# PROTECTED AREAS LAW MATRIX

## SOUTH AFRICA

Alexander Ross Paterson

<table>
<thead>
<tr>
<th>NAME OF INSTRUMENT analysed</th>
<th>National Environmental Management: Protected Areas Act (57 of 2003)</th>
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<tbody>
<tr>
<td>JURISDICTION national or sub-national</td>
<td>South Africa (National)</td>
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<tr>
<td>Available online</td>
<td>Full texts at ECOLEX.org (<a href="http://www.ecolex.org/LEX-FAOC045046">LEX-FAOC045046</a>)</td>
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<tr>
<td>Valid as of</td>
<td>1 January 2009</td>
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<thead>
<tr>
<th>TOPIC</th>
<th>QUESTION</th>
<th>APPLICATION</th>
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<tbody>
<tr>
<td></td>
<td>2. Enactment date; if not enacted state date of bill (i.e. draft)</td>
<td>The Protected Areas Act came onto force on 1 November 2004.</td>
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<td>3. Enacted by (institution/level of government)</td>
<td>Minister of Environmental Affairs and Tourism (national).</td>
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<td>4. Minister or policy-level body granted regulatory/other powers to implement the instrument?</td>
<td>Minister of Environmental Affairs and Tourism and Provincial Ministers of the Executive Council for Environmental Affairs (MEC).</td>
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<td></td>
<td>5. Specialized PA agency/dept. responsible for daily implementation</td>
<td>Department of Environmental Affairs and Tourism; South African National Parks (statutory body appointed to manage national parks in South Africa); and Provincial Conservation Authorities.</td>
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<tr>
<td>2. Scope</td>
<td>6. Is the instrument only for terrestrial areas?</td>
<td>No.</td>
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<tr>
<td>Geographical</td>
<td>7. Does it cover terrestrial and marine areas?</td>
<td>Terrestrial and marine to boundary of EEZ &amp; continental shelf (section 4).</td>
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<td>Conservation</td>
<td>8. Does it provide only for marine PAs?</td>
<td>No.</td>
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<td></td>
<td>9. Does it focus on biodiversity conservation?</td>
<td>Yes. Protected Areas Act must be read and interpreted together with National Environmental Management: Biodiversity Act (see section 6) which defines biodiversity as ‘the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems’ (section 1). The purposes for which protected areas can be declared (section 17) are broad ranging and include: (a) to protect ecologically viable areas representative of South Africa’s biological diversity and its natural landscapes and seascapes</td>
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* This matrix has been developed in order to provide a standardised framework for the analysis of the main legal instruments on protected areas in any country, and thus provide a basis for comparison.
in a system of protected areas;
(b) to preserve the ecological integrity of those areas;
(c) to conserve biodiversity in those areas;
(d) to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
(e) to protect South Africa’s threatened or rare species;
(f) to protect an area which is vulnerable or ecologically sensitive;
(g) to assist in ensuring the sustained supply of environmental goods and services;
(h) to provide for the sustainable use of natural and biological resources;
(i) to create or augment destinations for nature-based tourism;
(j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
(k) generally, to contribute to human, social, cultural, spiritual and economic development; or
(l) to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

10. Does it focus on specific types of ecosystems? | Yes. See the broad range of purposes for which protected areas can be declared (9 above). Lists of threatened and protected ecosystems can be declared under the Biodiversity Act. The situation of these listed ecosystems will be used to inform future planning regarding the location of protected areas.

11. Does it cover conservation of cultural values? | Yes. See the broad range of purposes for which protected areas can be declared (9 above) which include social, cultural and spiritual values.

In addition, world heritage sites declared under the World Heritage Act must be regarded protected areas under the Protected Areas act and are subject to the regulations promulgated under it (GN 3838 in GG 28181 dated 28 October 2005).

12. Does it relate only to Government/publicly owned PAs? | No. The Minister of Environmental Affairs and Tourism can declare state land as special nature reserves, national parks, nature reserves and protected environments - subject to prior consultation with all relevant state departments. Areas will generally be managed by state conservation agency such as SANParks. The Act goes further to provide for the inclusion of private and communal land within a protected area. See 13, 14, 15 and 16 below.

