

The Role of Local Indigenous Communities in the Management of Natural Resources in and around South Africa's National Parks

by

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ABSTRACT

South Africa's protected areas are at the forefront of the country's efforts to conserve its unique flora and fauna. The setting aside of these vast tracts of land has been the main thrust of Western conservation efforts for over two centuries. Despite the significant financial and human resources allocated to the protection of these natural areas, the extinction of many plant and animal species continues to occur on a daily basis.

This study sets out to explore one of the crucial weaknesses of traditional protected areas management - the failure to incorporate and empower the people with the greatest knowledge and need of the natural resources in their areas - the local indigenous communities. In the past, the legislative focus was aimed at the total exclusion of these communities from protected areas. In South Africa, these 'preservationist' laws have been bitterly flavoured by the apartheid ideology, resulting in widespread environmental inequity and injustice for those societies targeted by racist and discriminatory policies.

The thesis traces the history of the national parks concept, from its preservationist origin in the late nineteenth century United States, to modern-day national parks that operate in terms of joint-management agreements in Australia and South Africa. It also exposes the detrimental effect that the establishment of national parks has inflicted on local indigenous communities around the globe. The experiences of Zimbabwe, Namibia, Canada and Australia are of particular relevance and value to South Africa in this respect.

An overview and assessment of the current legal regime governing protected areas in South Africa reveals that further legislative transformation is required in order to integrate human development and wildlife conservation ideals. In particular, greater emphasis is needed to ensure the participation of local indigenous communities in the management natural resources in and around national parks. A failure to meet this objective may seriously undermine the future well-being of all of South Africa's inhabitants.

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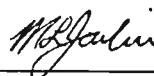
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DECLARATION

I, Mark Leo Jardine do hereby declare that the whole of this thesis is, unless specifically indicated to the contrary in the text, my own original work.



CHAPTER 1: INTRODUCTION AND OVERVIEW

" I have heard that economic growth is a necessity and conservation is a consideration of importance. We disagree. Conservation is life and economic growth is a matter of interpretation. " ¹

South Africans put an end to apartheid when they voted in the country's first non - racial elections in April 1994. Since then, an ambitious reconstruction and development programme has been put in place by the government of national unity to correct inequalities from the past. The present dilemma that arises with respect to wildlife conservation and management is how to reconcile the extensive land and financial resources required by national parks and other protected areas with the acute social and economic needs of poor rural communities. The central argument of this study is that the future of South Africa's national parks and protected areas will be threatened unless ways can be found to include and empower local indigenous communities in the management and ownership of wildlife resources.

The solution is not a simple one and requires input from disciplines such as sociology, anthropology, economics, politics, history and ecology in order to attempt a comprehensive approach. This focus of this thesis is to discuss and analyse the past, present and future role of law: initially as a tool of subjugation and dispossession of local indigenous communities in the colonial and apartheid periods and more recently, as a mechanism of social and economic upliftment for those people previously disadvantaged by discriminatory laws.

¹ Quote of elder of the Mohawk Nation in Martin V (ed) *For the Conservation of Earth* (1998) 288

There are currently eighteen national parks in South Africa², covering an estimated 3.6 million hectares. The flagship is the Kruger National Park, which measures about 2.2 million hectares, making it bigger than the size of Israel.³ These national parks play host to South Africa's remarkable biological diversity. The Addo Elephant Park contains unique plants like the Zuurberg cycad⁴ and cushion bush⁵, which do not occur anywhere outside this area. The Kalahari Gemsbok National Park constitutes one of the last regions on earth where large migrations, such as those of eland, springbok and the blue wildebeest can still take place.⁶ This large variety of genes, species, ecosystems and ecological processes sees South Africa ranked as the third most biologically diverse country in the world.⁷

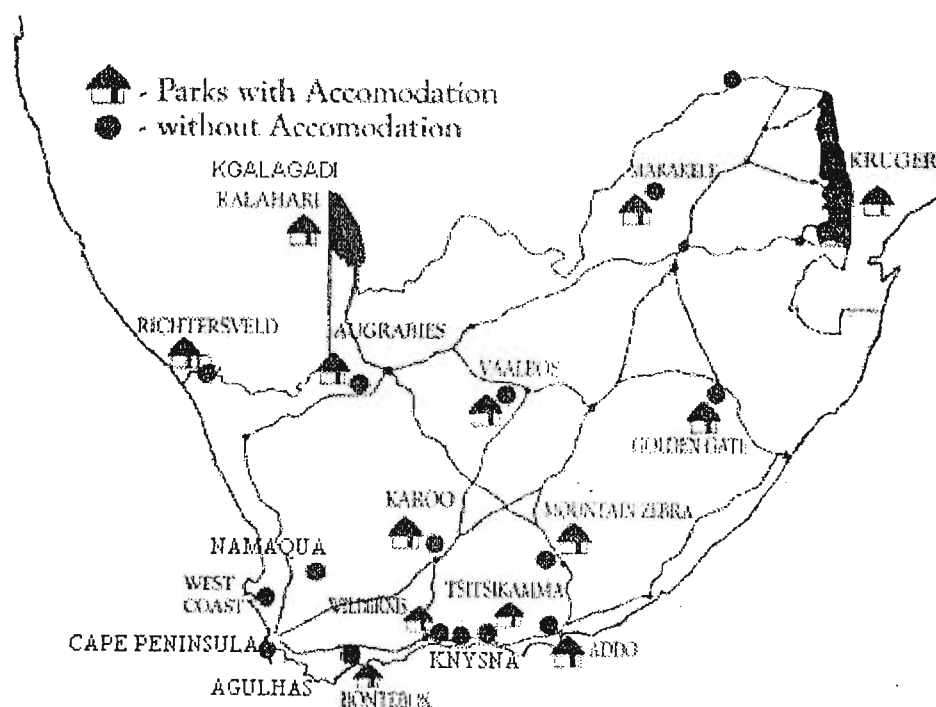


Figure 1: Map of South Africa's National Parks
Source: South African National Parks' Website –
<http://www.parks~sa.co.za/map.htm>

² The Addo Elephant National Park, Agulhas National Park, Au-grabies Falls National Park, Bontebok National Park, Cape Peninsula National Park, Golden Gate Highlands National Park, Kgalagadi Transfrontier Park, Karoo National Park, Knysna National Lake Area, Kruger National Park, Maralele National Park, Mountain Zebra National Park, Namaqua National Park, Richtersveld National Park, Tsitsikamma National Park, Vaalbos National Park, West Coast National Park and the Wilderness National Park.

³ There are current plans to establish the Gaza-Kruger-Gonaehzhou Transfrontier Park, which will amalgamate the Kruger National Park with areas in Mozambique and Zimbabwe. The total surface area of this Park will be approximately 40 000 square kilometres and is likely to be declared around 2003 - <http://www.polity.org.za>

⁴ *Encephalartos logifolius*

⁵ *Oldenburgia arbuscula*

⁶ http://home.online.no/~sa-emb/wildlife_national-parks.html

⁷ 1992 National Biodiversity Index, World Conservation Monitoring Centre.

Conservation efforts in South Africa have received domestic and international acclaim. The Natal Parks Board, for example, has been credited with bringing the southern white rhino back from the brink of extinction. It was only through careful management that numbers have increased from perhaps 20 animals at the turn of the 20th century, to an estimated population of 7 500⁸.

In this context, it is not surprising to find national parks described as assets of international, national and local value and significance⁹. South African national parks have thus become more than mere physical entities, geographical areas or suites of ecosystems and species. They are a mirror of society and vigorous symbols, which appear on numerous postcards and tourist brochures. In fact, it has been suggested that 90% of foreign tourists who visit South Africa, come primarily to experience the fauna and flora.¹⁰

The large majority of domestic and overseas visitors to these areas, however, remain unaware of the harsh reality behind this ideal picture. To many Africans, who live adjacent to national parks, these areas have come to symbolize racial discrimination and white political and economic domination.

To these indigenous local communities, the natural resources found within park boundaries are not merely for recreational or aesthetic pleasures, but critical to their survival. Despite this fact, these people have deliberately and systematically been excluded from sharing in the benefits of national parks.

⁸ tSas-Rolfes 'Does CITES Work? Four Case Studies'<http://www.wildnetafrica.co.za>

⁹ White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity – N1095/1997, Government Gazette No. 18163 dated 28 July 1997@12

¹⁰ Wells, M 'The Economic and Social Role of Protected Areas in the New South Africa' (1996) Policy Paper No.26 of the Agricultural and Policy Centre and the Overseas Development Institute.6

Forced removals, denial of access to natural resources¹¹ and a loss of traditional knowledge and cultural values, have become part of the history of the establishment of national parks in South Africa. Inhumane and discriminatory legal restrictions ensured that Africans were not eligible for hunting licences, had no legitimate access to firearms and were not allowed to kill wildlife that damaged their crops.¹² National parks were almost always located in segregated 'homelands'.¹³ These 'bantustans' were masterminded by the apartheid government, as part of their divide and rule tactics. People in these areas were poor and lacked the political representation to resist their resettlement.

This legacy has left an enormous challenge for contemporary environmental lawmakers to ensure their policies are relevant to the broader socio-economic context outside of park boundaries. The recent Constitutional Court case of the Government of South Africa vs. Grootboom and others¹⁴ affirms that the State has a positive obligation to deal with the deplorable conditions under which millions of people live daily, throughout the country. It is estimated that at least 17 million South Africans live below the Minimum Living Level.¹⁵ Many of these impoverished people are from black, rural communities at the borders of protected areas. Here, they fight a daily battle for basic needs, while on the other side of the fence; lush grasslands and abundant wildlife thrive under the watchful eye of conservation authorities. It is against this backdrop that protected areas will need to define new roles, which will justify and secure their future in a democratic South Africa, based on freedom and equality.

¹¹ Such as grazing for cattle, hunting grounds, medicinal plants, firewood and thatching grass.

¹² Koch E 'Eco-Tourism and Rural Reconstruction: Realty or Rhetoric?' Chapter 8 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997)215

¹³ The "homelands" policy had its roots in the 1913 and 1936 Land Acts, which reserved the most productive agricultural land for whites. Only 13% of the total surface area was allocated to black ownership.

¹⁴ CCT 11/00/2000 (1) SA 46 (CC)

¹⁵ 'RDP-A Policy Framework 1994- <http://www.polity.org.za/govdocs/rdp/rdp2.html>

Chapter two will begin this thesis by looking at the various perceptions associated with national parks. Local indigenous communities view their natural surroundings as an integral part of their everyday existence. Strict laws and taboos ensure that the use of natural resources takes place on a sustainable basis. In stark contrast, the colonial, preservationist approach is based on the notion that the total exclusion of rural people from protected areas would ultimately lead to the protection of wild animals and their habitats.¹⁶ Although the International Union for the Conservation of Nature (IUCN) has attempted to redefine protected areas to allow include indigenous peoples¹⁷, the preservationist style of protected areas management persists in many parts of the world.

The aim of chapter three is to highlight the plight of local indigenous communities under the discriminatory stereotypes created by colonial settlers. White game hunters, such as William Cornwallis Harris, openly made disparaging remarks about indigenous African people. The physical features of the Khoi-khoi were compared to those of a bush-pig and those of the San with a baboon.¹⁸ As a result of racist policies, local people living off the land adjoining the reserves were denied access to the trees, roots, grasses and herbs. Hunting and fishing, essential means of obtaining food, were harshly punished. Traditional conservation programmes were often carried out without any cultural respect or sensitivity to surrounding rural communities. The chief research officer of the National Parks of South Africa, Dr Anthony Hall-Martin, stated bluntly, "We had poachers in 1982 and 1983 and we killed them off."¹⁹

International initiatives such as the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage, the 1992 Rio

¹⁶ Summers, R " Legal and institutional aspects of community-based wildlife conservation in South Africa, Zimbabwe and Namibia." (1999) *Acta Juridica* 188

¹⁷ The IUCN Classification System for Protected Areas, 1994.

¹⁸ Carruthers J *The Kruger National Park: A Social and Political History* (1995) 90

¹⁹ Koch E, Cooper D and Coetzee H (eds) *Water, Waste and Wildlife: the politics of ecology in South Africa* (1990)16

Declaration on the Environment and Development and the 1992 Convention on Biological Diversity will be the subject of discussion in chapter four. These conventions have signalled an international move away from the old conservation school of thought, towards providing local indigenous communities with the right incentives and necessary institutional structures to enable them to manage their own natural resources.²⁰ Best practise documents like the 'Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies' provide an invaluable international guideline for states wishing to implement community-based conservation strategies.

In chapter five, various international projects and legal mechanisms aimed at people-orientated conservation, will be discussed and evaluated. The experiences of Zimbabwe, Namibia, Canada and Australia may prove to be important yardsticks for current South African efforts. At the same time, South Africa must guard against the wholesale import of programmes developed by other states. For example, although Zimbabwe's CAMPFIRE²¹ is widely recognised as the most established and well known example of community-based conservation²², critics have pointed to a failure to respect local rights over natural resources, excessive reliance on market forces, institutional problems and a lack of popular participation.²³ This should spell a warning to policy-makers that any legal developments should be tailor-made to fit South Africa's unique conditions.

Before delving into the current protected areas legislation, chapter six will provide a background into the 'politics of parks' in South Africa. Although a

²⁰ See international case studies in West P and Brechin S (eds) *Resident People and National Parks: social dilemmas and strategies in international conservation* (1991) and Wells M, Brandon K and Hannah L *People and Parks: Linking Protected Area Management with Local Communities* (1992) The International Bank for Reconstruction and Development.

²¹ Communal Areas Management Programme For Indigenous Resources

²² Eco-Compass: Increased Scrutiny for Community-Based Conservation –<http://www.islandpress.org>

²³ Ghimrie K and Pimbert M 'Social Change and Conservation: an overview of issues and concepts' Chapter 1 in Ghimrie K and Pimbert M Op cit (note 12) 3

romanticized history of national parks presents wildlife conservation as a righteous cause, unsullied by involvement in the country's turbulent political conflicts, a closer examination reveals that protectionist attitudes have always been deeply embedded in South Africa's political economy. Many of the discriminatory legal restrictions governing conservation were actually part of the white ruling classes' efforts to create a cheap labour for the mines and other industries that mushroomed after the discovery of gold.²⁴

Chapter seven will give a brief overview of multitude of laws presently governing protected areas in South Africa. There are thirteen provincial ordinances and acts as well as eleven Acts of Parliament, including the National Parks Act 57 of 1976. The twenty one types of protected areas are administered by different bodies, including the National Parks Board; the Department of Water Affairs and Forestry; the Department of Environmental Affairs and Tourism; the South African National Defence Force; the National Botanical Institute, provincial conservation agencies; numerous local authorities; and an assortment of private and public landowners who subscribe to various conservation schemes.²⁵

Despite the profusion of legal provisions and administrative officials responsible for protected areas, the current legal regime is generally considered to be ineffective, due to its fragmented and complex nature. Chapter eight also exposes a major lacuna in South Africa's protected area legislation: the lack of a unified and co-ordinated effort to empower local indigenous communities to manage the natural resources in and around national parks and other protected areas. There are, however, signs of a shift in traditional, top-down conservation policies. Initiatives such as the Makuleke Agreement and the Kwa-Zulu Nature Conservation Management

²⁴ Koch E Op cit (note 12)@215

²⁵ White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity – N1095/1997, Government Gazette No. 18163 dated 28 July 1997@27

Act 9 of 1997 may set the scene for a new people-friendly attitude to conservation and natural resource management in South Africa.

These legal developments display South Africa's potential to become an international path-breaker in the successful implementation of co-management arrangements with indigenous communities.²⁶ Wildlife has been identified as an area in which the country has a "global competitive advantage"²⁷ and thus a valuable resource that has the potential to improve the quality of life of all South Africans. In spite of these encouraging signs, there are a few major areas that need to be addressed in the transformation process. Chapter nine examines the issues surrounding land restitution, eco-tourism and participatory management and reveals that community-based conservation is an ongoing challenge with no simple formula as a solution.

The thesis concludes with a word on the South African government's most recent plans to ensure that wildlife conservation and socio-economic development do not continue to be mutually exclusive or mutually destructive objectives. The Department of Environmental Affairs and Tourism is about to launch the National Biodiversity Strategy and Action Plan, aimed at marrying these two goals. At the end of the day, however, the best approach will result from a combined effort of the state, local indigenous communities, conservationists, traditional leaders, natural resource managers, land-use planners, non-governmental organisations, environmental policy-makers and all members of South African society.

²⁶ Cock J and Fig D ' From Colonial to Community-Based Conservation: Environmental Justice and the National Parks of South Africa.' (1999) <http://www.sunsite.wits.ac.za/env/justice.htm>.

²⁷ Financial Mail – 20 September 1991 quoted in Koch E Op cit (note 12) 220

CHAPTER 2: NATIONAL PARKS

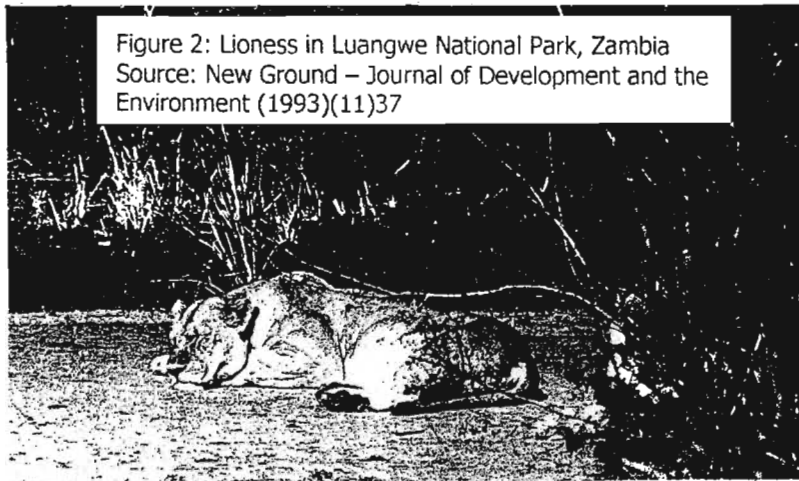


Figure 2: Lioness in Luangwe National Park, Zambia
Source: New Ground – Journal of Development and the Environment (1993)(11)37

Protected areas and national parks have truly become international phenomena. Protected areas now exist in 169 countries, covering approximately 7 734 900 square kilometres or some 5.2 % of the earth's total land area.²⁸ Strictly protected areas, such as national parks, strict nature reserves and natural monuments cover 3% of the earth's surface.²⁹ At the IV World Congress on National Parks and Protected Areas, held in Caracas in 1992, it was suggested that each country should designate at least 10% of each biome under its jurisdiction as a protected area. Countries such as Costa Rica, Honduras, Bhutan, Botswana and Tanzania have brought nearly 25% of their national territories under protected areas, and many more are approaching this level.³⁰

2.1 The Roots of National Parks: the influence of the United States of America

The concept of a national park can be traced back to as far as 1832, when American artist George Catlin suggested the idea of a "nation's park, containing man and beast, in all wilderness and freshness of the nature's

²⁸ This is roughly the size of the United States or twice the size of India

²⁹ World Conservation Monitoring Centre (1992)

³⁰ Ghimrie K and Pimbert M 'Social Change and Conservation: An overview of issues and concepts'. Chapter 1 in Ghimrie K and Pimbert M *Social Change and Conservation* (1997) 11

beauty.”³¹ A tradition of ‘wilderness’ emerged in the late nineteenth century. This was essentially a place of refuge from the ills of civilisation, something to be preserved for the recreation of the human spirit. The Yosemite Park Act of 1864³² and the Yellowstone National Park Act³³ of 1872 were subsequently enacted.

The main debate surrounding the management of these early parks concerned the dilemma of preserving the natural resources while simultaneously providing recreational opportunities within park boundaries.³⁴ The object of Yellowstone National Park was declared to be, “the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities or wonder within the said park and their retention in their natural order.” At the same time Congress also stated that Yellowstone was to be “set apart as a private park or pleasuring ground for the benefit and enjoyment of the people.”³⁵

The storm that brewed between conservationists in the National Parks Service and concessionaries with a commercial interest in these parks resulted in the passing of further legislation. The National Parks Systems Concessions Policy Act of 1965³⁶ provided that, “the preservation of the park requires such public accommodations, facilities and services...should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values.”³⁷

³¹ ‘The National Parks: Shaping the System’ National Park Service, United States Department of the Interior – (1991) 10

³² Ch 184, 13 Stat 325 (codified at 16 USC s48, 1994)

³³ Ch 24, 17 Stat 32 (codified at 16 USC ss21-40c, 1994)

³⁴ Jeffrey MI ‘National Parks and Protected Areas: Approaching the New Millennium.’ (1999) Acta Juridica 163@166

³⁵ Yellowstone National Park Act of 1864, 16 USC s21 and s22, 1994.

³⁶ Publication No. 89-249, 79 Stat 969 (codified at 16 USC ss20 20g, 1994)

³⁷ See also the National Park System Organic Act of 1916, ch408, 39 Stat 535 (codified at USC ss 1-4, 1994)

What seemed to pass the eye of Congress, however, were the rights of the people most affected by the establishment of these parks – the local indigenous communities. This was probably due to the popular public opinion that Indians were ‘sneaking red devils’. Although Yellowstone was originally conceived as a preserve for both nature and Native American Indians, the forced removals of the Shoshone People of Yellowstone did not accord with this idea. The violent conflicts, which subsequently ensued in 1877, resulted in the death of as many as 300 people.³⁸

Despite the apparent disregard for human rights, the United States model of nature and protected areas has powerfully shaped the global pattern of conservation and has led to the establishment of national parks in both developing and developed nations. During the nineteenth and twentieth century, Canada, Australia, New Zealand and Mexico followed hot on the heels of America in the creation of their own national parks. In 1925, King Albert established Africa’s first national park in Zaire.³⁹ The proclamation of national parks in Europe and Asia completed the global movement.

2.2 The Preservationist Approach to Conservation

The United States model of national parks was based on the preservation of entirely pristine and virginal landscapes via the exclusion of human occupation within its boundaries. This viewpoint was given legislative voice in the form of the Wilderness Act of 1964⁴⁰. This Act defines ‘wilderness’ as “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”⁴¹

The idea that local indigenous communities should be allowed to manage and utilize the natural resources within national park boundaries would

³⁸ Ghimrie K and Pimbert M Op cit (note 30) 104

³⁹ Although the Albert National Park is widely acknowledged as the first national park on the African continent, the Sabie Game Reserve had already been founded in 1898 in South Africa. In 1926, it became known as the now world famous Kruger National Park.

⁴⁰ Codified at 16 USC ss1131 - 1136

⁴¹ Glavovic PD ‘Wilderness: source or resource? A suggested Wilderness Act for South Africa?’ (1985)18 CILSA 343@350.

have been considered heretical to early American conservation. The current United States National Parks Service still upholds this long tradition of preservation.

The fundamental principles of the preservationist ideology can be summarized as follows:

- wildlife conservation can only work by adopting a total position against killing and use of wildlife
- biodiversity conservation can be achieved by not buying wildlife products, regardless of whether they are produced through approved management systems
- wildlife conservation in the developing world can succeed without generating economic returns to land owners and to the traditional custodians of biological diversity
- all wildlife populations are fragile entities driven closer to extinction by any human use ⁴²

These assumptions still form the backbone of many modern Western-style national parks management systems. While it may be true that hunting accounts for the extinction of many species, it appears that habitat changes account for a far larger number.⁴³ The setting aside of vast areas of land as national parks, is thus widely regarded as key to the success of modern conservation, which aims to protect whole ecosystems and habitats rather than individual species.⁴⁴

⁴² Pimbert M and Pretty J 'Parks, People and Professionals: Putting participation into protected areas management.' Chapter 6 in Ghimrie K and Pimbert M Op cit (note 30) 300

⁴³ Cadwell L K *International Environmental Policy- Emergence and Dimensions* (1990) 215

⁴⁴ Glavovic, P.D 'Wilderness, source or resource: A suggested Wilderness Act for South Africa?' (1985) 17 CILSA 343@344 - It has been suggested that the maintenance of these 'regions of biotic freedom' may be the only way to protect biotic complexity and diversity.

2.3 People-Orientated Conservation

More recently, there has been a break away from adherence to managing national parks based strictly on preservationist principles, for a number of reasons. These include:

Firstly, the popular belief that 'wilderness' is a place void of any human interference can be seen as nothing more than a myth. What conservationists believe are 'pristine' landscape or 'untouched' ecosystems are, in fact, mostly human cultural artefacts. An example is the tropical forests of the Amazon, where 'natural' features are often the product of modifications by the indigenous Amerindian population. Many plant and animal species that have long been considered 'wild' are actually carefully nurtured by these communities. Home gardens, for example, often attract wildlife; and the populations of several species have increased as a result of crops or fruit trees planted by indigenous forest people. Where land is largely uninhabited, it is often due to forced migration and resettlement, rather than any natural cause.⁴⁵ Furthermore, it is estimated that in 1985, some 70% of the world's protected areas were actually inhabited.⁴⁶

Secondly, the socio-economic circumstances in which the original concept of a national park originated, i.e. a relatively affluent United States, are very different to that of developing countries. National parks originated in the mountainous West of the United States, where most native inhabitants were decimated by wars, disease and broken treaties. In stark contrast, the Third World context is one of overpopulation, land hunger and poverty. Human populations in Africa have increased between 10 and 16 fold since 1900. The population of Zimbabwe has increased from about 500 000 in 1900 to just over 8 million in 1982. Ownership of cattle, the dominant domestic animal, has increased proportionately. The level of

⁴⁵ Stevens S 'Inhabited National Parks: Indigenous Peoples in Protected Landscapes.' (1986) IUCN (East Kimberley Working Paper No.10)

⁴⁶ In Latin America, the percentage may be as high as 85%

urbanisation is low, at less than 25% of the population and subsistence agriculture is the dominant form of land use, with wood fuel as the primary source of energy.⁴⁷ Are governments faced with these crises to meet basic human needs really justified in the blind importation of a national parks model that is based on the preservationist style?

Lastly, not only is the preservationist approach unacceptable from a socio-economic perspective, it also often fails to meet with conservation objectives. Developing states such as Botswana, Namibia, South Africa, Zambia and Zimbabwe have found that the promotion of community participation in the ownership, management and enforcement of sustainable utilisation is a far more effective and desirable conservation tool than traditional 'command and control' mechanisms. In Kenya, where all hunting and killing of elephants is illegal, the elephant population dropped from about 65 000 to 19 000 during the 1980's.⁴⁸ In Zimbabwe, on the other hand, where the sustainable utilisation of its elephants has been allowed, there has been growth from 30 000 to 43 000 in the same period.

