

CHAPTER 5: LEGISLATION AND AUTHORITIES HAVING A DIRECT INFLUENCE ON THE FUTURE PROTECTION AND LAND USE PLANNING OF BIOSPHERE RESERVES.

5.1 INTRODUCTION

Since 1994, South Africa's legal system entered into a new era with the enactment of its new Constitution. The formulation of new acts is still in a process that will take some considerable time, especially in the environmental and conservation fields.

Every country that is a signatory to international agreements, treaties, conventions and programmes needs to meet certain obligations. Countries differ in strategies in how to implement and monitor these obligations. Usually it become part of a country's legislative framework or departmental policies. As legislation pertaining to biosphere reserves are not yet part of South Africa's legislative framework, current legislation that might be used to ensure that a biosphere reserve is protected and maintained should be evaluated. However, during the finalization of this study, the National Department of Environmental Affairs and Tourism started to redefine the protected area categories that have been used to proclaim protected areas so that "buffer zone" areas can also receive protection status under the new proposed National Environmental Management: Protected Area Bill (South Africa, Department of Environmental Affairs and Tourism, 2002). It will have a direct influence on the protected area status of the core and buffer zone areas in the biosphere reserve.

It is not the intention of this study to discuss all legislation that might have an effect on a biosphere reserve or the protection of the environment and biodiversity. The study rather aims at assessing legislation and authorities that will have a direct influence on the protection of the current land uses and spatial zonation pattern of a biosphere reserve. As discussed in Chapter 4 it is a fact that the broader land use protection of pristine and vast open areas determines a preferred eco-destination, and that it is, therefore, of the utmost

importance for the future existence of such an ecotourism destination to enforce legislation.

Wood (2002) argues that if no effective regulation or enforcement of environmental laws exists, and if natural areas are developed without foresight, facilities will in certain instances be improperly constructed. Even in remote areas, where ecotourism is often developed, it is still necessary to set development standards that are approved in coordination with local stakeholders, in particular with representatives of local communities. In order to become a successful sustainable development tool worldwide, ecotourism requires a thorough investigation into the planning of ecotourism destinations and their long term management. Wood (2002) further more indicates that adequate government funds must be made available for the planning of destinations. Budgets need to properly acknowledge the important role of conserving areas, both cultural and environmental, for ecotourism development.

In November 1995, the UNESCO General Conference approved the Seville Strategy for Biosphere Reserves (UNESCO, 2002). The General Conference also formally adopted the Statutory Framework of the World Network which defines the principles, criteria and designation procedure for biosphere reserves. Although it is not a binding text for states/countries (as would be the case of a convention), the Statutory Framework applies to all biosphere reserves designated within the framework of the MaB Programme. The relevant resolution of the UNESCO General Conference invited all member states/countries to take account of this text when establishing new biosphere reserves. The these documents, therefore, provide the basic texts shaping and guiding the further development of the World Network of Biosphere Reserves and its component parts.

5.2 SPATIAL LAND USE FRAMEWORKS AND LEGISLATION

According to the White Paper on Land Policy (South Africa, Department of Land Affairs, 1997) all three spheres of government (local, provincial and national) and traditional authorities have functions, which require land administration. However, at present most

of the legislation dealing with land administration has been assigned to the Ministers of Agriculture and Land Affairs on national level. National Parliament has the power under certain circumstances to legislate on matters falling within the functional areas of exclusive provincial legislative competencies where applicable. Close cooperation is necessary in the carrying out of the respective functions of national, provincial and local governments to ensure the most appropriate and effective use of land. However, since the existing legislative framework for land development is fragmented, uncoordinated and inappropriate, it has resulted in a lack of effective, integrated environmental management. Moreover, because the responsibility for natural resource management is assigned to different national and provincial ministries, different approaches are practiced as specified by the specific Acts pertaining to that area. This means that the institutional framework, as well as the administrative system, fails to facilitate integrated approaches to land use, including the protection of the natural environment. The Physical Planning Act (South Africa, 1991b), the Environmental Conservation Act (South Africa, 1989) and the Conservation of Agriculture Resources Act (South Africa, 1983) do endorse the principle of the integration of environmental management in land use planning. However, at the administrative level, environmental management practices remain sectoral and fragmented.

In the absence of current legislation to give formal protection status to a biosphere reserve, the following legislation pertaining to spatial land use plans is applicable. It has been summarized as follows:

A) National Environmental Management Act (NEMA) 107 of 1998 (South Africa, 1998a).

