	Category III
World Heritage Site	South African World Heritage Convention Act of 1999	Minister of Environmental Affairs and Tourism, delegated to an appointed management authority	

APPENDIX B: HYPERLINK TO FULL TEXT OF NATIONAL ACTS

(Click on to go to full text file. Acrobat reader is needed for some files)

[*National Forest Act 84 of 1998*](#)

[*Environmental Conservation Act 73 of 1989*](#)

[*Mountain Catchment Areas Act 63 of 1970*](#)

[*National Environmental Management Act 107 of 1998*](#)

[*National Parks Act 57 of 1976*](#)

[*World Heritage Convention Act 49 of 1999*](#)

[*National Heritage Resources Act 25 of 1999*](#)

[*Lake Areas Development Act 39 of 1975*](#)

[*National Water Act of 1998*](#)

[*National Monuments Act 28 of 1969*](#)

[*The Defence Act 44 of 1975*](#)

[*Conservation of Agricultural resources Act 43 of 1983*](#)

[*National Veld and Forest Fires Act 101 of 1998*](#)

[*Development Facilitation Act of 1995*](#)

[*Draft Protected Areas Bill*](#)

[*Draft Biodiversity Bill*](#)

APPENDIX C: LEGISLATION EXTRACTS: HYPERLINKS TO TEXT

Protected Areas Draft Bill

Section 2

The objectives of this Act are –

- (a) to provide, within the framework of the National Environmental Management Act, for the declaration and management of protected areas;
- (b) to give effect to international agreements on protected areas which are binding on the Republic;
- (c) to provide for co-operative governance in the declaration and management of protected areas; and
- (d) to provide for the continued existence of South African Parks to assist in achieving the above objectives.

State guardian of protected areas

Section 3

3. In fulfilling the rights contained in section 24 of the Constitution, the state –

- (a) through its functionaries and institutions implementing this Act, must act as the guardian of protected areas in the Republic; and
- (b) must implement this Act to achieve the progressive realisation of rights.

.....
Protected Areas Draft Bill

Purpose of protected areas

38. The purpose of the declaration of areas as protected areas is –

- (a) to select ecologically viable areas representative of South Africa's biological diversity;
- (b) to preserve the ecological integrity of those areas;
- (c) to conserve biodiversity in those areas;
- (d) to manage the interrelationship between natural environmental biodiversity and human settlement and economic development; and
- (e) generally to contribute to human, social, cultural, spiritual and economic development.

.....
Protected Areas Draft Bill

Section 6 : Application of National Environmental Management Act

6. (1) This Act must be –

- (a) Interpreted and applied in accordance with the national environmental management principles; and
- (b) read with Chapter 9A and other provisions of general application in the National Environmental Management Act.

Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

.....
Protected Areas Draft Bill

Repeal of legislation

115. (1) The National Parks Act, 1976 (Act No. 57 of 1976), and the Lake Areas Development Act, 1975 (Act 39 of 1975), are hereby repealed.

Chapter 4 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), is repealed with effect from the publication of a notice in terms of section 55 (2) of this Act.

.....
Protected Areas Draft Bill

Section 40 Register of Protected Areas

40. (1) The Minister must maintain a register called the Register of Protected Areas.
- (2) The Register must be a list of all protected areas in the Republic, whether declared in terms of this Act or any other legislation.
- (3) The Register must reflect the following particulars in respect of each protected area:
- (a) the name of the area;
 - (b) the statutory provision in terms of which the area was declared;
 - (c) the category in which the area falls, including its approximate IUCN category;
 - (d) the specific designation of the area or any part of the area, if the area or part of the area has been designated as contemplated in section 39 (2);
 - (e) whether it is a national, provincial or local protected area;
 - (f) the size of the area in hectares;
 - (g) its location; and
 - (h) the name of its management authority

.....
Protected Area Draft Bill

Chapter 3: Declaration of Protected areas

Part 1: Purpose, types and register of protected area

Section 39

39. (1) There are the following types of protected areas in the Republic:
- (a) Special nature reserves, conforming to IUCN category 1a;
 - (b) National parks, conforming to IUCN category 2;
 - (c) Nature reserves, which include IUCN categories 1b, 3,4 and 6;
 - (d) Sites of ecological importance;
 - (e) Protected natural environments, which approximate IUCN category 5 and
 - (f) Limited development areas.
- (2) For the purposes of this Act, an area declared in terms of –
- (a) section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area, must be regarded to be a nature reserve;
 - (b) the Lake Areas Development Act, 1975 (Act 39 of 1975), as a lake development area, must be regarded to be a national park;
- (3) The protected areas mentioned in subsection (1) are not affected by the designation of a protected area or part of a protected area in terms of this Act or any other legislation as –
- (a) a wilderness area;
 - (b) a specially protected coastal area;
 - (c) a marine reserve;
 - (d) a specially protected forest area, forest nature reserve or forest wilderness area;
 - (e) conservancy or resource use area;

- (f) a Wetland of International Importance;
- (g) a transfrontier conservation area;
- (h) a biosphere reserve;
- (i) a World Heritage site; or
- (j) any other kind of special conservation area.

.....

Protected Areas Draft Bill

Section 50: Designation of nature reserves

50. (1) A nature reserve declared by the Minister in terms of section 48 must be designated in the notice as –
- (a) a wilderness area;
 - (b) a controlled resource use area;
 - (c) a marine reserve;
 - (d) a landscape, ecosystem, habitat or species reserve; or
 - (e) any other kind of nature reserve.

.....

Protected Areas Draft Bill

Chapter 4 Protected Areas in terms of international Agreements

Designation

69. (1) The Minister may by notice in the *Gazette* designate a protected area, or part of a protected area, as –
- (a) a Wetland of International Importance;
 - (b) a transfrontier conservation area;
- a biosphere reserve; or
a World Heritage site

Criteria for designating Wetlands of International Importance

70. A national, provincial or local protected area, or part of such an area may be designated as a Wetland of International Importance if –
- (a) the area meets the criteria determined in terms of the Convention on Wetlands; and
 - (b) it is desirable to include the area in the List of Wetlands of International Importance.

Criteria for designating transfrontier conservation areas

71. (1) A national, provincial or local protected area, or part of such an area, which is situated on the Republic's border with a neighboring country, may be designated as a transfrontier conservation area, if that country agrees that such protected area and any area on its side of the border should be managed as a combined conservation area.

(2) The Minister may declare a provincial or local protected area as a transfrontier conservation area only with the concurrence of the MEC of the relevant province or the council of the relevant municipality.

- (3) When a protected area has been declared as a transfrontier conservation area, the Minister may –
- (a) enter into an agreement with the neighboring country to establish a joint management system for the combined conservation area; and
 - (b) make regulations in terms of section 106 to give effect to the agreement on the Republic's side of the border.

(4) An agreement referred to in subsection (3) must be tabled in the National Assembly and the National Council of Provinces.

Criteria for designating biosphere reserves

72. (1) One or more national, provincial or local protected areas may be designated as a biosphere reserve for the purpose of including it in the World Network of Biosphere Reserves, if the area meets the criteria determined by the International Coordinating Council of the Man and the Biosphere Programme of UNESCO.

- (2) An area declared as a biosphere reserve must include areas consisting of one or more –
- (a) category 1 or 2 protected areas serving as the core of the biosphere reserve;
 - (b) areas serving as transitional zones; and
 - (c) areas serving as buffer zones.

World heritage sites

73. An area declared as a World Heritage site in terms of the World Heritage Convention Act, 1999, must be managed in terms of that Act.

Protected Areas Draft Bill

Section 82 Management authorities

82. (1) The Minister must assign, in writing, the management of a national protected area to a management authority that must be an organ of state. The Minister must assign the management of a protected area which is a national park to South African National Parks.

(2) The MEC of the province concerned must assign, in writing, the management of a provincial protected area to a management authority that must be a provincial organ of state.

(3) A municipality must manage a local protected area within its area, and is for the purposes of this Act the management authority of the area.

Protected Areas Draft Bill

Section 84 : Management criteria

84. (1) The management authority of a protected area must manage the area –
- (a) exclusively for the purpose for which it was declared; and
 - (b) in accordance with –
 - (i) the management plan for the area;
 - (ii) this Act, the Biodiversity Act and, to the extent applicable, the Coastal Zone Act, the Marine Living Resources Act and any other applicable national legislation; and
 - (iii) any applicable provincial legislation, in the case of a provincial or local protected area.

- (2) The management authority of a national or provincial protected area –
- (a) must report annually to the Minister or MEC, as may be appropriate, on aspects of the area agreed on in the management plan; and
 - (b) may amend the management plan by agreement with the Minister or MEC.

Protected Areas Draft Bill

Section 87 :Co-management of protected areas

87. (1) The management authority managing a protected area may enter into an agreement with another organ of state, a local community or a local community association for –

- (a) the co-management of the area by the parties; or
- (b) the regulation of human activities that affect the environment in the area.

(2) A co-management agreement may provide for –

- (a) the delegation of powers by the management authority to the other party to the agreement;
- (b) the apportionment of any income generated from the management of the protected area between the parties;
- (c) the collection, catching or use of biological resources in the area;
- (d) access to sites of cultural or religious significance in the area; and
- (e) any other relevant matter.

(3) A co-management agreement must be consistent with this Act;

(4) The Minister or MEC, as may be appropriate, may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the protected area management objectives.

.....
 Protected Areas Draft Bill
 Chapter 3, part 1
 (Extracts for criteria for classifying protected areas)

Criteria for declaring special nature reserves

43. An area may be declared as a special nature reserve or part of an existing special nature reserve only if the area –

- (a) is a highly sensitive area of national or international biodiversity significance possessing outstanding ecosystems, geological or physiological features or species;
- (b) is unable to accommodate any eco-tourism;
- (c) is unable to tolerate any use of its biological resources;
- (d) is either –
 - (i) owned by the state;
 - (ii) under the exclusive physical control of the state; or
 - (iii) owned by a person, other than an organ of state, who has consented to the declaration by way of a written agreement with the Minister; and
- (e) is to be dedicated exclusively to conservation and scientific research.