The exclusion of local people from wildlife resources has not only heightened the socio-economic problems that plague impoverished communities, it also has had an adverse effect on the natural resources of the affected area. "People prevented from using their wildlife legally will ignore it, eliminate it, or use it illegally, to the disadvantage of the resource and those who might develop it and use it legally."⁴⁹ No anti-poaching unit or fence can be expected to protect the biodiversity within national parks, if these are regarded as isolated islands amidst a sea of black rural poverty. Surrounding degraded environments limit gene-flow,

⁴⁷ Cumming D 'Conservation Issues and Problems in Africa' Chapter 3 in Lewis, D and Carter N *Voices from Africa: Local Perspectives on Conservation*. (1993) 34

⁴⁸ See Hiemert A "How the elephant lost his tusks" 104 Yale Law Journal (1995) 1473@1488.

⁴⁹ 'Sharing the Land – Wildlife, People and Development in Africa.' (1994) IUCN/ ROSA Environmental Issue Series No 1@ 4

alter nutrient and water-cycles and produce regional and global climate changes, which may ultimately threaten the existence of these 'island parks'. In order to ensure that national parks have an indispensable role to play in the future South Africa, they will need to be part of a broader approach to land-use planning and management.⁵⁰

Given the inadequacies of the preservationist approach, it would be advisable for developing nations to take a closer look at all the options, before continuing to import the United States model into the management regime of their national protected areas. Governments need to realise that it does not represent the only choice for national park management. For example, the historical development of conservation areas in Britain has always respected existing rights and sought to maintain the established farming system. Instead of regarding local communities as a threat, British conservationists formally include local government bodies in their management, and employ special mechanisms to ensure that local residents have a direct influence in decision-making.⁵¹

2.4. The IUCN Classification System for Protected Areas

A more inclusive attempt to define the objectives of national parks and protected areas is the International Union for the Conservation of Nature Guidelines for Protected Areas Management Categories.⁵² Here, a protected area is defined as "an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means."⁵³

⁵⁰ Liebenberg L 'Towards a New Conservation Policy.' (1994) Policy Paper No.4 of the Land and Agricultural Centre and the Overseas Development Institute@8

⁵¹ Colchester M 'Salvaging Nature: Indigenous Peoples and Protected Areas.' Chapter 4 in Ghimrie K and Pimbert M Op cit (note 30) 100

⁵² IUCN, 1994

⁵³ IUCN Guidelines for Protected Area Management Categories(1994) IUCN:5

Under this definition, the core objectives of the management of protected areas are scientific research, wilderness protection, preservation of species and genetic diversity, maintenance of environmental services, protection of specific natural and cultural features, tourism and recreation, education, sustainable use of resources and maintenance of cultural and traditional attributes. Six categories provide for gradation according to the extent of human intervention, from virtually no impact to an intensive level of human impact that is still compatible with nature protection.⁵⁴ This attitude is a vast expansion on the narrow ecological imperative of the preservationist approach.

CATEGORY	NAME	MANAGEMENT OBJECTIVE	SOUTH AFRICAN LEGAL OR OTHER EQUIVALENT CATEGORY ⁷
Category Ia	Scientific Reserves	Managed mainly for scientific research and monitoring	<ul style="list-style-type: none"> • Special nature reserves • Wilderness areas
Category Ib	Wilderness Area	Managed mainly for wilderness protection, subsistence, and recreation	<ul style="list-style-type: none"> • Special nature reserves • Wilderness areas
Category II	National Parks and Equivalent Reserves	Managed mainly for ecosystem protection and recreation	<ul style="list-style-type: none"> • National parks • Provincial parks and nature reserves • Indigenous state forests
Category III	Natural Monuments and Areas of Cultural Significance	Managed mainly for conservation of specific natural or cultural features	<ul style="list-style-type: none"> • Natural monuments • Monuments • Botanical gardens • Zoological gardens • Natural heritage sites • Sites of conservation significance
Category IV	Habitat and Wildlife Management Areas	Managed mainly for conservation through management intervention	<ul style="list-style-type: none"> • Provincial, local, and private nature reserves • Conservancies
Category V	Protected Land and Seascapes	Managed mainly for land and seascape conservation and recreation	<ul style="list-style-type: none"> • Protected natural environments • Natural resource areas • Scenic landscapes • Urban landscapes
Category VI	Managed Resource Protected Area	Managed mainly for the sustainable use of natural ecosystems	<ul style="list-style-type: none"> • Mountain catchment areas

Figure 3: IUCN Protected Areas Categories
 Source: White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity N 10957/1997, Government Gazette No.18163 dated 28 July 1997. 31

⁵⁴ Barnard, D *Environmental Law for All* (1999) 320

Advantages of IUCN classification system are the facilitation of legislation for protected areas, planning management strategies, making appropriate management decisions, controlling both the type and intensity of use and justifying the benefits claimed for the protected areas policy. Furthermore, where these categories gain international acceptance, the IUCN is able to work more effectively with national departments.⁵⁵

The system also appears to have taken the social development needs of local communities into account by naming the sustainable utilisation of resources as one of the primary objectives of managing protected areas. In addition, a new Category VI – Managed Resource Protected Area, has been included which provides specifically for the sustainable flow of natural products and services to meet community needs.⁵⁶

However, the practical benefits of this categorisation system are far less obvious for the poor rural communities. Studies have indicated that those categories, which do allow for some human use, are unevenly represented in developed and developing states. Europe, for example, contains over half of the world's category V sites. This reflects that in Europe, places where people can co-exist with nature, are deemed worthy of special attention. In sharp contrast, category V sites are under represented in the protected area network of developing nations: 4 in central America (0.01% of the total land area), 56 in South Asia (0.09%), 20 in sub-Saharan Africa (0.1%) and 7 in the Pacific (0.03%).⁵⁷ Category II – National Parks remains the most frequently used category in the developing countries.⁵⁸

⁵⁵ Hanks P and Glavovic PD Protected Areas Chapter 27 in Fuggle RF and Rabie MA (eds) *Environmental Management in South Africa* (1992) 691

⁵⁶ In order to qualify for this category, however, it is a requirement that at least two-thirds of the area remain in its 'natural' state

⁵⁷ World Conservation Monitoring Centre (1994).

⁵⁸ Brechin S, West P, Harmon D and Kutay K 'Resident Peoples and Protected Areas: A framework for Inquiry.' Chapter 1 in West P and Brechin S *Resident People and National Parks: social dilemmas and strategies in international conservation*. (1991) 10

According to the 1994 IUCN Guidelines, a national park is defined as, " a natural area of land and/ or sea designated to

- a) protect the ecological integrity of one or more ecosystems for present and future generations,
- b) exclude exploitation or occupation inimical to the purposes of designation of the area and
- c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible."

This definition displays a sentiment, which is distinctly reminiscent of the early United States perspective. Aldo Leopold, who is regarded as one of the forefathers of wilderness conservation in the United States, conceived of a 'land ethic', in terms of which a thing is only right when it tends to preserve the integrity, stability and beauty of the biotic community and wrong when it tends otherwise.⁵⁹

Strict adherence to the definitional requirements of a national park have resulted in many countries passing national park legislation requiring the removal of resident people and the denial of their access to natural resources, within unilaterally demarcated boundaries.⁶⁰ As a result, conservationists find themselves legally obliged to resettle people from national parks, even though there is no clear evidence that their presence poses a threat to the local eco-system.⁶¹ Although the IUCN's Guidelines represent a major step forward in including local people in conservation, it is ultimately up to the individual countries to utilise the system in ways that benefits all members of society.

⁵⁹ Leopold A *Sand Country Almanac* (1966) 240

⁶⁰ Including South Africa, in the form of the National Parks Act 57 of 1976.

⁶¹ An example is the Korup National Park in Cameroon. Even though studies revealed that the hunting, gathering and fishing of local villagers was occurring at a sustainable level, WWF advised a voluntary resettlement programme due to the fact that the inhabitants activities were seen as incompatible with the operations of a national park. See Colchester M Op cit (note 51) 107

2.4 A 'Preservationist' Approach in South Africa?

The attitude of the first warden of the Kruger National Park, James Stevenson-Hamilton typified the preservationist ideology of early South African conservation ⁶², " It has been impressed on me that the first difficulty would probably be with the natives, since these and the game could not be expected to exist together, and I had already decided in my own mind that... the Reserve would be cleared of all human inhabitants."⁶³

The question that arises then is: In a country where 6 million people are dependant on informal housing⁶⁴, where blacks earn an average of R14,90 for every R100 earned by whites⁶⁵ and 10% of the poorest people live in black rural areas, contributing a mere 1 % to the total consumer spending⁶⁶, would it be socially, politically, economically or ecologically responsible for the South African government to continue to take a 'preservationist' approach to its national parks?

It has been said that national park use has "a purpose higher and apart from purely recreational, entertainment, or economic values. It is partly an act of nation-building.⁶⁷" South African national parks have the potential to fulfil this role, and become a world leader in international efforts to conserve biodiversity. This will, however, largely depend on how soon the government realises that conservation is as much a sociological challenge as a biological one.

⁶² Skukuza is the first and most famous rest camp in the Kruger National Park and is named after James Stevenson Hamilton. It was bestowed upon him by the Tsonga people, who were forced to vacate their village, so that the park could be established. It means, "he who sweeps clean"

⁶³ Koch E Op cit (note 12) 217

⁶⁴ Sake-Beeld 04/10/1999

⁶⁵ The Sunday Times 18/03/2001

⁶⁶ <http://www.polity.org.za>

⁶⁷ Lovett F N *National Parks and the Common Good* (1998) 8.

CHAPTER 3: LOCAL INDIGENOUS COMMUNITIES

According to the International Labour Organisation, there are about 5000 different indigenous tribal people living in 70 countries across the world. The total world population is estimated at approximately 300 million.⁶⁸ Terms such as 'traditional societies', 'indigenous people' and 'local communities' have become the subject of recent literature, especially since the establishment of the United Nations.⁶⁹ Despite numerous efforts to determine the subjects of these terms⁷⁰, a universally acceptable definition remains elusive.

If South Africa is to develop legal mechanisms, which empower 'local indigenous communities' to manage natural resources in and around national parks, legislators will need a clear idea of who the beneficiaries of this strategy will be. Given the cultural diversity of the country, this will not be an easy task. In order to explore this challenge, the following section will look at attitudes towards indigenous communities and their relationship with nature.

3.1 The Colonial Perspective

The idea that humankind is apart from nature is deeply rooted in Western civilisation. In contrast to the 'animistic' religions of many indigenous African people, Judeo-Christian traditions tell of an origin in which man was given dominion over animals. In Ancient Greece, for example, 'wilderness' was perceived as the domain of wild, irrational female forces⁷¹ that contrasted with the rational culture that was ordered by males. The

⁶⁸ <http://www.kivu.com/CIDA>

⁶⁹ Barsh 'Indigenous Peoples in the 1990's: From object to subject in international law?' (1994) Harvard Human Rights Journal @33.

⁷⁰ E.g. The World Bank identifies them as 'social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged by the development process.' (World Bank, 1990) Others suggest that they are 'self-identifiable as a people, wholly or partially self-governed, and live within a larger nation.' (<http://www.kivu.com?CIDA%20?Handbook/cidawo.html>)

⁷¹ The Amazons were considered long-haired, naked, female savages who represented the antithesis of Greek civilisation.

notion that society had a destiny to tame the wilds and educate the 'savages' that roamed therein, became a fundamental truth and a political imperative. In British eyes, black Africans were regarded as 'barbarians', unable to appreciate European 'refinements', such as notions of cruelty and pleasure hunting. Popular perceptions in the early twentieth century were that Africans destroyed wildlife, spoiled the recreation of sports hunters and managed to escape wage labour by subsisting on wildlife.⁷²

The attitude of the colonists was reflected in the discriminatory legislation, which was deliberately aimed at excluding indigenous people from utilizing wildlife. Harsh restrictions on trespassing, firearm and dog ownership and a ban on all trapping of wildlife deprived African of a crucial source of protein. Subsistence hunting was declared illegal, while recreational hunting became entrenched as a socially exclusive activity of the white elite.⁷³ The only role that an African played in conservation was that of a 'courageous and loyal native ranger', who was tolerated as a menial labourer, rather than respected as a partner in natural resource management.

These racist policies seriously undermined conservation efforts in Africa. Wildlife, once an important asset and highly regarded and protected by people, lost its value. Poachers, who were once the enemies of people, now became the sole suppliers of the benefits of wildlife and enjoyed protection from nearby communities. Finally, the local communities began to despise wildlife departments and game scouts. Led by their chiefs, they were determined to thwart and destroy the system that excluded them.⁷⁴

⁷² Wells M 'The Ecological and Social Role of Protected Areas in the new South Africa.' (1996) Policy Paper No.6 of the Land and Agricultural Policy Centre and the Overseas Development Institute.40

⁷³ Koch, Fabricius and Mangome 'Community Wildlife Management in South Africa: Challenging the assumptions of Eden' ongoing study quoted in Glasewski J *Environmental Law in South Africa* (2000) 37.

⁷⁴ Nsanjama H (former director of National Parks and Wildlife in Malawi) Introduction to Lewis D and Carter N *Voices from Africa: Local perspectives on Conservation* (1993) 3

This viewpoint is expressed by a rural field worker in Kwa-Zulu Natal: "People are not against conservation. They are angry with the manner in which it is done. Those in charge are more interested with law enforcement than conservation and that is why there is hatred in the hearts of the people."⁷⁵

3.2 The View of Local Indigenous Communities

Many ethnically distinct and marginalized people are increasingly adopting the term 'indigenous' to describe themselves. This is because of the rights they believe are associated with this term: rights to lands and territories, to maintain their cultural traditions and languages, the exercise of their customary law, to govern themselves through their own organisations, the right to self determination and lastly, the right to control their own natural resources.⁷⁶ Indigenous communities consistently emphasize the spiritual, social, cultural, economic and political significance of lands, territories and resources to their continued survival and vitality.⁷⁷

In general, indigenous communities have developed ways of life remarkably attuned to their local environment. Magqubu Ntombela, an elder of the Zulu people and a game conservation officer in Kwa-Zulu Natal for over 60 years, states, "I understand the plants and animals, birds and insects. I can tell you the rain is coming. All this knowledge is in my blood. I know of 'Hlonipa', the language of respect, which we use when referring to animals and in the presence of our Kings and Chiefs."⁷⁸

Indigenous people often employ traditional management systems for natural resources, which maintain ecosystems and biodiversity at a high

⁷⁵ Koch E Cooper D and Coetzee H *Water, Waste and Wildlife: The politics of ecology in South Africa* (1990) 15

⁷⁶ Colchester M 'Salvaging Nature: Indigenous Peoples and Protected Areas' Chapter 4 in Ghimrie K and Pimbert M *Social Change and Conservation* (1997)

⁷⁷ Torasofsky G 'Assessing the International Forest Regime.' (1999) IUCN Environmental Policy Law Paper no.37 @70

⁷⁸ Martin V (ed) *For the Conservation of Earth.* (1988) 291

level of integrity. These systems are often deeply rooted in religion and belief systems. Places of ancestral worship/visitation and rainmaking ceremonies were commonly waterfalls, hot springs, gorges, thickets, mountains and dense forests. The legends connected with these sites express a profound sense of awe about the mysteries of life, death, creation and meaning. The violation of the sacred and the holy brought imminent death.⁷⁹ In traditional African cultures, elephant, rhinoceros, buffalo, hippopotamus, lion and leopard were hunted only under exceptional circumstances. For example, elephants were killed for ivory to make bangles. One bangle was used by several generations in the same lineage. The older the bangle, the higher it was regarded.

The fact that these indigenous management systems displayed a deep understanding of Western conservationists' concepts, such as 'wise use' and 'sustainable utilisation', was not due to the need to preserve 'wilderness' for recreational and aesthetic worth, but rather as a result of their everyday interaction with nature. Nicocanor Gonzalez comments on the indigenous Kuna Indian people, "...they are familiar with the laws of nature. They are not conservationists, rather they know how to interrelate humans and nature. In this sense, then, I don't believe that indigenous people are conservationists, as defined by ecologists. We are not nature lovers. At no time have indigenous groups included the concepts of conservation and ecology in their traditional vocabulary. We speak rather of Mother Nature."⁸⁰

Resource utilisation was always implicit in the way indigenous people interacted with nature. What conservationists protect as a 'fragile wilderness' is seen as a 'plentiful pantry' by local inhabitants. The rules that govern the management of natural resources are not found in colonial statute books, but rather in unwritten tribal laws, which are reinforced by

⁷⁹ Simbotwe M P 'African Realities and Western Expectations' Chapter 2 in Lewis D and Carter N Op cit (note 74) 16

⁸⁰ Colchester M Op cit (note 76) 113

indigenous religious sanctions. Breaking of these laws leads to alienation from the community rather than criminal conviction prescribed in colonial-style laws.

Thus while the stereotypes created by society in the colonial and apartheid era, cast blacks in the role of poachers, and whites in the role of conservationists, the reality of the relationship between indigenous local communities and nature, appear quite different. On numerous occasions, indigenous people around the globe have risked their lives, in order to protect the natural resources they believe is rightfully theirs. In Kho Yai, Thailand, for example, enforcement measures following the establishment of the national park were met with hostility. Armed clashes between the Royal Forestry Department and villagers resulted in a loss of life on both sides. In Costa Rica, displaced workers from abandoned banana plantations invaded Corcouda National Park on the Osa Peninsula in 1985. Attempts to evict these people eventually escalated into armed conflict.⁸¹

3.3 The International Perspective

International Labour Organisation Conventions No.107 and 169 are the only international legal instruments dealing exclusively with tribal and indigenous peoples. Convention No.169 on Indigenous and Tribal Peoples was adopted in 1989 and has been ratified by thirteen countries. Article 1 of this Convention defines indigenous and tribal people as:

- 1.a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sectors of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws and regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the

⁸¹ Wells M, Brandon K and Hannah I People and Parks: Linking Protected Area Management with Local Communities (1992) The International Bank for Reconstruction and Development. 10

country, or a geographical region, to which the country belongs at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as fundamental criterion for determining the groups to which the provisions of this Convention apply.⁸²

3.4 South Africa: Listening to Local Indigenous Communities

In South Africa, a failure to involve indigenous people in environmental matters has caused dissatisfied rumblings amongst many local communities.⁸³ The paternalistic, authoritarian attitude with which conservation programmes have been carried out, has led to the negative environmental perceptions and attitudes of many black people, ranging from "apathy to hostility".⁸⁴

The dominant paradigm of Western conservation is to 'educate' Africans about nature and ecology, 'subjects' in which they have themselves developed intimate knowledge over thousands of years. Western conservationists need to learn to stop 'teaching' and start 'listening' to local indigenous communities if national parks in Africa are going to survive.

⁸² Beltron J (ed) 'Indigenous Peoples and Protected Areas: Principles, Guidelines and Case Studies' (1999) World Commission on Protected Areas: Best Practice Protected Area Guidelines – Series No.4

⁸³ "If conservation means losing water rights, losing grazing and arable land and being dumped in a resettlement area, without the most rudimentary infrastructure and services, as was the case when the Tembe Elephant Park was declared in 1983, this can only promote a vigorous anti-conservation ideology amongst the rural communities of South Africa." Richard Clasey, a rural fieldworker quoted in the Weekly Mail, 6/10/1989

⁸⁴ Farieda Khan quoted in Cock J and Koch E (eds) *Going Green: People, politics and the environment in South Africa* (1991) 1

If the danger of future violent conflicts are to be avoided in the establishment and management of national parks in South Africa, mutual respect and open communication will have to be mandatory features in negotiations between local indigenous people and conservationists. Any legal provision, which deals with 'local indigenous people', will have to take due cognisance of the multitude of cultural norms and values in South Africa and avoid a simplistic view of the situation. In particular the following points can be made:

3.4.1 Heterogeneous societies

It is often assumed that traditional societies live in a natural state of harmony with their surrounding environment. This is a notion, which is heavily influenced by modern Western romanticism. While some indigenous communities had cultural taboos on killing too many animals⁸⁵, others killed large numbers of animals by setting fires or digging huge pits. Not all Africans were hunter-gatherers or pastoralists, for whom wildlife posed no threat. Many were agriculturalists, who would not tolerate marauding elephants and baboons destroying their crops.⁸⁶ Furthermore, there are examples where members of traditional societies have harmed the environment of specific regions, just as there are examples where modern societies have co-existed rather well with their natural environment.⁸⁷

3.4.2 Enforced primitivism

Conservation policies have accommodated indigenous people in protected areas, as long as they maintain a traditional lifestyle and do not change the way they hunt or farm. This strategy has been referred to as 'enforced primitivism' by the World Bank. Enforced primitivism maintains the

⁸⁵ The Boran, for example, believed that a person would go crazy or die, if they killed a bird of prey.

⁸⁶ Bonner W *At the Hand of Man: Hope and Peril for Africa's Wildlife* (1993) 44

⁸⁷ Brechin S, Hamon D and Kutay K 'Resident Peoples and Protected Areas: A framework for Inquiry. Chapter 1 in West P and Brechin S *Resident People and National Parks: social dilemmas and strategies in international conservation*. (1991) 10

stereotype of indigenous communities as 'traditional people living in quaint grass huts'. It does not respect the fact that societies are dynamic, adaptive entities, which may want to engage with the culture, technology and resource utilisation patterns of the modern world. An example is the decision to allow the last community of Bushmen to reside in the Kalahari-Gemsbok National Park on condition that they maintained traditional hunting patterns. What they really wanted, however, were clothes, improved housing and hunting dogs. This did not fit in with the appropriate 'tourist image' which park officials sought to portray.⁸⁸

3.4.3 Traditional Authorities

Community members themselves are often divided, with inherent conflicts of interest regarding the distribution of natural resources. An investigation of the local power structure within the community should be carried out, prior to the implementation of any community-based conservation project. The traits of unity, homogeneity, coherence and stability should not be taken for granted.⁸⁹ Residents often complain that tribal authorities do not represent all sectors of the community.

In Swaziland, experience shows that institutions of chieftainship and customary forms of land tenure are not only undemocratic, but repressive as well. The king's contention that he holds assets 'in trust' for the nation, has been used as a smokescreen for private accumulation.⁹⁰

Environmental officials must also move away from the tendency to deal exclusively with local leaders appointed by the same hierarchically-organised government. Organisations such as youth groups and civic

⁸⁸ Study done by Robert Gordon in 1985 in Colchester M. Op cit (note 76) 106

⁸⁹ Hanna S and Jectoft S 'Human Use and the Natural environment: An overview of social and ecological dimensions' Chapter 3 in Hanna S Folje C and Maler K (eds) *Rights to Nature* (1996) 46

⁹⁰ Levin R "Tourism in Swaziland: development at a price" *New Ground – Journal of Development and the Environment* (1991)(3) 22

organisations should also be eligible to participate in the running of conservation areas within their constituency.⁹¹



Figure 4: Indigenous People of Swaziland
Source: New Ground – Journal of Development and the Environment (1991)(3)21

3.4.4 The Role of Women

Women are often left out of the equation in community development projects. The very policies that appear so apparently transformative in terms of 'local people' exercising voice, choice and solving problems for themselves, can turn, on closer inspection, to be supportive of the status quo, which is often highly inequitable for women.

The Joint Management Forestry Programme in India was hailed as a 'participation' success story. Further analysis revealed that it was gender exclusionary and highly inequitable. A Gujarat woman commented after her village received an award for environmental conservation, "What forest? Since the men have started protecting it, they don't even want us

⁹¹ van den Breemer P, Drijver C and Venema L (eds) *Local Resource Management in Africa* (1995) 21

to look at it!"⁹² There is a common belief that empowering women threatens the manhood of men.⁹³

3.5 A Broader Understanding of 'Community' Involvement

The focus of this thesis is the role of local indigenous communities in the management of natural resources in and around national parks: examples to be looked at, are such communities in South Africa the San and the Kalahari-Gemsbok National Park; the Makulele community and the Kruger National park; the Riemvasmaak society and the Augrabies National park and the indigenous people in the Richtersveld National Park. These communities deserve the strongest consideration in any community-based conservation policy, as they have been the prime target of discriminatory colonial and apartheid laws.

However, this should not derogate from the need to promote the general participation of all South African communities in the ownership, management and enforcement of sustainable resource utilisation⁹⁴. It must be remembered that 80% of the land surface area⁹⁵ is under private tenure, mainly under the control of white farmers. They own extensive tracts of natural habitats outside of present owned conservation areas and national parks.⁹⁶ Given this broader context, it is imperative that a future legal definition of 'community' is flexible enough to encompass all the peoples of South Africa's rainbow nation.

⁹² Cornwall A 'Making a Difference: Gender and Participatory Development.' Institute for Development Studies – Discussion Paper 378 (2000) 11

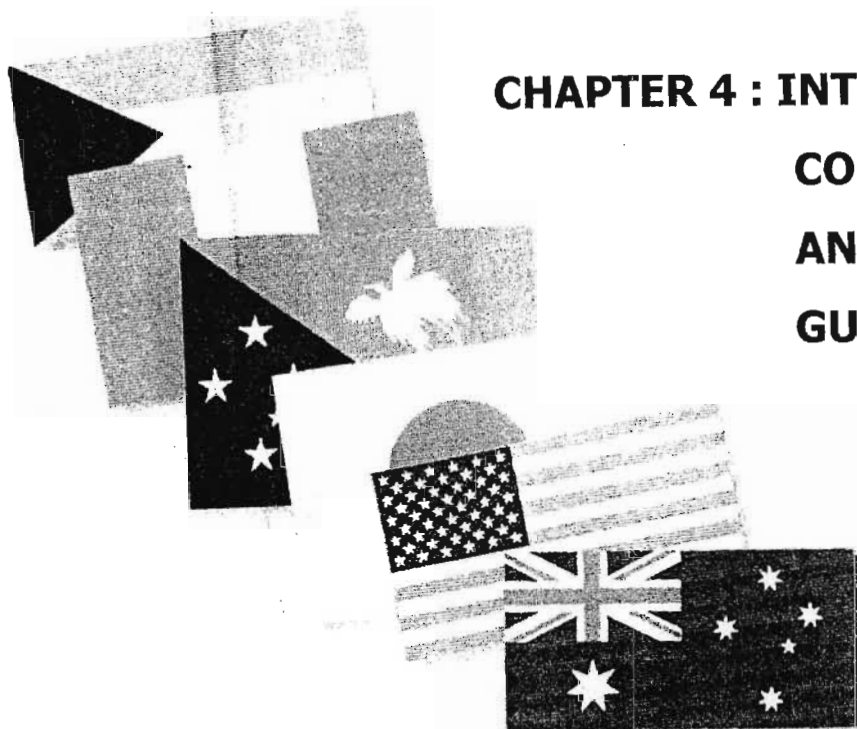
⁹³ 'Parks and People' New Ground – Journal of Development and the Environment. Supplement recording the Group for Environmental Monitoring (GEM) Conference held in 1993 in Broederstroom (1993)(13) 9

⁹⁴ See West P and Brechin S *Resident People and National Parks: social dilemmas and strategies in international conservation* (1991) 6. The authors of this book chose the terms 'resident people' instead of 'indigenous' as they felt that it was politically neutral and not bound by constraints of time or space. Their term 'resident peoples' consist of tribal peoples, acculturated tribal people, peasant people, farmers and rural citizenry and local entrepreneurs.