As discussed above, various environmental legislation exists to ensure that the environment is protected. This, however, only refers to the direct impact and not the spatial configuration of the resource base. NEMA does refer to landscape protection, as well as to Integrated Environmental Management and the Integrated Environmental Management (IEM) plans, but does not define it in such a way that it could serve as appropriate legislation to protect the spatial environment. It does, nevertheless, provide for the Minister, in concurrence of the Member of the Executive Council (MEC) of the

Province to “ identify geographical areas in which specified activities may not be commenced without prior authorization from the Minister or provincial MEC”. As regulations or policy with regard to the implementation of this act had not yet been determined at the time of completing this study, it could not regard this as legislation currently protecting the "spatial land use" of the environment.

B) Environment Conservation Act 73 of 1989 (South Africa, 1989)

In a certain sense the above Act makes provision for the protection of “the protected natural environment” because it aims at promoting the preservation of specific ecological processes, natural systems, natural beauty or species of indigenous wildlife or the preservation of biodiversity in general. On the date of the commencement of the Act, land reserved as a nature area in terms of the Physical Planning Act (South Africa, 1991b) was deemed to be declared a protected natural environment (Kidd, 1997).

Environmental evaluations have become an established part of good development planning throughout the world, and can be defined as an “activity designed to identify and predict the impact on health and well-being of legislative proposals, policies, programmes, projects and operational procedures, and to interpret and communicate information about impacts”. An Environmental Impact Assessment (EIA) is the administrative or regulatory process by which the environmental impact of a project is determined. There are a number of provisions in the Environment Conservation Act (South Africa, 1989) which relate to land use, particularly those that deal with limited development areas and identified activities. This Act therefore provides a practical tool to protect or change certain land use development patterns.

C) Physical Planning Act 125 of 1991 (South Africa, 1991b).

The objective of this Act is to “ensure the orderly physical development of the Republic”, through certain specified planning processes, although it does not lay down any direct land-use control measures.

D) Subdivision of Agricultural Land Act 70 of 1970 (South Africa, 1970).

The purpose of this act is to control the subdivision and, in connection therewith, the use of agricultural land. The rationale behind the Act is to prevent the subdivision of agricultural land into uneconomic units. The principal aim of the Act is to operate as a zoning regulation and prevention of land subdivision for residential purposes, which will authorize the change of use. According to the White Paper on South African Land Policy (South Africa, Department of Land Affairs, 1997), the Subdivision of Agricultural Land Act (South Africa, 1970) should be replaced with the type of zoning regulations, which can prevent unauthorized loss of precious agricultural land or damage to other natural resource areas. It thus accentuates the principle that zoning regulations should be based on national norms, monitored and enforced at provincial and local level by appropriate government bodies.

E) Less Formal Township Establishment Act 113 of 1991 (South Africa, 1991a)

The primary objective of this act is to provide for shortened procedures for the designation, provision and development of, and the establishment of townships, for less formal forms of residential settlement. This Act will thus have a direct influence on especially the development priorities in rural areas.

F) Development Facilitation Act 67 of 1995 (South Africa, 1995)

The policy of the state is that “current legislative incoherence must be transformed into an integrated, efficient and equitable planning and development system that establishes a balance between the public interest and private property rights”. As such, the Development Facilitation Act (South Africa, 1995) is seen as a key means of achieving this objective since the Act provides that competent local government bodies may set land development objectives for the area in question. The act has the potential to usher in a new era of principle-led planning by formulating general principles relating to land development have been formulated to promote efficient and integrated land development. The subject matter of the land development objectives includes the sustained utilization of the environment, and the optimum utilization of natural resources.

G) Municipal Systems Act 32 of 2000 (South Africa, 2000)

Local Government is a key role-player in the development process of South Africa. With the local government elections held in December 2000, the transitional phase came to an end so that the local government system currently has the task to operate on a solid basis. A new legal framework, established through the launching of the Municipal Structures Act (South Africa, 1998b) and the Municipal Systems Act (South Africa, 2000) was put in place. As described in Chapter 5 this integrated development and planning (IDP) of the Municipal Systems Act (South Africa, 2000) was made a legal requirement for municipalities. It thus needs to reflect the municipal council's vision for the long term development of the municipality and should include a spatial development framework for the municipality, subject to section 27 in the Act, which states:

the spatial development framework set out in a municipality's integrated development plan must relate the development priorities and objectives to different geographic areas of the municipality, and indicate how the various development strategies will be coordinated in relation to, and impact on, those different geographic areas.