..... Criteria for declaring national parks

46. An area may be declared as a national park, or part of an existing national park, only if the area –

- (a) is of unique national or international biodiversity significance possessing outstanding or representative ecosystems, geological or physiological features or species;
- (b) requires the setting and implementation of strict conservation standards –
 - (i) to protect the components of biodiversity occurring in the area for present and future generations; and
 - (ii) to prevent exploitation and harmful occupation;
- (c) is either –
 - (i) owned by the state;
 - (ii) under the exclusive physical control of the state; or
 - (iii) owned by a person other than an organ of state who has consented to the declaration by way of a written agreement with the Minister; and
- (d) is to be dedicated exclusively to –
 - (i) conservation and scientific research;

- (ii) nature based tourism; and spiritual, educational and recreational opportunities which are environmentally and culturally compatible.
-

Criteria for declaring nature reserves

49. An area may be declared as a nature reserve or part of an existing nature reserve, only if the area –

- (a) contains predominantly unmodified natural systems which requires the setting and implementation of strict conservation standards to ensure –
- (i) long term protection and maintenance of the biological diversity in the area; and
- (ii) a sustainable flow of natural products and services from the area to meet human needs;
- (b) is either –
- (i) owned by the national government, a provincial government or a municipality;
- (ii) under the exclusive physical control of the national government, a provincial government or a municipality; or
- (iii) owned by a private person who has consented to the declaration by way of a written agreement with the Minister, the MEC of the relevant province or a municipality; and
- (c) has not or does not form part of an area that has been declared as a category 1, 2, 3 or 5 protected area.
-

Designation of nature reserves

50. (1) A nature reserve declared by the Minister in terms of section 48 must be designated in the notice as –

- a wilderness area;
- a controlled resource use area;
- a marine reserve;
- a landscape, ecosystem, habitat or species reserve; or
- any other kind of nature reserve.

(2) A nature reserve declared by an MEC or a municipality in terms of section 48 must be designated in the notice as –

- a wilderness area
- a controlled resource use area;
- a landscape, ecosystem, habitat or species reserve; or
- any other kind of nature reserve.
-

Criteria for designating wilderness areas

51. An area may be designated as a wilderness area if the area –

- (a) is or forms part of a national or provincial park;
- (b) generally appears to have been affected primarily by the forces of nature, with the imprint of human influence substantially unnoticeable;
- (c) is of sufficient size to make practicable its preservation and use in an unimpaired condition;
- (d) is unable to accommodate substantial eco-tourism, but offers opportunities for solitude or a primitive and unconfined type of recreation for limited numbers of visitors;
- (e) is unable to sustain any commercial or community use of its biological resources;
- (f) is to be dedicated exclusively to its conservation and preservation for future generations.
-

Criteria for designating controlled resource use areas

53. An area may be designated as a controlled resource use area or a part of an existing controlled resource use area, only if the area –
- (a) has intermediate biodiversity value; and
 - (b) in order to protect the biodiversity in the area, is in need of restrictions on the use of biological resources in the area.

Criteria for designating marine reserves

54. (1) An area may be designated as a marine reserve or part of an existing marine reserve –
- (a) for the protection of biodiversity, or a particular species of biodiversity, and the physical features on which such biodiversity depend;
 - (b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or
 - (c) to diminish any conflict that may arise from competing uses in the reserve.
- (2) A marine reserve includes the air space above the reserve to a level of 1000 metres above ground level.

.....
Criteria for declaring sites of ecological importance

58. An area may be declared as a site of ecological importance, or part of an existing site of ecological importance, only if the area –
- (a) is of particular ecological significance by reason of its indigenous species, ecological communities, general biodiversity, natural eco-systems, habitats or landscapes;
 - (b) is under threat of harm;
 - (c) has high conservation value; and
 - (d) has not or does not form part of an area that has been declared as a category 1, 2, 3 or 4 protected area.

.....
Criteria for declaring protected natural environments

62. An area may be declared as a protected natural environment or part of an existing protected natural environment, only if the area –
- (a) contains specific natural features, natural systems, natural beauty, ecological processes or species of indigenous wildlife of outstanding or unique heritage value because of their inherent rarity, cultural or aesthetic significance or representative quantities;
 - (b) is either –
 - (i) owned by the national government, a provincial government or a municipality;
 - (ii) under the exclusive physical control of the national government, a provincial government or a municipality; or
 - (iii) owned by a private person who has consented to the declaration by way of a written agreement with the Minister, the MEC of the relevant province or a municipality; and
 - (c) has not or does not form part of an area that has been declared as a category 1, 2, 4 or 5 protected area.

.....
Criteria for declaring limited development areas

65. An area may be declared as a limited development area or a part of an existing limited development area, only if the area –
- (a) functions as a buffer zone to a protected area of higher biodiversity value;
 - (b) in order to protect the biodiversity in that protected area, is in need of restrictions on harmful land use or commercial activities in the area; and

(c) has not or does not form part of an area that has been declared as a protected area of another category.

.....

Consequences of designation of areas as marine reserves

55. (1) No person may take any action which will or is likely to have a negative impact on the ecological integrity and status of a marine reserve.

(2) The Minister, for the purpose of subsection (1), may by notice in the *Gazette* prohibit or restrict any activity –

- (a) of a nature that may negatively impact on the ecological integrity of the marine reserve; and
- (b) which is specified in the notice.

(3) Any activity restricted in terms of subsection (2) must be regarded as an activity identified in terms of section 24 (2) of the National Environmental Management Act.

.....

Consequences of declaration sites of ecological importance

59. (1) No person may take any action which will or is likely to have a negative impact on the ecological integrity and status of a national site of ecological importance.

(2) The Minister, the MEC of a province or a municipality may for the purpose of subsection (1), by notice in the *Gazette* prohibit or restrict any activity –

- (a) of a nature that may negatively impact on the ecological integrity of such site; and
- (b) which is specified in the notice.

(3) Any activity restricted in terms of subsection (2) must be regarded as an activity identified in terms of section 24 (2) of the National Environmental Management Act

.....

National Forestry Act 84 1998

Part 2 Protected areas

Part 2 allows the Minister to declare certain forests as protected forest areas. It sets out the procedure for and effect of this declaration. It provides for the management of such an area.

NFA Section 8 : Power to set aside protected areas

(1) The Minister may—

- (a) declare a State forest or a part of it;
- (b) purchase or expropriate land under section 49 and declare it; or
- (c) at the request or with the consent of the registered owner of land outside a State forest, declare it, as a specially protected area in one of the following categories:
 - (i) A forest nature reserve;
 - (ii) a forest wilderness area; or
 - (iii) any other type of protected area which is recognized in international law or practice.

(2) The Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation.

.....
NFA 84 of 1998

Section 9: Procedure for declaring protected areas

9. (1) Before declaring an area under section 8(1), the Minister must—

- (a) give notice of the proposal to declare a protected area and invite comments and objections within a specified period;
- (b) consider the comments and objections received in response to the notice; and
- (c) in the case of a trust forest, consult with the communities residing on the land adjoining the proposed protected area.

(2) The Minister must—

(a)

(i) publish the notice referred to in subsection (1) in the Gazette and two newspapers circulating in the area; and

(ii) air such notice on two radio stations broadcasting to the area; and

(b) deliver it to—

(i) the Council;

(ii) the Committee for Environmental Co-ordination, established by section 12 of the Environment Conservation Act, 1989 (Act No. 73 of 1989);

(iii) the member of the executive council responsible for nature conservation in the province in which the area falls;

(iv) the chief executive officer of the local authority for the area; and

(v)

any person or organ of State to whom control of the area in question has been transferred, whether by way of assignment, delegation, contract or otherwise.

(3) The Minister declares a protected area by publishing a notice in the media referred to in subsection (2)(a)—

(a) recording his or her decision;

(b) naming the protected area; and

(c) describing the area set aside.

Effect of setting aside protected areas

10. (1) No person may cut, disturb, damage or destroy any forest produce in, or remove or receive any forest produce from, a protected area, except—

(a) in terms of the rules made for the proper management of the area in terms of section 11(2)(b);

(b) in the course of the management of the protected area by the responsible organ of State or person;

(c) in terms of a right of servitude;

(d) in terms of the authority of a licence granted under section 7(4) or 23;

(e) in terms of an exemption under section 7(1)(b) or 24(6); or

(f) in the case of a protected area on land outside a State forest, with the consent of the registered owner or by reason of another right which allows the person concerned to do so, subject to the prohibition in section 7(1).

(2) The decision to declare a protected area may not be revoked, nor may a protected area which is State forest be sold, nor may a servitude over a protected area be granted, without—

(a) the Minister following the same procedure as that required for declaring the protected area; and

(b) the approval by resolution of Parliament.

(3) Changes to the boundaries of an existing protected area require compliance with subsection (2)(a) only.

Management of protected areas

11. (1) The Minister is responsible for the management of the protected area.

(2) The Minister must—

- (a) manage the protected area in a manner which is consistent with the purpose for which it was established; and
 - (b) make rules for the management of the protected area so as to achieve the purpose for which the area has been protected, unless suitable rules already exist for the area.
- (3) The Minister may grant financial or other assistance to the registered owner of land referred to in section 8(1)(c) for the management of a protected area.

.....
NFA section 10

10. (1) No person may cut, disturb, damage or destroy any forest produce in, or remove or receive any forest produce from, a protected area, except—

- (a) in terms of the rules made for the proper management of the area in terms of section 11(2)(b);

NFA section 11

11. (1) The Minister is responsible for the management of the protected area.

(2) The Minister must—

- (a) manage the protected area in a manner which is consistent with the purpose for which it was established; and
 - (b) make rules for the management of the protected area so as to achieve the purpose for which the area has been protected, unless suitable rules already exist for the area.
- (3) The Minister may grant financial or other assistance to the registered owner of land referred to in section 8(1)(c) for the management of a protected area.

.....
NFA : Part 3 Protection of trees

Part 3 allows the Minister to declare a tree, a group of trees, a woodland or a species of trees as protected. The procedure for and the effect of this declaration are set out. An emergency procedure is included to protect trees threatened with immediate harm.

Declaration of trees as protected

12. (1) The Minister may declare—

- (a) a particular tree,
 - (b) a particular group of trees,
 - (c) a particular woodland; or
 - (d) trees belonging to a particular species,
- to be a protected tree, group of trees, woodland or species.

(2) The Minister may make such a declaration only if he or she is of the opinion that the tree, group of trees, woodland or species is not already adequately protected in terms of other legislation.

(3) In exercising a discretion in terms of this section, the Minister must consider the principles set out in section 3(3).