⁹⁵ Excluding the former homelands

⁹⁶ McDowell C "Legal strategies to optimise conservation of natural eco-systems by private landowners – restrictive legislation." (1985) 19 CILSA 450

CHAPTER 4 : INTERNATIONAL CONVENTIONS AND GUIDELINES



The indigenous communities in and around South Africa's national parks do not stand alone in having suffered from the lack of humanitarian concern displayed by preservationist governments. From the relatively unknown Kipedo Valley National Park in Uganda, to the world-renowned Grand Canyon National Park in the United States, the 'parks and people' relationship has emerged as a major concern on the international agenda.

4.1 International Conventions

A number of international conventions confirm the right of local indigenous people to participate in natural resource management in their areas:

4.1.1 The Rio Declaration on Environment and Development (the Rio Earth Summit)

The Rio Earth Summit was adopted by the United Nations Conference on Environment and Development (UNCED) in 1992. This Convention emphasizes the importance of involving indigenous people in the sustainable utilisation of resources and in management decisions affecting them.⁹⁷ The Conference declared that:

⁹⁷ De Villiers B "Democratisation of Conservation: community involvement in the management of national parks." (2000) (15) SA Public Law 176@182

“Indigenous people and their communities and other local communities have a vital role in the environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”⁹⁸ It also calls for “involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies.”⁹⁹

The ten year follow-up to the Rio Earth Summit will take place in South Africa in September 2002. The World Summit on Sustainable Development will see hundreds of heads of states and tens of thousands of delegates descend on Johannesburg.¹⁰⁰

In an address in Johannesburg on the 11th October 2001, the Minister of Environmental Affairs and Tourism, Mohammed Vali Moosa stated, “For developing countries, issues of energy, biodiversity, HIV/AIDS, waste, fresh water and desertification will be at the core of their agenda for the summit. Government sees the value of formulating common positions around these issues. The challenge, specifically for Johannesburg, is to create an enabling environment for these discussions to take place in a manner that will bring about change to the world. For ordinary people globally, this summit will be meaningless if it fails to come up with programmes aimed at addressing these issues and thereby create a difference in the way they live their daily lives.”¹⁰¹

⁹⁸ Principle 22, AILR (1997) 344-347

⁹⁹ Objective 36.3(c) of Agenda 21, which is an action plan and blueprint for sustainable development adopted at the 1992 Rio Earth Summit.

¹⁰⁰ Macloed F “The Future of Conservation.” Mail and Guardian Supplement – Green Trust Awards. 24/08/2001 – 30/08/2001.1

¹⁰¹ For people, planet and prosperity: celebrating the hosting of the World Summit on Sustainable Development. (2001) <http://www.environment.gov.za/NewsMedia/speeches/2001oct11>

4.1.2 The Convention concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention)

The World Heritage Convention was adopted at the General Conference of the United Nations Education, Scientific and Cultural Organisation (UNESCO) in 1972. The object of this Convention is the protection of natural and cultural areas of outstanding universal value. It recognises the fact that the cultural and natural heritage of humankind are inextricably interwoven.¹⁰² In its operating guidelines of 1995, UNESCO recommended that "the protection of traditional cultural landscapes is helpful in maintaining biological diversity."¹⁰³

South Africa has enacted the World Heritage Convention Act 49 of 1999 to give domestic effect to its international counterpart. The Act combines a fundamental commitment to conservation, with a strong emphasis on development. By balancing these two interests, the Act creates a legal instrument appropriate to South African circumstances, where high levels of poverty demand an approach that optimises the economic potential of World Heritage Sites, without compromising their cultural and ecological integrity.¹⁰⁴

The Act is based on a set of fundamental principles, the most pertinent being:

- i) the participation of all interested and affected parties in the governance of cultural and natural heritage must be promoted.¹⁰⁵

¹⁰² Atherton T "The Power and the Glory: National Sovereignty and the World Heritage Convention (1995) *The Australian Law Journal* (69) 631@634

¹⁰³ Operation Guidelines of the World Heritage Convention (1995) paragraph 38

¹⁰⁴ 'World Heritage Act' (2000) <http://www.polity.org.za/search/ooop/qfullhit.htm> The Greater St. Lucia Wetlands Park was the first of South Africa's World Heritage Sites. The subsequent regulations establish a statutory St. Lucia Authority, which is responsible for the overall management the Park. It has a duty to promote the direct involvement of communities and to stimulate local economic development.

¹⁰⁵ S 4 (1) (d)

- ii) all people must have the opportunity to develop the understanding, skills and capacity for achieving equitable and effective participation.¹⁰⁶
- iii) participation by vulnerable and historically disadvantaged persons must be encouraged.¹⁰⁷

4.1.3 The Convention on Biological Diversity (The Biodiversity Convention)

The Biodiversity Convention was one of the crop of international agreements harvested at the Rio Earth Summit in June 1992. The Convention has been signed by over 170 countries and ratified or acceded to by over 120, including the European Economic Community (EEC). The primary focus of this Convention is the conservation of biodiversity and the equitable distribution of benefits. The main provision relating to the parks and people relationship is Article 8, which deals with 'in situ' conservation. According to the Biodiversity Convention, each contracting Party shall, as far as possible and as appropriate:

- i) regulate and manage biological resources important for the conservation of biological diversity, whether within or outside protected areas, with a view to ensuring their conservation and sustainable use.¹⁰⁸
- ii) promote environmentally sound and sustainable development in areas adjacent to protected areas, with a view to furthering protection of these areas.¹⁰⁹
- iii) subject to its international legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional life styles relevant for the conservation and sustainable use of biological diversity and promote their wider application, with the approval and

¹⁰⁶ S 4 (1) (e)

¹⁰⁷ S 4 (1) (f)

¹⁰⁸ Article 8 (c)

¹⁰⁹ Article 8 (e)

involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilisation of such knowledge, innovations and practices.¹¹⁰

South Africa ratified the Biodiversity Convention on 02 November 1995 and during 1997 published a comprehensive White Paper on the Conservation and Sustainable Utilisation of Biological Diversity. Policy objective no. 1.3 of the Biodiversity White Paper is to establish and manage efficiently a representative and effective system of protected areas. In order to achieve this goal, government is obliged to “ensure the involvement of local communities in decisions concerning the design of new protected areas, the adjustment of protected areas and the development and implementation of management plans.”¹¹¹

The White Paper also identifies local communities as key players in the conservation and sustainable use of biodiversity. How this is effected will differ from community to community. In some instances, communities will play an important role in managing and using local resources, while in other cases, local knowledge and skills will be invaluable in assisting monitoring and inventory work. In certain circumstances, communities have a key role to play in rehabilitating degraded eco-systems.¹¹²

4.1.4 The Draft Declaration on the Rights of Indigenous People

This document has not yet been adopted by the General Assembly of the United Nations, and as such, does not yet have the status of an international convention. It does, however, contain the following provisions relevant to the ‘parks and people’ dilemma:

¹¹⁰ Article 8 (j) See de Klemm C and Shrine C ‘Wetlands, Water and the Law.’ (1999) Policy Paper No.29, IUCN 184 - this provision shows that the importance of preserving indigenous culture and knowledge has now formally been recognised in international law.

¹¹¹ White Paper on the Conservation and Sustainable Use of South Africa’s Biological Diversity – N1095/1997, Government Gazette No. 18163 dated 28 July 1997@27

¹¹² The Biodiversity White Paper *ibid* (note 111) Chapter 4 – 4.2 The role of key players.
89

- i) indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent.¹¹³
- ii) indigenous peoples have the right to practice and revitalise their cultural traditions and customs.¹¹⁴
- iii) indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights.¹¹⁵
- iv) indigenous peoples have the right to the conservation, restoration and protection of the total environment.¹¹⁶

4.2 Other International Guidelines

In addition to these conventions, certain international documents indicate the 'best practice' guidelines. The document titled 'Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies'¹¹⁷ is a collaborative work of the IUCN and the World Wildlife Fund (WWF).

The document responds to WCC Resolution 1.53¹¹⁸, adopted at the IUCN World Conservation Congress in Montreal, 1996. These principles provide a basis upon which to develop partnerships between indigenous people and protected area planners and managers. This will facilitate the establishment and management of protected areas, which overlap with ancestral indigenous and other traditional peoples' areas and/or include

¹¹³ Article 10

¹¹⁴ Article 12

¹¹⁵ Article 19

¹¹⁶ Article 28

¹¹⁷ Beltron J (ed) Best Practice Protected Area Guidelines – World Commission on Protected Areas (1999) Series No 4

¹¹⁸ Resolution 1.53 requests "the Director –General, the Secretariat and technical programmes, Commissions, members and Councillors of the IUCN, within available resources, to endorse, support, participate in and advocate the development and implementation of a clear policy in relation to protected areas established in indigenous lands and territories."

indigenous and local communities traditionally using their resources. These principles are:

- i) Indigenous and other traditional peoples have long associations with nature and a deep understanding of it. Often they have made significant contributions to the maintenance of many of the earth's most fragile ecosystems, through their traditional sustainable resource use practices and culture-based respect for nature. Therefore, there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of indigenous and other traditional peoples. Moreover, they should be recognised as rightful, equal partners in the development and implementation of conservation strategies that affect their lands, territories, waters, coastal seas, and other resources, and in particular in the establishment and management of protected areas.
- ii) Agreements drawn up between conservation institutions, including protected area management agencies, and other indigenous and other traditional peoples for the establishment and management of protected areas affecting their lands, territories, waters, coastal seas and other resources, should be based on full respect for the rights of indigenous and other traditional peoples to traditional, sustainable use of their lands, territories, waters, coastal seas and other resources. At the same time, such agreements should be based on the recognition by indigenous and other traditional peoples of their responsibility to conserve biodiversity, ecological integrity and natural resources harboured in those protected areas.
- iii) The principles of decentralisation, participation, transparency and accountability should be taken into account in all matters pertaining to the mutual interests of protected areas and indigenous and other traditional peoples.

- iv) Indigenous and other traditional peoples should be able to share fully and equitably in the benefits associated with protected areas, with due recognition to the rights of other legitimate stakeholders.
- v) The rights of indigenous and other traditional peoples in connection with protected areas are often an international responsibility, since many of the lands, territories, waters, coastal seas and other resources which they own or otherwise occupy or use, cross international boundaries, as indeed do many of the eco-systems in need of protection.

These international documents and conventions follow a long history of worldwide conflicts between protected area authorities and indigenous and other traditional peoples. As South Africa has both First and Third World elements, an account of the clashes and subsequent legal developments of the developing nations of Zimbabwe and Namibia; as well as the developed states of Canada and Australia, may help South Africa avoid the pitfalls experienced by other countries.

CHAPTER 5: INTERNATIONAL EXPERIENCE WITH COMMUNITY BASED CONSERVATION: ZIMBABWE, NAMIBIA, AUSTRALIA AND CANADA.

Community-based conservation strategies employed by other countries have already begun to shape the future of protected areas management and conservation in South Africa. The conservancy model used by Namibia has become increasingly popular amongst private landowners. Joint management agreements, pioneered by the Australian government, have strongly influenced the settlement of several landmark land claims in South Africa. This chapter will take a closer look at several of these international developments in order to assess the wisdom of their importation.

5.1 Zimbabwe

The crossing of the 196 member Pioneer Column on 11 July 1890 from South Africa into what later became known as Southern Rhodesia, signalled the start of the colonial regime in Zimbabwe.¹¹⁸ In order to accommodate the needs of white settler farmers, indigenous communities were forcibly removed to 'African Reserves' or 'Tribal Trust Lands'¹¹⁹.

Hunting was prohibited in these areas, thus depriving local communities of a traditional source of food. At the same time, large tracts of land were seized for the establishment of parks and recreation areas.¹²⁰

¹¹⁸ See McIvor C 'Management of Wildlife, Tourism and Local Communities in Zimbabwe' Chapter 9 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997) 242 - Under the pretext that colonial intervention was necessary in Mashonaland to protect the indigenous Shona people against the fierce and intrepid Ndebele, Cecil John Rhodes negotiated a royal charter with the British government. This charter gave him the right to occupy and exploit the land and its resources.

¹¹⁹ After independence, these areas became known as 'Communal Lands'.

¹²⁰ The Shangaan people were displaced from their homes in order to make way for the Gonarezhou National Park.

Since local communities had no legal access to wildlife, they were deprived of both the best agricultural lands of the country and wildlife resources.¹²² This caused a general attitude amongst local indigenous communities that wildlife was merely a threat or nuisance to people, cattle and crops. The resultant hostility turned into destructive behaviour as park fences were damaged and fires started within park boundaries. Poaching increased significantly and was approved as a defiant gesture against a powerful ruling regime.¹²³

The situation changed in the mid 1970's, when the first steps were taken to allow rural people to legally manage and sustainably harvest natural resources. For the first time in official documentation of the Rhodesian state, the phrase 'community access' appeared in policies related to wildlife management. The Department of National Parks and Wildlife Management (DNPWLM) launched a pilot project in the Sebungwe Region, south of Lake Kariba, named the 'Communal Areas Management Programme for Indigenous Resources' or CAMPFIRE.¹²⁴ This project and its effects will be discussed later.

5.1.1 Legislative Reform

The Parks and Wildlife Act of 1975 was instrumental in transforming Zimbabwe's conservation policy from the 'central protectionism' of colonial legislation to a 'devolution of use rights' to ordinary landowners. The Act deals with the rights of landowners to use wildlife to their own advantage, with minimum interference from the state. According to the Act, some landholders were designated as the "appropriate authority" for wildlife: the

¹²² The Tribal Trust Lands were characterised by low soil fertility, erratic rainfall and high temperatures.

¹²³ Hof W 'Wildlife Resources and Local Development: Experiences from Zimbabwe's CAMPFIRE Programme.' Chapter 7 in van den Breemer J, Drijuer C and Venema L (eds) *Local Resource Management in Africa* (1995) 112

¹²⁴ Glasewki J *Environmental Law in South Africa* (2000) 381 This initiative has been described as a flagship example of the way we can replace traditional 'command and control' approaches to resource management with local responsibility and participation.¹²⁴

owners or occupiers on alienated land, the Forestry Commission and the DNPWLM on all other land.¹²⁴ The 1975 Act was initially racially discriminatory as white people were the only occupiers of alienated land at the time. The issue was addressed by a 1982 amendment, which empowers the relevant Minister to appoint 'district councils' as the 'appropriate authority' to manage wildlife resources.

The Parks and Wildlife Act of 1975 did not confer ownership, but allowed local communities to become the proprietors¹²⁵ of wildlife. Ultimate responsibility remains with the state to ensure that wildlife resources are managed on a sustainable basis.¹²⁶

5.1.2 The CAMPFIRE Approach – Strengths and Weaknesses

The CAMPFIRE project started slowly, with only two 'district councils' being granted the status of 'appropriate authority' in 1989.¹²⁷ By 1995, however, twenty-six districts had been granted 'appropriate authority' status, including every district bordering a national park¹²⁸. CAMPFIRE also began to show tangible benefits to local communities. In the period 1990-1992, households in the Mahenye community each received around R90 and the community bought two grinding mills. In Binga, Plumtree and

¹²⁴ 'Acts, Amendments and Appropriate Authorities: CAMPFIRE's Legal Framework.'
<http://campfire-zimbabwe.org/facts-03.html>

¹²⁵ See Murphee M.W 'Communities as Institutions for Resource Management.' (1991) CASS Occasional Paper Series 4. Proprietorship does not denote full ownership, but rather a 'sanctioned use-right, including the right to decide whether to use the resource at all, the right to determine the mode and extent of their use and to right to benefit fully from their exploitation in the way they choose.'

¹²⁶ See Summers R 'Legal and Institutional Aspects of Community-Based Wildlife Conservation in South Africa, Zimbabwe and Namibia.' (1999) *Acta Juridica* 188 @197. The status of wildlife as state property was unaltered by the 1975 Act. While district councils were designated as the 'appropriate authority', the Department of National Parks and Wildlife Management retained the position as the 'responsible authority'.

¹²⁷ These were Nyaminyami and Guruve

¹²⁸ Under the umbrella of the DNPWM, an alliance was formed with the University of Zimbabwe's Centre For Applied Social Studies (CASS), Zimbabwe Trust (a local NGO) and a branch of the World Wildlife Fund For Nature, (WWF) to begin a programme to assist rural development, by aiding district councils to achieve the required level of management capacity of wildlife.

Tsholotsho, CAMPFIRE funds were spent on water projects, schools and clinics.¹²⁹

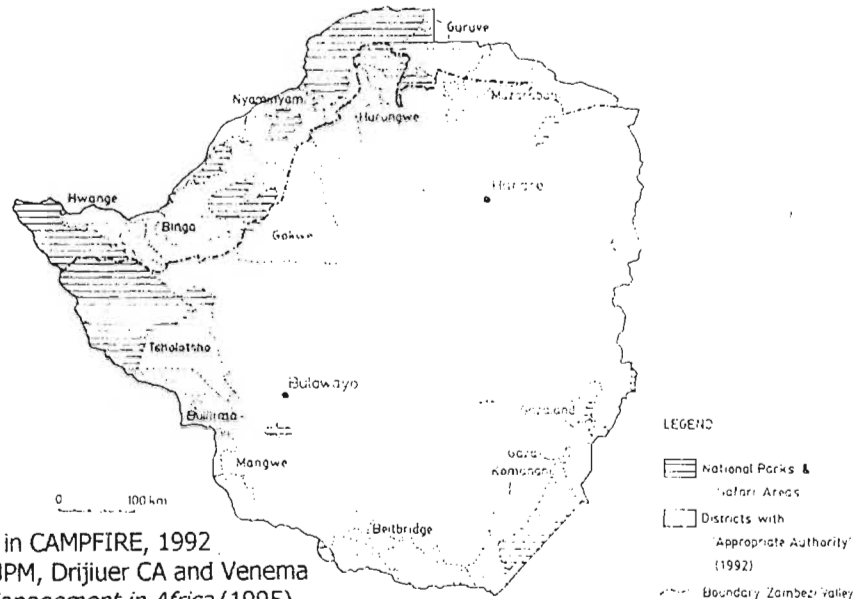


Figure 5: Districts involved in CAMPFIRE, 1992
 Source: van den Breemer JPM, Drijuer CA and Venema LB (eds) *Local Resource Management in Africa* (1995)
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The CAMPFIRE approach has thus achieved some credibility and popularity amongst professional conservationists and rural development planners.¹³⁰ However, opposition to CAMPFIRE states that the programme depends on hunting as the central income generating activity¹³¹, thus turning animal parts into a cash crop.¹³²

¹²⁹ 'Parks and People.' *New Ground –Journal of Development and the Environment* (1993)(13) Supplement recording the Group for Environmental Monitoring (GEM) Conference held in 1993 in Broederstroom. I

¹³⁰ See Parry D 'A Peoples Way with Nature.' *New Ground - Journal of Development and the Environment* 1991 (3)40 'The CAMPFIRE projects in Zimbabwe are pacesetters in southern Africa in involving local people in planning, implementing and managing strategies for wildlife utilisation and conservation. Perhaps South Africa could benefit from a look at the humanity of these schemes. Instead of pushing local people aside, they could take control of nature conservation and tourism in their areas.'

¹³¹ Most CAMPFIRE projects have earned the bulk of their revenues from game hunting and safari operations. However, several councils have explored the financial viability of more tourism based activities, such as photographic safaris, walking trails, canoe safaris and pony-trekking. See Munnik V 'Mavurandona' *New Ground - Journal of Development and the Environment* (1993) 40.

¹³² See 'Eco-Compass: Increased Scrutiny for Community-Based Conservation' <http://www.islandpress.org/global/development/campfire.html>. This movement is led by the Humane Society of the United States who argue that community based conservation programmes like CAMPFIRE, which emphasizes the economic value of wildlife, will ultimately lead the demise of species such as the elephant.

A major criticism of CAMPFIRE is that it fails to provide for 'grassroots empowerment' of the local communities. The statutory devolution of authority does not filter down far enough to those people who bear the highest costs of wildlife in their areas – the local communities on the ground.¹³³ Local communities themselves are not considered legal entities in terms of the Act, which means that the 'appropriate authority' status cannot be conferred directly upon them. Furthermore, membership of the district councils is dominated by executive staff, who are accountable to their parent ministry, rather than the local communities. A survey revealed that most African farmers viewed the district councils 'almost as remote and incomprehensible as central government.'¹³⁴

Other critics point out that CAMPFIRE projects fail to facilitate genuine community participation because they are seen as externally imposed models of conservation, rather than social development, as their primary objective¹³⁵. External interest groups, such as tour operators, hunting and safari outfits, government officials and NGO's tend to make crucial decisions in the running and organisation of the schemes. Continued dependence on these outsiders has resulted in little or no transference of skills to rural communities¹³⁶. While local communities have indeed benefited from development projects, meat or cash receipts, there has hardly been any real participation or capacity-building.

Lastly, there is growing awareness that South African conditions are very different to those in the Zimbabwe. The rural areas of Zimbabwe that

¹³³ Murphee M W Op cit (note 125) 9 "The Parks and Wildlife Act delegated proprietorship and responsibility which goes with it, to the district councils. But they are not the producers or on-the-ground managers of wildlife; these are the producer communities within council areas, which differ from one another in resource endowment, quality of management and production."

¹³⁴ Peterson J H 'CAMPFIRE: A Zimbabwean Approach to Sustainable Development Through Wildlife Utilisation.' (1991) University of Zimbabwe Publications Office Harare 35

¹³⁵ Koch E 'Eco-Tourism and Rural Reconstruction in South Africa: Realty or Rhetoric?' Chapter 8 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997) 223

¹³⁶ Zimbabwe Trust (1990) 15 in McIvor C Op cit (note 118) 262

surround national parks are sparsely populated and have low agricultural potential. In contrast, South African communities display a high population density and tend to be more varied, with some settlements located in peri-urban, rather than rural areas¹³⁷. As CAMPFIRE principles are found to yield the best results in small homogenous societies, it is doubtful whether the simple participatory mechanisms will have the same effect in a more complex South African context.

Despite these numerous shortcomings, the experience of Zimbabwe with its CAMPFIRE initiative, has important lessons for South Africa. In order for community-based conservation to be successful, devolutionary legislation needs to be enacted, whereby responsibility for the management of wildlife is conferred on local communities.¹³⁸ The legislation must provide for institutional structures, which will ensure that benefits accruing from wildlife resources are directly channelled to local rural communities. It should also entail the possibility of land tenure reform in order to give group ownership of defined aspects of land to rural communities.¹³⁹

5.2 Namibia

With most of Namibia falling within a belt of extremely low rainfall, the predominant landscapes are desert, semi-arid grasslands and savannas. In the past, wildlife played a fundamental role in the cultural heritage of the indigenous Namibian people, since both wild animals and plants made significant contributions to their traditional economies.

For hundreds of years, the Himba, Herero, Damara and Kung have herded their livestock, hunted the county's abundant wildlife and cultivated the land in a manner that has maintained the natural balance of nature. Their

¹³⁷ This makes it far more difficult to establish 'proprietorship' over a given set of natural resources.

¹³⁸ Local communities must also be accorded the status of a juristic person to enable them to receive any statutory benefits.

¹³⁹ Summers R Op cit (note 126) 200

lifestyle was disrupted during the period of colonial administration, when much of Namibia's best land was settled by foreigners, during the period of German colonial rule and the United Nations mandated South African administration from 1890-1990.¹⁴⁰

As with Zimbabwe, the influx of white colonialists had a devastating effect on both the indigenous people and wildlife of Namibia.¹⁴¹ In addition to this human suffering, indigenous wildlife populations began to dwindle as a result of uncontrolled hunting and the loss of habitat. Twenty years ago, the Caprivi was Namibia's richest wildlife area. Today, the black rhino is extinct in the region, while giraffe and wildebeest are no longer found in the eastern regions.¹⁴²

The colonial era not only saw the destruction of wildlife, but also the importation of foreign protectionist nature conservation policies, which alienated the local people from the wildlife. "When my cattle were starving, nature conservation chased them out of the Skeleton Coast Park – the last place there was still food. They said that the area was for wild animals and they would shoot cattle that came in. I had to put my cattle inside a kraal and watch them die, knowing that just downriver, inside the park, there was fodder."¹⁴³

¹⁴⁰ 'Indigenous Peoples and Conservation.' <http://www.panda.org/reso..ainability/indigenous/proj-namibia.html>.

¹⁴¹ "First the Germans proclaimed reserves, which forces us to occupy greatly reduced areas of land. Then the South Africans wanted those reserves as well, for settlement of farmers. That is why today we are crowded in a small patch of Namaland near the South African border. The land is finished – we are too many people with too many animals. There is very little rainfall and there are too few boreholes, which have strong water. We once had the use of much greater areas for grazing and water too. We need our land back to move forwards."¹⁴¹ Quote from an indigenous pastoralist in Namaland in Kasale B and Pakleppa R 'Namibia : the land hungry people.' *New Ground – Journal of Development and the Environment* (1991)(5)20

¹⁴² Schultz H "'Craft and hippos are our diamonds now.'" <http://www.wildnetafrica.co.za>

¹⁴³ Herero elder quoted in Jacobsohn, M 'Koakoveld: Making Conservation Work.' *New Ground – Journal of Development and the Environment* (1991)(6) 2

5.2.1 The Community Game Guard Programme and Integrated Development -Conservation Projects.

A turning point was brought about in the 1980's, due largely to the joint effort of conservationist, Garth Owen-Smith and anthropologist Dr. Margaret Jacobsohn. The first breakthrough occurred in 1983, when Owen-Smith and the leaders of the Damara, Herero and Himba held a meeting to discuss the best solution to stop the continued slaughter of elephant, black rhino and other game in the Koakoveld. The Community Game Guard project was conceived. It is based on the premise that indigenous people make the best conservationists, given the responsibility and tools for managing their own natural resources. Unlike the anti-poaching unit that attempts to catch poachers, the aim of the auxiliary network has been to stamp out poaching by involving and empowering local communities in the conservation of their wildlife.¹⁴⁴



Figure 6: Namibia's Auxiliary Game Guard
Source: New Ground – Journal of Development and the Environment (1991)(6)7

¹⁴⁴ "The auxillary's function is not to apprehend the poacher, but only to detect his presence and then alert the headman...The Koakoveld auxiliary doesn't always carry a rifle and performs his task of keeping alert for poachers while tending his cattle or going about his normal activities..." Bonner R *At the Hand of Man: Hope and Peril for Africa's Wildlife* (1994) 27

This initial effort was followed by a number of small, integrated rural development/conservation projects that were aimed at linking conservation and tourism to the community's socio-economic development. The Purros Project was launched in 1987, based on the realisation that the expanding tourist industry was the only short-term way of passing the much needed material benefits from wildlife, to the struggling Purros community. Through a combination of tourist levies¹⁴⁵, a craft market and employment opportunities¹⁴⁶, the project generated more than R25 000 for the local people by late 1990.