13. Does it cover public/private ownership? | Yes. Minister or MEC can declare private land as falling within special nature reserve, national park or nature reserve once agreement has been concluded with the private landowner. In respect of protected environments, the mere consent of the landowner is required. The areas may be managed by state entities, conservation organisations and private individuals.

14. Does it cover Private Protected Areas (PPAs)? | Yes. Minister or MEC can declare private land as falling within special nature reserve, national park or nature reserve once agreement has been concluded with the private landowner. In respect of protected environments, the mere
consent of the landowner is required. The process of declaration can be initiated by the private landowner and he/she/it can be appointed as the management authority for the area. The private sector and NGO’s can also feasibly be appointed as the management authority for state land declared as a protected area.

| 15. | Does it provide for co-management? | Yes. The Protected Areas Act provides for the conclusion of co-management agreements. The management authority may enter into an agreement with another organ of state, a local community, an individual or other party (section 42). |
| 16. | Does it cover Community Conserved Areas (CCAs)? | Yes. Minister or MEC can declare communal land as falling within special nature reserve, national park or nature reserve once agreement has been concluded with the private landowner. In respect of protected environments, the mere consent of the communal landowner is required. The process of declaration can be initiated by the community and they can be appointed as the management authority for the area. Local communities can also feasibly be appointed as the management authority for state land declared as a protected area. |

### 3. Policy context

| 17. | Summarise stated purpose or objective of the instrument | These objectives are expressly enunciated in the Act (section 17). The purposes of the declaration of areas as protected areas are:

- to protect ecologically viable areas representative of South Africa’s biological diversity and its natural landscapes and seascapes in a system of protected areas;
- to preserve the ecological integrity of those areas;
- to conserve biodiversity in those areas;
- to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- to protect South Africa’s threatened or rare species;
- to protect an area which is vulnerable or ecologically sensitive;
- to assist in ensuring the sustained supply of environmental goods and services;
- to provide for the sustainable use of natural and biological resources;
- to create or augment destinations for nature-based tourism;
- to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
- generally, to contribute to human, social, cultural, spiritual and economic development; or
- to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.’ |

| 18. | Specify any references to global or regional conventions | Ancillary reference is made to the World Heritage Convention (section 13(1)). |
| 19. | Specify reference to any significant environmental law principle such as the precautionary principle, public participation, access to information | Precautionary Principle

The interpretation and implementation of the Protected Areas Act is subject
Public Participation & Access to Information

The interpretation and implementation of the Protected Areas Act is subject to the national environmental management principles prescribed in section 2 of the National Environmental Management Act (107 of 1998) (see section 5 of the Protected Areas Act). These principles include public participation and access to information:

- ‘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 (section 2(4)(f)).

- ‘Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law’. (section 2(4)(k)).

- The Protected Areas Act must also be read in the context of the Promotion of Administrative Justice (3 of 2000) and Promotion of Access to Information Act (2 of 2000) which codify the constitutional dictates of the rights to just administrative action and access to information.

- Additional specific provisions can be found in the Protected Areas Act.

- Prior to declaring any form of protected area under the Act, the authorities must comply with the public participation and consultation procedure prescribed in section 31–section 34 of the Act. These procedures include: notice and comment procedures; where appropriate – oral hearings; and consultation with interested and affected parties.

- Management authorities are subject to annual reporting obligations (section 43).
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<tr>
<th>4. Objectives and policies</th>
<th>20. Summarize any general or specific policy for PAs stated in the instrument</th>
<th>The Protected Areas Act provides that it must be implemented and interpreted in line with the provisions of the NEM: Biodiversity Act (section 6). The latter act provides for the prescription of a national biodiversity framework (section 38), bioregional plans (section 40) and biodiversity management plans (section 43). These planning frameworks will guide the identification, declaration and management of South Africa’s protected area regime.</th>
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<tr>
<td>21. Specify any objectives expressed for PAs stated in the instrument</td>
<td>There are numerous references in the national biodiversity framework, an electronic copy of which is attached. See the following specific references relating to the fulfilment of Strategic Objective 5:</td>
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<td>- Finalise the 20-year protected area expansion plan, underpinned by the national biodiversity targets in the NSBA for biomes, provinces and marine biozones (4.5.1, p 47).</td>
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<td>- Implement Phase 1 of 20-year protected area expansion plan (4.5.2, p 48)</td>
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<td>- Establish and strengthen stewardship programmes in at least five provinces (4.5.3, p 48).</td>
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<td>- Protected area expansion strategy finalised and supported by all key implementing agencies.</td>
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<td>- Complete, up-to-date map of protected areas widely available</td>
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**Local Communities and Indigenous Rights**