NFA

CHAPTER 3 SPECIAL MEASURES TO PROTECT FORESTS AND TREES Part 1

Prohibition of destruction of natural forests

Part 1 prohibits the destruction of indigenous trees in any natural forest without a licence.

Prohibition on destruction of trees in natural forests

7. (1) No person may cut, disturb, damage or destroy any indigenous, living tree in, or remove or receive any such tree from, a natural forest except in terms of—

- (a) a licence issued under subsection (4) or section 23; or
- (b) an exemption from the provisions of this subsection published by the Minister in the Gazette on the advice of the Council.

(2) The Minister may declare to be a natural forest a group of indigenous trees—

- (a) whose crowns are not largely contiguous; or

(b) where there is doubt as to whether or not their crowns are largely contiguous, if he or she is of the opinion, based on scientific advice, that the trees make up a forest which needs to be protected in terms of this Part.

(3) The Minister declares a forest to be a natural forest by—

(a) publishing a notice in the *Gazette*;

(b) publishing a notice in two newspapers circulating in the area; and

(c) airing a notice on two radio stations broadcasting to the area.

(4) The Minister may issue a licence to cut, damage or destroy any indigenous, living tree in, or remove or receive any such tree from, a natural forest.

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National Environmental Management Act 107 of 1998

Repeal of laws

50. (1) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 15, 27A and 38 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed.

(2) Sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) and the notices and regulations issued pursuant to sections 21 and 22 and in force on the commencement date of this Act are repealed with effect from a date to be published by the Minister in the *Gazette*, which date may not be earlier than the date on which regulations or notices made or issued under section 24 of this Act are promulgated and the Minister is satisfied that the regulations and notices under sections 21 and 22 have become redundant.

Savings

51. Anything done or deemed to have been done under a provision repealed by this Act—

(a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and

(b) subject to paragraph (a) is considered to be an action under the corresponding provision of this Act.

NEMA CHAPTER 1

NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES

2. (1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and

(a) shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfill the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;

(b) serve as the general framework within which environmental management and implementation plans must be formulated;

(c) serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;

(d) serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and

(e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the

environment.

(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

(3) Development must be socially, environmentally and economically sustainable.

(4) (a) Sustainable development requires the consideration of all relevant factors including the following:

(i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;

(ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;

(iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

(iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;

(v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;

(vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;

(vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and

(viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.

(b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.

(c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.

(d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.

(e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.

(f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

(g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.

(h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.

(i) The social, economic and environmental impacts of activities, including

disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.

- (j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
- (k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- (l) There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.
- (m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.
- (n) Global and international responsibilities relating to the environment must be discharged in the national interest.
- (o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
- (p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
- (q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.
- (r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

INTEGRATED ENVIRONMENTAL MANAGEMENT

General objectives

23. (1) The purpose of this Chapter is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.

(2) The general objective of integrated environmental management is to—

- (a) promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment;
- (b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;
- (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them;
- (d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;
- (e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment; and
- (f) identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in section 2.

(3) The Director-General must coordinate the activities of organs of state referred to in section 24(1) and assist them in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and the co-ordination of procedures.

NEMA: Duty of care and remediation of environmental damage

28. (1) Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorized by law or cannot reasonably be avoided or stopped, to minimize and rectify such pollution or degradation of the environment.

NEMA : preventative principle

(4) (a) Sustainable development requires the consideration of all relevant factors including the following:

(i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;

(ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;

(iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

(iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;

(v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;

(vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;

(vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and

(viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.

NEMA : Polluter pays principle

(p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimizing further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.

National Parks Act 57 of 1976

Section 2A

Establishment of parks by Minister

(1) The Minister may by notice in the Gazette declare-

(a) with the concurrence of the Minister of Minerals and Energy, State land in respect of which no right in connection with prospecting or mining has been granted in terms of any law; and

[Para. (a) amended by s. 11 of Act 23 of 1990, by s. 13 of Act 52 of 1992 and by s. 1 of Act 106 of 1998.]

(b) notwithstanding the provisions of the Lake Areas Development Act, 1975 (Act 39 of 1975), State land situated in an area declared to be a lake area under section 2 of that Act,

to be a park under a name to be assigned to it in that notice, and amend Schedule 1 by the addition of the name and a description of the land thus declared to be a park.

(2) The Minister may by notice in the Gazette declare any land contemplated in subsection (1) to be part of a park or, subject to subsection (3) of section 2, exclude land from a park and amend Schedule 1 accordingly.

Section 2B

(1) The Minister may by notice in the Gazette declare-

(a) with the concurrence of and subject to the conditions determined by the Minister of Minerals and Energy and the Minister of Public Works and, as the case may be, after consultation with any other Minister who has an interest by virtue of the functions of his department, any other State land; or

(b) after consultation with the Minister of Minerals and Energy and subject to any agreement entered into between the board and, as the case may be, the Minister and any other Minister who may have an interest in such an agreement by virtue of the functions of his department, and the owner of any land, whereby that land is made available for the purposes of a national park, that land,

under a name assigned thereto in the notice, to be a park, or declare such land to be part of a park or with the concurrence of the Minister of Minerals and Energy and, in respect of land referred to in paragraph (a), the Minister of Public Works and, as the case may be, any other Minister who has an interest by virtue of the functions of his department or, as the case may be, according to an agreement referred to in paragraph (b), exclude land from a park.

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The Environmental Conservation Act 73 of 1989

Part III: Protection Of Natural Environment

16. Protected natural environment (PNE's)

1) A competent authority may by notice in the *Official Gazette* concerned declare any area defined by him, to be a protected natural environment and may allocate a name to such area: Provided that such protected natural environment may only be declared--

- a) if in the opinion of the competent authority there are adequate grounds to presume that the declaration will substantially promote the preservation of specific ecological processes, natural systems, natural beauty or species of indigenous wildlife or the preservation of biotic diversity in general; and
- b) after consultation with the owners of, and the holders of real rights in, land situated within the defined area: Provided that where such owners and holders cannot readily be located the competent authority shall give notice in the *Official Gazette* and in one Afrikaans and one English newspaper circulating within the district where the land is situated, of his intention to declare such land to be a protected natural environment and invite such owners and holders to lodge any complaints against the intended declaration with the Director-General of that province within 30 days from the date of the notice.

1A) A competent authority may, by notice in the *Official Gazette*--

- c) exclude any area from a protected natural environment and amend the description of the protected natural environment accordingly;
 - d) withdraw the declaration of any protected natural environment; and
 - e) change the name of any protected natural environment.
- 1B) The provisions of subsection (1)(b) shall *mutatis mutandis* apply to the exclusion of an area from a protected natural environment and the withdrawal of a declaration of a protected natural environment: Provided that the withdrawal of a declaration of a protected natural environment may only take place after consultation with any local authority or government institution (if any) to which the control and management of the area concerned had been assigned in terms of subsection (6)(a).
- 2) The competent authority may by notice in the *Official Gazette* concerned issue directions in respect of any land or water in a protected natural environment in order to achieve the general policy and objects of this Act: Provided that--
- a) a copy of the directions applicable to the area shall be handed or forwarded by post to the last-known address of every owner of, and every holder of a real right in, the land in question; and
 - b) the directions shall only be issued with the concurrence of each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.
- 2A) The competent authority may, subject to the provisions of any other law pertaining to land, and subject to the proviso to subsection (2), amend or repeal any direction issued under the said subsection.
- 3) Every owner of, and every holder of a real right in, land situated within a protected natural environment in respect of which directions have been issued in terms of subsection (2) or amended in terms of subsection (2A), and the successors in title of such owner and the holder of the real right, shall be subject to the provisions of such directions.
- 4) The competent authority shall in writing direct the registrar of deeds of the deeds registry in which the title deed of land referred to in subsection (3) is registered, to make an entry of the directions in question in his registers and to endorse the office copy of the title deed accordingly.
- 5) The competent authority may with the concurrence of the Minister of State Expenditure out of money appropriated by the provincial legislature concerned for that purpose and subject to such conditions as he may determine, render financial aid by way of grants or otherwise to the owner of, and the holder of a real right in, land situated within a protected natural environment in respect of expenses incurred by the owner or holder of the right in compliance with any direction issued in terms of subsection (2).
- 6) A competent authority may--

- a) with the concurrence of a local authority or government institution assign the control and management of a protected natural environment to such local authority or government institution; or
- b) withdraw such control and management from such local authority or government institution.

Part III: Protection Of Natural Environment
18. Special nature reserves

- 1) The Minister may by notice in the *Gazette* declare any area defined by him, and situated in the Republic of South Africa, including the territorial waters as defined in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), to be a special nature reserve.
- 2) A declaration under subsection (1) shall only be made--
 - a) for purpose of the protection of the environment in or special characteristics of such area;
 - b) in respect of land or water of which the State is the owner or which is under the exclusive control of the State;
 - bA) in respect of other land or water than land or water referred to in paragraph (b), at the request of and with the written consent of the owner of such land or water, as well as the holder of any right to minerals in respect of such land, and subject to the conditions agreed upon by the Minister and the owner.
 - c) [Para (c) deleted by s. 7 of Act No. 94 of 1993].
- 3) The declaration of a special nature reserve shall not be withdrawn or the boundaries thereof altered except by resolution of Parliament: Provided that this subsection shall not apply to a declaration contemplated in subsection (2)(bA).
- 4) The Minister may assign the control of a special nature reserve to any competent authority, local authority or government institution, providing such assignment takes place--
 - a) with the concurrence of the competent authority, local authority or government institution in question;
 - b) if a management plan for the special nature reserve is drawn up in consultation with the competent authority, local authority or government institution in question and accompanies such assignment; and
 - c) with the concurrence of the owner of the land or water, as well as the holder of any right to minerals in respect of such land, contemplated in subsection (2)(bA).
- 5) The competent authority, controlling local authority or government institution referred to in subsection (4) may amend the management plan with the concurrence of the Minister.
- 6) Subject to the provisions of subsection (7) no person shall--
 - a) gain admittance to a special nature reserve; or

- b) perform any activity in or on a special nature reserve.
- 7) The competent authority, controlling local authority or government institution referred to in subsection (4) may, on the conditions determined by it, after consultation with the Minister, in writing grant exemption from the provisions of subsection (6), to--
- a) any scientist occupied with any specific project;
- b) any officer charged with specific official duties;
- c) any other person desiring to view a special nature reserve on account of its special nature or characteristics.
- 8) For the purposes of subsection (6) a special nature reserve shall include the air space to a level of 500 metres above the ground level of that special nature reserve.