5.2.2 Legislative Reform

It was not until almost a decade after these earlier projects, that the Namibian government decided to engage the issue on a legislative level. The Ministry of Environment and Tourism (MET) developed a policy, which provided for the establishment of conservancies¹⁴⁷ by either commercial farmers or rural communities on communal land.

The Nature Conservation Amendment Act 5 of 1996 subsequently amended the Nature Conservation Ordinance 4 of 1975, in order to provide for the granting of use-rights over wildlife resources to rural communities in certain circumstances. The amendment was brought about in the context of a general environmental legislation reform programme, based on the new Namibian Constitution.¹⁴⁸

¹⁴⁵ Overnight visitors were requested to pay R25 for the use of communal land.

¹⁴⁶ The project ensured that women were involved in the craft market or as 'resource monitors' (they were responsible for monitoring the status of thatching grass, wild foods etc.)

¹⁴⁷ A conservancy is an area managed co-operatively by farmers, who agree to pool their land and financial resources, to make available a larger unit of land, on which integrated wildlife management can be carried out.

¹⁴⁸ Article 95(1)(a) "The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: 1) ...maintenance of eco-systems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians."

In terms of the amendment, rural communities need to form a conservancy¹⁴⁹ in order to be able to acquire the use-rights over wildlife. The approval by and registration of the MET is necessary in this regard. Having satisfied the necessary conditions, the Minister may declare a 'conservancy'¹⁵⁰. The practical effect is that communities receive limited rights of ownership over certain animal species and use rights over others. Legally formed conservancies can also apply for hunting and/or tourism rights.¹⁵¹

5.2.3 The Relevance of the Namibian Approach to South Africa

Development in the conservation thinking has done much to change the status quo of local indigenous communities of Namibia. Integrated development/conservation projects provide a valuable way in which people can earn an income, without having to abandon their subsistence economy. The renewed interest and heightened respect for wildlife is reflected in the attitude of the people."¹⁵² The conservancy model has also gained in stature. Since the amendment took place, 14 such areas have been gazetted, while more than 30 are in the process of establishment.

The involvement of local communities in conservation is also much cheaper than the conventional paramilitary operations used to protect wildlife against poachers. In contrast to the millions of dollars spent by Kenya on guns, ammunition and vehicles, the Purros project costs virtually nothing to run, indeed, it generates revenue¹⁵³. Animal populations have recovered to such an extent that hunting is now encouraged on a

¹⁴⁹ S24(A)(1) Conservancies require a defined membership, a representative management committee, a legally recognised constitution and defined boundaries

¹⁵⁰ S24(A)(2)(ii)

¹⁵¹ 'Community-Based Resource Management Programme.' Namibian Ministry of Environment and Tourism Website: <http://www.dea.met.gov/na/programmes/cbnrm/cbnrm.htm>

¹⁵² "It is as if we are farming wild animals. But instead of getting meat and skins for them, we get the money that the tourists pay to see them. That is why we must look after our wildlife." Quote of village elder in Jacobsohn M Op cit (note 143) 5

¹⁵³ See Bonner R Op cit (note 144) 33. The total cost of the "Community Game Guards" Project in 1989 was \$30 000, nearly all the money coming from the Endangered Wildlife Trust, a private organisation based in Johannesburg, South Africa.

communal basis, with each village selecting its own hunters to take part in an annual game harvest.¹⁵⁴

There is no guarantee that the results achieved by the efforts of Owen-Smith and Jacobsohn are replicable in the South African context. Like most integrated development/conservation projects, the Purros project was tailor made to fit the unique socio-economic needs of the local community. " There is no holy grail. Ours is not a model for anybody, except the principle that you have to involve the local people, that you have to have the support of the community."¹⁵⁵

Furthermore, the extent of poverty and under-development in some South African homelands suggests that the problem cannot be tackled effectively by isolated projects¹⁵⁶ such as the Purros project. In the former Kwa-Zulu, Boputhatswana and KaNgwane homelands, surveys indicate that in some areas, the number of people and their needs are so great that natural resources are simply not capable of providing sustained and meaningful development to a significant proportion of the population¹⁵⁷.

It is still too early to assess the full effects of these legislative developments on the people and wildlife of Namibia, however, it is important to note that the Nature Conservation Amendment Act 5 of 1996 conferred use-rights over wildlife resources on the local communities

¹⁵⁴ "Wildlife Conservation in Namibia" <http://www.panda.org/resources/publications/forest/sparetrees/page2.html>.

¹⁵⁵ Owen-Smith G in Bonner R Op cit (note144) 34

¹⁵⁶ See Wells M, Brandon K and Hannah L 'People and Parks Linking Protected Area management with Local Communities.' (1992) The International Bank for Reconstruction and Development@ 61 "Threats to parks and their neighbours often originate far from park boundaries. Local people, the intended beneficiaries if integrated conservation development projects, are commonly the most visible of agents of park degradation; however, their actions are often attributable to laws, patterns of resource access, social changes and economic forces – factors that integrated conservation/development projects and their sponsors can have little hope of changing."

¹⁵⁷ Anderson, J L 'Case Studies of Conservation Agency: Tribal Neighbourhood Agreements in South Africa.' Unpublished KaNgwane Parks Board in Koch E Op cit (note 135) 223

themselves, rather than on local government¹⁵⁸. This has been a major factor in the purported success and popularity of the Namibian approach.

5.3 Canada

Following the worldwide pattern of colonial invasion, the indigenous communities of Canada were assigned the blame for the massive onslaught on North American wildlife in the late 19th and early 20th centuries.¹⁵⁹ Later findings exposed these allegations to be far from accurate. It was rather the rapid expansion of industry and commercial hunting and fishing industries that led to the demise of wildlife populations.¹⁶⁰

Historical studies have indicated that the indigenous people of Canada employed innovative and successful wildlife management systems, which are aimed at marrying sustainability with biodiversity. As a native elder commented " Through all these years, we have lived and managed the resource in a sustainable manner. We have conserved and protected the caribou and other animals; and we have lived in harmony with the natural world. While you may think of ourselves as living in the wilderness of northern Canada, we think of ourselves as being of the wilderness. We and our activities are part of our natural wilderness and have been so for tens of thousands of years."¹⁶¹

Despite their intimate relationship with their natural surroundings, the indigenous people of Canada were systematically excluded from areas the colonial government saw fit to designate as protected areas. In 1896, for

¹⁵⁸ See Summers R Op cit (note 126) 209 suggests that the Namibian legislation is thus a clear improvement on Zimbabwe's "appropriate authority" approach.

¹⁵⁹ The Cree and Ojibway hunters in the northern Ontario and Quebec, for example, were accused of slaughtering such enormous numbers of Canadian geese that the survival of this species was threatened

¹⁶⁰ Morrison J 'Protected Areas, Conservationists and Aboriginal Interests in Canada.' Chapter 10 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997) 281

¹⁶¹ Quote of Kassi N, community leader of the Untat Gwich'in Nation of north-western Canada in Martin V. *For the Conservation of Earth* (1988) 301

example, the Department of Indian Affairs set aside 728 acres on Clear Lake as a fishing reserve for the Keeseekoowenin Band of Salteaux. Some 30 years later, the federal government declared the enabling order in council inoperative and included the fishing reserve in the new Riding Mountain National Park. The native community was evicted and their houses burnt down.¹⁶²

5.3.1 Legislative Reform

The issues surrounding the participation of local indigenous Canadian communities in the management of wildlife resources, is interwoven with the struggle for aboriginal and treaty rights¹⁶³. It was the case of *Calder vs. Attorney General of British Columbia*¹⁶⁴ in 1973, which produced the formal basis for the recognition of indigenous land rights in the common law of Canada.¹⁶⁵ The Canadian federal government subsequently embarked on the negotiation of a comprehensive land rights settlement.

Aboriginal and treaty rights were accorded constitutional protection under the 1982 Constitution Act. Hence S35 provides a restriction on the future erosion by federal and provincial legislation¹⁶⁶. Short of consent, only constitutional amendment can extinguish aboriginal and treaty rights¹⁶⁷. While the special hunting and fishing rights extended by land cession

¹⁶² This pattern of forced removals began as early as 1893, when Algonquin Park became Ontario's first protected area. The assistant commissioner decided that aboriginal interests were not those considered by his government when the park reserve was created. He instructed his officials to explain to the Golden Lake People that hunting and trapping would no longer be permitted and that they would have to leave.

¹⁶³ To the aboriginal people of Canada, treaties symbolise the fact that Canada is not simply a settler society, but is instead linked formally to the distinct aboriginal societies that were there before the Europeans first arrived. Price and Smith (1993 – 1994) in Morrisson J Op cit (note 160) 278

¹⁶⁴ 1973 SCR 313

¹⁶⁵ De Villiers B *Land Claims and National Parks – The Makuleke Experience* (1999)@22 According to the judgement, "Aboriginal title does not depend on treaty, executive order or legislative enactment, but flows from the fact that the owners of the interest have from time immemorial occupied the areas in question and have a pre-existing right of possession."

¹⁶⁶ S35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognised and affirmed.

¹⁶⁷ Reiter R 'Aboriginal and Treaty Rights: A survey of case law and future directions in Law and Policy.' <http://www.cff.ca/brochures/reiter.pdf>.

treaties are covered by S25 of the Constitution Act, broader protection on lands not covered specifically by treaty, is provided by S35¹⁶⁸.



Figure 7: Indian Treaty Zones in Canada
Source: Pimbert M and Ghimrie K (eds) *Social Change and Conservation* (1997) 279

These provisions were brought in due recognition of the fundamental importance of land and natural resources to the aboriginal people of Canada. Over the past two decades, native groups have constantly fought to have this relationship respected. Between 1968 and 1974, Jean Cretien, Canadian prime minister, who was then the federal minister responsible for national parks, established ten new national parks. Prior to the inclusion of three parks located in the Yukon and Northwestern Territories under the provisions of the National Parks Act, significant opposition was put forward by native people, who saw this as a federal initiative to thwart their land claims. The National Parks Act was subsequently amended to designate the three parks as national park reserves, pending the settlement of aboriginal land claims. Aboriginal traditional hunting and trapping rights were also guaranteed under the 1974 amendment.¹⁶⁹

¹⁶⁸ Cumming (1985) in East K 'Joint Management of Canada's Northern National Parks.' Chapter 27 in West P and Brechin S (eds) *Resident Peoples and national Parks – Social Dilemmas and Strategies in International Conservation*. (1991) 335

¹⁶⁹ Jeffrey MI 'National parks and protected areas – approaching the new millennium.' (1999) *Acta Juridica* 163@172 (footnote 49)

Along with the development of land claims has thus come a change in the policy of federal government regarding community-based natural resource management. The Report of the Task Force to Review Comprehensive Claims Policy advised the government on the importance of land and control over the land by aboriginal people. The report warned that many of the objectives of the claims policy could not be achieved unless aboriginals played an active role in decisions concerning land and resources within their traditional areas.¹⁷⁰ The federal government accepted the involvement espoused by the task force and incorporated them into official policy governing the negotiation of comprehensive claims.

5.3.2 Regional Agreements in Canada

Regional agreements are concluded on the basis that indigenous communities may exchange any native title they may have to land, for more clearly defined statutory rights.¹⁷¹ In addition, communities are offered a package of social and economic rights for addressing their most urgent needs for basic services. Provision is also made for the direct involvement in the management of land and the utilisation of resources

Joint management regimes have thus been implemented, especially in the northern national parks of Canada. This is in line with the government policy, which provides that, "...an agreement will be negotiated between Parks Canada and representatives of local native communities prior to formal establishment of a national park, creating a joint management regime for the planning and establishment of a national park."¹⁷² An example is the Fort Chipewyan Cree Band Settlement involving the Wood Buffalo National park, signed in December 1986. The most material provisions of the agreement relate to guarantees of perpetual hunting, fishing and trapping rights, the establishment of a Wildlife Advisory

¹⁷⁰ 'Living Treaties: Lasting Agreements.' (1985) Canada

¹⁷¹ These rights may range from total freehold to usage rights.

¹⁷² Parks Canada Policy (1978) s 1.3.13

Board¹⁷³, rights of 'first refusal' on economic activities and preferential access to training and employment opportunities in the park.¹⁷⁴

5.3.3 The Canadian Approach for South Africa?

Canada is certainly one of the few countries to have taken steps to involve indigenous people more directly in environmental affairs. The most recent National Parks Act received royal assent on the 20th October 2000 and affirms the Canadian government's commitment to empowering aboriginal communities in matters affecting national parks.¹⁷⁵ Eleven national parks currently have co-operative management boards to advise the Minister of Canadian Heritage on the operation and management of protected areas.¹⁷⁶ Parks Canada has also established an Aboriginal Affairs Secretariat to encourage consultation with Aboriginal people on public education programmes across the country, identify economic opportunities associated with national parks and stimulate dialogue with Aboriginal people at national and local levels.

Canada's 'regional agreements' have been suggested as suitable models for South Africa, in order to regulate and harmonise land uses adjacent to national parks and other protected areas.¹⁷⁷ This will ensure that a more holistic approach is adopted to conserve the environment, e.g. the

¹⁷³ The Cree will have the majority of voting rights on the Board, which advises the Minister on many aspects of management.

¹⁷⁴ East K 'Joint Management of Canada's Northern National Parks.' Chapter 27 in West P and Brechin S (eds) *Resident Peoples and national Parks – Social Dilemmas and Strategies in International Conservation*. (1991) 340

¹⁷⁵ S12 (1) 'The Minister shall, where applicable, provide opportunities for public participation at national and regional levels, including participation by aboriginal organisations, bodies established under land claims agreements and representatives of park communities, in the development of parks policy and regulations, the establishment of parks, the formulation of management plans, land use planning and development in relation to park communities and any other matters that the Minister considers relevant.'

¹⁷⁶ Half of the members on each of these boards are appointed by local indigenous communities neighbouring the national parks, while the other half are appointed by the Minister of Canadian Heritage.

¹⁷⁷ De Villiers B Op cit (note 165) 24

protection of catchment areas, combating soil erosion; and that management of parks will not be isolated from surrounding communities.

It must be noted, however that none of the Canadian regional agreements concluded to date have given indigenous beneficiaries total control over environment and resource policy making in their territory. "Government has an overriding obligation to protect rights of all users and manage resources within their particular jurisdictions. Thus government cannot abdicate their functions through a wholesale delegation of decision-making power".¹⁷⁸ The failure to devolve authority on local communities continues to impair the conclusion of effective regional agreements.

It has also been noted that the Canadian context involves an indigenous minority community attempting to define their rights in relation to the majority group. The ability of government to delay or speed up the land restitution process depends on what is favourable to its own political agenda. In contrast, South Africa has an elaborate statutory framework, backed up by the multiparty commitment to restore rights in land¹⁷⁹.

Furthermore, cases where subsistence uses by indigenous communities have been allowed to continue within park boundaries have turned on the limited measure of sovereignty accorded to aboriginal communities in Canada.¹⁸⁰ They are distinguishable from the South African situation, where communities subject to indigenous law do not enjoy similar autonomy.¹⁸¹

¹⁷⁸ 1985 Report of the Task Team to Review Comprehensive Claims Policy.

¹⁷⁹ De Villiers B Op cit (note 165) 18

¹⁸⁰ R vs van der Peet (1996) 137 DLR (4th)289 (SCC) and R vs Sundown (1999)170 DLR (4th)385 (SCC) See Mbodla N 'Res publicae: a South African perspective.' (2001)(64) THRHR 121

¹⁸¹ Currie I 'Indigenous Law' in Chakalson et al *Constitutional Law of South Africa* (1996) 27-36

5.4 Australia

When the first shipload of European 'colonisers' disembarked at Sydney harbour on the 26th January 1788, they encountered an established population of aboriginal peoples, estimated at between 300 000 and 1 million, living in scattered enclaves throughout the expansive continent. The settlers soon encroached upon the ecosystems of the indigenous people and systematically decimated their numbers through violence, disease and the expropriation of subsistence resources.¹⁸² Traditional hunting and fishing grounds were destroyed to make way for industrial development, towns and national parks. This was accompanied by legal restrictions on the right of people to hunt and forage for subsistence purposes. The colonial perspective was that the indigenous people of Australia functioned without laws, without a sovereign and were primitive in their social organisation.

In fact, the tradition and practices of Australian Aborigines are not only concerned with subsistence, but are inextricably linked with the rule of law.¹⁸³ There is a growing recognition that effective and sustainable management of land and resources is greatly enhanced by combining Aboriginal knowledge with conservation objectives. The existing diversity of species and ecosystems in Australia is a result of continued Aboriginal management practices in accordance with traditional aboriginal laws.

While the initial impact of Aboriginal people on the biological diversity of the continent was significant, they forged a balance between use and

¹⁸² Fox J 'Aborigines in Australia' <http://www.bsos.umd.edu/cicdm/mar/austrabor.htm>
 "In 1930, the aboriginal population had dwindled to a mere 30 000 and was tagged a 'dying race.'"

¹⁸³ Hunting ties the past to the present, but is not simply a survival of some prior subsistence gambit...most importantly, it is an aspect of law. As such, it offers a venue through which certain can do and display concern for the belief system. Just like ritual, hunting affords men the opportunity of making claims regarding their position and right to authority in the group. To hunt then, is, as with ritual participation, to follow the Law, demonstrate its great potency and guarantee its continuance." Sackett 'The recognition of traditional hunting, fishing and gathering rights.' <http://www.beta.austlii.edu.au>.

sustainability, something that colonising structures are yet to understand.¹⁸⁴ Despite these findings, conservation authorities in Australia continue to apply the traditional authoritarian 'scientific' model of management of national parks. Legal developments indicate, however, that a new approach, based on reconciliation, cultural respect and empowerment is challenging the conventional ideology.¹⁸⁵

5.4.1 Legislative reform

5.4.1.1 Land Claims

The first land rights legislation was the Aboriginal Land Rights Act of 1976, which provided that the land in the Northern Territory¹⁸⁶ may be vested in Aboriginal land trusts to administer for the benefit of groups of Aboriginals.¹⁸⁷ Under the 1976 Aboriginal Land Rights Act, indigenous communities had to prove that they were the traditional owners of the claimed land

The situation was substantially altered by the landmark case of *Mabo vs. the State of Queensland*¹⁸⁸, which overturned the doctrine of *terra nullius* and placed the onus on the Crown to show how, when and by what instrument it had extinguished Aboriginal ownership¹⁸⁹. The federal government subsequently adopted the 1993 Native Title Act, which entrenched the right of Aboriginal owners to be consulted when certain developments on their land are planned¹⁹⁰.

¹⁸⁴ Strelein 'Indigenous Peoples and Protected Landscapes in Western Australia.' (1993) (10) Environmental and Planning Law Journal. 382

¹⁸⁵ Lord S 'Aboriginal Land Rights and National parks in New South Wales.' <http://www.dazed.org/npa/npj/200006/june.aboriginal.htm>.

¹⁸⁶ This area falls under the control of the federal government-the Commonwealth.

¹⁸⁷ S4 and S5

¹⁸⁸ (1992) 175 CLR 1

¹⁸⁹ See Yu P 'Mabo – Its meaning for Australia' <http://www.cao.org.au/publications>
Until the Mabo decision, the dominant paradigm was that at the time of colonisation in 1788, all land was *terra nullius* and therefore belonged to the Crown. The land rights accorded to Aboriginal people were given to them out of the goodwill of the Crown.

¹⁹⁰ De Villiers B Op cit (note 165) 25

3.4.1.2 Joint Management Agreements in Australian National Parks

In Australia, the states have the primary responsibility for the declaration of wildlife reserves. The National Parks and Wildlife Conservation Act of 1975, does, however, envisage the establishment of Commonwealth national parks¹⁹¹. The Act further provides that where a national park is on indigenous land, a Board of Management, with a majority of indigenous representatives, will be the responsible authority.¹⁹²

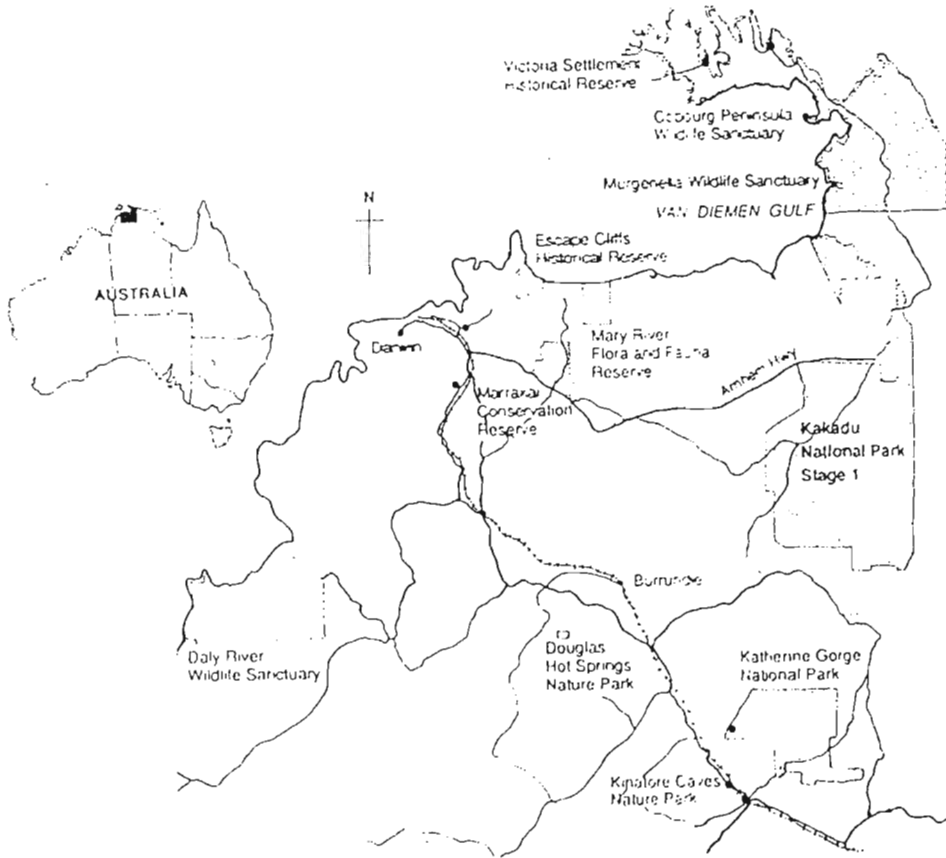


Figure 8: Map of Nature Conservation Areas around Kakadu National Park, Australia

Source: West P and Brechin S (eds) *Resident Peoples and National Parks – Social Dilemmas and Strategies in International Conservation* (1991) 131

Kakadu, Uluru-Kata Tjuta and Boederee national parks are currently run on the basis of joint management agreements, concluded between

¹⁹¹ S 6(2)

¹⁹² S 14C(5)

Aborigines and the Commonwealth.¹⁹³ Ownership of land in these three parks was restored to the Aboriginal owners on condition that the land is leased back to the conservation authorities to ensure its continued protection. The respective communities receive annual rent, some of their members are employed within the park as rangers and guides; and they undertake certain tourism activities for their own account. A Board of Management¹⁹⁴ directs the management of the park. After extensive consultation with members of the Aboriginal communities, as well as other interested parties, the Board will draft a Plan of Management, which serves as the basis upon which authorities manage the park.¹⁹⁵

The Australian states have also made attempts to encourage the participation of Aboriginal communities in park management. In Queensland, for example, land within a national park may be granted to Aboriginal and Torres Strait Islander people, but it must be leased back in perpetuity to the Crown.¹⁹⁶ In New South Wales, the National Parks Association adopted a set of policies clearly recognising Aboriginal ownership and joint management of national parks.¹⁹⁷

3.4.2. Can the Australian Approach work in South Africa?

Australia has played a leading role in community involvement by introducing Aboriginal participation in the co-management of some national parks. In 1995, the Uluru-Kata Tjuta national park and its Board of members won UNESCO's highest award, the Picasso medal for outstanding efforts to preserve the landscape and Aboriginal culture of the park; and for setting new international standards for World Heritage

¹⁹³ The other three Commonwealth National Parks are the Territories of Cocos Islands, Christmas Island and Norfolk Island.

¹⁹⁴ Traditional owners or their Aboriginal representatives form a majority on the Board.

¹⁹⁵ De Villiers B 'Democratisation of conservation: community involvement in the management of national parks.' (2000) 15 SA Public Law 176@186.

¹⁹⁶ The Aboriginal Land Act of 1991 (Qld) S 5.20 and the Torres Strait Islander Act of 1991(Qld) S5. 20

¹⁹⁷ 'Aboriginal Land Rights Issues and their relationship to National parks Dedication and Management; and the Conservation of Natural Values within New South Wales.' The ALRI policies. See Lord S. Op cit (note 185)

management.¹⁹⁸ The Commonwealth and State and Territory agencies are presently implementing the Indigenous Area Program. This program aims to ensure equitable participation in the development of the National Reserve System, through the establishment and management of protected areas on indigenous estates¹⁹⁹; and the establishment of co-operative management arrangements between indigenous groups and the relevant government agencies over government owned protected areas. Given these accomplishments, it is not difficult to see why joint management agreements have been recognised internationally as providing a model for involving indigenous people in managing protected areas. In South Africa, this model has been followed in various land claim settlements, including the Makuleke Agreement, discussed in chapter eight of this thesis. It is thus important to probe the weaknesses of the Australian system.

The 1993 Native Title Act did not provide Aborigines with effective rights to manage protected areas. The legislation failed to, "significantly enhance indigenous peoples' rights to participate in regional planning and environmental management. Much of the land claimable as native title has been severely degraded by mining and pastoral development... in essence, indigenous systems of land and marine tenure are perceived as a hindrance to economic growth."²⁰⁰

The basis of the Australia's 'joint management agreement' has been a bone of contention in Australian society. This is because of the fact that the restoration of native title is conditional on the mandatory lease-back of the land to conservation authorities, for the purposes of a national park. The Aboriginal owners may not sell the land or grant any other real right

¹⁹⁸ 'Environment Australia – Working with Indigenous Communities through Joint Management' http://www.ea.gov.au/indigenous/fact_sheet/joint.html

¹⁹⁹ It has been shown that many types of landscapes are poorly represented in the existing National Reserve System and that some such areas occur only on indigenous owned land.