The interpretation and implementation of the Protected Areas Act is subject to the national environmental management principles prescribed in section 2 of the National Environmental Management Act (107 of 1998) (see section 5 of the Protected Areas Act). These principles include:

- ‘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’ (section 2(4)(f)).
- ‘Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge’ (section 2(4)(g)).
- In addition, the Protected Areas Act recognizes that the government must ‘implement this Act in partnership with the people’ (section 3(b)).
## 5. Definitions

### 22. Is the term PA defined in the instrument? If so, how?

‘Protected area’ is defined as ‘any of the protected areas referred to in section 9’

Section 9 includes the following forms of protected areas:
- special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments;
- world heritage sites;
- marine protected areas;
- specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998); and
- mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

Each of these is in turn defined in section 1.

### 23. Are specific categories/types of PAs provided? If so, specify any that are based on:

- (i) conservation/management objectives
- (ii) ecosystem types (e.g. MPAs)
- (iii) tenure/governance considerations (PPAs/community-owned)
- (iv) jurisdictional considerations, and whether there are transboundary issues involved

Indicate if these categories/types are included in definitions section or in body of instrument

It provides for the declaration of four categories of protected areas under the Act (each of which is described in more detail below):
- special nature reserves
- national parks
- nature reserves
- protected environments

**Special Nature Reserves** (section 18 and 19):
- Can be declared for the following purposes:
  - to protect highly sensitive, outstanding ecosystems, species or geological or physical features in the area; and
  - to make the area primarily available for scientific research or environmental monitoring.

**National Parks** (sections 20-22):
- Can be declared for the following purposes:
  - protect the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa’s natural systems, scenic areas or cultural heritage sites; or
  - protect the ecological integrity of one or more ecosystems in the area;
o prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;
o provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and
o contribute to economic development, where feasible.

Nature Reserves (section 23-27):

- Can be declared for the following purposes:
  - to supplement the system of national parks in South Africa;
  - to protect the area if the area:
    - has significant natural features or biodiversity;
    - is of scientific, cultural, historical or archaeological interest; or
    - is in need of long-term protection for the maintenance of its biodiversity or for the provision of environmental goods and services;
  - to provide for a sustainable flow of natural products and services to meet the needs of a local community;
  - to enable the continuation of such traditional consumptive uses as are sustainable; or
  - to provide for nature-based recreation and tourism opportunities.

Protected Environments (section 28-30):

- Can be declared for the following purposes:
  - to regulate the area as a buffer zone for the protection of a special nature reserve, national park, world heritage site or nature reserve
  - to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefore;
  - to protect the area if the area is sensitive to development due to its-
    - biological diversity;
    - natural characteristics;
    - scientific, cultural, historical, archeological or geological value;
    - scenic and landscape value; or
    - provision of environmental goods and services;
  - to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;
<table>
<thead>
<tr>
<th>IUCN Categories</th>
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<tbody>
<tr>
<td>24.</td>
<td>Is there explicit reference to IUCN categories?</td>
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<td>25.</td>
<td>If so, are they reproduced verbatim or in a modified form? (See annex: IUCN categories 1 to 6)</td>
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<tr>
<td>26.</td>
<td>If the IUCN categories are not mentioned or incorporated, are any categories actually used in the instrument similar to the IUCN categories? be specific</td>
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<td>27.</td>
<td>Are there provisions for:</td>
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<tr>
<td>6. Institutional Arrangements: At the PA System level</td>
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<td>- an overall PA System institutional structure (Minister, cabinet)?</td>
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<td></td>
<td>- overall administration of the PA System programme and implementation (department, agency, intergovernmental commission)? If so, describe.</td>
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<td></td>
<td>- Regarding the declaration and management of protected areas, powers are vested in both the Minister of Environmental Affairs and Tourism and the Provincial MECs</td>
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<td></td>
<td>- Declaration of Protected Areas:</td>
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<td></td>
<td>- The authority to declare the above areas is generally the preserve of the Minister of Environmental Affairs and Tourism and in various circumstances, the relevant provincial MEC.</td>
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<td></td>
<td>- Minister:</td>
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<tr>
<td></td>
<td>- Special nature reserves (s 18(1))</td>
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<td></td>
<td>- National parks (s 20(1))</td>
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<tr>
<td></td>
<td>- Nature reserves (s 23(1))</td>
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<td></td>
<td>- Protected environments (s 28(1))</td>
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declared by both the Minister and the relevant provincial MEC.