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Section 43 ECA

Amends sections 1 of the Physical Planning Act 88 of 1967 by deleting the definition of 'nature area'.

s44 (1) Amends section 4 of the Physical Planning Act 88 of 1967 by deleting paragraph (b) of subsection (1).

(2) At the commencement of this Act, land reserved as a nature area in terms of section 4 (1) (b) of the Physical Planning Act, 1967 (Act 88 of 1967), shall, notwithstanding the provisions of subsection (1), be deemed to be declared a protected natural environment in terms of section 16 (1) of this Act.

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ECA section 23

Limited development areas

(1) A competent authority may by notice in the Official Gazette declare any area defined by him or her, as a limited development area.

(2) No person shall undertake in a limited development area any development or activity prohibited by the competent authority by notice in the Official Gazette or cause such development or activity to be undertaken unless he or she has on application been authorized thereto by the competent authority designated by the Minister by notice in the Gazette, or by a local authority designated by the competent authority by notice in the Official Gazette, on the conditions contained in such authorization.

(3) In considering an application for an authorization referred to in subsection (2) the competent authority or the designated local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.

(4) A limited development area shall not be declared unless the competent authority-

(a) has given notice in the Official Gazette and in not fewer than one English and one Afrikaans newspaper circulating in the area in question of his or her intention to declare such area as a limited development area;

(b) has permitted not fewer than 60 days for the submission to the Director-General of the provincial administration concerned, of comment on the proposed declaration;

(c) has considered all representations received in terms of such notice; and

(d) has consulted each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

[S. 23 amended by s. 12 of Act 79 of 1992, substituted by Proclamation R29 of 7 April 1995 and amended by Proclamation R43 of 8 August 1996.]

The World Heritage Convention Act 49 of 1999

Chapter 1 section 6 WHC

Identification and nomination of World Heritage Sites

6. (1) The Minister is responsible for the procedure relating to the nomination of World Heritage Sites in accordance with this Act, the Convention and the Operating Guidelines.

(2) The Department or a body determined by the Minister must identify places of potential cultural or natural heritage and investigate the desirability of nominating such places for inclusion on the World Heritage List.

(3) Any person may submit a proposal in writing to the Department or, if it is in existence, the body referred to in subsection (2), for a place in the Republic to be nominated for inclusion on the World Heritage List.

(4) The Minister may determine the format and procedures for—

(a) the proposal referred to in subsection (3);

(b) an investigation into such proposal; and

(c) the nomination of any place in the Republic for inclusion on the World Heritage List.

(5) A written motivation for the declaration of a place as a World Heritage Site must be prepared and kept by the Department in accordance with the requirements of the Convention and the Operating Guidelines.

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Chapter II section 7 WHC

Consultation prior to declaration or establishment of Authority

7. (1) The Minister must consult with the Minister of Arts, Culture, Science and Technology and with interested parties before acting in terms of section 8 or 9, which consultation, in the case of interested parties, may be in the form of public hearings and must include consultation with representatives from the relevant affected—

(a) provinces;

(b) local governments;

(c) cultural authorities;

(d) nature conservation authorities;

(e) heritage authorities; and

(f) other organs of state.

(2) The consultation with interested parties referred to in subsection (1) must be in a manner that the Minister considers to be appropriate, including—

(a) calling on interested parties to participate in the public hearings referred to in subsection (1); and

(b) specifying particulars of the consultation process by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations.

(3) The Minister must, after consultation in terms of subsection (1), but before acting in terms of section 8 or 9, if applicable, notify—

(a) the owner of the area affected by the proposed action;

(b) the mortgage holder, the occupier and any other person with a registered interest in the area affected by the proposed action; and

(c) cultural, nature conservation, heritage and similar public interest bodies with an interest in the area affected by the proposed action.

(4) The notification referred to in subsection (2) must be effected by notice in the *Gazette*, in at least two nationally distributed newspapers, appropriate local newspapers and radio stations.

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Chapter II section 8,910 WHC

Existing organ of state declared as Authority

8. Where an existing organ of state is already lawfully managing or involved in a World Heritage Site, the Minister may, after consultation with the relevant affected MEC or Minister, if applicable, by notice in the *Gazette*—

(a) declare that such organ of state is an Authority under this Act which is a juristic person with the capacity to sue and be sued in its own name;

(b) give or impose such additional powers or duties referred to in section 13 to that organ of state in relation to that World Heritage Site.

Establishment of new Authorities

9. The Minister may, by notice in the *Gazette*, establish an Authority, which is a juristic person with the capacity to sue and be sued in its own name, with so much of the powers and duties set out in this Act, as the Minister may determine.

Organs of new Authorities

10. An Authority established in terms of section 9 may exercise its powers and duties through a Board or an Executive Staff Component or both, as the Minister may determine by notice in the *Gazette*.

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Chapter IV WHA

Preparation and implementation of integrated management plans

21. (1) Every Authority must prepare and implement an integrated management plan for the World Heritage Site under its control to fulfil Articles 4 and 5 of the Convention.

(2) An Authority must conduct its affairs in accordance with an integrated management plan.

Harmonization of integrated management plans

22. In preparing an integrated management plan, an Authority must have due regard for, and seek to integrate and harmonise that integrated management plan with the requirements of the Convention and the Operational Guidelines, and with applicable—

- (a) plans in terms of the National Environmental Management Act, 1998, the National Heritage Resources Act, 1999, the Cultural Institutions Act, 1998 (Act No. 119 of 1998), the Development Facilitation Act, 1995, and the National Parks Act, 1976 (Act No. 57 of 1976);
- (b) provincial government planning and development plans;
- (c) regional planning and development plans;
- (d) local government planning and development plans; and
- (e) existing planning and development plans of an existing organ of state referred to in section 8.

Objects of integrated management plans

23. The object of every integrated management plan is to ensure the protection and management of the World Heritage Site concerned in a manner that is consistent with the objectives and principles of this Act.

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Chapter V WHA

Purchase of land for World Heritage Site purposes

29. The Minister may, with the concurrence of the Minister of Public Works, purchase any property and reserve it for purposes contemplated in this Act in relation to World Heritage Sites, if that purpose is in the public interest.

Expropriation of land for World Heritage Site purposes

30. The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriations.

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The National Heritage Resources Act 25 1999

Chapter II : Protection and management of heritage resources (ss 27-47)

Part 1

Formal protections (ss 27-32)

S27 National heritage sites and provincial heritage sites

(1) SAHRA must identify those places with qualities so exceptional that they are of special national significance in terms of the heritage assessment criteria set out in section 3 (2) and prescribed under section 6 (1) and (2), and must investigate the desirability of their declaration as national heritage sites.

(2) A provincial heritage resources authority must identify those places which have special qualities which make them significant in the context of the province or a region in terms of the heritage assessment criteria set out in section 3 (2) and prescribed under section 6 (1) and (2) and must investigate the desirability of their declaration as provincial heritage sites.

(3) Any person may submit a nomination to SAHRA for a place to be declared a national heritage site or to the provincial heritage resources authority for a place to be declared a

provincial heritage site. The heritage resources authority concerned may prescribe the format and procedures for such nominations.

(4) A written motivation for the declaration of a place as a heritage site must be prepared and kept on record by the heritage resources authority.

(5) SAHRA may, by notice in the Gazette, declare any place referred to in subsection (1) to be a national heritage site.

(6) A provincial heritage resources authority may, by notice in the Provincial Gazette, declare any place referred to in subsection (2) and described in the notice to be a provincial heritage site.

(7) The heritage resources authority concerned may, by similar notice-

(a) amend any notice published under subsection (5) or (6); or

(b) withdraw any notice published under subsection (5) or (6) or paragraph (a) of this subsection.

(8) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (7), the heritage resources authority-

(a) must notify the owner;

(b) must notify the mortgage holder, the occupier and any other person with a registered interest in the property;

(c) must notify all conservation bodies which have, in terms of section 25 (1) (b), registered their interest in the geographical area in which the proposed heritage site is situated, and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable. All submissions must be considered by the heritage resources authority before a final decision is made; and

(d) before notifying the owner as provided in paragraph (a), must give to the owner reasonable opportunity for representations or submissions to be made in regard to the proposed notification.

(9) A heritage resources authority may at any time withdraw a notice which it has served in terms of subsection (8) (a).

(10) For the purposes of subsections (15) to (22), a place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under subsection (8) (a) or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period.

(11) Subject to subsection (12), if the owner objects to the proposed declaration of a place or proposes conditions which the heritage resources authority reasonably considers to be unacceptable, the heritage resources authority may, prior to the expiry of the notice in terms of subsection (10), renew a notice under subsection (8) (a), whereupon the protection under subsection (10) shall be extended for a further six months. If during this time consultation between the heritage resources authority and the owner fails to lead to the withdrawal of the owner's objection or the proposal of acceptable conditions, the heritage resources authority may declare the place to be a heritage site.

(12) The Minister, on the advice of SAHRA, must prescribe circumstances in which the State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls.

(13) SAHRA must inform the provincial heritage resources authority, the provincial planning authority and the local authority within whose area of jurisdiction a national heritage site falls, within 30 days of its declaration.

(14) A provincial heritage resources authority must inform SAHRA, the provincial planning authority and the local authority within whose area of jurisdiction a provincial heritage site falls, within 30 days of its declaration.

(15) SAHRA is responsible for the protection of national heritage sites in accordance with the provisions of this section.

(16) A provincial heritage resources authority is responsible for the protection of provincial heritage sites in accordance with the provisions of this section.

(17) Except in cases where the heritage resources authority considers it inappropriate, all heritage sites must be marked with a badge indicating their status.

(18) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

(19) The responsible heritage resources authority may make regulations pertaining to heritage sites under its control, or to any other heritage site with the consent of the owner of that site-

(a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration;

(b) regulating the conditions of use of any heritage site or the conditions for any development thereof;

(c) regulating the admission of members of the public to a heritage site, and the fees payable for such admission.

(20) Any branch of the State or supported body which is the owner of a heritage site must maintain such site according to a minimum standard and according to a procedure prescribed by the responsible heritage resources authority after consultation with the relevant Departments of Works.

(21) The responsible heritage resources authority may, by agreement with the owner of a heritage site-

(a) conserve or improve any heritage site;

(b) construct fences, walls or gates around or on a heritage site;

(c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or

(d) erect signs on or near a heritage site.