²⁰⁰ Boer 'Indigenous Peoples and Environmental Management.' (1994) *Environmental and Planning Law Journal* 320.

to it, or offer it as security for obtaining finance or other developments. This has not only affected the negotiation position of the parties, but has been criticised on the grounds that it lacked procedural fairness and encroached on the right to freedom of contract. The mandatory lease back has thus come to be seen by some as establishing new relations of domination, rather than promoting self-management. As one Aboriginal spokesperson commented "Many of our people believe that this legislation is not offering real title or Aboriginal ownership at all, that it presents merely a token gesture as long as the hand-back means a perpetual lease-back."²⁰¹

Studies have also revealed that the joint management system has resulted in much less actual power sharing than government rhetoric and legislation suggested. In Kakadu, for example, the implementation of the system did not make provision for a planning or policy role for the Aboriginal owners. Evidence indicated that they did not have an interest in formal sharing of daily management activities, but rather sought the ability to shape key values guiding park operations and development; and influence the steps by which these values would be interpreted and implemented.²⁰²

Lastly, the efforts of the federal and state agencies to establish joint management schemes and community consultation arrangements have been implemented on an ad-hoc, reactive basis. As yet, there is no national policy or strategic direction to guide government in matters concerning the involvement of Aboriginal people in the development and implementation of environmental policy. This means that different states

²⁰¹ De Villiers B Op cit (note 165)33

²⁰² Weaver S 'The Role of Aborigines in the management of Australia's Coburg and Kakadu National Parks.' Chapter 26 in West P and Brechin S (eds) *Resident Peoples and national parks – Social dilemmas and Strategies in International Conservation*. (1991) 331

are proceeding at their own discretion according to their own political agenda, without taking national interests into account²⁰³.

In South Africa, the Constitution Act 108 of 1996 places control and administration of national parks squarely on the shoulders of national government.²⁰⁴ There is ongoing debate, however, that various functions and management of national parks should be delegated to provincial authorities.²⁰⁵ It has been suggested that in a culturally and environmentally diverse context, such as South Africa, the need for increased sensitivity and experience in dealing with variations, could warrant the granting of a degree of regional autonomy to existing conservation bodies.²⁰⁶ If this does occur, a strong co-ordinated national policy on community-based conservation will have to be formulated, in order to prevent the complications experienced by Australia and Canada from recurring.²⁰⁷

South Africa has a reputation for administering its environmental law in an ad-hoc, reactive manner. The 'parks and people' dilemma presents an opportunity for South African legislators to take a closer look at both the merits and mistakes of countries such as Zimbabwe, Namibia, Canada and Australia in order to take a proactive viewpoint to its protected areas and national parks.

²⁰³ Canada shares this problem in that each province is empowered to formulate its own policies and legislation with respect to the development and exploitation of wildlife resources. This means that the ability of the Canadian federal government to impose national standards and to furnish national conservation goals is extremely limited. See Jeffrey MI 'National Parks and Protected Areas: Approaching the new millennium.' (1999) *Acta Juridica* 163 @ 174

²⁰⁴ Schedule 4

²⁰⁵ Liebenberg L 'Towards a New Conservation Policy' (1994) Policy Paper No.4 of the Land and Agricultural Policy Centre and the Overseas Development Institute 27

²⁰⁶ Koch E 'Eco-Tourism and Rural Reconstruction: Reality or Rhetoric?' Chapter 8 in Ghimrie K and Pimbert M *Social Change and Conservation* (1997) 235.

²⁰⁷ In Australia, the Commonwealth Environment Protection and Biodiversity Conservation Act of 1999 may prove the basis for the development of the required national policy. It provides for a committee to advise the Minister on matters related to the 'significance of indigenous peoples' knowledge of the management of land.'

CHAPTER 6 – NATIONAL PARKS AND CONSERVATION IN SOUTH AFRICA – A BRIEF HISTORY

The story of nature conservation in southern Africa, which is portrayed in 'official histories', reminiscence of wildlife officials, tourist guides and other 'popular' environmental literature is often embedded in mythology. These myths have arisen because the subject is so often construed in the light of an evangelical crusade in which 'good conservationists' are pitted against 'evil exploiters and poachers'.²⁰⁸ The next section is aimed at providing a more complete and accurate account of the history of South Africa's national parks in order to expose the true heroes and villains.

The first officially protected areas in South Africa were the forest reserves of Tsitsikamma and Knysna, established under the Cape Forest Act 28 of 1888. Next was the Pongola game reserve in 1894,²⁰⁹ while the Hluhluwe, Umfolozi and Mkuzi game reserves were proclaimed in 1897. The Sabie game reserve, later to become part of the Kruger National Park, followed in 1898 and Giant's Castle in the Drakensberg during 1903.²¹⁰ Today, there are said to be 422 protected areas constituting some 6% of South Africa's land surface area. Every year there are moves to expand old protected areas and establish new ones.²¹¹ Current projects include the Table Mountain natural area, the Namaqualand coastal area and the Limpopo Valley area. The Dondola National Park and the Highveld National Park near Potchefstroom in the North Western Province are also under consideration. The 35 547 hectare Addo Elephant Park is set to expand, following a R11 million donation by the International Fund for Animal Welfare to the South African National Parks.

²⁰⁸ Carruthers, J *The Kruger National Park: A Social and Political History* (1995) 2

²⁰⁹ Deproclaimed in 1921

²¹⁰ Rabie M A 'South African Law relating to conservation areas.' CILSA 17 (1985)52.

²¹¹ http://www.home.online.no/~saemb/wildlife_national_parks.html.

While earliest conservation regulations in South Africa are said to date back as far as 1657 when Jan van Riebeeck imposed restrictions on hunting in the Cape²¹², there is evidence that conservation laws and natural resource management principles were being applied long before the arrival of settlers.

6.1 Pre-Colonial Jurisprudence

As most traditional African societies were largely dependent upon natural resources, including the wildlife that surrounded them, political systems generally included a set of rules and procedures designed to regulate the use of natural resources. These practices are similar to those considered to be innovative and effective by modern Western-style conservationists. Within a traditional African community, only certain classes of people were allowed by the chief to hunt certain species of animals (controlled harvesting). Hunting in areas such as graveyards and sacrificial grounds was prohibited, in effect making them animal sanctuaries or refuges (multiple-use zones). Each chief had village scouts who made sure that the rules and regulations laid down for the management of wildlife were followed (community policing).²¹³

South African examples of pre-colonial conservation practices include the setting aside of hunting preserves for Zulu Royalty, soil conservation methods of the BaTswana people and totemic protection among such people as the BaSotho.²¹⁴

The Tembe-Thonga people of northern Kwa-Zulu Natal have a system of 'privatisation' in order to ensure the sustainability of their natural resource utilisation. Chiefs allocate indigenous fruit trees to individuals in the community. In return for protecting the trees, the fruit belongs to the 'owner'

²¹² Bothma JDP and Glavovic PD 'Wild Animals' Chapter 12 in Fuggle R F and Rabie M A *Environmental Management in South Africa* (1992) 251

²¹³ Nsamanjana H 'Introduction' to Lewis, D and Carter N *Voices from Africa – Local Perspectives on Conservation* (1993) 2

²¹⁴ White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity N1095/ 1997, Government Gazette No.18363 dated 28 July 1997@15

and can be sold by him or her. Similarly, ilala palm sites²¹⁵ and fish trapping locations are granted to individuals to supervise and protect against over-utilisation. When the fish-stocks are low, the more efficient methods of fishing are banned by the local headman, or the fisherman themselves²¹⁶.

These traditional systems were changed substantially with the colonisation of South Africa. Europeans brought shotguns and rifles, which were much more effective in making big-game hunting an everyday event. The cattle, sheep and goat farming encroached on the habitats of indigenous wildlife and soon populations began to dwindle.

Instead of looking in their own backyards, colonists put the blame squarely on the shoulders of Africans.²¹⁷ The first known extinction of species in Africa was, in fact, due to the settlers in the southern part of the continent. The blaubok was eliminated before 1800, primarily because the colonists took over the animal's grazing land for their cattle. The quagga was gone by 1860 as the Boers appropriated pastureland and hunted them for their skins.

6.2 South African National Parks – the British Influence

The momentum behind the creation of national parks in European colonies and the United States came from different origins. In North America, it was the pristine landscape – the natural grandeur of trees, rivers, valleys and mountains, which sparked off protected areas legislation. In contrast, the reserves of central and southern Africa were based on the need to preserve the numbers of large mammals.

²¹⁵ The juices of this palm are used to produce a wine.

²¹⁶ Koch E, Cooper D and Coetzee H *Water, waste and wildlife: the politics of ecology in South Africa* (1990)19

²¹⁷ Bonner R *At the Hand of Man: Hope and Peril for Africa's Wildlife*.(1993)43 Frederick Selous, the most renowned big-game hunter of his day wrote that, " It is hardly too much to say that 997 out of every 1000 elephants, whose tusks come to the London market, are killed by African natives" and that the white rhino had been exterminated in parts of southern Africa "entirely by natives"

6.2.1 The 1900 Convention for the Preservation of Animals and Birds in Africa

In 1900, the foreign ministers representing the African colonial powers: Britain, France, Germany, Belgium and Spain, gathered in London to sign the 1900 Convention for the Preservation of Animals and Birds in Africa.

Although all the countries never ratified the 1900 'London Convention', it became the basis for colonial wildlife conservation in Africa. It is recognised as the first international conservation treaty, however, concern for the welfare of Africa's indigenous wildlife, eco-systems and people was at the bottom of the list of the signatories' priorities.²¹⁸

Complete protection was exclusively afforded to those few animals, which were not deemed dangerous to man or which had some commercial value.²¹⁹ Other species were considered to be vermin, and the treaty encouraged their extermination.²²⁰ The animal that was central to the conference was the African elephant. The treaty did not impose a total ban, but only a prohibition on the shooting of infant and female elephants. While this may seem a noble effort to protect 'women and children', it was actually to ensure the continued supply of ivory, skins and meat. Lastly, the tastes of big game hunters were catered for, as colonial governments in Africa began setting aside 'game reserves' in the early part of the twentieth century²²¹ and certain prized species were declared 'royal game'.

6.2.2 The 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State.

The 1933 'Africa Convention' superseded the 1900 treaty. It was based on the findings of Major R.W.G Hingston, who concluded that the only way to

²¹⁸ The Pre-Ambles states that the object of the treaty is the "...saving from indiscriminate slaughter, and of insuring the preservation throughout their possessions in Africa, of all the various forms of animal species existing in a wild state..."

²¹⁹ giraffe, gorilla, chimpanzee, mountain zebra, white-bearded gnu, pygmy hippopotamus and the wild ass.

²²⁰ Lion, leopard and wild dog.

²²¹ Koch E "Eco-tourism and Rural Reconstruction in South Africa: Reality or Rhetoric?" Chapter 8 in Pimbert M and Ghimrie K *Social Change and Conservation* (1997) 215

preserve nature, while not inconveniencing man, was to "place them in two permanently separate compartments, in other words, only by establishing national parks."²²² The national parks that were consequently proclaimed were sited in areas of low rainfall, scant mineral deposits and tsetse fly infestation. This was designed to ensure that their establishment did not intrude on areas owned by the politically powerful, white European farmers in Africa.²²³

The Pongola game reserve was established in July 1889 by the government of the Transvaal Republic. It was the first to be proclaimed in South Africa. The warden, H.F van Ordt, had a wide reputation for his ruthless treatment of Africans and promptly expelled them from the area and forbade them to return.²²⁴ Later colonial policies made provision for some human residence within park boundaries, but only on condition that Africans paid rent, either in the form of cash or labour.

This colonial exploitation and control was not limited only to South Africa, but to the whole continent of Africa. The Masaai, for example, were displaced from their homes in East Africa, under the 1958 'Agreement by the Masaai to Vacate the Western Serengeti'. This was done after an eminent botany professor from the University of London, W.H Pearsall, concluded that the ecology of the Serengeti was so fragile that the effects of any grazing and cattle treading would too severe.²²⁵ Subsequent reports argued that the

²²² The 1933 treaty defined a 'national park' as an area:

- a) placed under public control, the boundaries of which shall not be altered or any portion be capable of alienation except by competent authority;
- b) set aside for propagation, protection and preservation of fauna and flora and objects of aesthetic, geographical, pre-historic, historical, archaeological or other scientific interest, for the benefit, advantage or enjoyment of the general public;
- c) in which hunting, killing and capturing of fauna and the destruction or collection of flora is prohibited, except by or under the direction and control of park authorities.

²²³ Bonner R Op cit (note 217) 168.

²²⁴ Koch E Op cit (note 221) 215

²²⁵ This report was requested by the Society for the Preservation of the Wild Fauna of the Empire, which was the first international conservation organisation, founded in 1903. Its members were made up of lords, knights and other upper class figures of the British society.

Masaai had no legal right to remain in the Serengeti, and that their interests should be made subservient to the global concern of preserving the Serengeti as an international asset.²²⁶ Bernard Grzimek, a legend in the annals of African conservation explained, "A national park must remain a primordial wilderness to be effective. No men, not even native ones should live inside its borders."²²⁷

Conservationists are only now beginning to realize that the Serengeti's grassland eco-system is, in part, maintained by the presence of the Maasai and their cattle. With the expulsion of the Maasai from their lands, the Serengeti is increasingly being taken over by scrub and woodland, meaning less grazing for antelopes.

6.3 Apartheid and National Parks

As a result of the Land Acts of 1913 and 1936, the most productive agricultural land in South Africa was reserved for whites. Blacks were prevented from land ownership in 87% of the country. But after 1948, apartheid's divide and rule tactics went even further. The remaining 13% of the country allocated to black ownership was further divided into unviable patches allocated to specific ethnic groups. These territories were reconceived as 'homelands' of most black people. Black people were allocated limited rights in exchange for their loss of rights in the remaining 87% of the country.²²⁸

These 'homelands' became the major focus of establishing conservation areas, as the natural environment had not been as drastically transformed as in urban, industrial and commercial agricultural areas²²⁹. The black rural

²²⁶ Leakey L "Memorandum on the Serengeti National park Problem" in Bonner R Op cit (note 217) 175

²²⁷ Adams J and O' Shane T *The Myth of Wild Africa: Conservation without Illusion* (1992) 16

²²⁸ Whyte A (ed) *Building a New South Africa: Environment, Reconstruction and Development - a report from the International Mission of Environmental Policy* (1995)(4) International Development Research Centre.45

²²⁹ These areas were, however, characterised by poor soil quality and erratic rainfall.

communities in these areas were the poorest in the country and the least represented at national level. The political and financial costs of removing these people in order to establish national parks would be less than in white-dominated industrial or agricultural areas.²³⁰

National parks were promoted as wildlife wonderlands, where visitors were encouraged, educational material generated, scientific research undertaken and revenue collected. Management of these parks was supposedly implemented with scientific and technical rigour, without political complications. Leaders, such as General Jan Smuts, voiced their support for protected areas such as the Kruger National Park, " ... but greater than its wonderful fauna, its subtropical flora, its unrivalled scenery, is the eerie spirit which broods over its solitude. Where no human pressure is felt, and the human element shrinks into insignificance..."²³¹ Behind these 'morally sound' sentiments lay a much more sinister motive: white self-interest, Afrikaner nationalism, ineffectual legislation, elitism, capitalism and the exploitation of Africans.²³²

The 1926 National Parks Act took wildlife conservation out of the hands of sportsmen and old-style game wardens and projected it into the mainstream of South African politics. Those politics were distinctly white and the socio-political structure of South African national parks was consequently shaped by white interests. Members of the National Parks Board of Trustees included Oswald Pirow, a founder of 'New Order', the Nazi-sympathising political organisation; and Gustav Preller, a determined publicist for Afrikaner nationalism, a state historian and journalist. National parks thus came to

²³⁰ Balic S 'Conservation: A case for the People of Kosi Bay.' *New Ground- Journal of Development and the Environment*. (1990)(1) 10

²³¹ Moloi D 'Ghosts of the Past.' *New Ground – Journal of Development and the Environment - Supplement* recording the Group for Environmental Monitoring (GEM) conference held in 1993 in Broederstroom.5

²³² Cock J 'Going Green at the Grassroots: the environment as a political issue'. Chapter 1 in Cock J and Koch E (eds) *Going Green. People, politics and the environment in South Africa* (1991) 4 -A Wildlife Society survey of candidates in the last tricameral election in 1989 found that 37 % of them rated visiting the Kruger National Park of greater conservation importance than 'improving the quality of life'.

symbolise the spirit of the Great Trek – braving lions, tsetse fly and hostile 'natives'.

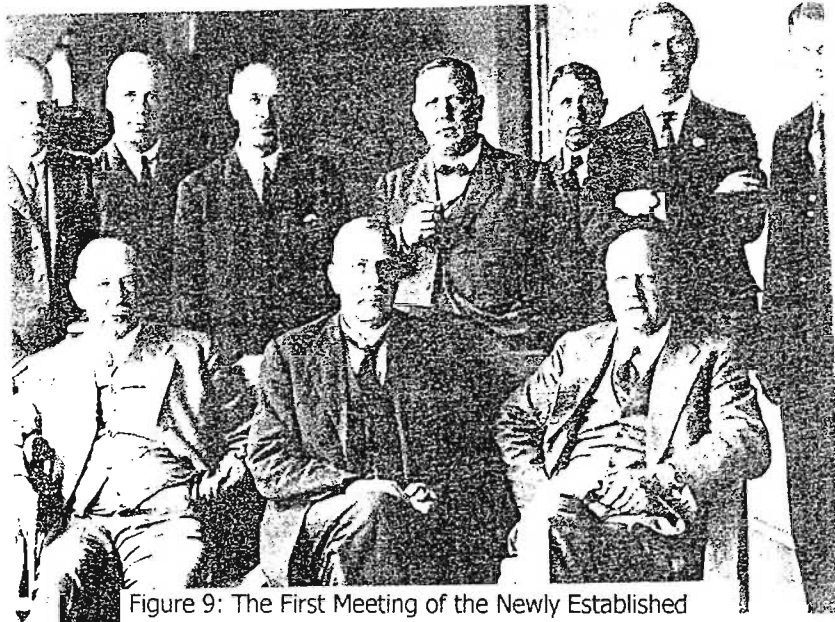


Figure 9: The First Meeting of the Newly Established National Parks Board, 1927

Source: Carruthers J *The Kruger National Park: A Social and Political History* (1995) 80

The 'Afrikanerisation' of national parks generally went unchallenged by other white South Africans, the major reason being the intense 'moral goodness', which came to be associated with conservation. After the almost total destruction of wildlife in the late nineteenth century, the twentieth century introduced an almost religious belief amongst whites in the 'goodness' of conservation and the inherent 'evil' in any other point of view. This was bolstered by the popular perception that nature conservation falls outside the national political arena, making national parks common cause between English and Afrikaans speakers and thus a locus where fraternal relationships could blossom

The 1926 National Parks Act had turned the native hunter into a poacher, and a threat to the conservation of the Lowveld. Penalties imposed on Africans were more severe than they were on whites.²³³ In addition, poaching seems to have been detested by white game reserve officials not so much because

²³³ Carruthers, J *The Kruger National Park: A Social and Political History* (1995) 94. For instance, an African hunter who killed a duiker received a month's imprisonment with hard labour without the option of a fine, while a group of three whites who had killed four reedbuck, two duiker, a steenbuck and a korhaan, were sentenced to a fine of 5 pounds or seven days imprisonment.

of the danger it presented to wildlife populations, but because it represented freedom of action on the part of Africans and therefore a corresponding lack of white supremacy.

Although the apartheid era signalled a move away from a strict colonial preservationist ethic, towards a policy that encouraged visitors, it was still embedded in discriminatory ideology. J.G Strijdom gave voice to the segregationist policy of the national party, by presenting a scheme for dismembering the Kruger National park and setting certain areas aside for exclusive non-white use. As recently as 1983, accommodation and recreational facilities for blacks was described as having a 'spartan atmosphere'²³⁴ compared to the civilised, modern facilities of other 'white' camps, like Skukuza.

The clout of Afrikaner nationalism did not restrict itself to conservation within the boundaries of South Africa. The World Wildlife Fund for Nature (WWF) is the world's largest conservation organisation and is one of the largest charitable organisations in any field. Due to a lack of financial resources, the business skills of Anton Rupert²³⁵ were employed in 1968, when he joined the WWF board of trustees. Rupert conceived of a '1001 Club', which would consist of wealthy individuals who were willing to part with \$10 000 in exchange for life-time membership to the organisation. In the 1989 list, at least 60 individuals were from South Africa²³⁶. Many were also members of a secret, conservative Afrikaner society called the 'Broederbond'. With the input of so much white South African money into the organisation, it is a safe bet to assume that some of WWF's decisions were made with its generous patrons in mind.

²³⁴ The accommodation was a tented camp named 'Balule', established in 1932. This facility had no shop, fuel station or reception office

²³⁵ Anton Rupert was an Afrikaner from the Cape, who had made millions as the owner of Rothmans International Tobacco Company, and became one of the richest men in South Africa.

²³⁶ Only five countries had more donors, and as a percentage of their population, South African whites had 300 times as many members of the United States.

6.4 Social Conflicts

To many local indigenous communities in South Africa, the national park has come to symbolise racial discrimination and white political and economic domination. From the western border of the country, where indigenous San people were removed to make way for the Kalahari-Gemsbok Park in the 1930's, to the eastern shores of South Africa, forced removals have become synonymous with wildlife protection programmes.²³⁷

The dispute that arose between rural communities and the National Parks Board, over the mountainous region of the Richtersveld, is merely an example of a series of nationwide conflicts. Conservationists had earmarked the Richtersveld as an area of rich biodiversity. The area is famed for its huge variety of succulents, over 300 species, including the 'halfmensboom'²³⁸, a rare cactus-like plant, which grows to approximately two metres and has a semi human appearance.

The National Parks Board wanted to exclude local herdsman, despite arguments from botanists and archaeologists that they and their sheep/goats had been part of the local ecology for almost two thousand years.²³⁹ The Management Committee of the Department of Land, Housing and Agriculture had given its assent to the removal of the local residents and the provision of inferior and unfamiliar land for those displaced. When members of the community caught wind of this development, they applied for a Supreme Court interdict halting the creation of the park.²⁴⁰

After the interdict was granted on the 20th March 1989, a flurry of negotiations saw the local community retain the right to reside and graze in

²³⁷ Koch E Op cit (note 221) 217

²³⁸ *Pachypodium namaquanum*

²³⁹ Munnik V 'From Protest to Pride: Learning to manage in the Richtersveld.' New Ground – Journal of Development and the Environment - Supplement recording the Group for Environmental Monitoring (GEM) conference held in 1993 in Broederstroom.2

²⁴⁰ Balic S 'Richtersveld win land rights tug-o-war.' New Ground - Journal of Development and the Environment. (1990) (1) 6

the area. In addition to certain royalties and job opportunities, the indigenous Richtersveld people obtained the right to share in the decision-making in the park's management plan. Recent evaluation of the Richtersveld joint management arrangement has, however, revealed that results are far from perfect, as anticipated benefits have not accrued to the community²⁴¹.

The struggle to retain land rights, to participate in natural resource management and to preserve cultural and social cohesion is not exclusive to the people of the Richtersveld. Other conflicts included the Bakgatla community in the Pilansberg region²⁴², the Nama herders of Namaqualand²⁴³, the Tembe-Thonga people of Maputaland²⁴⁴ and the Kangwane tribes in the former eastern Transvaal homeland.²⁴⁵

The truth is that conservation practices and national parks in South Africa have always been highly politicised and contested. In 1989, the Head of the ANC's Department of Economics and Planning, Max Sisulu, commented, "The ANC believes that a rational ecological protection policy requires the dismantling of apartheid. Widespread overgrazing, soil erosion and serious land degradation in the so-called 'homelands' constitute the inevitable destructive consequences of apartheid. These cannot be reformed or rehabilitated by land-use management measures without first dismantling apartheid..."²⁴⁶ The next chapter will provide a overview of the current nature conservation legislation in the post-apartheid South Africa, with a particular emphasis on national parks and other protected areas.

²⁴¹ Cock J and Fig D 'From Colonial to Community-Based Conservation: Environmental Justice and the National Parks of South Africa.' (1999) <http://www.sunsite.wits.ac.za/env/justice.htm>.

²⁴² Ntsoke Z 'The Bakgatla Balance the Books.' New Ground – Journal of Development and the Environment - Supplement recording the Group for Environmental Monitoring (GEM) conference held in 1993 in Broederstroom.3

²⁴³ Fig D 'Flowers in the Desert.' Chapter 8 in Cock J and Koch E Op cit (note 232) 111

²⁴⁴ Balic S Op cit (note 240) 8

²⁴⁵ Munnik V 'Living with Lions: Conservation in KaNgwane.' New Ground - Journal of Development and the Environment (1991) (6) 16.

²⁴⁶ Cock J Op cit (note 232) 12

CHAPTER 7 – NATURE CONSERVATION LEGISLATION IN SOUTH AFRICA: PROTECTED AREAS AND NATIONAL PARKS.

Discriminatory legislation was used as the primary tool of exclusion and oppression by the previous South African apartheid government. It is therefore imperative that present laws foster public awareness, transparency and accountability. They must also give direction and leadership in areas where reform is necessary – as is the case with local indigenous communities and protected areas. In this chapter, the current legal regime relating to protected areas and national parks will be examined, in order to determine whether this role is being fulfilled.

After 'The Union' was formed in 1910, the central government assumed conservation responsibility for forestry, inland waters, and islands and in 1926, the first National Parks Act was promulgated. The national government focussed on establishing and managing national parks, such as the Kruger National Park, marine fisheries and forestry.²⁴⁷ Fish and game preservation was, however, a function allocated to the provinces, which continued to expand their activities and establish conservation agencies to deal with the administration of biological resources.²⁴⁸

With the adoption of the new Constitution in 1994, the four provinces became nine, and simultaneously reincorporated the former homelands, which had their own individual nature conservation laws. Each of the nine provinces now has, in theory, its own individual nature conservation law²⁴⁹, which subsumes any previous 'homeland' legislation. However, many of the provinces have not

²⁴⁷ White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity N1095/1997, Government Gazette No.18163 dated 28 July 1997@16

²⁴⁸ The provinces also established their own provincial reserves. The former province of Natal was particularly pro-active in this regard.

²⁴⁹ In Kwa-Zulu Natal, The Kwa-Zulu Natal Nature Conservation Management Act 9 of 1997 and in Mpumalanga, the Mpumalanga Nature Conservation Act 10 of 1998.

yet adopted their own new nature conservation laws and continue to apply the respective old nature conservation ordinances²⁵⁰, as well as in some provinces, the respective former homeland nature conservation laws²⁵¹.