**MEC:**
- Nature reserves (s 23(1))
- Protected environments (s 28(1))

**Management of Protected Areas:**
- Minister or relevant provincial MEC must assign the management of the protected area to a management authority (section 38).
- Minister or relevant provincial MEC must approve relevant management plans (section 39).
- Minister or relevant provincial MEC may establish indicators for monitoring the management of protected areas (section 43). Once so prescribed, a management authority must monitor its area against these indicators and report annually thereon to the Minister or relevant MEC. So as to ensure objectivity, the Minister or MEC can appoint external auditors to monitor the performance of a management authority and provision is made for terminating its mandate should it fail to fulfil effectively its management functions. (section 44).

**The same Minister of Environmental Affairs and provincial MEC’s also have a range of relevant powers and functions under the NEM:**

- Biodiversity Act. These include:
  - The prescription of a national biodiversity framework (section 38).
  - The identification of Bio-regions and prescription of bioregional plans (section 40).
  - The scrutiny and approval of biodiversity management agreements (section 44).
  - The listing of threatened and protected ecosystems and species (section 51-63).
  - The regulation of alien invasive species (sections 64-79).
  - The regulation of bioprospecting (sections 80-87).

**The same Minister also has an array of relevant powers:**
- Under the Marine Living Resources Act (18 of 1998) relating to the declaration of Marine Protected Areas.
Under the National Heritage Resources Act (25 of 1999) and World Heritage Convention Act (49 of 1999 relating to heritage sites. National and provincial heritage protected areas and world heritage sites).

There are two additional statutory bodies which are relevant to the administration of the Act

- SANParks – a national statutory authority created under the auspices of the Protected Areas Act (Chapter 5):
  - Its board array of powers and functions is set out in section 55 of the Act:
    - manage the national parks and other protected areas assigned to it in terms of Chapter 4 and section 92 in accordance with this Act;
    - protect, conserve and control those national parks and other protected areas, including their biological diversity; and
    - on the Minister’s request, advise the Minister on any matter concerning:
      - the conservation and management of biodiversity; and
      - proposed national parks and additions to or exclusions from existing national parks; and
    - on the Minister’s request, act as the provisional managing authority of protected areas under investigation in terms of this Act;
    - manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
    - sell, exchange or donate any animal, plant or other organism occurring in a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific park;
    - undertake and promote research;
    - control, remove or eradicate any species or specimens of species which it considers
undesirable to protect and conserve in a park or that may negatively impact on the biodiversity of the park;
- carry out any development and construct or erect any works necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
- allow visitors to a park;
- take reasonable steps to ensure the security and well-being of visitors and staff;
- provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
- carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
- determine and collect fees for:
  - entry to or stay in a park; or
  - any service provided by it;
- authorise any person, subject to such conditions and the payment of such fees as it may determine, to:
  - carry on any business or trade, or provide any service, which South African National Parks may carry on or provide in terms of this section; and
  - provide the infrastructure for such business, trade or service;
- by agreement with:
  - a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
  - any other organ of state, perform a function in a park which that organ of
The South African National Biodiversity Institute
- Created under the NEM: Biodiversity Act (Chapter 2)
- Also has a broad array of powers of broader relevance to various forms of protected areas:
- SANBI’s functions and powers include (section 11):
  - must monitor and report regularly to the Minister on:
    - the status of the Republic’s biodiversity;
    - the conservation status of all listed threatened or protected species and
    - the status of all listed invasive species.
  - must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;
  - may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;
  - must coordinate and promote the taxonomy of South Africa’s biodiversity;
  - must manage, control and maintain all national botanical gardens;
  - may establish, manage, control and maintain:
    - herbaria; and
    - collections of dead animals that may exist;
  - must establish facilities for horticulture display, environmental education, visitor
<table>
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<tr>
<th>Amenities and research;</th>
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<tr>
<td>o must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;</td>
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<td>o may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;</td>
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<td>o must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;</td>
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<td>o may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;</td>
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<td>o may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;</td>
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<td>o may coordinate and implement programmes for:</td>
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<td>▪ the rehabilitation of ecosystems; and</td>
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<td>▪ the prevention, control or eradication of listed invasive species;</td>
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<td>o may coordinate programmes to involve civil society in:</td>
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<tr>
<td>▪ the conservation and sustainable use of indigenous biological resources;</td>
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<tr>
<td>▪ the rehabilitation of ecosystems;</td>
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<td>o on the Minister’s request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;</td>
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<td>o on the Minister’s request, must advise him or her on any matter regulated in terms of this Act, including:</td>
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<td>▪ listed ecosystems;</td>
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### At the individual PA level