(22) No person may damage any fence, wall or gate constructed or sign erected by a heritage resources authority in terms of subsection (21).

(23) (a) All reproduction rights either in two or three dimensions in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage resources authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site.

(b) Subject to the provisions of paragraph (a), no person other than the owner of the site may make such reproduction for profit without a permit issued by SAHRA or a provincial heritage resources authority, as the case may be, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general.

NHRA Chapter II : Cont.
Formal protections

28 Protected areas

(1) SAHRA may, with the consent of the owner of an area, by notice in the Gazette designate as a protected area-

(a) such area of land surrounding a national heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any wreck as is reasonably necessary to ensure its protection; or

(c) such area of land covered by a mine dump.

(2) A provincial heritage resources authority may, with the consent of the owner of an area, by notice in the Provincial Gazette designate as a protected area-

(a) such area of land surrounding a provincial heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any archaeological or palaeontological site or meteorite as is reasonably necessary to ensure its protection.

(3) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted the heritage resources authority which designated such area in accordance with a procedure prescribed by that authority.

(4) With regard to an area of land covered by a mine dump referred to in subsection (1) (c) SAHRA must make regulations providing for the protection of such areas as are seen to be of national importance in consultation with the owner, the Minister of Minerals and Energy and interested and affected parties within the mining community.

(5) A heritage resources authority may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area.

(6) A local authority may, with the agreement of the heritage resources authority which designated a protected area, make provision in its town planning scheme or in by-laws for the management of such area.

29 Provisional protection

(1) SAHRA, or a provincial heritage resources authority, may, subject to subsection (4), by notice in the Gazette or the Provincial Gazette, as the case may be-

- (a) provisionally protect for a maximum period of two years any-
 - (i) protected area;
 - (ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or
 - (iii) heritage resource, the protection of which SAHRA or the provincial heritage resources authority wishes to investigate in terms of this Act; and
- (b) withdraw any notice published under paragraph (a).

(2) A local authority may, subject to subsection (4), by notice in the Provincial Gazette-

- (a) provisionally protect for a maximum period of three months any place which it considers to be conservation-worthy, the conservation of which the local authority considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; and
- (b) withdraw any notice published under paragraph (a):

Provided that it notifies the provincial heritage resources authority within seven days of such provisional protection.

(3) A provincial heritage resources authority may, by notice in the Provincial Gazette, revoke a provisional protection by a local authority under subsection (2) or provisionally protect a place concerned in accordance with subsection (1).

(4) A heritage resources authority or a local authority may not provisionally protect any heritage resource unless it has notified the owner of the resource in writing of the proposed provisional protection.

(5) A heritage resource shall be deemed to be provisionally protected for 30 days from the date of service of a notice under subsection (4) or until the notice is withdrawn or the resource is provisionally protected by notice in the Gazette or the Provincial Gazette, whichever is the shorter period.

(6) A heritage authority or a local authority may at any time withdraw a notice which it has issued under subsection (4).

(7) SAHRA shall inform the relevant provincial heritage authority and local authority within 30 days of the publication or withdrawal of a notice under subsection (1).

(8) A provincial heritage resources authority shall inform the relevant local authority within 30 days of the publication or withdrawal of a notice under subsection (1).

(9) A local authority shall inform the provincial heritage authority of the withdrawal of a notice under subsection (2) (b).

(10) No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object without a permit issued by a heritage resources authority or local authority responsible for the provisional protection.

.....

NHRA Chapter II : Cont.
Formal protections

31 Heritage areas

(1) A planning authority must at the time of revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, or at the initiative of the provincial heritage resources authority where in the opinion of the provincial heritage resources authority the need exists, investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) Where the provincial heritage resources authority is of the opinion that the need exists to protect a place of environmental or cultural interest as a heritage area, it may request a planning authority to investigate its designation in accordance with proposals submitted by the provincial heritage resources authority with its request. The planning authority must inform the provincial heritage resources authority within 60 days of receipt of such a request whether it is willing or able to comply with the request.

(3) Where the planning authority informs the provincial heritage resources authority that it is willing and able, the provincial heritage resources authority must assist the planning authority to investigate the designation of the place as a heritage area.

(4) Where the planning authority does not so inform the provincial heritage resources authority, or informs the provincial heritage resources authority that it is not so willing and able, the provincial heritage resources authority may investigate the designation of the place as a heritage area and, with the approval of the MEC, designate such place to be a heritage area by notice in the Provincial Gazette.

(5) A local authority may, by notice in the Provincial Gazette, designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, provided that prior to such designation it shall consult-

- (a) the provincial heritage resources authority; and
- (b) owners of property in the area and any affected community,

regarding inter alia the provisions to be established under subsection (7) for the protection of the area.

(6) The MEC may, after consultation with the MEC responsible for local government, publish regulations setting out the process of consultation referred to in subsection (5).

(7) A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under this Act, provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the provincial planning authority and the local authority, and provided further that-

(a) the special consent of the local authority shall be required for any alteration or development affecting a heritage area;

(b) in assessing an application under paragraph (a) the local authority must consider the significance of the area and how this could be affected by the proposed alteration or development; and

(c) in the event of any alteration or development being undertaken in a heritage area without the consent of the local authority, it shall have the power to require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the requirements of the local authority, the local authority shall have the right to carry out such restoration work itself and recover the cost thereof from the owner.

(8) A local authority may erect signage indicating its status at or near a heritage area.

(9) Particular places within a heritage area may, in addition to the general provisions governing the area, be afforded further protection in terms of this Act or other heritage

NHRA Chapter II : Cont.
Formal protections

S35 Archaeology, palaeontology and meteorites

(1) Subject to the provisions of section 8, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of a provincial heritage resources authority: Provided that the protection of any wreck in the territorial waters and the maritime cultural zone shall be the responsibility of SAHRA.

(2) Subject to the provisions of subsection (8) (a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible heritage authority must, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects.

(3) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage resources authority, or to the nearest local authority offices or museum, which must immediately notify such heritage resources authority.

(4) No person may, without a permit issued by the responsible heritage resources authority-

(a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;

(b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;

(c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or

(d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

(5) When the responsible heritage resources authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 38 has been followed, it may-

(a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order;

(b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary;

(c) if mitigation is deemed by the heritage resources authority to be necessary, assist the person on whom the order has been served under paragraph (a) to apply for a permit as required in subsection (4); and

(d) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development if no application for a permit is received within two weeks of the order being served.

(6) The responsible heritage resources authority may, after consultation with the owner of the land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

(7) (a) Within a period of two years from the commencement of this Act, any person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act, equivalent provincial legislation or the National Monuments Act, 1969 (Act 28 of 1969), must lodge with the responsible heritage resources authority lists of such objects and other information prescribed by that authority. Any such object which is not listed within the prescribed period shall be deemed to have been recovered after the date on which this Act came into effect.

(b) Paragraph (a) does not apply to any public museum or university.

(c) The responsible authority may at its discretion, by notice in the Gazette or the Provincial Gazette, as the case may be, exempt any institution from the requirements of paragraph (a) subject to such conditions as may be specified in the notice, and may by similar notice withdraw or amend such exemption.

(8) An object or collection listed under subsection (7)-

(a) remains in the ownership of the possessor for the duration of his or her lifetime, and SAHRA must be notified who the successor is; and

(b) must be regularly monitored in accordance with regulations by the responsible heritage authority.

NHRA Chapter II : Cont.

Formal protections

36 Burial grounds and graves

(1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority-

(a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

(b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

(c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3) (a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3) (b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority-

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority-

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

(b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or agents provocateur and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the Gazette.

(8) Subject to section 56 (2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

.....
 NHRA Chapter I
 Part 1: General Principles
 System for management of National resources

S8 Responsibilities and competence of heritage resources authorities and local authorities for identification and management of national estate

(1) There is a three-tier system for heritage resources management, in which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility of provincial heritage resources authorities and local level functions are the responsibility of local authorities. Heritage resources authorities and local authorities are accountable for their actions and decisions and the performance of functions under this system.

(2) SAHRA is responsible for the identification and management of Grade I heritage resources and heritage resources in accordance with the applicable provisions of this Act, and shall co-ordinate and monitor the management of the national estate in the Republic.

(3) A provincial heritage resources authority is responsible for the identification and management of Grade II heritage resources and heritage resources which are deemed to be a provincial competence in terms of this Act.

(4) A local authority is responsible for the identification and management of Grade III heritage resources and heritage resources which are deemed to fall within their competence in terms of this Act.

(5) For the purpose of any application for a permit or other authorisation to perform any action which is controlled in terms of this Act or provincial heritage legislation, a formal protection by a heritage resources authority at a higher level takes precedence over any formal or general protection at a local level, without prejudice to any incentives offered at any level.

(6) (a) A provincial heritage resources authority or a local authority shall not perform any function in terms of this Act or any other law for the management of heritage resources unless it is competent to do so. The capacity of a provincial heritage resources authority or local authority shall be assessed in terms of criteria prescribed by the Minister, including the availability of adequate staff, expertise, experience and administrative systems, to be applied-

(i) by SAHRA, in the assessment of the capacity of provincial authorities to perform specific functions in relation to prescribed categories of heritage resources; and

(ii) by provincial heritage resources authorities, to establish the capacity of local authorities to perform any function under this Act:

Provided that, in the event of a dispute, the matter shall be submitted to arbitration.

(b) If an authority at provincial or local level does not have the capacity or is not competent to perform a specific function for which it is responsible under this section, that function shall be performed on an agency basis by an authority at a higher level or a competent authority on the same level.

(c) A provincial heritage resources authority or a local authority shall apply to the relevant authority for the assessment of its competence under paragraph (a) in the manner prescribed by the assessing authority, and may apply for reassessment within the period and on the conditions prescribed by the assessing authority.

(d) The assessing authority may at any time, and shall at least every two years, reassess the competence of a subordinate authority and review the assumption of functions and powers under this Act.

.....

Mountain Catchment Areas Act 63 of 1970

S2 Declaration of mountain catchment areas

The Minister may by notice in the Gazette define any area and declare that area to be a mountain catchment area and may from time to time by like notice alter the boundaries of any mountain catchment area or withdraw any notice whereby a mountain catchment area was established.

S2A Beacons

(1) The Director-General may, for the purposes of the definition of any area by the Minister under section 2, cause beacons to be erected on the land concerned at places designated by the Minister.