7.1 The Common Law

7.1.1 Wild Animals

A wild animal is regarded by the common law as being a thing that is capable of being privately owned²⁵², but before ownership of a wild animal is acquired, it is regarded as an unowned thing.²⁵³ Ownership of a *res nullius* is acquired by means of *occupatio*, which requires that the person claiming ownership must have the intention to become the owner²⁵⁴ and must exercise physical control over the thing.²⁵⁵ The ramifications of the common law for the conservation of wild animals is, save in the exceptional case where someone has acquired ownership of them, there are no private law remedies available to citizens when wild animals are killed, captured or injured.²⁵⁶

Moreover, if the animal is protected by virtue of being within a fenced farm or protected area and hence under the requisite physical control, it will lose such protection as soon as it escapes from the fenced area.²⁵⁷ The common law crimes of theft and malicious damage to property are not applicable. Consequently, wild animals would be without any legal protection if it were not for specific legislation for their conservation.²⁵⁸

²⁵⁰ For example, the Free State still operates under the Free State Conservation Ordinance 15 of 1974 and the Northern Cape continues to follow the Cape Nature and Environmental Conservation Ordinance 19 of 1974.

²⁵¹ Parts of the Eastern Cape are still governed by the Ciskei Nature Conservation Act 10 of 1987, while the Northern Province faces the task of consolidating the laws and institutions of four previous homelands: Lebowa, Venda, Gazankulu and KaNgwane.

²⁵² *A res in commercio*

²⁵³ *A res nullius*

²⁵⁴ *Animus domini*

²⁵⁵ Van der Merwe CG and de Waal MJ *The Law of Things and Servitudes* (1993) para 132

²⁵⁶ The common law position has been altered by the Game Theft Act 105 of 1991, which provides that a person who keeps certain commercially valuable game, shall not lose ownership, if the game escapes from land, which is sufficiently enclosed.

²⁵⁷ Kidd M *Environmental Law: A South African Guide* (1997) 108

²⁵⁸ Rabie MA *International Encyclopaedia of Laws 'South Africa'* (1999) Chapter 3:Wildlife Protection. 261

7.1.2 National Parks

At common law, a protected area such as a national park is be considered a *res publica*.²⁵⁹ The State stands in a custodial relationship to the thing, which is held in trust on behalf of the community²⁶⁰. The public retain simple rights, such as the use and enjoyment of the public property.²⁶¹ There is also a strong presumption against the granting of full ownership rights in respect of a *res publica*, as well as the concession of any lesser right in it.²⁶²

7.2 Nature Conservation Legislation

Nature conservation legislation in South Africa can be divided into two broad categories: the conservation of wildlife within protected areas and conservation outside such areas.

7.2.1 Conservation outside of Protected Areas

The original four nature conservation Ordinances, the Free State Nature Conservation Ordinance 8 of 1969, the Natal Nature Conservation Ordinance 15 of 1974, the Cape Nature and Environmental Conservation Ordinance 19 of 1983 and the Transvaal Conservation Ordinance 12 of 1983, continue to apply in the relevant geographical areas of the nine new provinces, until they are amended or replaced by Parliament or by new provincial legislatures. The ordinances provide for protection of wildlife outside of protected areas by focussing on individual species of fauna and flora, rather than on eco-systems.²⁶³ The system works by providing protection to these listed species in various ways. On some, there is absolute protection, while others require permits stipulating conditions such as bag limits, hunting seasons and hunting methods.²⁶⁴

²⁵⁹ This is a thing held by the state for the benefit of inhabitants

²⁶⁰ See Mbodla N 'Res Publicae: A South African perspective.' (2001) 64 THRHR122

²⁶¹ Surveyor General (Cape) vs Estate De Villiers (1923) AD 588

²⁶² Consolidated Diamond Mines of South West Africa vs Administrator, South West Africa 1958(4) SA 572 (A)

²⁶³: The ordinances contain schedules with categories such as 'ordinary game', 'open game', 'protected game', 'specially protected game' and 'endangered and rare species'; followed by a list of individual species of wild animals, birds and fish. This classification is based on the IUCN's Red Data Book concept

²⁶⁴ Glasewski J *Environmental Law in South Africa* (2000) 432

7.2.2 Conservation inside Protected Areas

Over the years, South Africa has enacted a wide variety of laws giving effect to various categories of protected areas. The main functional areas listed in the South African Constitution²⁶⁵ that relate to protected areas are the administration of indigenous forests and nature conservation, which qualify as areas of concurrent national and provincial legislative competence. However, national parks, national botanical gardens and marine reserves are subjects of exclusive national competence.²⁶⁶

TYPE OF PROTECTED AREA	LEGISLATION	ADMINISTRATION
National Park	National Parks Act 57 of 1976	National Parks Board
Lake Area	Lake Areas Development Act 139 of 1975	National Parks Board
Mountain Catchment Area	Mountain Catchment Areas Act 63 of 1970	Assigned to provinces
Protected Natural Environment	Environment Conservation Act 73 of 1989	Assigned to provinces
Special Nature Reserve	Environment Conservation Act 73 of 1989	Assigned to provinces
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
State Forest	Forest Act 122 of 1984	DWAF: delegated to provinces
Forest Nature Reserve and Wilderness Area	Forest Act 122 of 1984	DWAF delegated to provinces
National Monument	National Monuments Act 28 of 1969	National Monuments Council and provinces
Conservation Area	National Monuments Act 28 of 1969	National Monuments Council and provinces
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 specified resources
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	9 provincial administrations, numerous local authorities, private landowners
Ramsar Site	No legal status (Proposed Wetland Conservation Act)	DEAT and conservation authorities
Private Conservancies	No legal status	Farmers
Biosphere Reserves	No legal status	Conservation authority / neighbours
Sites of Conservation Significance	No legal status	Private landowners
Natural Heritage Sites	Not legally enforceable	Private landowners

Figure 10:
The Management of Protected Areas in South Africa Source: White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity N 10957/1997, Government Gazette No.18163 dated 28 July 1997. 32

²⁶⁵ Act 108 of 1996

²⁶⁶ Schedule 4 Part A

7.3 National Parks legislation in South Africa

7.3.1 The National Parks Act 57 of 1976

The first National Parks Act (NPA) was promulgated in 1926 as a direct result of representations made to the central government for the protection of the Sabie Game Reserve for the whole nation. This region had been proclaimed as a game reserve in 1898, by the South African Republic, and it was feared that the area was inadequately protected against agriculture and mining development. The 1926 Act re-proclaimed the Sabie Game Reserve as part of the Kruger National Park. The current legislation dealing with national parks in South Africa is the National Parks Act 57 of 1976²⁶⁷.

7.3.1.2 Object of a national park

The purpose for which national parks are established in terms of the Act is: '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 said 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.'²⁶⁸

7.3.1.3 Establishment of national parks

The NPA provides various mechanisms for the establishment of national parks. The Minister of Environmental Affairs and Tourism may, by notice in the Government Gazette, declare certain state land to be a park, provided the concurrence of various Ministers, who have an interest in the area concerned, is obtained.²⁶⁹ Particular emphasis is given to ensuring that the concurrence of the Minister of Minerals and Energy Affairs is obtained and that mineral

²⁶⁷ Hanks J and Glavovic P.D 'Protected Areas' Chapter 27 in Fuggle R F and Rabie MA *Environmental Management in South Africa* (1992) 698

²⁶⁸ S4

²⁶⁹ S2(B)

rights are respected. A park cannot be declared on state land, where a prospecting or mining right has been granted.²⁷⁰

Notwithstanding the provisions of the Lake Areas Development Act 39 of 1975, the Minister may also declare state land situated in a declared lake area to be a scheduled park, or part of it.²⁷¹ Apart from the establishment of national parks on state land, the Act also provides for “contractual parks” where an agreement is entered into between the South African National Parks and the landowners concerned.²⁷² Again, certain interested ministries have to be consulted, including the Minister of Minerals and Energy Affairs.²⁷³

Certain national parks are included in a schedule to the NPA,²⁷⁴ while others are merely included in a register.²⁷⁵ The high degree of inviolability of scheduled parks is illustrated by the fact that the NPA specifically provides that no land may be alienated or excluded or detached from the scheduled park, except under the authority of a resolution of Parliament.²⁷⁶

The Minister of Public Works, may, with the concurrence of the Minister of Minerals and Energy Affairs, by purchase or otherwise, including the exchange of state land situated outside a national park, or failing agreement with the owner, by expropriation, acquire land or a mineral right to land for the purposes of a national park.²⁷⁷ Provision is also made for South African National Parks, with the approval of the Minister of Environmental Affairs and Tourism, to purchase or even expropriate land or mineral right to land for the purposes of a national park.²⁷⁸

²⁷⁰ S2A(1)(a)

²⁷¹ S2A(1)(b)

²⁷² S2B(b)

²⁷³ Examples include the Richtersveld National Park, Cape Peninsula National Park and the West Coast National Park.

²⁷⁴ S2(1), S2A91) and (2) and S2C(1) and (2)

²⁷⁵ S 2B(2) and S2D(2)

²⁷⁶ S29(3)

²⁷⁷ S3(1)

²⁷⁸ S3A(1) and (2)

7.3.1.3 The administration of national parks

National parks are administered and managed by South African National Parks.²⁷⁹ The functions and powers of the Board are to control and manage the parks for the objects described in S4 of the NPA.²⁸⁰ These include the construction of roads, buildings, fences etc.²⁸¹; taking steps to ensure the security of visitors, the animal and plant life in the parks; and the preservation of the park and the animals and vegetation therein in a natural state²⁸²; and the provision of visitor accommodation and other facilities.²⁸³

Provision is also made for a National Parks Land Acquisition Fund to receive monies from various sources, including bequests and donations²⁸⁴. Finally, the Board may make regulations with the approval of the Minister, regarding various aspects of park management and administration.²⁸⁵ Among the regulations are those that relate to the exclusion of members of the public from certain areas of the park and²⁸⁶ the killing, capturing and impounding of any animals within a park and their subsequent disposal.²⁸⁷ Further regulations relate to matters that facilitate the efficient control and management of the park.²⁸⁸

7.3.1.4 Enforcement in national parks

Control is augmented through a number of criminal prohibitions. Prospecting and mining in any park included in schedule 1 is prohibited.²⁸⁹ Examples of other prohibitions include the entry into the park without permission,

²⁷⁹ This statutory body was previously known as the National Parks Board. The change of name was brought about by the National Parks Amendment Act 70 of 1997. The NPA simply refers to "The Board."

²⁸⁰ S12(1)

²⁸¹ S12(2)(b)(i)

²⁸² S12(2)(b)(ii)

²⁸³ S12(2)(b)(iv)

²⁸⁴ S12A(1)

²⁸⁵ S29

²⁸⁶ S29(1)(a)(i)

²⁸⁷ S29(1)(a)(ii)

²⁸⁸ See generally S29 (1)(a)-(o) The standing regulations are contained in GNR 2006 of 06/0/1978 supplemented by GNR 2243 of 21/09/90 and GNR238 of 16/02/1990 that regulate the West Coast National Park and the Wilderness National Park respectively.

²⁸⁹ S20

possession of weapons, hunting, injuring, disturbing or removing of animals and damage to trees and other plants.²⁹⁰

The NPA provides for two sets of penalties. The first one relates to offences to wild animals. Schedule 2 lists about 200 species, which may incur a fine of between R4000 and R8000 or imprisonment for a maximum of two years²⁹¹. In respect of elephant, black and white rhinoceros, the penalties increase to between R30 000 and R100 000 or upto ten years imprisonment. The second set of penalties deals with plants. Schedule 3 species attract a penalty of R1000 to R6000 or 18 months imprisonment. Offences with other plant species result in a R300 to R1500 fine or four months imprisonment.²⁹²

7.4 Other National Protected Areas

National parks constitute 53% of the total land area allocated to protected areas in South Africa and represent the cornerstone of the protected area network in South Africa. The establishment of other protected areas, such as conservancies, heritage sites, biosphere reserves and private nature reserves, is becoming increasingly prevalent in recent times. In order to provide a comprehensive picture, the following outline will provide a brief insight into the full range of protected areas legislation in South Africa.

7.4.1 The Constitution of South Africa Act 108 of 1996

S24 of the Constitution states that everyone has the right to an environment that is not harmful to his or her health or well – being.²⁹³ The term 'well being' is broad enough to be interpreted by the constitutional court as including the aesthetic and spiritual dimension of the natural environment.

²⁹⁰ S24(1)

²⁹¹ S24(1)(a)

²⁹² S24(6)

²⁹³ S24 (a)

For many South Africans, well-being is dependant on the maintenance of wild places, including national parks and other protected natural areas.²⁹⁴

7.4.2 The Defence Act 44 of 1957

The Minister of Defence is given wide powers to do or cause to be done, all things that are necessary for the efficient defence and protection of the Republic of South Africa²⁹⁵. Policy directives state that nature conservation is a secondary objective of land under the control of the Minister. Management plans regarding this objective needs to be submitted annually.

7.4.3 The Mountain Catchment Areas Act 63 of 1970

The Minister of Water Affairs and Forestry is empowered to declare a mountain catchment area and define its boundaries in the Government Gazette.²⁹⁶ The principle objective is the maintenance of water yield and water quality. A secondary value is their use for nature conservation, recreation and agriculture.²⁹⁷ The Minister may also issue directives to be applicable within the boundaries of a mountain catchment area, or within five kilometres from it.²⁹⁸ Apart from the usual criminal penalties, the Act also provides for fire protection plans,²⁹⁹ exemption from taxes,³⁰⁰ compensation³⁰¹ and financial aid³⁰².

7.4.4 The Sea Birds and Seals Protection Act 46 of 1973

The object of this Act is to provide the control over certain islands and rocks, the capture and killing of sea birds and seals and for the disposal of their

²⁹⁴ Glasewki J 'Environmental Rights and the New South African Constitution' Chapter 9 in Anderson M and Boyle A (eds) *Human Rights Approaches to Environmental Protection: an overview* (1996)178

²⁹⁵ S76

²⁹⁶ S2

²⁹⁷ Rabie and Burgers " The Mountain Catchment Areas Act and its Implementation." (1997) 12 SA Public Law 351 at 352-354

²⁹⁸ S3(1) These may relate to the conservation, use, management and control of such land, the prevention of soil erosion, the protection and treatment of the natural vegetation and the destruction of intruding vegetation and any other necessary or expedient matter.

²⁹⁹ S8(1)

³⁰⁰ S5(1)

³⁰¹ S4

³⁰² S10

products.³⁰³ "It is a criminal offence to set foot or remain on upon any island... except in the performance of his duties under the Act... or under authority and subject to the conditions of an exemption or a permit."³⁰⁴

7.4.5 The Lake Development Areas Act 39 of 1975

The Act provides for the declaration of 'lake areas' on land comprising or adjoining a tidal lagoon or tidal river.³⁰⁵ Control over lake areas had been initially exercised by the Lake Area Development Board, but was transferred to South African National Parks (SANP) in 1983. SANP presently controls, manages and develops state land within a lake area.³⁰⁶

7.4.6 The Forest Act 122 of 1984

This Act provides for the establishment of national botanical gardens.³⁰⁷ The National Botanical Institute (NBI) is a juristic person, which runs and maintains the seven botanical gardens in South Africa. The NBI may, with the concurrence of the Minister of Water Affairs and Forestry, make by laws relating to the Institute.³⁰⁸

7.4.7 The Environment Conservation Act 73 of 1989(ECA)

The ECA makes provision for the following protected areas:

- i) **Protected Natural Environments (PNE's³⁰⁹)**: these are areas declared by a competent authority, who is of the opinion that it will substantially promote the preservation of specific ecological processes, natural systems, natural beauty or species of indigenous

³⁰³ Long Title of the Act

³⁰⁴ S3(9)

³⁰⁵ S2(1)

³⁰⁶ S 11(1)

³⁰⁷ Although the Forest Act 73 of 1984 has been repealed by the National Forest Act 84 of 1998, the latter specifically preserves Part IX, which establishes the National Botanical Institute.

³⁰⁸ S72 For example: visits by the public to the gardens and the conservation of any animal or plant in a national botanical garden.

³⁰⁹ There are currently 7 PNE's in South Africa, being the Magaliesberg Nature Area, the Cape Peninsula Nature Area, the Rietvlei Nature Area, the Langebaan Nature Area, the Lourens River PNE, the Rietvlei PNE and the Cape Peninsula PNE.

wildlife or the preservation of biotic diversity in general.³¹⁰

Consultation with the owners and holders of real rights in the defined area is a prerequisite to the declaration of a PNE.

- ii) **Special Nature Reserves:** these areas are set aside primarily as scientific reserves.³¹¹ Entry into the reserve is strictly controlled and written permission is required from a local authority or government institution and only after consultation with the Minister.³¹²
- iii) **Limited Development Areas:** once a limited development area has been declared by the Minister, no development may be undertaken without due authorisation from the Minister or local authority.³¹³ In considering the application, an environmental impact assessment may be required³¹⁴.

7.4.8 Marine Living Resources Act 18 of 1998

The Minister of Environmental Affairs and Tourism is empowered to declare an area to be a marine protected area:

- a) for the protection of fauna and flora or a particular species of fauna and flora and the physical features on which they 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 and
- c) to diminish any conflict that may arise from competing uses in the area.³¹⁵

Amongst the prohibited activities within the boundaries of these areas, are fishing, taking and destroying of any flora and fauna other than fish, without the requisite permission.³¹⁶

³¹⁰ S16(1)(a)

³¹¹ S18 (2)(a)

³¹² S 518(6) and (7) Only a scientist with a specific project or an officer charged with specific duties may be allowed into a special nature reserve. The Prince Edward and Dassen Islands in the Southern Ocean have been declared so far.

³¹³ S23 (1) and (2)

³¹⁴ S23(3)

³¹⁵ S84(4)

³¹⁶ S84(4)

7.4.9 National Forest Act 84 of 1998

This Act provides for three types of specially protected areas in the forestry context: a forest nature reserve, a forest wilderness area and any other type of protected area, which is recognised in international law or practice.³¹⁷ It is a criminal offence to cut, damage, remove or destroy any forest produce from such a protected area, unless it is conformity with certain stipulated rules or conditions.³¹⁸ Management of these protected areas is to be conducted by the Minister of Water Affairs and Forestry.³¹⁹

7.4.10 National Heritage Resources Act 25 of 1999

This Act is the central legislative enactment regulating the management of South Africa's heritage resources.³²⁰ Its primary objective is the conservation of the 'national estate'. Apart from specific provisions regarding certain immovable property, it also provides for specific protected areas: national and provincial heritage sites,³²¹ protected areas,³²² heritage areas³²³ and archaeological and palaeontological sites, including wrecks and meteorites.³²⁴

7.4.11 World Heritage Convention Act 49 of 1999

This Act was passed to incorporate the World Heritage Convention into South African law. The Act encompasses both cultural heritage and natural heritage that is of 'outstanding universal value'. It provides for the cultural and environmental protection and sustainable development of, and related activities within, World Heritage Sites.³²⁵

7.5 Provincial and Local Protected Areas Legislation

Since their inception in 1910, the various provinces have established numerous provincial nature reserves under the respective Nature

³¹⁷ S8(1)(i)-(iii)

³¹⁸ S10(1)

³¹⁹ S11

³²⁰ This Act repeals the National Monuments Act 28 of 1969

³²¹ S27

³²² S28

³²³ S31

³²⁴ S35

³²⁵ S3(a)

Conservation Ordinances. Apart from provincial nature reserves, the ordinances also provide for local and private nature reserves.

7.5.1 Provincial Nature Reserves

The Premier of a province may proclaim a provincial nature reserve on any land under his or her control or management³²⁶ or after consultation and the conclusion of an agreement with any state department, on land that is under the control or management of such state department.³²⁷ For this purpose, he or she may by agreement or expropriation, acquire suitable land³²⁸ and appoint staff.³²⁹

The Premier may also make regulations to control a wide range of activities in respect of provincial nature reserves.³³⁰ There is also a general prohibition that no person may, without a permit, hunt any wild animal or pick any flora in a provincial nature reserve. The head of the Department of Environmental and Cultural affairs must manage, control and develop provincial nature reserves with a view to the propagation, protection and preservation of fauna and flora and may in this process provide facilities for public recreation³³¹.

7.5.2 Local Nature Reserves

The Cape Nature and Environmental Conservation Ordinance 19 of 1974 is the only ordinance that makes provision for the establishment of local nature reserves by local authorities, although local authorities elsewhere have also established local nature reserves by virtue of local by-laws. The establishment, control and management of local nature reserves is similar to provincial reserves, save that the actions of the local authority are made subject to approval by the Premier of the province.³³²

³²⁶ S6(1)(a) The Cape Nature and Environmental Conservation Ordinance 19 of 1974 will be used as an example.

³²⁷ S6(1A)(a)(i)

³²⁸ S6(2)(a)

³²⁹ S6(2)(b)

³³⁰ S6(6)

³³¹ S6(3)

³³² S10

7.5.3 Private Nature Reserves

Any landowner may, with the approval of the Premier, and subject to such conditions specified, establish a private nature reserve on land of which he or she is the owner.³³³ Where a landowner obtains the necessary approval, he or she is generally afforded greater privileges regarding conservation and utilisation of fauna and flora than otherwise would have been the case.³³⁴

7.6 Other Non-Statutory Mechanisms

7.6.1 Conservancies

The conservancy system was originally conceived in South Africa in the former province of Natal and spread to the former Transvaal and the Orange Free State. The former Natal Parks Board (NPB) defines a conservancy as a group of farms, whose owners have combined resources for the improved conservation and well-being of wildlife inhabiting the area.

The NPB assists in a number of ways, including the provision of technical advice, the drawing up of management plans and the training of game guards.³³⁵ Ten years after the establishment of the first conservancy in 1978, 90 such conservancies have been formed, with a total of 1077 members, employing 242 game guards and comprising a total area of 701 324 ha.³³⁶

7.6.2 Biosphere Reserves

Biosphere Reserves are established and registered in terms of the Man and the Biosphere Programme of UNESCO. They are internationally designated protected areas, which are managed to demonstrate their value to conservation.³³⁷ Such reserves usually include a core area devoted to long-term protection, a buffer zone that surrounds the core area and where only activities compatible with the conservation objectives are tolerated and an

³³³ S12(1) of the Cape Nature Conservation and Environmental Conservation Ordinance 19 of 1974

³³⁴ S13

³³⁵ Hanks J and Glavovic P.D 'Protected Areas' Chapter 27 in Fuggle RF and Rabie MA *Environmental Management in South Africa* (1992) 711

³³⁶ Rabie MA Op cit (note 258) 246

³³⁷ Glasewki J Op cit (note 264) 391

outer transition where sustainable resource management practices are promoted. The Royal Zulu Reserve and Biosphere has been described by world-renowned conservationist Ian Player as “the most important conservation project to emerge from Southern Africa since 1904.” The plan is not only to breed endangered species for their survival and to attract tourists, but to revive respect for the traditional cultural and spiritual values attached to natural resources³³⁸. A biosphere reserve has also been declared in the Koggelberg Mountains in the Overberg area of the Western Cape in 1999.³³⁹

The following chapter provides an assessment of the protected areas legislation and administration, as summarised above. It will also explore recent attempts to tackle the inadequacies and weaknesses in the present legal system.

³³⁸ Macloed F 'Zulus take up spears for wildlife.' Mail and Guardian 22/06/01-28/06/01@18

³³⁹ Two further biosphere reserves have recently been announced. The Cape West Coast Biosphere Reserve and the Waterberg Biosphere Reserve.

CHAPTER 8 – ANALYSIS AND REFORM OF SOUTH AFRICA’S PROTECTED AREAS LEGISLATION

8.1 Analysis of Current Protected Areas and National Parks Legislation

The plethora of protected areas of different types, subject to control of a variety of different administrative bodies, is cause for concern.³⁴⁰ Although South Africa has a sophisticated network of protected areas, the legal framework is regarded as fragmented, uncoordinated and weak from an institutional and administrative point of view³⁴¹.

The current complex and ad hoc status of South African protected areas legislation is summarised in the White Paper on Conservation of Conservation and Sustainable Use of South Africa’s Biological Diversity³⁴², “...the fragmented, polarised and inefficient administration and legislative structure created by apartheid resulted in no fewer than 17 government departments having a primary responsibility for nature conservation prior to the 1994 election. This situation did not improve with the establishment of the new provinces and government structures. Divided responsibilities, together with a duplication of effort, a profusion of laws and most importantly, a lack of co-ordination, have been major factors hampering the effective conservation of biodiversity.” The present position has been described as a bazaar of legislative confusion.³⁴³

Of major concern is the failure to link social, cultural, economic and political needs of South Africa’s people with the protection of natural areas, such as national parks. Bothma JDP and Glavovic PD express this concern: “It is essential that the last remnants of wildlife and their habitat be legally

³⁴⁰ Kidd M *Environmental Law: A South African Guide* (1997) 107

³⁴¹ Glasewki J *Environmental Law in South Africa* (2000) 409

³⁴² N1095/1997, Government Gazette No.18163 dated 28 July 1997@18

³⁴³ Manning I ‘South Africa’s biodiversity- a bazaar of legislative confusion’ Without Prejudice- South Africa’s corporate legal magazine. (2001) (1)(1) 20

protected, the laws should also permit the controlled taking on a sustainable-yield basis, especially where traditional societies are dependant on natural resources for their livelihood. There should be a provision, as a matter of law and not of administrative policy, for local participation in the protection of wildlife and natural areas, the determination of reserve boundaries and the preparation of management plans, and in economic benefits derived from those resources".³⁴⁴ An overview of the legislation dealing with national parks and protected areas reveals that South Africa currently falls short of this mark.

This ineffective, authoritarian legislation has left deep scars on both South Africa's people and wildlife. Traditional national parks managers regard surrounding communities as inimical to biodiversity conservation. Neighbours are regarded as potential poachers, competitors for land and water, and their poverty as an embarrassment to tourism. The park officials see their relationship as being predominantly one of policing and guarding boundaries. On the "other side of the fence", a very different perspective has emerged. A BBC documentary on the politics of conservation in South Africa opens with a scene of youths from the township of Matsulu, located on the southern fence of the Kruger National Park, singing and dancing in the gravel road that separates their homes from the reserve. The angry youths went to protest about the park because they associate it with forced removals, restrictions on freedom of movement and paramilitary game rangers.³⁴⁵

Indications also show that endemic wildlife species and their natural habitats have also suffered at the hand of traditional conservation practices. Already 3435³⁴⁶ of South Africa's plant species, 102³⁴⁷ of bird, 72³⁴⁸ of reptile, 17³⁴⁹ of

³⁴⁴ Bothma JDP and Glavovic PD 'Wild Animals' Chapter 12 in Fuggle RF and Rabie MA *Environmental Management in South Africa* (1992) 258

³⁴⁵ The Weekly Mail 15-21 November, 1991

³⁴⁶ 15%

³⁴⁷ 14%

³⁴⁸ 24%

³⁴⁹ 18%

amphibian, 90³⁵⁰ of mammal and 142³⁵¹ of butterfly species are listed as threatened in the South African Red Data books. It is further estimated that 25% of land has been transformed for purposes of cultivation or afforestation, for urban or industrial development or to enable roads, railways and dams to be built. Areas that are not developed may have been subject to overgrazing, to infestation by alien plants and animals, or to the exploitation of certain species for subsistence or trade purposes.³⁵² Trends indicate that this situation is not improving, and that the growing human populations and the unsustainable rates of resource consumption will result in increasing negative impacts on biodiversity.