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>28. Does the instrument provide for future designation of management entities at individual PA level? If so, specify.</td>
<td>Yes. The Minister or relevant provincial MEC must assign the management of the protected area to a management authority who can be a suitable person, organisation or organ of state (section 38).</td>
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<td>29. Is there a requirement for inter-agency cooperation? If so, specify.</td>
<td>One of the key objectives of the Act is ‘to provide for co-operative governance in the declaration and management of protected areas’ (section 2(b)). Provision is made for interagency and inter-institutional consultation prior to the declaration of protected areas (section 31 and section 32). In respect of management – when preparing a management plan for a protected area, the management authority concerned must consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area. (section 39).</td>
</tr>
<tr>
<td>30. Is a specific body or bodies provided with authority to manage individual PAs? If so, describe (see also questions 25 and 26).</td>
<td>Yes. The Minister or relevant provincial MEC must assign the management of the protected area to a management authority who can be a suitable person, organisation or organ of state (section 38).</td>
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</tbody>
</table>
| 31. Is there a statutory basis for public participation in such bodies or other consultation/involvement of the public in the governance/management of individual PAs? If so, specify. | Individuals, organisations, local and indigenous communities can be appointed to manage protected area (see 28 above). Co-management agreements can be concluded with individuals, organisations, local and indigenous communities (see 45 below). Where the individual, organisation, local or indigenous community is not appointed as the management authority:  
- the respective management authority has discretion to make provision for community access and use in their management plan (section 41(2)(f)).  
- the respective management authority can enter into a written agreement with a local community inside or adjacent to the park, reserve or site to allow members of the community to use in a sustainable manner biological resources in the park, reserve or site (section 50(1)(b)). |
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<tr>
<th>7. Advisory Bodies</th>
<th>32. Does the instrument provide for advisory bodies - at PA System level? - at individual PA level?</th>
<th>PA System Level</th>
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<td>• SANParks, established under the Act, is partly a scientific advisory body. The composition, qualifications and appointment process are set out in sections 57-76. • SANBI, established under the Biodiversity Act, also have a role to play as an advisory body in the context of protected areas. The composition, qualifications and appointment process are set out in sections 13-22. Regarding the Board’s powers and functions see 6.2 above.</td>
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<td>33. If advisory bodies are provided for, indicate the relevant provisions that create those bodies, or enables their creation and describe the purpose, membership, powers and functions of those advisory bodies.</td>
<td>PA System Level</td>
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<td>• Regarding SANParks purpose, formation, powers and functions see 27 above. • Regarding SANBI’s purpose, formation, powers and functions see 27 above.</td>
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<td>34. If statutory bodies are not provided for, is there a statutory basis for scientific input or consultations; if so, specify.</td>
<td>Individual PA Level</td>
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<td>• Regarding the ad hoc advisory committees see 32 above.</td>
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<tr>
<td>35. Are there provisions to assess and report on effectiveness of the PA System? If so, specify.</td>
<td>No.</td>
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<tr>
<th>8. PA System Planning and Management</th>
<th>36. Does the instrument provide for a system of Protected Areas (PA System)?</th>
<th>Yes.</th>
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<tr>
<td>37. Does the instrument require the preparation of a plan for development and management of a PA System? If so describe purpose, responsible entity and key elements</td>
<td>No. The planning framework is prescribed under the Biodiversity Act (see 3.1 above).</td>
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<td>• National Biodiversity Framework – prescribed by the Minister of Environmental Affairs and Tourism to:</td>
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<td>• provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, nongovernmental</td>
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<td>9. Establishment, amendment, abolition</td>
<td>38. Are there provisions for the establishment of PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)</td>
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<td></td>
<td>• The Minister of Environmental Affairs and Tourism has authority to establish, amend and abolish special nature reserves, national parks, nature reserves and protected environments.</td>
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<td></td>
<td>• The provincial MEC has authority to establish, amend and abolish nature reserves and protected environments.</td>
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<td><strong>Procedure:</strong></td>
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<td>• The procedure for establishing special nature reserves, national parks, nature reserves and protected environments are generally the same. See generally section 31-section 36 and specifically: section 18 (special nature reserves); section 20 (national parks); section 23 (nature reserves); and section 28 (protected environments):</td>
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<td>• consult all national organs of state affected by the proposed notice;</td>
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<td>• in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult-</td>
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<td>• the MEC of the province concerned; and</td>
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<td>• the municipality in which the area concerned is situated;</td>
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<td></td>
<td>• consult any lawful occupier with a right in land in any part of the area affected and:</td>
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<td></td>
<td>• in respect of private land incorporated within a special nature reserves, national park or nature reserve – enter into written</td>
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agreement between the relevant Minister or the MEC.