(2) A certificate purporting to be signed by the Director-General, in which it is stated that a beacon which has been erected under subsection (1) complies with the regulations and has been erected at a place designated by the Minister, shall on its mere production in any civil or criminal proceedings be prima facie proof that such beacon complies with the regulations and has been erected at a place so designated.

[S. 2A inserted by s. 1 of Act 41 of 1976.]

S3 Directions with reference to land

(1) The Minister may declare a direction to be applicable with reference to land which is situated-

(a) within any mountain catchment area; or

(b) outside any mountain catchment area but within a distance of five kilometers from the boundary thereof.

.....
MCA Act 63 of 1970

Section 3 Directions with reference to land

(1) The Minister may declare a direction to be applicable with reference to land which is situated-

(a) within any mountain catchment area; or

(b) outside any mountain catchment area but within a distance of five kilometers from the boundary thereof, and which is specified in such direction, relating to-

(i) in the case of land contemplated in paragraph (a)-

(aa) the conservation, use, management and control of such land;

(bb) the prevention of soil erosion, the protection and treatment of the natural vegetation and the destruction of vegetation which is, in the opinion of the Minister, intruding vegetation; and

(cc) any other matter which he considers necessary or expedient for the achievement of the objects of this Act in respect of such land; and

(ii) in the case of land contemplated in paragraph (b), the destruction of vegetation which is, in the opinion of the Minister, intruding vegetation.

Lake areas development Act 39 of 1975

Section 2: Establishment of lake areas

(1) Subject to the provisions of subsection (2), the Minister may, by notice in the Gazette, with effect from a date mentioned in the notice-

(a) declare any land comprising or adjoining a tidal lagoon, a tidal river or any part thereof, or any other land comprising or adjoining a natural lake or a river or any part thereof, which is within the immediate vicinity of a tidal lagoon or a tidal river, to be a lake area under a name to be assigned to it in that notice;

[Para. (a) amended by s. 47 of Act 97 of 1986.]

(b) declare any land to be part of any lake area or exclude any land from any lake area.

[Sub-s. (1) amended by ss. 46 and 47 of Act 97 of 1986.]

(2) No land which is under the control of a provincial administration shall be declared to be a lake area or to be part of any lake area under subsection (1), except after consultation by the Minister with the Administrator concerned.

.....
 Lake areas development Act
 Section 2: Establishment of lake areas

11 Objects and powers of board

(1) The objects of the board shall be to control, manage and develop any State land situated within any lake area and made available to the board by the Minister in terms of section 17 and to deal therewith in terms of this Act, and for that purpose the board may-

- (a) sub-divide, lay out, plan and develop such State land;
- (b) with the approval of the Minister and subject to such conditions as he may determine-
 - (i) sell, let, hypothecate or otherwise encumber such State land or any part thereof, or exchange it for private land within any lake area, whether before or after development; and
 - (ii) acquire by lease, exchange or otherwise, any private land or any interest in private land situated in any lake area or any building or other structure, in so far as the acquisition thereof may be necessary for or incidental to the attainment of the objects of the board;
- (c) with the approval of the Minister and subject to such conditions as he may determine, advance moneys to a local authority for any purpose which in the opinion of the board will be conducive to the attainment of the objects of this Act;
- (d) enter into contracts with the State, including the South African Railways and Harbours Administration, a local authority or any other body or person for the performance of any act which the board is empowered to perform;
- (e) borrow money;
- (f) accept donations;
- (g) provide accommodation and amenities in connection therewith for visitors to any lake area;
- (h) provide any other service for the convenience of visitors to any lake area;-
- (i) erect, establish, equip or maintain any building, structure, depot or site which is required in connection with any matter referred to in paragraph (g) or (h) or let a site required for any such purpose;
- (j) make such charges in connection with a matter referred to in paragraph (g) or (h) as it may determine;
- (k) empower any person to carry on any activity which the board may carry on under paragraph (g) or (h), subject to such conditions and the payment of such fees as the board may deem fit.

(2) The board shall not without the approval of the Minister, given in consultation with the Minister of Finance, accept any donation to which any condition is attached, or borrow any money.

(3) The ownership of any immovable property donated to the board shall upon the acceptance of the donation by the board vest in the State.

(4) The board may, if authorized thereto by the Minister, investigate the desirability, or otherwise, of declaring any area to be a lake area or of declaring any land to be part of a lake area or of excluding any land from any lake area.

(5) The board may for the purposes of a notice mentioned in section 2 (1), cause any land to be defined in such notice to be surveyed.

[Sub-s. (5) amended by s. 47 of Act 97 of 1986.]

(6) Moneys derived from the sale of State land shall be paid into the Consolidated Revenue Fund.

National Water Act 36 1998

Section 2: Purpose of Act

2. The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved,

managed and controlled in ways which take into account amongst other factors -

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water;
- (c) redressing the results of past racial and gender discrimination;
- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (i) meeting international obligations;
- (j) promoting dam safety;
- (k) managing floods and droughts,

and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.

.....
NWA Act 36 1998

Section 3 Public trusteeships of nation's water resources

3. (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.

(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.

(3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

.....

NWA section 16: Determination of Reserve

16. (1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.

(2) A determination of the Reserve must -

(a) be in accordance with the class of the water resource as determined in terms of section 13; and

(b) ensure that adequate allowance is made for each component of the Reserve.

(3) Before determining the Reserve in terms of subsection (1), the Minister must -

(a) publish a notice in the *Gazette* -

(i) setting out the proposed Reserve; and

(ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and

a date before which comments are to be submitted, which date may not be earlier than 60 days after

publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of

interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(ii).

Preliminary determinations of Reserve

17. (1) Until a system for classifying water resources has been prescribed or a class of a water resource has been

determined, the Minister -

(a) may, for all or part of a water resource; and

(b) must, before authorising the use of water under section 22(5), make a preliminary determination of the Reserve.

(2) A determination in terms of section 16(1) supersedes a preliminary determination.

.....

NWA Part 4: Pollution prevention

Part 4 deals with pollution prevention, and in particular the situation where pollution of a water resource occurs or might occur as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking measures to prevent pollution of water resources. If these measures are not taken, the catchment management agency concerned may itself do whatever is necessary to prevent the pollution or to remedy its effects, and to recover all reasonable costs from the persons responsible for the pollution.

Prevention and remedying effects of pollution

19. (1) An owner of land, a person in control of land or a person who occupies or uses the land on which -

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists, which causes, has caused or is likely to cause pollution of a water resource,

must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) The measures referred to in subsection (1) may include measures to -

(a) cease, modify or control any act or process causing the pollution;

- (b) comply with any prescribed waste standard or management practice;
 - (c) contain or prevent the movement of pollutants;
 - (d) eliminate any source of the pollution;
 - (e) remedy the effects of the pollution; and
 - (f) remedy the effects of any disturbance to the bed and banks of a watercourse.
- (3) A catchment management agency may direct any person who fails to take the measures required under subsection (1) to -
- (a) commence taking specific measures before a given date;
 - (b) diligently continue with those measures; and
 - (c) complete them before a given date.
- (4) Should a person fail to comply, or comply inadequately with a directive given under subsection (3), the catchment management agency may take the measures it considers necessary to remedy the situation.
- (5) Subject to subsection (6), a catchment management agency may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from the following persons:
- (a) Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;
 - (b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor-in-title;
 - (c) the person in control of the land or any person who has a right to use the land at the time when -
 - (i) the activity or the process is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent -
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) The catchment management agency may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the catchment management agency, benefitted from the measures undertaken under subsection (4), to the extent of such benefit.
- (7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (8) If more than one person is liable in terms of subsection (5), the catchment management agency must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

.....
 NWA: Part 2: Catchment management strategies

Part 2 requires every catchment management agency to progressively develop a catchment management strategy for the water resources within its water management area. Catchment management strategies must be in harmony with the national water resource strategy. In the process of developing this strategy, a catchment management agency must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons. The catchment management strategy, which must be reviewed from time to time, will include a water allocation plan. A catchment management strategy must set principles for allocating water to existing and prospective users, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources. Establishment of catchment management strategies

8. (1) A catchment management agency contemplated in Chapter 7 must, by notice in the Gazette, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area.
- (2) The notice must state the address where the strategy may be inspected.
- (3) A catchment management strategy -
- (a) may be established in a phased and progressive manner and in separate components over time; and
 - (b) must be reviewed at intervals of not more than five years.

(4) A catchment management strategy or any component of that strategy may only be established with the written consent of the Minister.

(5) Before establishing a catchment management strategy or any component of that strategy in terms of subsection

(1), a catchment management agency must -

(a) publish a notice in the *Gazette* -

(i) setting out a summary of the proposed catchment management strategy or the component in question;

(ii) stating the address where the proposed strategy or the component in question is available for inspection; and

(iii) inviting written comments to be submitted on the proposed strategy or the component in question, specifying an address to which and a date before which comments must be submitted, which date may not be earlier than 90 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate; and (c) consider all comments received on or before the date specified in paragraph (a)(iii).

Contents of catchment management strategy

9. A catchment management strategy must -

(a) take into account the class of water resources and resource quality objectives contemplated in Chapter 3, the requirements of the Reserve and, where applicable, international obligations;

(b) not be in conflict with the national water resource strategy; (c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area; (d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area;

(e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27(1);

(f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act No. 108 of 1997);

(g) enable the public to participate in managing the water resources within its water management area;

(h) take into account the needs and expectations of existing and potential water users; and

(i) set out the institutions to be established.

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NWA

Chapter 11 Government Waterworks

Section 110) Consultation and environmental impact assessment

110. (1) Before constructing a waterwork, the Minister must -

(a) prepare an environmental impact assessment relating to the proposed waterwork which must, where the Minister considers it appropriate, comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989);

(b) publish a notice in the *Gazette* -

(i) setting out the proposal to construct the waterwork;

(ii) containing a summary of the environmental impact assessment; and

(iii) inviting written comments to be submitted, specifying an address to which and a date before which the

comments are to be submitted, which date may not be earlier than 60 days after publication of the

Defence Act 44 of 1957

Section 76 General powers of Minister

(1) The Minister may do or cause to be done all things which in his opinion are necessary for the efficient defence and protection of the Republic or any part thereof.