It is therefore clear that the spatial development framework, with the IDP, will be a legally binding document for all land-use management decisions in accordance with the new spatial planning legislation under preparation.

Section 35 of the Act refers to the fact that a district municipality must plan integrated development for the area of the district municipality as a whole but in close consultation with the local municipalities in the area. As mentioned further in this section a municipality must comply with any provincial and national planning legislation promulgated before this Act took effect, to the extent that such legislation is consistent with the planning provisions in the Act.

Section 37 of this Act further refers to the legal consequences of adopting the integrated development plan status by stating:

An integrated development plan adopted by a municipality – is the principle planning instrument which guides and informs all planning and development, and all decisions with regard to planning and development, in the municipal area; and binds all persons except to the extent of any inconsistency between a

municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails.

A spatial development framework contained in an integrated development plan prevails over a plan as defined in section 1 of the Physical Planning Act (South Africa, 1991b).

H) Land Use Management Bill of 2001 (South Africa, Department of Land Affairs, 2001)

The Minister of Land Affairs, as the minister responsible for land, proposed to introduce new legislation to parliament that will provide a uniform, effective and efficient framework for spatial planning and land use management in both urban and rural contexts. The most dramatic effect of the White Paper is that it will rationalize the existing plethora of planning laws into one national system that will be applicable in each province in order to achieve the national objective of wise land use.

The basis of the system will be principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management. The decisions of planning authorities, whether related to the formulation of plans such as IDPs or the consideration of land development applications such as rezoning, must all be consistent with these principles and norms. An authority's failure to affect this will enable the Minister to intervene in the decision either by requiring that it is reconsidered or, in extreme cases, taking the decision by him or herself.

Section 16 of this Bill specifically makes reference to Spatial Development Frameworks, thus linking this Bill directly to the Municipal Systems Act (South Africa, 2000) by ensuring that the Spatial Development Frameworks of the Integrated development plans of the municipalities be consistent with

- a) the directive principles,
- b) any national land use framework applicable in the area of the municipality, and
- c) any national and provincial plans and planning legislation.

The Spatial Development Framework must include:

- a) a land use policy;

- b) a plan visually indicating, or where appropriate describing, the desired spatial form of the municipal area;
- c) basic guidelines for a land use management system in the municipal area;
- d) a capital expenditure framework for the municipality's development programmes; and
- e) a strategic assessment of the environmental impact of the spatial development framework.

Section 24 of the above mentioned Bill states that “a land use scheme promulgated in terms of section 23, has the force of law and binds the owners of land to which the scheme applies, including any other persons having a right or interest in that land”.

According to the Land Use Management Bill (South Africa, Department of Land Affairs, 2001) the land use regulator will have influence on the change of use of a specific piece of land. Currently the land use regulator is the municipality to which an applicant applies for approval of change in land use.

The opportunity for a biosphere reserve is to take part in the land use committee or land use advisory committee as provided for by Section 40 of this Bill, exists. This will add the necessary expertise that is contained within the biosphere reserve sphere of thinking.

I) Limpopo Province Environmental Management Bill of 2002 (Limpopo Province, Department of Finance and Economic Development, 2002)

Other legislation that can influence the spatial planning of a biosphere reserve is the proposed provincial Environmental Management Bill (Limpopo Province, Department of Finance and Economic Development, 2002) and the proposed National Environmental Management: Protected Area Bill (South Africa, Department of Environmental Affairs and Tourism , 2002).

The Provincial Member of the Executive Council may by notice in the Provincial Gazette register an area specified in the notice as –

- a biosphere reserve, taking into account the criteria set out in item 4 of Schedule I

(stipulated UNESCO's criteria for establishing a biosphere reserve);

- amend the size or composition of a biosphere reserve; or
- withdraw the registration of a biosphere reserve.

However, due to the national importance of a biosphere reserve, and international agreements between UNESCO and South Africa, biosphere reserves should be directed on national level through appropriate national policies and strategies. It is foreseen that the appropriate Provincial Authorities will mainly be responsible for the application evaluation of a biosphere reserve, monitoring and the alignment of provincial policies and strategies with these of the National Authority.

J) National Environmental Management: Protected Area Bill (South Africa, Department of Environmental Affairs and Tourism, 2002)

The National Department of Environmental Affairs and Tourism started to redefine the protected area categories that have been used to proclaim protected areas. “Buffer zone” areas can also receive protection status under this new Bill. This Bill will therefore have a direct influence on the protected area status of the core and buffer zone areas in a biosphere reserve.