8.2 South African Initiatives aimed at Community-Based Conservation

In the 1980's there was a shift amongst some South African conservationists, based on the realisation that the exclusion of local communities combined with draconian law enforcement, have met with little success in achieving sustainable resource utilisation.³⁵³ This was affirmed by the 1982 Congress on National Parks in Bali, which called for increased support for communities through education programmes, revenue-sharing schemes, participation in the management of reserves and the creation of appropriate development schemes near protected areas.³⁵⁴

This change has seen a move away from ideas of 'preservation', 'non-utilitarianism' and 'law enforcement' to 'wise-use', 'resource management' and 'sustainable utilisation'. Observations in many other parts of the world have shown that South Africa is relatively pro-active in promoting parks for people,

³⁵⁰ 37%

³⁵¹ 22%

³⁵² White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity – N1095/1997, Government Gazette No.18163 dated 28 July 1997@52

³⁵³ Hauck M 'Regulating Marine Resources in South Africa.' Acta Juridica (1999) 211@222

³⁵⁴ The 1980 World Conservation Strategy also stressed the importance of linking protected area management with economic activities of local communities.

while not neglecting the principle mission of ecological management and the maintenance of life support.³⁵⁵

Key elements of this new community-based conservation approach are:

- the establishment of consultative structures in advance of establishing a new national park, in order to canvass the views of local communities and interest groups
- provision for joint management and consultative management in policy development and implementation in national parks
- new approaches to resource utilisation that allow traditional owners access to parks for purposes of plant collection, cutting of grass and fishing
- outsourcing and privatisation of services to entrepreneurs within local communities, with preference being given to previously disadvantaged groups
- the creation of special departments – social ecology in the case of SANP, with the specialised function to interact with local communities, meet their leaders and where possible, involve them in management and business ventures affecting the parks.³⁵⁶

The following are a few examples of how these community-friendly principles are being applied in terms of current legislation, in different parts of the subcontinent:

- i) The 'People and Parks' project started by the non-government organisation, the Group for Environmental Monitoring (GEM) was initially launched as a research project in four communities, but has now expanded to include more than 40 communities in a series of regional workshops, building up to an annual national conference.

³⁵⁵ Steenkamp N and Hughes G R 'Parks are for People: the value of South Africa's Protected natural areas.' (1997) 51(2) African Wildlife 17

³⁵⁶ De Villiers, B 'Democratisation of Conservation: community involvement of national parks.' (2000) 15 SA Public Law 17 6@ 188.

This project has played an invaluable role in bringing local issues and concerns to the national policy debate.³⁵⁷

- ii) National Park community forums/committees are formed in order to provide for sound relationships between communities and park management and to promote mutual trust and co-operation between SANP and local stakeholders. The Chief Executive Officer of SANP appoints the members of these consultative bodies, after consultation with local interest groups.³⁵⁸
- iii) Community trusts and levies such as those implemented by the Kwa-Zulu Natal Nature Conservation Service in the Hluhluwe – Umfolozi region are aimed at the economic empowerment of local communities. In 1999, traditional chiefs or amakhosi unanimously agreed to re-invest an amount of R730 737 back into tourist facilities within the parks.³⁵⁹
- iv) Spatial Development Initiatives (SDI's) are government-backed strategies aimed at the creation of development corridors, which can focus on industry, agriculture and tourism. An essential component is broad-based and intensive public participation that must often be accompanied by special programmes to empower historically disadvantaged communities to participate meaningfully in development dialogue and become independent economic stakeholders in the development process. Current projects include Lubombo, Richards Bay, the Fish River and the Wild Coast.³⁶⁰
- v) Community development organisations (CDO's) were developed by the former Boputhatswana Parks Board as a result of hostile reactions from local communities to the creation of the Pilansberg Game Reserve. These independent institutions take key decisions about the management and use of revenue derived from the park.

³⁵⁷ Wells M 'The Ecological and Social Role of Protected Areas in the new South Africa.'(1996) Policy Paper No.6 of the Land and Agricultural Policy Centre and the Overseas Development Institute.41

³⁵⁸ De Villiers B Op cit (note 356) 190.

³⁵⁹ 'Communities invest in Hluhluwe Umfolozi Park.' (1999)(53)(6) African Wildlife. 6

³⁶⁰ South African Environment Project website – <http://www.saep/org /subject/economy/SDIs/htm>

Members are nominated by tribal authorities and chosen from amongst ordinary residents. The CDO's have launched several projects, including the community game reserve, production of overalls for the neighbouring mines, vegetable growing and the supply of haberdashery to Sun City.³⁶¹

- vi) Private enterprises, such as the Conservation Corporation Africa have begun to devise ways of making their business contribute to the socio-economic improvement of black neighbours. The philosophy of social responsibility rests on the promotion of local development through its Rural Investment Fund, established to channel private and bilateral donor funds into community development projects around core tourism enterprises.³⁶²
- vii) In response to the complex and fragmented nature of the protected areas infrastructure, the post-1994 South African government constituted a Board of Investigation into the Institutional Arrangements for Nature Conservation in South Africa in 1998.³⁶³ After a comprehensive survey of the institutional and administrative structures in South Africa, the Kumleben Commission made a number of important recommendations, inter alia: the involvement of local communities in the management and in the sharing of the economic benefits of a protected area is essential for their well-being and in the interests of nature conservation generally.

Although these initiatives display a willingness on the part of protected area managers to change the colonial preservationist paradigm of the past, indications show that these efforts are far from providing a complete solution. For example, recent surveys conducted by CIET- Africa³⁶⁴ reveal that Wild Coast residents still do not have the means to make a living. This despite the implementation of a Spatial Development Initiative (SDI) intended to 'kick-

³⁶¹ Koch E 'Eco-Tourism and Rural Reconstruction in South Africa: Reality or Rhetoric?' Chapter 8 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation*. (1997) 225

³⁶² Grossman and Koch 1995 in Wells M Op cit (note 357) 44

³⁶³ Justice Kumleben, Professor Sangweni and Dr. Ledger led the Kumleben Commission.

³⁶⁴ Community Information Empowerment and Transparency

start' the local economy. Formal employment has dropped from 20 – 11% amongst females and 29 – 19% amongst males between 1997 and 2000.³⁶⁵ It has further been noted that national park community forums/committees provide a model for dealing with a small number of local communities. In the context of massive poverty and unemployment in rural areas surrounding South Africa's national parks³⁶⁶ these consultative bodies are merely a step in the right direction.³⁶⁷

Further legal developments may, however, pave the way for a co-ordinated, unified approach to future partnerships between local indigenous communities and national parks and other protected areas in South Africa. These are the 1994 protected areas general policy, the changes in the administration of national parks, the establishment of contractual national parks and joint management boards, the provision for 'local boards' in terms of the Kwa-Zulu Natal Nature Conservation Management Act 9 of 1997 and the integration of conservation with environmental management.

8.2.1 The 1994 Protected Areas General Policy

Part I of the Environment Conservation Act 73 of 1989 (ECA) provides for an Environmental Policy. The ECA does not expressly set down policy, but empowers the Minister to "...determine the general policy ...by publication in the Government Gazette."³⁶⁸ Such a policy can be promulgated for, inter alia:

- a) the protection of ecological processes, natural systems and the natural beauty as well as the preservation of biotic diversity in the natural environment;³⁶⁹
- b) the promotion of sustainable utilisation of species and ecosystems and the effective application and re-use of natural resources.³⁷⁰

³⁶⁵ Myburgh M 'No Work on the Wild Side.' Mail and Guardian 29/06/2001 – 05/07/2001@40

³⁶⁶ E.g. the western boundary of the Kruger National Park where millions live in poor conditions, with few jobs and limited educational opportunities.

³⁶⁷ Wells M Op cit (note 357) 44

³⁶⁸ S2

³⁶⁹ S2(a)

³⁷⁰ S2(b)

S3 of the ECA obliges each Minister, Administrator, local authority or government institution which deals with environmental matters, to exercise their powers or perform their duties in accordance with the policy referred to in S2. The Director-General has the duty to ensure that the policy is being complied with and may take any necessary steps in this regard.³⁷¹

Government Notice 51 of 21/01/1994 was promulgated in terms of S2 of the ECA and calls for "a national nature conservation plan, including the compilation of a complete inventory of and a classification for protected areas will be developed by the Department of Environmental Affairs to ensure the maintenance of South Africa's biodiversity. The objective is the establishment of a representative system of protected areas with a national coverage and distribution to include various veld types, biomes and land forms. The interests and wishes of local populations must be considered in the establishment of each protected area. Effective management and control should be established to make possible the sustainable use of economically viable natural resources, for example, game, marine resources, veld and natural forests. The maintenance of ecological integrity and natural attractiveness must be pursued as a primary objective..."

As anticipated, a further policy titled The Classification of Terrestrial and Marine Protected Areas³⁷² was published by the Department of Environmental Affairs and Tourism. Paragraph 1 sets out the management philosophy: "The development of nature conservation and specifically the establishment and management of protected areas have moved from the traditional concept that all protected areas were to be preserved solely as a sacrosanct wildlife sanctuary. The accommodation of life-styles, aspirations and needs of local communities as part of the overall conservation ethic has become a globally

³⁷¹ S3(2)(a) and (b)

³⁷² Government Notice 449 of 1994, GG 15726 of 09/05/1994

acceptable principle.”³⁷³ A classification system based on the IUCN Guidelines is then set out.³⁷⁴

Although the National Environment Management Act 107 of 1998 (NEMA) has repealed S2 of the ECA, it specifically preserves anything done under the ECA provided it is not inconsistent with, or overridden by NEMA.³⁷⁵ This effectively means that the 1994 classification system and management policy still remain in force.

8.2.2 Changes in the Administration of National Parks

Since 1926 national parks have been administered by the National Parks Board. This was the name confusingly used for the governing body of non-executive board members³⁷⁶ and the organisation as a whole. The organisation was renamed South African National Parks (SANP) in 1996, after a public competition was launched to develop a new name. In 1995, the National Parks Amendment Act³⁷⁷ was passed by the then Senate. The Act increased the Board from 12 to 18 members, with half nominated by the provincial Premiers. The remaining nine are appointed by the Cabinet from nominations by the public and other interested organisations. The new Board of Curators is more representative than its predecessors in racial terms and it is also marked by diversity of party political allegiance.

The transformation statement of the new Board states: “SANP is striving to transfer power and control of resources from the minority that had been appointed and privileged by an undemocratic system, to the majority that

³⁷³ Lyster R “Environmental Law” Annual Survey of South African Law (1994) 368

³⁷⁴ According to the policy, a national park or equivalent reserve is defined as, ‘...an outstanding natural area designated to protect the ecological integrity of one or more ecosystems for this and future generations. It must be of sufficient size to sustain viable, free-living populations of wild plant and animal species, which occur naturally. Preservation of the environment will at all times receive the highest priority. Only development that is reconcilable with the management objective will be allowed. Members of the public will have controlled access to these areas, which will be managed by either a National Parks Board or other competent authority. Existing national parks, provincial parks, nature reserves and indigenous state forests fall into this category.’

³⁷⁵ S51 of NEMA

³⁷⁶ Technically speaking, they were the Board of Curators

³⁷⁷ 38 of 1995

participates in the new democratic process. It is also directing the benefits of its activities to provide for all South Africans, rather than the more wealthy and privileged sections of society."³⁷⁸

Although this policy signals a dramatic shift away from the dominant notions of conservation, the slow pace of reform and affirmative action remain controversial. Until 1996, the cabinet minister responsible for national parks hailed from the former ruling National Party. Similarly, all the bureaucrats in central government responsible for biodiversity protection were members of the old guard, with transformation occurring only from 1998 onwards. Within the SANP, key officials were from the former white-ruled establishment and continued to reflect similar values after democratisation.³⁷⁹

Occupational Level	Male				Female				Total
	Afr.	As.	Col.	Wh.	Afr.	As.	Col.	Wh.	
Management	30	1	9	165	11	1	5	9	231
Skilled	66	3	24	148	15	2	7	96	360
Semi-skilled	716	2	220	9	92	3	73	100	1214
Unskilled	1489	0	82	3	756	1	97	4	2432
Total	2301	6	335	325	874	6	182	208	4237
Afr. = African		As. = Asian		Col. = Coloured			Wh. = White		

Figure 11: Staff of the South African National Parks
Source: SANP directorate of Human Resources, 1999.
Report: January 1998 n- January 1999, Pretoria

³⁷⁸ See the SANP official website – <http://www.parks-sa.co.za?general-info.htm>: One of the key elements of SANP's Strategic Plan is to facilitate the access and involvement of all stakeholders in the change process to ensure participatory democracy and ownership of the transformed agency, including reconciliation with communities adjacent to South African national parks through economic and cultural empowerment.

³⁷⁹ Cock J and Fig D 'From colonial to community-based conservation: Environmental Justice and the National Parks of South Africa.' (1999) [http://www.sunsite.wits.ac.za /env/justice.htm](http://www.sunsite.wits.ac.za/env/justice.htm)

8.2.3 Contractual National Parks and Land Claims

As with the reform process in Zimbabwe, Namibia, Canada and Australia, the transformation of conservation policies and structures has included the issue of land reform. A 'contractual national park' may be declared in accordance with S 2B(1) of the National Parks Act 57 of 1976, which results in the return of full ownership to local communities, while it is agreed that land is used in a way that is compatible with conservation objectives. In this respect, the new SANP Board has established a Land Claims Committee aimed at the settlement of claims through negotiation, mindful of the need to balance social justice and its mandate to conserve biodiversity.³⁸⁰

The Makuleke-SANP joint management agreement was concluded on 30 May 1998, after 18 months of tough negotiation. The resulting settlement is based primarily on the joint agreement concept pioneered in Australia and has been described as a "world class agreement" and a "breakthrough for conservation in South Africa."³⁸¹

The Makuleke community lodged a land claim against the northern part of the Kruger National Park, known as the Pafuri area on the 20th December 1995.³⁸² The area, which comprises approximately 25 000 hectares and which is probably the most biodiverse, had been occupied by the community until August 1969, when they were forcibly removed by the then Department of Bantu Affairs.

³⁸⁰ See Cock J and Fig D Op cit (note 379): Claims are submitted to one of the five regional Land Claims Commissioners. In the case of state owned land, a number of government departments may be involved e.g. Public Works, Land Affairs, Minerals and Energy, Defence and Environmental Affairs and Tourism. Should the state accept the legality of the claim, settlement can be negotiated between the state and the community. Any agreement needs to be endorsed by the Land Claims Court, which would adjudicate any claim where no agreement has been reached.

³⁸¹ Msimang, M – Chief Executive Officer of SANP in De Villiers, B 'Makuleke Land Claim and the Kruger National Park: joint management – a benchmark for conservation areas?' (1998) 13 SA Public Law 309@317

³⁸² The Makuleke Community concerning Pafuri Area of the Kruger National Park and Environs, Soutpans District, Northern Province – LCC 90/98 15 December 1998.

This was a particularly horrific removal, which involved 3000 people being forced at gunpoint to burn their own homes. At the time, the Makuleke community was offered land in exchange for the loss, but they received only 6000 hectares, while the rest was put at the disposal of other tribes.

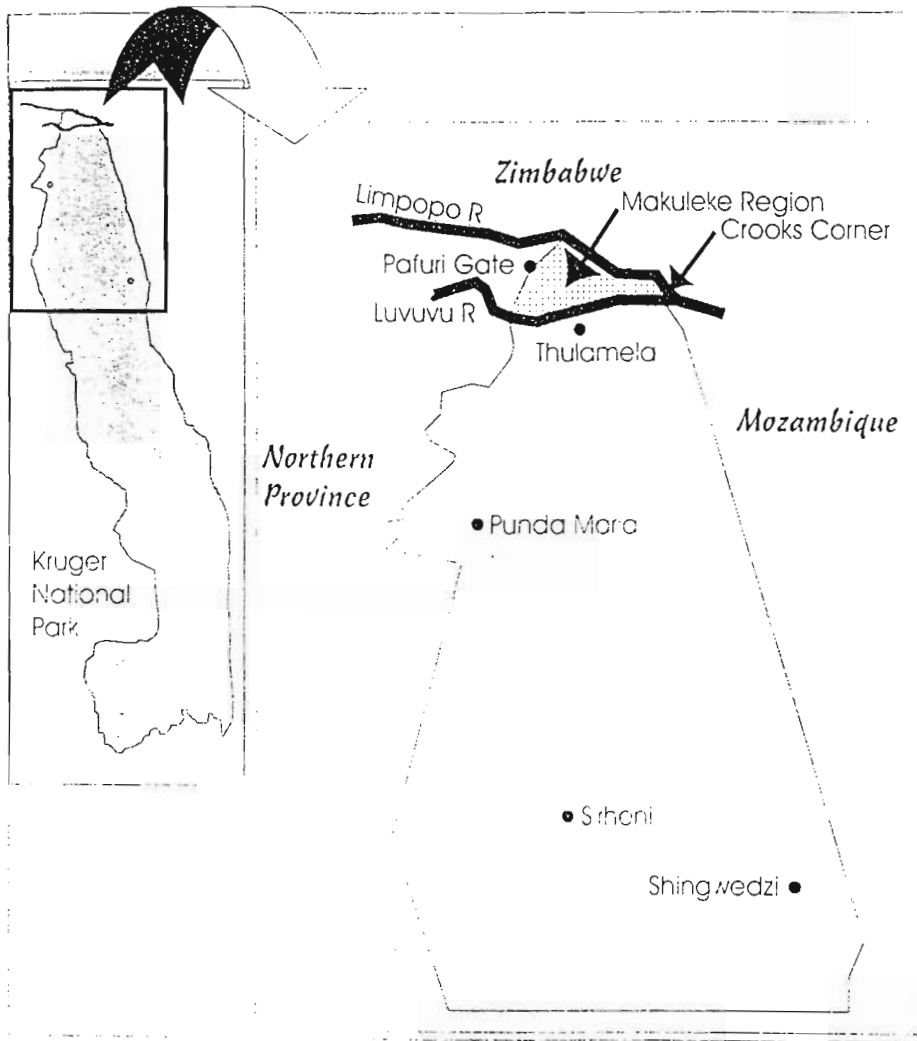


Figure 12 Map of the Makuleke Region
Source: de Villiers B *Land Claims and National Parks: the Makuleke Experience* (1991)¹

In pursuance of the Restitution of Land Rights Act 22 of 1994, the community based their claim on the fact that they were deprived of their land rights in pursuit of discriminatory legislation and by means of discriminatory policies. Inadequate compensation was offered to them for the land and possessions

lost. The Makuleke agreement is the first South African agreement, which restored the rights of a community to land situated within a national park.³⁸³ The agreement provides that a contractual park will be established for a period of 50 years, provided that the agreement may be cancelled after an initial period of 25 years. The interest of the Makuleke people will be represented by a Community Property Association³⁸⁴, which will hold the land on behalf of the community. A joint management board will manage and control the land. SANP will be responsible for conservation activities, while the community will oversee all commercial ventures. No mining, farming or permanent settlement will occur without the permission of SANP. Capacity building and employment creation programmes supported by donations from foreign donor organisations will ensure that the community can, in time, take responsibility for the conservation management of the land. The agreement has also resulted in some 5000 hectares previously beyond the boundaries of the Kruger National Park, now being incorporated in the contractual area.

Although the Makuleke agreement may set a significant precedent for creating harmony between community and conservation interests,³⁸⁵ it has also caused considerable controversy amongst certain sectors of the South African public. Nelson Mandela, in his address at the launch of the Kruger National Park centenary celebrations on the 26 March 1998, supported the ideal of South African national parks being valuable national assets.³⁸⁶ As such, these areas belong to the nation as a whole and the questions that arises is why local communities adjacent to such regions have access to the

³⁸³ Similar agreements are currently being discussed as a possibility to settle land claims involving the Khoisan community and the Kalahari-Gemsbok Park, the Riemvasmaak community and the Augrabies Falls national park as well as other protected areas surrounding the Greater St. Lucia Wetland Park.

³⁸⁴ This body is formed in terms of the Communal Property Associations Act 28 of 1996, which provides the means whereby rural communities who want to hold land jointly and in groups, can organise their tenure in such a matter. See Summers R 'Legal and Institutional Aspects of Community-based wildlife conservation in South Africa, Zimbabwe and Namibia.' (1999) *Acta Juridica* 208.

³⁸⁵ Steenkamp C 'The Makuleke Claim Signing Ceremony: harmonising social justice and conservation.' (1998) (5) 4 *African Wildlife* 8

³⁸⁶ <http://www.polity.org.za/search/oop/qfullhit/htm> " Such assets as the Kruger National Park and many other parks and tourist attractions...can make a major contribution, not only to our own country, but the whole of southern Africa."

utilisation of natural resources, in a manner that discriminates against other citizens. Some argue that if the taxpayers' money is used to sustain national parks, the benefits from such parks should be distributed as widely as possible.

A recent proposal by the Makuleke community suggested the hunting of two elephants and two buffaloes in their section of the Kruger National Park in an effort to raise capital to develop their eco-tourism potential.³⁸⁷ This has already raised the eyebrows of those who are concerned that the conservation status of the area will be jeopardised by the agreement. Rangers in the park argue that the hunting of rare species is not sustainable in such a low-density game area; and that it would make the animals shy of tourists.

There are further fears that the slow pace required to realise benefits from joint management and eco-tourism activities will conflict with the need to deliver short-term benefits to the Makuleke community. This may have a negative impact on the atmosphere of trust, good faith and credibility, which is a prerequisite to any joint management scheme.³⁸⁸

Finally, it is not the legal contract that will determine the ultimate success or failure of the Makuleke agreement. Sound interpersonal relationships between park management and community representatives, on a day-to-day basis, may prove to be the deciding factor³⁸⁹. Traditionally, poor people with limited

³⁸⁷ Mcloed F 'Zulus take up spears for wildlife.' Mail and Guardian 22/06/01 – 28/06/01(19)
The hunting contract for the year 2000 earned the Makuleke community R460 000. In 2001, their hunting quota is two elephants, four buffaloes, four nyalas, four impalas, three zebras, one eland and one kudu, and is expected to earn R850 000.

³⁸⁸ Wells M 'The Ecological and Social Role of Protected Areas in the new South Africa' (1996)
Policy Paper No.6 of the Land and Agricultural Policy Centre and the Overseas Development Institute. 47

³⁸⁹ A Preliminary Survey of the black personnel of the Kruger National Park indicates that their value judgements do not dissent from those of the rural communities living adjacent to the park. The majority of respondents agreed that the park was mainly concerned with the protection of wild animals for the benefit of rich, white tourists. They also indicated that it was unfair that wild animals had grass, while the cattle of the neighbouring communities were starving during the drought. See 'Progress Report of Research Projects undertaken in the Kruger National Park during 1994.' (1995) Scientific Report No 12/95, National Parks Board.

experience of taking part in the formal economy have limited experience of opportunities. Understandably, they present their demand on national parks in terms of their immediate needs i.e. land, jobs and shelter, rather than the opportunities for training and entrepreneurial linkages. Conversely people inside park boundaries, with limited experience of rural poverty and development similarly have limited perceptions of the potential that poor people have to become partners in development inside and outside the parks. They tend to respond to the demands, instead of the opportunities.³⁹⁰

8.2.4 The Kwa-Zulu Nature Conservation Management Act 9 of 1997

The Kwazulu-Natal Nature Conservation Service (KZNNCS) and its predecessor, the Natal Parks Board have consistently been at the forefront of conservation and protected areas management in South Africa. Although Kwazulu- Natal has no national parks, some of its reserves are of such a high standard that it has been recommended that they be called 'national parks', while remaining under the administration of provincial authorities.³⁹¹

Conservation authorities in Kwazulu- Natal have always been proud of their efforts to develop problem-solving partnerships with the local communities surrounding their protected areas. KZNNCS has implemented the Community Conservation Programme, which is centred on diverse regional activities to create forums, involve neighbouring communities and deliver benefits and foster economic opportunities. The objective is to foster nature conservation value, within the framework of co-managed, sustainable natural resource management.³⁹²

In order to give legal substance to their neighbour relations and Community Conservation Programmes run previously by the Natal Parks Board and the Kwazulu Directorate of Nature Conservation, legislation was passed in 1997,

³⁹⁰ (Breen et al 1992) in Wells M Op cit (note 357) 41

³⁹¹ The flagship is currently the Greater St. Lucia Wetland Park, containing the largest estuarine system in South Africa, covering an area of 300 – 350 square kilometres. It has recently been accorded the status of a World Heritage Site. See Moore N "Wildlife Boost for St. Lucia." Mail and Guardian 30/03/01 – 05/04/01@ 35.

³⁹² Kwa-Zulu Wildlife website – <http://www.rhino.org.za>

which provides a new and unique system of allowing neighbouring and business communities to become involved in the management of formally protected areas of the province. The Kwazulu- Natal Nature Conservation Management Act 9 of 1997 provides for the establishment of 'local boards'³⁹³ that are aimed at the promotion of local decision-making regarding the management of nature conservation, as well as the integration of activities of the protected area into that of the surrounding area.³⁹⁴

The Minister of Agriculture and Environmental Affairs, currently Mr Narend Singh, may, in consultation with the Board and after following the specified procedure, establish a local board in respect of a protected area or areas³⁹⁵. Although the 'local boards' are independent, they must still work within the framework of the policy of the Kwazulu-Natal Nature Conservation Board, which retains the ultimate authority to direct conservation in Kwazulu-Natal.³⁹⁶ The 'local boards' are empowered to compile and implement management plans in respect of the areas within their jurisdiction, in consultation with the KZNNCS.³⁹⁷ Membership will include a mixture of representatives from conservation,³⁹⁸ tribal authorities, regional and town councils, community-based organisations, the business sector, environmental groups, farming associations and other special interest groups.³⁹⁹

The establishment of 'local boards' signals that community-based initiatives have now found a place in South African statute books, at least at a provincial level. Kwazulu Natal has thus shown that it regards local indigenous communities as an integral part of efforts to protect biodiversity and ecological processes.