(2) Without derogating from the generality of his powers under subsection (1), the Minister may-

(a) acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes;

(b) establish, maintain and operate factories for the manufacture and repair of arms, ammunition, vehicles, aircraft, vessels, military clothing and other stores and equipment;

(c) notwithstanding anything contained in any law relating to the seashore or aviation, but subject to the provisions of any law relating to harbours, acquire, construct, maintain, manage and control harbours, docks, quays, jetties, aerodromes (as defined in subsection (2) of section ninety-nine) and other facilities necessary for vessels or aircraft of the South African Defence Force;

(d) acquire arms, ammunition, vehicles, aircraft, vessels, clothing, animals, stores and other equipment required for defence purposes;

(e) sell, let or otherwise dispose of any land, building, animal or thing mentioned in any of the preceding paragraphs which is no longer required for defence purposes;

(f) permit persons of any category or kind who are not members of the South African Defence Force and have registered in such manner as the Minister may determine, to participate voluntarily in any training exercises with the commandos, subject to such conditions as the Minister may from time to time determine and may, after consultation with the Minister of Finance, by notice in the Gazette declare that such provisions of sections 39, 40, 41 or 125 as may be specified in the notice shall, to such extent and with such modifications as may be so specified, apply in respect of such persons as if they were citizens voluntarily serving as members of a commando.

[Para. (f) added by s. 48 of Act 85 of 1967.]

(2A) The Minister may in writing authorize the Chief of the South African Defence Force or any officer designated for that purpose by the said Chief to exercise on behalf of the Minister, any power contemplated in subsections (1) and (2).

[Sub-s. (2A) inserted by s. 23 of Act 132 of 1992.]

(3) The Minister may, in consultation with the Minister of Finance, and any person acting under the authority of the Minister may, in consultation with an officer in the Department of Finance deputed thereto by the Minister of Finance, whenever he deems it expedient in the public interest or in case of emergency, authorize-

(a) the conveyance, on such terms and conditions as the Minister or such person acting in consultation as aforesaid may deem fit of any person other than an officer or employee of the State acting in the execution of his duty as such, or on behalf of any such person of any goods, not being the property of the State, by means of any vehicle, aircraft or vessel which is the property of the State in its Department of Defence;

(b) the rendering of any service, on such terms and conditions as aforesaid to any person other than an officer or employee of the State acting in the execution of his duty as such; or

(c) the use, on such terms and conditions as aforesaid of any vehicle, aircraft, vessel, equipment or any other thing, the property of the State in its Department of Defence, by any person other than an officer or employee of the State acting in the execution of his duty as such.

Defence Act

Section 89

89 Prohibition of access to military premises

(1) The Minister may by notice in the Gazette or in any other manner which he considers sufficient in the circumstances, prohibit or restrict and, in any such event, allow on such conditions as he may deem fit access of any person to any military camp, barracks, dockyard, installation, other property (whether movable or immovable) or other premises or any land or area of water which is used either temporarily or permanently by the South African Defence Force or which is under control of that Force, including any such building, premises or area which is also being used or occupied by, or is the property of, any other person or to any part thereof.

(2) The officer in command (and, in the case of movable property, the officer in control) of any such camp, barracks, dockyard, installation, property, premises, land or area (in this section called 'military premises or property') may by order issued under his hand and made known or displayed in such manner as he considers sufficient in the circumstances, temporarily prohibit or restrict and, in any such event, allow on such conditions as he may deem fit access of any person to such military premises or property or any part thereof.

(3) Any person who enters or is within or on any such military premises or property or the part thereof to which such prohibition or restriction relates, contrary to any prohibition or restriction or condition contemplated in subsection (1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(3A) No provision of this section shall be construed as derogating from the rights of the State through the South African Defence Force, or, if applicable, any other department of State under or pursuant to the Prevention of Illegal Squatting Act, 1951 (Act 52 of 1951), and the Minister shall for all purposes in relation to any right or expectation of the South African Defence Force to or in respect of any military premises or property in respect of which any unlawful action has been or may be taken, be competent to act as applicant, respondent, plaintiff, defendant or party in any legal proceedings.

(4) The Minister or the Chief of the South African Defence Force or an officer in command referred to in subsection (2), may further undertake or cause to be undertaken the works and take or cause to be taken such measures as he considers necessary for the efficient defence, protection or safeguarding of any military premises or property, and may in connection with any

works and measures so undertaken or taken cause such notices to be published or such warning notices to be displayed or erected as he may in each particular case consider necessary.

(5) Neither the State nor any member of the Executive Authority nor any person in the service of the State nor any member of the South African Defence Force or the Reserve shall be liable for any loss or damage suffered by any person as a result of any bodily injury, loss of life or loss of or damage to property, whether movable or immovable, caused by or arising out of or connected with any act or omission by the State, any member of the Executive Authority, any person in the service of the State or any member of such Force or Reserve in connection with any measures taken or works undertaken for the defence, protection or safeguarding of, or the prohibition or restriction of access to, any such military premises or property.

(6) For the purposes of this section (excluding subsection (2) and, in so far as it confers powers on the Chief of the South African Defence Force or an officer in command, subsection (4)), land or premises (including any part of a building) on or in which armaments as defined in the Armaments Development and Production Act, 1968 (Act 57 of 1968), are developed, manufactured, serviced, repaired or maintained by any person, or on or in which any function of the Armaments Corporation of South Africa, Limited, established under the said Act, is carried out, shall be deemed to be land or premises used by, or under the control of, the South African Defence Force.

(7) Before any person is in terms of subsection (1) or (2) allowed access to any military premises or property, anything that may in terms of section 2 (2) of the Control of Access to Public Premises and Vehicles Act, 1985 (Act 53 of 1985), be required of any person, may mutatis mutandis be required of him, and the conditions referred to in the said subsections (1) and (2) may include such conditions as are mentioned in section 2 (3) of the said Act.

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Conservation of Agricultural Resources Act 43 Of 1983

Section 6 Control measures Cases

(1) In order to achieve the objects of this Act the Minister may prescribe control measures which shall be complied with by land users to whom they apply.

(2) Such control measures may relate to-

- (a) the cultivation of virgin soil;
- (b) the utilization and protection of land which is cultivated;
- (c) the irrigation of land;
- (d) the prevention or control of waterlogging or salination of land;
- (e) the utilization and protection of vleis, marshes, water sponges, water courses and water sources;
- (f) the regulating of the flow pattern of run-off water;
- (g) the utilization and protection of the vegetation;

- unit;
- (h) the grazing capacity of veld, expressed as an area of veld per large stock unit;
 - (i) the maximum number and the kind of animals which may be kept on veld;
 - (j) the prevention and control of veld fires;
 - (k) the utilization and protection of veld which has burned;
 - (l) the control of weeds and invader plants;
 - (m) the restoration or reclamation of eroded land or land which is otherwise disturbed or denuded;
 - (n) the protection of water sources against pollution on account of farming practices;
 - (o) the construction, maintenance, alteration or removal of soil conservation works or other structures on land; and
 - (p) any other matter which the Minister may deem necessary or expedient in order that the objects of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(3) A control measure may-

- (a) contain a prohibition or an obligation with regard to any matter referred to in subsection (2);
- (b) provide that the executive officer may exempt a person from such prohibition or obligation by means of a written consent;
- (c) prescribe the procedure with regard to the lodging of an application for such written consent.

(4) Different control measures may be prescribed in respect of different classes of land users or different areas or in such other respects as the Minister may determine.

(5) Any land user who refuses or fails to comply with any control measure which is binding on him, shall be guilty of an offence.

.....
Conservation of Agricultural Resources Act

Section 8: Schemes

(1) The Minister may, with the concurrence of the Minister of Finance, by notice in the Gazette establish a scheme in terms of which assistance, out of moneys appropriated by Parliament for this purpose, may be granted to land users by means of-

- (a) the payment of subsidies in respect of-
 - (i) the construction of soil conservation works;

(ii) the reparation of damage to the natural agricultural resources or soil conservation works which has been caused by a flood or any other disaster caused by natural forces;

(iii) the reduction of the number of animals being kept on land in order to restrict the detrimental effect of a drought on that land;

(iv) the restoration or reclamation of eroded, disturbed, denuded or damaged land;

(v) the planting and cultivation of particular crops which improve soil fertility or counteract the vulnerability of soil to erosion;

(vi) the combating of weeds or invader plants;

(vii) the performance or omission of anything else which the Minister may deem necessary or expedient in order to achieve the objects of this Act; and

(b) the supplying of weed killers in order to combat weeds or invader plants, and the rendering of services by the department, including the utilization of weed killers, in order to combat weeds or invader plants on the land of land users.

(2) Different schemes may be so established in respect of different areas, and the provisions of a scheme may differ in respect of different areas in such respects as the Minister may determine.

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National Veld and Forest Fire Act 101 of 1998

Section 5 : Duties of fire protection associations

5. (1) A fire protection association must at least—

- (a) develop and apply a veldfire management strategy for its area;
- (b) provide in the strategy for agreed mechanisms for the co-ordination of actions with adjoining fire protection associations in the event of a fire crossing boundaries;
- (c) make rules which bind its members;
- (d) identify the ecological conditions that affect the fire danger;
- (e) regularly communicate the fire danger rating referred to in sections 9 and 10 to its members;
- (f) organise and train its members in fire fighting, management and prevention;
- (g) inform its members of equipment and technology available for preventing and fighting veldfires;
- (h) provide management services, training and support for communities in their efforts to manage and control veldfires;
- (i) supply the Minister at least once every 12 months with statistics about veldfires in its area;
- (j) furnish any information requested by the Minister in order to prepare or maintain the fire danger rating system;
- (k) exercise the powers and perform the duties delegated to it by the Minister; and
- (l) appoint a fire protection officer, unless a municipality is a member.

(2) Where a municipality or a designated service is a member, the fire protection association must consult with it in the development and application of the strategy.

.....

National Veld and Forest Fire Act 101 of 1998

Section 18: Actions to fight fires

18. (1) Any owner who has reason to believe that a fire on his or her land or the land of an adjoining owner may endanger life, property or the environment, must immediately—

(a) take all reasonable steps to notify—

(i) the fire protection officer or, failing him or her, any member of the executive committee of the fire protection association, if one exists for the area; and

(ii) the owners of adjoining land; and

(b) do everything in his or her power to stop the spread of the fire.

(2) Any person who has reason to believe that a fire on any land may endanger life, property or the environment, may, together with any other person under his or her control, enter that land or land to which the fire can spread in order to prevent that fire from spreading or to extinguish it.