It is believed that the core areas within the Waterberg Biosphere Reserve need to be re-assessed according to the new classification of protected areas as set out in the new Bill.

The fact that a biosphere reserve represents such a large area, which includes not only state land but also private land and communal owned land, makes it difficult to proclaim the whole area under one protected area category. However, the Bill makes provision for landowners who participate in conservation related activities, to proclaim their properties accordingly. The new Bill makes provision for the Minister or provincial MEC to declare an area a “protected environment”. An area can be declared as a protected environment or as part of an existing protected environment for any of the following reasons:

- a) to regulate the area as a buffer zone for a special nature reserve, national park or nature reserve in order to prevent undesirable development;

- b) to enable owners of land to take collective action to conserve biodiversity on their land and seek legal recognition therefore;
- c) to protect a specific ecosystem outside of a special nature reserve, national park or nature reserve;
- d) to protect the area if the area is sensitive to development
 - i. due to its biological diversity;
 - ii. due to its natural characteristics;
 - iii. due to its scientific, cultural, historical or archeological value; or
 - iv. for aesthetic reasons;
- e) to ensure the sustainable use of natural resources in the area; or
- f) to limit land use in the area if the area is earmarked for declaration as or inclusion in a national park or nature reserve.

The buffer zone area within the Waterberg Biosphere Reserve could, therefore, receive protection status under this legislation.

K) White Paper on South Africa's Land Policy (South Africa, Department of Land Affairs, 1997)

Land is an important and sensitive issue to all South Africans because it is a finite resource which binds all the people together. One of the aspects the policy deals with is a system of land management which will support sustainable land use patterns and rapid land and registering rights in property, establish broad norms and guidelines for land use planning, effectively manage public land and develop a responsive, client-friendly land administration service. This policy will, therefore, directly influence biosphere reserve policies and management plans.