³⁹³ These local boards presently cover four major protected areas in Kwa-Zulu Natal – Tembe and Ndumo, the Ukhahlamba Drakensberg Park, the Coastal Forest Reserve and the Hluhluwe-Umfolozi Park.

³⁹⁴ S27 (1)

³⁹⁵ S25 (1)

³⁹⁶ S27 (3)(iv)

³⁹⁷ S27 (2)

³⁹⁸ S25 (2)(a) states that at least one official or employee of the KZNNCS nominated by the Board must be an ex officio member.

³⁹⁹ S25(4)(c)

Previous experience, however, uncovers the immense challenge of turning admirable paper policies into tangible benefits. The Kwa-Zulu Department of Nature Conservation (KDNC) had previously expressed support for a more progressive approach, stating that, "All conservation efforts are doomed to fail if there are no tangible benefits for the people involved. This is especially true in a third World such as ours."⁴⁰⁰

This warning was echoed by Chief Minister Mangosuthu Buthelezi, who stated that his former homeland, Maputaland "had clearly understood that people must be the cornerstone of any conservation effort and that unless conservation is made relevant to ordinary people, it has no hope of gaining their support."⁴⁰¹ As a result of these sentiments, it became policy of Kwazulu-Natal to allocate 25% of tourist related revenue to tribal authorities for the benefit of the local people.⁴⁰²

The 60 odd families who were forcibly removed from their homes as a result of the creation of the Tembe Elephant Park in Kwa-Zulu Natal claim that they have not seen such benefits, almost 6 years after their eviction. As a mother of six children commented, "We left cultivated fields and mavula and umlwebe trees behind. We were promised taps and a supply of water, but never got this."⁴⁰³ Given these broken promises, it is not surprising to find that some rural people regard community-based conservation projects more as rhetoric than reality.

It is still too early to ascertain whether the legislative backing of 'local boards' will provide an improvement on previous interactions between local communities and conservation authorities in Kwa-Zulu Natal. It may,

⁴⁰⁰ Official newsletter of KDNC – Isigijima (1992(1) 4

⁴⁰¹ Koch E Op cit (note 361) 226

⁴⁰² 'Animals vs People – the Tembe elephant Park' The Association for Rural Development (AFRA) Chapter 15 Cock J and Koch E (eds) in *Going Green: People, politics and the environment in South Africa*. (1991) 223

⁴⁰³ Koch E, Cooper D and Coetzee H *Water, Waste and Wildlife: the politics of ecology in South Africa* (1990) 20

undergoing major legal and administrative reconstruction, to include local indigenous communities in their conservation strategies.

8.2.5 Environmental Management Legislation and Conservation

While nature conservation and protected areas legislation have been embedded in South African statute books since the beginning of the twentieth century, the last two or three decades has seen the growth of a body of laws around what can broadly be described as environmental management.

Instead of only focussing on the protection of fauna, flora and eco-systems, environmental management is broad ranging and ensures that environmental considerations are taken into account in all public and private sector decisions and activities.⁴⁰⁴

Nature conservation is thus seen as a subsidiary component of the environment and the two cannot be divorced⁴⁰⁵. The two major Acts that jointly regulate the management of the environment are the Environment Conservation Act 73 of 1989 (ECA) and the National Environment Management Act 107 of 1998 (NEMA). Several provisions of these Acts are pertinent to the issues revolving around local indigenous communities and national parks.

8.2.5.1 The Environment Conservation Act 73 of 1989

Part V of the Environment Conservation Act 73 of 1989 (ECA) is headed: "Control of activities which may have a detrimental effect on the environment." This empowers the Minister to declare either activities⁴⁰⁶ or areas⁴⁰⁷ to be "effected activities" or "limited development areas". Where the Minister has declared such activities, written authorisation is required from

⁴⁰⁴ Bray E 'Co-operative Governance in the Context of the National Environmental Management Act 107 of 1998.' (1999) 6 SAJELP 1

⁴⁰⁵ Board of Investigation into the Institutional Arrangements for Nature Conservation in South Africa, Report of Mr Justice Kumleben, Prof Sangweni and Dr Ledger, October 1998.10

⁴⁰⁶ S21

⁴⁰⁷ S23

the Minister or the Premier prior to the proposed development.⁴⁰⁸ In granting such authorisation, the Minister may request a report concerning the impact of the activity on the environment.⁴⁰⁹ The fundamental purpose of an environmental impact assessment is to ensure that the public interest is best served in the development process.⁴¹⁰ This may be an important tool to ensure that the voices of local communities are heard in the development and management of national parks.

Although the ECA was passed in 1989, it was only under the new government that the enabling provisions regarding activities were invoked, when a set of regulations was at last promulgated under S21 of ECA. Regulation 1182⁴¹¹ contains a list of identified activities, many of which are typical of the daily routine of national park managers.⁴¹²

8.2.5.2 The National Environment Management Act 107 of 1998

The National Environment Management Act 107 of 1998 (NEMA) is the flagship statute of the Department of Environmental Affairs and Tourism and came into force in January 1999. The basis of this framework Act is a set of bed-rock principles, which apply to all organs of state, including the conservation agencies responsible for the management of national parks and other protected areas. A number of these principles have important implications for the future role that local indigenous communities will play in the establishment and management of South Africa's protected areas.

⁴⁰⁸ S22 (1)

⁴⁰⁹ An environmental impact assessment (EIA) may be defined as the "the systematic identification and evaluation of the potential impacts of proposed projects, plans, programmes or legislative actions relative to the physical, chemical, biological, cultural and socio-economic components of the total environment." See Carter *Environmental Impact Assessments* 2nd ed (1996) 2

⁴¹⁰ Ridl J "IEM: Lip Service or Licence?" (1994) (1) SAJELP.70

⁴¹¹ Government Gazette No. 18261 dated 05/09/1997

⁴¹² 1. 'The construction and upgrading of:

- a) roads, railways, airfields and associated structures outside the borders of town planning schemes;
- e) marinas, harbours and all structures below the high-water mark of the sea;
- j) dams, levees or weirs affecting the flow of water
- m) public and private resorts and associated infrastructure

2. The change of land use from:

- a) agricultural or undetermined use to any other land-use.'

In terms of NEMA:

- i) 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.⁴¹³
- ii) 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 people disadvantaged by unfair discrimination.⁴¹⁴
- iii) 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.⁴¹⁵
- iv) 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 knowledge⁴¹⁶.
- v) community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.⁴¹⁷

In spite of these considerable efforts to empower local communities, the issues of land restitution, eco-tourism and participatory management may prove to be major challenges in the implementation of community-based conservation in South Africa.

⁴¹³ S2 (2)

⁴¹⁴ S2 (4) (d)

⁴¹⁵ S2 (4) (f)

⁴¹⁶ S2 (4) (g)

⁴¹⁷ S2 (4) (h)

CHAPTER 9 – FUTURE HURDLES IN COMMUNITY BASED CONSERVATION – LAND RESTITUTION, ECO-TOURISM AND PARTICIPATORY MANAGEMENT.

9.1 Land Restitution

A priority in the democratic South Africa is the need to restore the land rights of those previously dispossessed. Therefore, it is generally conceded that the establishment of national parks and other protected areas has entailed the displacement of indigenous people. These communities not only have a legitimate aspiration, but a constitutional right for the return of land they were deprived of.⁴¹⁸ To this end, the government has embarked on a multi-faceted programme that aims to correct the injustice caused by discriminatory laws. No fewer than 22 pieces of legislation⁴¹⁹ were passed to provide for a land reform framework. In 1999, 53 675 families have gained access to 6 544 998 hectares of land. 375 redistribution projects have been introduced and 367 restitution cases have been finalised.⁴²⁰ This colossal effort bears testimony to government's awareness that the restoration of land rights is a key element, perhaps the most important, in the democratisation process in South Africa.⁴²¹

As far as claims against national parks and other protected areas are concerned, the Departments of Land Affairs, Environment and Tourism and Public Works, national and provincial conservation authorities and local

⁴¹⁸ S25(7) of the Constitution Act 108 of 1996 states that a "person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."

⁴¹⁹ For example, the Restitution of Land Rights Act 22 of 1994, the Upgrading of Land Tenure Act 3 of 1996, the Interim Protection of Informal Land Rights Act 62 of 1997 and the Prevention of Illegal Eviction and Unlawful Occupation Act 19 of 1998.

⁴²⁰ Du Pleissis W, Olivier N and Pienaar J 'Land Issues, an assessment of failures and successes.' (1999) (14) SA Public Law 240.

⁴²¹ De Villiers B 'Africa 2000 – the progress with land claims and reflections on the Australian process.' (2000) (15) SA Public Law 426.

communities have joined forces concluding historic agreements, aimed at an equitable resolution for all stakeholders. An example is the land claim by local communities against the eastern shores of the Greater St. Lucia Wetlands Park. The resulting agreement makes provision for dispossessed households to receive a total amount of R 16 680 000 as financial compensation. In addition, a 5-hectare Heritage Site as well as a Trust that will administer the tourist levy, were negotiated for the benefit of the claimants.⁴²²

In spite of these encouraging signs, there is a growing concern amongst claimants that the restitution process is moving too slowly.⁴²³ Mrs Gilfillan, the regional Land Claims Commissioner for the Northern Province and Mpumalanga commented, "Regular media reports of the growing list of claims before the Commission on the Restitution of Land Rights, more than 16 000 at last count, makes the exercise seem a formidable, if not, impossible task."⁴²⁴ In this context, it is likely that a large portion of the estimated 3.5 million people forcibly removed since 1913 will not have their expectations met.

Many of the claimants are also having their claims turned down because they were not the formal owners of the land.⁴²⁵ The Commission does not recognise claims based on aboriginal rights. The people of the Richtersveld, for example, instituted an action in the Land Claims Court against the state diamond mining company, Alexcor, and the government in terms of the Restitution of Land Rights Act 22 of 1994. Judge Anthonie Gildenhuys ruled that the Cape High Court did not have the jurisdiction to decide on the rights of the Richtersveld people in terms of indigenous or aboriginal title, on the basis on which large tracts of land have been returned to the descendants of

⁴²² 'A Boost for Land Restitution' (1999) Commission on the Restitution of Land Rights – <http://www.polity.org.za/search/oop.qfullhit.htm>

⁴²³ Du Pleissis W, Olivier N and Pienaar J "Land Reform: trends developing in case law. (1999) (14) SA Public Law 528@529

⁴²⁴ 'Claims before the Commission on the Restitution of Land Rights may not succeed.' (1997) <http://www.polity.org.za/search/oop.qfullhit.htm>

⁴²⁵ The Restitution of Land Rights Act 22 of 1994 only applies to owners of land dispossessed as a result of racial laws and past practices.

original inhabitants in Australia, New Zealand and Canada.⁴²⁶ This highlights the urgent need for land tenure reform.

Under apartheid laws, normal land use relations such as landownership, sharecropping and tenancy were prohibited and criminalized and customary land use patterns were interfered with and amended. New and unnatural discriminatory land use relations, such as the various residential permits and statutory leasehold were introduced, thereby preventing the normal and natural development of acceptable land-use patterns.⁴²⁷ The challenge is to bring all people occupying land under a unitary, legally validated system of landholding, while at the same time, providing dispossessed people with choices regarding the tenure system most appropriate to their needs. This is of particular importance to biodiversity conservation, as the lack of a defined tenure right to wildlife resources means that the community or landholder has no real incentive to conserve the resources that occur on the land.⁴²⁸

9.2 Eco-Tourism: Distributing the Benefits of Wildlife Conservation

Tourism is claimed to be the world's largest industry and provider of jobs. In the countries with particularly outstanding natural attractions, tourism is used as the primary justification for the creation of national parks. In Kenya, for example, tourism is the largest generator of foreign currency, earning U.S \$400 million in 1988. In Rwanda's Parc National des Volcans, tourists going to see gorillas, generated U.S\$ 1 million annually in entrance fees alone, with another U.S \$2-3 million generated by other expenditures.⁴²⁹

⁴²⁶ Streek B "Richtersveld people lose their claim to regain their ancestral land." Mail and Guardian, March 23 -29 2001@4.

⁴²⁷ Van der Walt AJ 'The Future of Common Law Land Ownership' in Van der Walt AJ (ed) *Land Reform and the Future of Landownership in South Africa* (1991) 21

⁴²⁸ Summers R " The legal and institutional aspects of community-based wildlife conservation in South Africa, Zimbabwe and Namibia.' (1999) *Acta Juridica* 188@191

⁴²⁹ 'Costs and Benefits of Tourism in Protected Areas' Chapter 1 in *Development of National Parks and Protected Areas for Tourism* (1992) World Tourism Organisation and United Nations Environment Programme. 6

Eco-tourism has is the fastest growing sub-sector in the world. It has been defined as "purposeful travel to natural areas in order to gain an understanding of the culture and natural history of the environment. It implies that care is taken, not to alter the integrity of the eco-system and that economic opportunities are provided, which makes conservation of natural resources beneficial to local people."⁴³⁰ The benefits of eco-tourism for rural and indigenous people include the preservation of cultural traditions, the conservation of the natural environment and the maintenance of social, cultural and religious values. In remote areas, with limited development, eco-tourism ventures can improve the quality of life, self-esteem and well being of surrounding local communities.⁴³¹ Some writers claim that it is the only industry in the world that allows for a net flow of wealth from industrial states to developing countries.⁴³²

In South Africa, eco-tourism has become a buzzword, largely due to its potential for substantial economic returns. In 1992, foreign expenditure was estimated at R2.5 billion, providing 300 000 people with jobs. Despite the political violence⁴³³, there has been an average 10% increase per annum, in the number of visitors from abroad.

In order to ensure that the development of tourism meets with the cultural, socio-economic and political aims of government, the Department of Environmental Affairs and Tourism has promoted the notion of 'responsible tourism'. This places the responsibility on government and business to involve local communities in tourism activities, via the development of meaningful

⁴³⁰ Definition used by the Eco-tourism Society of South Africa in Koch E Koch E 'Eco-Tourism and Rural Reconstruction: Reality or Rhetoric?' Chapter 8 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997) 218

⁴³¹ 'Eco-Tourism' and Indigenous Peoples.' Zeppel H (1997) <http://www.life.csu.edu.au/ecotour/eco.wwwhz.html>

⁴³² Brandon, 1993 in Koch E "Eco-tourism and Rural Reconstruction in South Africa: Reality or Rhetoric?" Chapter 8 in Pimbert M and Ghimrie K *Social Change and Conservation* (1997) 218

⁴³³ SATOUR 1993

economic linkages. It implies the duty to respect, invest in and develop local cultures and protect them from exploitation and over-commercialisation.⁴³⁴

	<u>GDP</u>	<u>Balance of Payments</u>	<u>Jobs</u>
<u>INTERNATIONAL TOURISM</u>			
Total international tourist expenditures estimated at R 5,400m	R 6,346m	R 6,277m	154,000
Attributable to wildlife tourism			
10%	R 635m	R 628m	15,000
50%	R 3,173m	R 3,138m	77,000
90%	R 5,712m	R 5,649m	139,000
<u>DOMESTIC TOURISM</u>			
Total domestic tourist expenditures estimated at R 3,200m	R 3,761m	n/a	92,000
Attributable to wildlife tourism			
2%	R 75m	n/a	2,000
5%	R 188m		5,000
10%	R 376m		9,000
<u>ALL WILDLIFE TOURISM</u>			
Lowest estimates combined	R 710m	R 628m	17,000
Highest estimates combined	R 6,088m	R 5,649m	148,000

Figure 13: Estimate of tourist expenditure attributable to protected areas, 1993

Source: Wells M. The Ecological and Social Role of Protected Areas in the new South Africa (1996) Policy Paper No.6 of the Land and Agricultural Policy Centre and the development Institute. 41

In accordance with this guideline, South African National Parks (SANP) has embarked on several eco-tourism projects aimed at the empowerment of neighbouring communities. The Skukuza Alliance Arts and Craft Project has created a craft centre for local artists, resulting in an increase of monthly sales from R2000 – R4000, with the membership increasing from 69 to 4000 by June 1998. In addition the SANP Board has accepted the principle of outsourcing, commercialisation, concessioning and partnering of non-core functions.⁴³⁵ This may facilitate the involvement of burgeoning business interest in the black community.⁴³⁶

⁴³⁴ The White Paper on the Development and Promotion of Tourism, Department of Environmental Affairs and Tourism (1996) paragraph 3.4

⁴³⁵ For example, laundry and the supply of agricultural produce to lodges.

⁴³⁶ Cock J and Fig D 'From colonial to community based conservation: environmental justice and the National Parks of South Africa.' (1999) <http://www.sunsite.wits.ac.za/ew/justice/htm>.

The potential of eco-tourism has, however, proved to be a double-edged sword. All too often, tour operators make a decision to initiate eco-tourism projects, without consulting the affected community and discussing the range of land-use options available to them. This has resulted in devastating environmental and cultural changes.⁴³⁷ In Nepal, for example, trekkers have chosen the destination consciously to experience the pristine natural environment, but they have also been responsible for the serious deforestation of the area.

The most serious obstacle that prevents eco-tourism in South Africa from providing benefits to local indigenous communities is the tendency for profits to leak out of the host country back to developed nations.⁴³⁸ This is particularly prevalent in countries that lack substantial local ownership of services, such as airlines, hotels and transportation. Most of the revenue flows to the large multinational companies, which dominate the industry.⁴³⁹ Local benefits from tourism are potentially very high, but are generally limited to employment on a very small scale.

9.3 Participatory Management

Although the terms "peoples' management" and "popular participation" are now part of the normal language of many development agencies, non-governmental organisations and banks, very few of their projects have specified what they mean by participation, nor how they expect local participation to reduce the threats to nearby protected areas. This has led to a certain amount of uncertainty and ambiguity in the implementation of community-based conservation projects.⁴⁴⁰

⁴³⁷ Jenkins D 'Eco-Tourism.' (1993)(14) *New Ground – Journal of development and the Environment*. 22

⁴³⁸ The World Bank estimates that as much as 55% of tourist spending in developing states eventually leaks back to developed countries.

⁴³⁹ *South Africa Political and Economy Monthly - Tourism Supplement* (1993) (6) 11

⁴⁴⁰ Wells M, Brandon K and Lee H *Parks and People – Linking Protected area Management with Local Communities* (1992) *The International Bank for Reconstruction and Development*. 42.

Like many other areas of rural development, conservation has been characterised by very different interpretations of participation. During the colonial period, management was based on coercion and control, with local people seen as an impediment to conservation. Until the 1970's, participation was increasingly seen as a tool to achieve the voluntary submission of people to protected areas schemes. During the 1980's, participation was defined as taking an interest in natural resource protection. In the 1990's and into the new millennium, the concept of participation has emerged as a means to involve local indigenous people in protected area management.⁴⁴¹

A typology⁴⁴² reveals that participation may vary from top down 'passive participation'⁴⁴³ to bottom up 'active participation'.⁴⁴⁴ Ideally, protected areas would be managed with substantial input from communities. Cernea states: "Local people should be empowered to mobilise their own capacities, be social actors rather than passive subjects, manage the resources, make decisions and control the activities that affect their lives."⁴⁴⁵ This approach is necessary if national parks are to generate sufficient economic benefits and solicit local support for conservation. In South Africa, however, efforts have generally failed to meet this level of participation.⁴⁴⁶ "Joint management agreements are rare and have been implemented in the Makuleke case, while participation

⁴⁴¹ Pimbert M and Pretty J 'People, Parks and Professionals – putting 'participation' into protected areas management. Chapter 11 in Ghimrie K and Pimbert M (eds) *Social Change and Conservation* (1997) 308.

⁴⁴² Pimbert M and Pretty J (1994) in Wells M 'The Ecological and Social Role of Protected Areas in the new South Africa.' (1996) Policy Paper No 6 of the Land and Agricultural Policy Centre and the Overseas Development Institute. 48

⁴⁴³ In these projects, people participate by being told what is going to happen or has already happened. A unilateral announcement is made by an administration or project management, without listening to peoples' responses. Information is only shared amongst outside professionals.

⁴⁴⁴ People take initiatives to change systems that are independent of external structures. Such self-initiated mobilisation and collective action may or may not challenge the distributions of power or wealth.

⁴⁴⁵ Cernea 1985 in Wells M 'The Ecological and Social Role of Protected Areas in the new South Africa.' (1996) Policy Paper No.6 of the Land and Agricultural Policy Centre and the Overseas Development Institute.42

⁴⁴⁶ De Villiers B 'Democratisation of Conservation: community involvement in the management of national parks.' (2000) (15) SA Public Law 176@185

by consultation has now become the rule for all national parks.⁴⁴⁷ The majority of community based projects initiated in South Africa have been based on 'consultative management', which leaves the ultimate discretion in the hands of conservationists, while local communities are left without a final say or veto over policy issues.

Projects that make allowance for access to natural resources, such as thatching grass, meat, herbs and other resources within park boundaries are often seen as handouts from above, rather than a form of development capable of a real transformation in the rural economy. A similar perception applies where a portion of the entrance fees is paid to local communities by the conservation agency. As one member of the Pilansberg Community Development Organisation comments: "The Parks Board gave token money as a present to the community. This was apparently 10% of the profits, but people have not been informed of where the money comes from or how the amount is decided on."⁴⁴⁸

These material incentives may also create dependencies and give misleading impressions that local people are supportive of externally driven initiatives. Many community groups make the point that, instead of handing out meat and other resources, wildlife products should be sold and the proceeds put into a scholarship fund for local youth to study conservation and other skills needed for parks management.⁴⁴⁹

This exposition of the issues of land restitution, eco-tourism and participatory management is merely an indication of the ongoing and complex task that lies ahead.

⁴⁴⁷ De Villiers B Op cit (note 446) 188 footnote 32 – The Richtersveld and Cape Peninsula National Parks are also based on contractual agreements, but the owners of the land are not as closely involved in management matters, as in the case of the Makuleke region.

⁴⁴⁸ Koch E Op cit (note 432) 231

⁴⁴⁹ The Group for Environmental Monitoring, 1993.

CHAPTER 10

CONCLUSION: THE ROAD AHEAD

The Constitution of South Africa⁴⁵⁰ provides that everyone has the right to have the environment protected, for the benefit of present and future generations, through legislative and other measures that:

- i) promote conservation⁴⁵¹ and
- ii) secure ecological sustainable development and use of natural resources while promoting justifiable economic and social development.⁴⁵²

This provision shows concern, not only for South Africa's rich biodiversity, but also its people, including the local indigenous communities that live in and around our national parks and other protected areas.

As the result of South Africa's colonial past, however, past laws and practices did not reflect this same balanced viewpoint. Environmental racism saw black South Africans separated from their rights in protected areas. This abrogation of rights involved the expulsion of blacks from land later used to create national parks. It further saw their exclusion from physical access and managerial control of national parks. This lack of respect for fundamental human rights has not only left a bitter taste in the mouth of many communities, but has also left chasms of poverty and human suffering.

An overview of the recent conservation efforts in South African protected areas has illustrated that the government, private sector, NGO's, conservation and development agencies and local indigenous communities have all made efforts to find an equitable and democratic solution. By and large, however, these community-based projects have been isolated and un-coordinated.

⁴⁵⁰ Act 108 of 1996

⁴⁵¹ S24 (b) (ii)

⁴⁵² S24 (b) (iii)

There now appears to be a general consensus amongst writers that the time is right for the establishment of a framework Protected Areas Act consolidating all types of parks and reserves under one legislative roof.⁴⁵³ A fundamental component of this proposed legislation is the incorporation of local indigenous communities in the establishment and management of natural resources in and around national parks and other protected areas.

Whether local indigenous people are owners and co-managers of local resources, expert consultants or tour guides, the vital issue is that they have the freedom, backed by legislative force, to define the roles they will play. While the legislation must be forceful enough to send a strong policy directive to all provinces and regions across the nation, it must also be flexible enough to cater for the particular needs of local people and environments.

The experiences of countries, such as Canada, Australia, Zimbabwe and Namibia display the worldwide recognition that local people have a fundamental right to participate meaningfully on the management of local resources on which they depend. This is confirmed by a number of international conventions and documents.

South Africa has stepped into the foreground on international conservation and protected areas management. In addition to hosting the World Wilderness Summit in Port Elizabeth during November 2001, it is also busy preparing for the World Summit on Sustainable Development in Johannesburg in 2002 and the 5th World Congress on Protected Areas in Durban in September 2003. This means that the legislation, institutions and administration of South Africa's protected areas network will come under

⁴⁵³ See - Glazewki J *Environmental Law in South Africa* (2000)@409
 - Liebenberg L 'Towards a new Conservation Policy.' (1994) Policy Paper No.4 of the Land and Agricultural Policy Centre and the overseas Development Institute@26
 - Rabie MA *International Encyclopaedia of Laws* (1999) "South Africa.' @246
 - Hanks J and Glavovic P.D "Protected Areas' Chapter 27 in Fuggle and Rabie *Environmental Management in South Africa* (1992) @712.

international scrutiny; and problems such as land restitution and eco-tourism will be highlighted.

Indications from the South African government are that they are willing to take positive steps to meet this challenge. The Minister of Environmental Affairs and Tourism, Mohammed Vali Moosa announced recently, that a National Biodiversity Strategy and Action Plan would soon be unveiled. In his report, the Minister said that the strategy would include a five to ten year plan on Biodiversity Management. "National biodiversity legislation is now in the initial drafting stages and soon we will have uniformity with all relevant legislation..." The report outlines government's approach to all South Africa's protected areas, through a massive conservation strategy involving 22 initiatives, which will see South Africa expanding its current protected areas. "This effort will also shed a new financing model and major improvement on the current institutional arrangements, with the participation of communities in the implementation of conservation programmes, complemented by private sector participation and management."⁴⁵⁴

In addition, the Department of Environmental Affairs and Tourism has embarked on a Poverty Relief Programme in order to alleviate poverty amongst South Africa's poorest communities. The purpose of the programme is to manage and administer poverty relief proposals and spin-off projects in the tourism and environmental sectors, with a special focus on infrastructure investment and product development such as heritage sites and conservation.⁴⁵⁵

At the end of the day, however, it is not the progressive legislation or pious political pronouncements that will result in the ultimate empowerment of the rural poor of South Africa. A change of attitude and a new consciousness can only be achieved through increased awareness and education. Although it

⁴⁵⁴ 'Government consolidated protected areas' (2001) <http://www.wildlifepics.co.za/news/260401.html>

⁴⁵⁵ 'Poverty Relief Programme 2000 – 2001' <http://www.environment.gov.za/ProjProg//2001aug20/PovRelPgm 2000-01.htm>.

would be unrealistic to put community-based conservation forward as a panacea for widespread poverty and unemployment, the transformation of conservation and protected areas management is part of a wider project of changing South Africa into a free, democratic and non-racial society. That is why South Africa cannot give up the challenge to transform conservation from 'conservative to community.'

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