(3) In taking control over the fighting of a fire in terms of section 6(1)(c), any fire protection officer may—

(a) take control from any person who has, until his or her arrival, controlled the fighting of the fire;

(b) order any person who is apparently not younger than 16 years and not older than 60 years to assist him or her.

(4) In the absence of a fire protection officer, a forest officer may—

(a) take over control of the fighting of a fire in or within ten kilometres of any State forest to the exclusion of any other person; and

(b) order any person who is apparently not younger than 16 years and not older than 60 years to assist him or her.

(5) Any person acting in terms of subsection (1), (2), (3) or (4) may, if he or she considers it necessary for the protection of life, property or the environment or for preventing a fire from spreading or for extinguishing it—

(a) enter any land;

(b) destroy trees, grass, crops or other vegetation;

(c) enter or break and enter any premises;

(d) prevent any person from entering any premises;

(e) forcibly remove from the scene any person who is in danger or who obstructs him or her in the performance of his or her duties; and

(f) remove or order to be removed any vehicle or other thing.

(6) Whenever a fire spreads or may spread across a boundary of a fire protection association, the

fire protection officer must—

(a) inform the fire protection officer of the area to which the fire spreads or may spread;

(b) take all steps needed to co-ordinate the fire-fighting operation in accordance with the fire management strategy referred to in section 5(1)(a) and (b).

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Development Facilitation Act 67 of 1995

Section 3: General principles for land development

3. (1) The following general principles apply, on the basis set out in section 2, to all land development:

(i) promote the integration of the social, economic, institutional and physical aspects of land development;

(ii) promote integrated land development in rural and urban areas in support of each other;

(iii) promote the availability of residential and employment opportunities in close proximity to or integrated with each other;

- (iv) optimize the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;
- (v) promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land;
- (vi) discourage the phenomenon of "urban sprawl" in urban areas and contribute to the development of more compact towns and cities;
- (vii) contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and
- (viii)** encourage environmentally sustainable land development practices and processes.
- (d) Members of communities affected by land development should actively participate in the process of land development.
- (e) The skills and capacities of disadvantaged persons involved in land development should be developed.

Policy, administrative practice and laws should encourage and optimise the contributions of all sectors of the economy (government and non-government) to land development so as to maximise the Republic's capacity to undertake land development and to this end, and without derogating from the generality of this principle-

- (i) national, provincial and local governments should strive clearly to define and make known the required functions and responsibilities of all sectors of the economy in relation to land development as well as the desired relationship between such sectors; and
- (ii) a competent authority in national, provincial or local government responsible for the administration of any law relating to land development shall provide particulars of the identity of legislation administered by it, the posts and names of persons responsible for the administration of such legislation and the addresses and locality of the offices of such persons to any person who requires such information.
- (g) Laws, procedures and administrative practice relating to land development should-
 - (i) be clear and generally available to those likely to be affected thereby;
 - (ii) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;

(iii) be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and

(iv) give further content to the fundamental rights set out in the Constitution.

(h) Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should-

- (i) promote land development which is within the fiscal, institutional and administrative means of the Republic;
- (ii) promote the establishment of viable communities;
- (iii)** promote sustained protection of the environment;
- (iv) meet the basic needs of all citizens in an affordable way; and
- (v) ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas.

(i) Policy, administrative practice and laws should promote speedy land development.

(j) Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.

(k) Land development should result in security of tenure, provide for the widest possible range of tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, where it is necessary for land or homes occupied by them to be utilised for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner.

(l) A competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimise conflicting demands on scarce resources.

(m) Policy, administrative practice and laws relating to land development should stimulate the effective functioning of a land development market based on open competition between suppliers of goods and services.

(2) The Minister may by notice in the Gazette-

(a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1); and

(b) prescribe any principle set out in subsection (1) in greater detail, but not inconsistent therewith, whereupon such principle shall apply throughout the Republic on the basis set out in section 2.

(3) The Premier of a province may by proclamation in the Provincial Gazette-

(a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1) or prescribed by the Minister under subsection (2);

(b) prescribe any principle set out in subsection (1) or prescribed by the Minister under subsection (2) in greater detail, but not inconsistent therewith; and

(c) publish for general information provincial policy relating to land development or any aspect thereof which is consistent with the principles set out in or prescribed under subsections (1) and (2) and paragraphs (a) and (b), whereupon such principle or policy shall apply in the province on the basis set out in section 2.

.....
Development Facilitation Act

Section 14 :Terms of reference of Commission

14. The Commission shall advise the Minister or, subject to section 6(a)(ii), any Premier or MEC, on the following matters:

(a) Policy and laws relating to the following aspects of planning development generally, including land development:

(i) The appropriate scope of planning, including the relationship between spatial and non-spatial planning;

(ii) the appropriate levels of government at which planning should be carried out, the kind of planning to be done at each level and the co-ordination between different departments, levels of government and other bodies responsible for planning;

(iii) the appropriate documentation or instruments to be used for planning at each level of government;

(iv) the appropriate emphasis that should be placed upon development, including land development, for the benefit of low income and historically disadvantaged communities;

(v) the appropriate methods of monitoring compliance with the general principles set out in Chapter I and the setting and achievement of objectives for land development by national, provincial and local government;

(vi) the appropriate levels and methods of public participation in planning at different levels of government; and

(vii) the integration of environmental conservation with planning at different levels of government.

.....
 Development Facilitation Act

Section 28. (1) Land development objectives shall relate to-

(a) the objectives of the relevant authority in relation to access to and the standard of services for land development, including public transport and water, health and education facilities;

(b) the objectives (with reference to local circumstances, including demographic circumstances and prevailing spatial patterns) relating to urban and rural growth and form in the relevant area, including objectives in relation to-

(i) the integration of areas settled by low-income communities into the relevant area as a whole;

(ii) the sustained utilization of the environment;

(iii) the planning of transportation;

(iv) the provision of bulk infrastructure for the purpose of land development;

(v) the overall density of settlements, with due regard to the interests of beneficial occupiers;

(vi) the co-ordination of land development in consultation with other authorities;

.....
Protected Areas Bill

Section 39: Protected areas in South Africa

39. (1) There are the following types of protected areas in the Republic:

(a) Special nature reserves, conforming to IUCN category 1a;

(b) National parks, conforming to IUCN category 2;

(c) Nature reserves, which include IUCN categories 1b, 3,4 and 6;

Sites of ecological importance;

Protected natural environments, which approximate IUCN category 5 and

(e) Limited development areas.

(2) For the purposes of this Act, an area declared in terms of –

(a) section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area, must be regarded to be a nature reserve;

(b) the Lake Areas Development Act, 1975 (Act 39 of 1975), as a lake development area, must be regarded to be a national park;

(3) The protected areas mentioned in subsection (1) are not affected by the designation of a protected area or part of a protected area in terms of this Act or any other legislation as –

(a) a wilderness area;

(b) a specially protected coastal area;

(c) a marine reserve;

(d) a specially protected forest area, forest nature reserve or forest wilderness area;

(e) conservancy or resource use area;

- (f) a Wetland of International Importance;
- (g) a transfrontier conservation area;
- (h) a biosphere reserve;
- (i) a World Heritage site; or
- (j) any other kind of special conservation area.

Biodiversity Draft Bill

Section 40: Preparation of national biodiversity framework

40. (1) The Minister –
- (a) must prepare and adopt a national biodiversity framework, that shall be the National Biodiversity Strategy and Action Plan within 2 years of the date on which this Act took effect;
 - (b) must monitor implementation of the framework;
 - (c) must review the framework at least every five years; and
 - (d) may, when necessary, amend the framework.

(2) Before adopting or amending the national biodiversity framework, the Minister must consult the MECs.

(3) The Minister must publish the national biodiversity framework and each amendment of the framework by notice in the *Government Gazette*.

Contents of national biodiversity framework

41. (1) *The national biodiversity framework must –*
- (a) *be a coherent policy directive appropriate for the Republic as a whole on biodiversity management and conservation, including the sustainable use of biological resources;*
 - (b) *provide for an integrated, co-ordinated and uniform approach to biodiversity management and conservation by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;*
 - (c) be consistent with –
 - (i) this Act;
 - (ii) the national environmental principles; and
 - (iii) any relevant international agreements binding on the Republic.

(2) *The national biodiversity framework must reflect the following core components:*

- (a) a national vision for biodiversity management and conservation in the Republic, including the sustainable use of biological resources;
- (b) the conservation status of –
 - (i) biodiversity in the Republic in general; and
 - (ii) specific biodiversity components that are threatened;
- (c) key factors that are likely to impact negatively and positively on biodiversity management and conservation;
- (d) national biodiversity management and conservation objectives;
- (e) priorities and strategies to achieve those objectives;
- (f) performance indicators against which progress with the achievement of those objectives could be measured;
- (g) mechanisms to monitor and measure such progress;
- (h) a framework for co-operative governance on a cross-functional and multi-disciplinary basis to implement measures concerning biodiversity management and conservation, including –
 - (i) this Act;

- (ii) the national biodiversity framework;
- (iii) any bioregional conservation plans referred to in section 43;
- (iv) any other conservation plans referred to in section 50;
- (v) provincial and municipal conservation plans; and
- (vi) any national or provincial sectoral plans impacting on biodiversity management and conservation;
 - (i) the identification of primary and supporting responsibilities in this regard of the different spheres of government and different organs of state;
 - (j) measures, including incentives, to facilitate –
 - (i) the involvement of non-governmental organizations, the private sector, local communities and the public in biodiversity management and conservation;
 - (ii) partnerships in this regard between organs of state and non-governmental organizations, the private sector, local communities and private persons; and
 - (iii) the implementation of this Act; and
 - (k) regional co-operation on issues concerning biodiversity management and conservation in Southern Africa.

- (3) The national biodiversity framework must include a national plan for protected areas aimed at –
- (a) co-ordinating and integrating management responsibilities with regard to protected areas;
 - (b) aligning resource allocations with the conservation importance of protected areas;
 - (c) aligning the protection status of protected areas with their conservation importance; and
 - (d) enhancing the conservation of ecosystems and habitats that are under-represented as protected areas.

(4) The national biodiversity framework may determine norms and standards for provincial and municipal conservation plans.

Legal status of national biodiversity framework

42. The national biodiversity framework published in terms of section 40 (3) binds all persons and organs of state, subject, in the case of a conflict with provincial legislation, to section 146 of the Constitution.