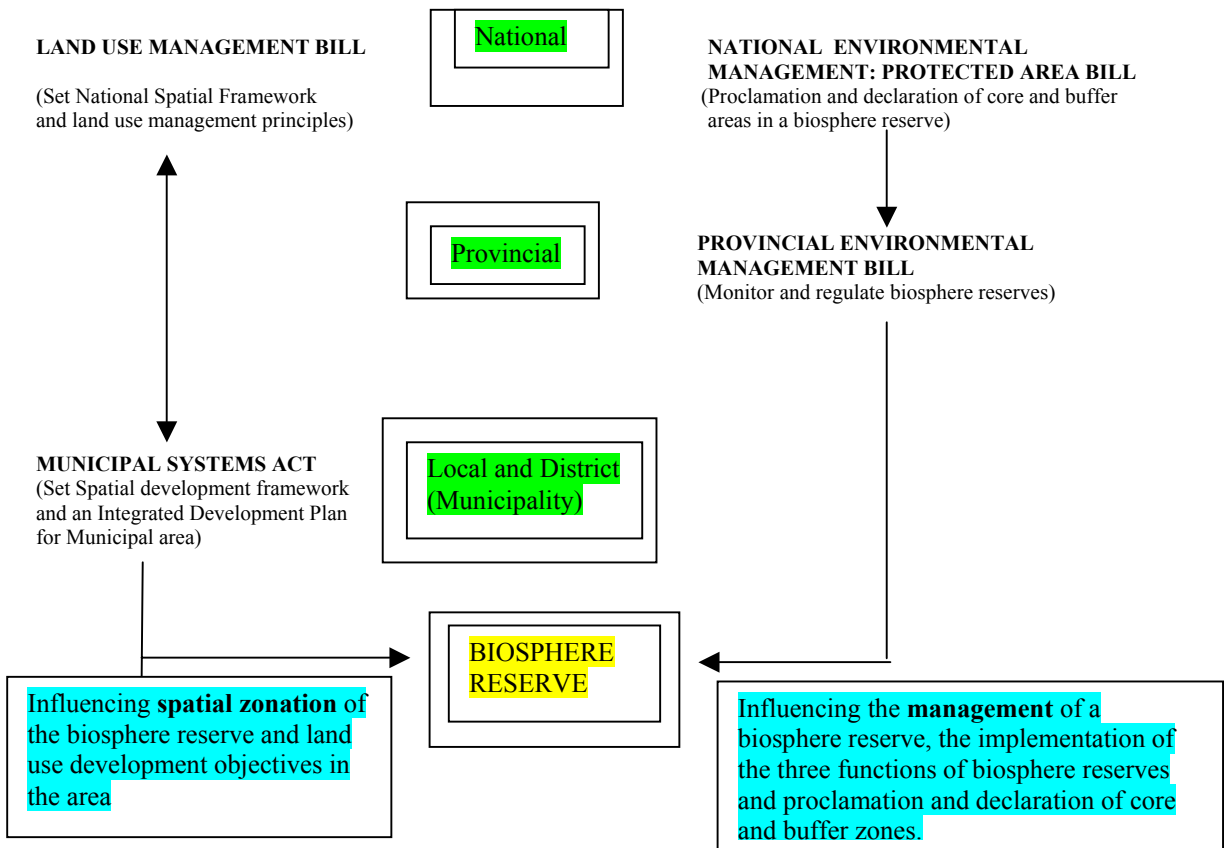


Figure 11: Legislation that will directly influence the spatial zonation and land use management in biosphere reserves.

5.3 AUTHORITIES RESPONSIBLE

A number of organs of the state are responsible for the administration of environmental legislation (Table 4). Throughout the world, environmental legislation largely depends for its effectiveness on the authorization, permitting or licensing of persons to carry out certain activities (Kidd, 1997).

There are a number of different ways in which the state can ensure that individuals comply with legislative control provisions. Models that are used are the so-called “command and control” or the “self regulation”. “Command and control” refers to a system where the authorities strictly monitor whether the law is being followed and where offenders are prosecuted, by applying criminal law. “Self regulation”, on the other

hand, would typically involve a situation where individuals monitor their own operations and submit to the authorities periodic audit results in which their environmental performance set out (Kidd, 1997).

Both these models are applicable to a biosphere reserve. Due to the distinct zones and associated functions within a biosphere, internal monitoring and evaluation criteria need to be set. In addition, a biosphere reserve's performance in regard to the implementation of these functions will have to be evaluated by the authorities responsible for the Man and Biosphere (MaB) programme which, in this case, is the National Department of Environmental Affairs and Tourism and the provincial department responsible for Environmental Affairs.

For biosphere reserve structures that would be responsible for "self regulation", the implementation of the ISO (International Organization for Standardization) 14001 is proposed. This will assist the various roleplayers within a biosphere reserve to monitor their own environmental performance that will ultimately link up with the requirements of the National Environmental Management: Protected Area Bill (South Africa, Department of Environmental Affairs and Tourism, 2002).

To summarize, this chapter has stressed the importance of clear role clarification and division of responsibilities amongst all the authorities involved in pertaining the protection of the biosphere reserve. With the diversification of functions and responsibilities within a biosphere reserve, proper coordination amongst all involved is of the utmost importance.

If biosphere reserves with international status are incorporated in the proposed National Land Use Management Bill (South Africa, Department of Land Affairs, 2001) and the spatial frameworks of the local Municipal IDPs, biosphere reserves will have appropriate legal protection. The new National Environmental Management: Protected Area Bill (South Africa, Department of Environmental Affairs and Tourism, 2002) could provide the necessary policy and guidelines pertaining to the management of biosphere reserves.

Table 4 illustrates the responsibilities of the different authorities according to the current legislation.

Table 4: A summary of the responsibilities of the different spheres of government and the biosphere reserve management committee according to the current legislative framework.

AUTHORITY	RESPONSIBILITY
National Government level	<ul style="list-style-type: none"> • Set policy and legal framework to regulate the Man and Biosphere programme in SA. • Set a National Spatial Framework for land use management. • Develop guidelines to include biosphere reserves in national conservation and development strategies. • Establish links with international recognized biosphere reserves.
Provincial Government level	<ul style="list-style-type: none"> • Monitor and evaluate the implementation of the Man and Biosphere programme at provincial level. • Develop links between provincial biosphere reserves. • Include biosphere reserves in the provincial conservation and development strategies of the Province. • Align provincial policies and strategies pertaining biosphere reserves with these of national authorities.
Local Government level (Municipalities)	<ul style="list-style-type: none"> • Set spatial frameworks and land use planning and development objectives for the municipality. • Incorporate biosphere reserve as a land use model for the promotion of sustainable development within the municipality. • According to legislation – municipalities need to serve as the local land use regulator, using its IDP as guiding document.
Biosphere Reserve level	<ul style="list-style-type: none"> • Implement and manage the biosphere reserve concept as set by MaB's principles and guidelines. • Ensure continuation of stakeholder participation, consultation and liaison. • Maintain the biosphere reserve coordinating/management committee. • Set "self regulatory" guidelines and programmes to ensure effectiveness and ownership of the programme.