- in respect of private land incorporated within a protected environment – obtain the consent and notify the landowner in writing of the intended declaration.

- publish the intention to issue a notice to establish a protected area in the Gazette and in at least two national newspapers distributed in the area in which the affected area is situated. The publication must:
  - invite members of the public and interested and effected persons to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the Gazette; and
  - contain sufficient information to enable members of the public to submit meaningful representations or objections; and
  - include a clear indication of the area that will be affected by the declaration.

- The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.

- The Minister or MEC must give due consideration to all representations or objections received or presented.

- The Minister and MEC must finally publish a notice in the Government Gazette.

- The declaration of private land as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, may be initiated either by the Minister or the MEC or the owners of that land acting individually or collectively.

- The terms of any written agreement entered into between the Minister, South African National Parks or an MEC and the owner of private land are binding on the successors in title of such owner.

- The terms of agreement must be recorded in a notarial deed and registered against the title of the property – thereby creating a
The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, or whenever a declaration in respect thereof is withdrawn or altered (section 36).

<table>
<thead>
<tr>
<th>39.</th>
<th>Are there provisions for altering the boundaries of PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)</th>
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</thead>
<tbody>
<tr>
<td><strong>Procedure</strong></td>
<td>The withdrawal or alteration of a declaration of an area as a special nature reserve, national park or nature reserve, or the alteration of the boundaries thereof, may generally only take place:</td>
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<td>• in the case of a declaration by the Minister, by resolution of the National Assembly;</td>
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<td>• in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or</td>
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<td>• If the Minister or MEC, or the other party to an agreement, withdraws from an agreement contracting private land into a protected area, the Minister or MEC must withdraw the notice in terms of which the land in question was declared a nature reserve or part of an existing nature reserve. See section 19 (special nature reserves); section 21 (national parks); and section 23 (nature reserves).</td>
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<tr>
<td>In addition, the authorities must follow the consultation and public participation procedures set out in sections 31-34:</td>
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<td></td>
<td>• consult all national organs of state affected by the proposed notice;</td>
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<td>• in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult-</td>
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<td></td>
<td>• the MEC of the province concerned; and</td>
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<td>• the municipality in which the area concerned is situated;</td>
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<td></td>
<td>• consult any lawful occupier with a right in land in any part of the area affected and:</td>
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<tr>
<td></td>
<td>• in respect of private land incorporated within a special nature reserves, national park or nature reserve – enter into written agreement between the relevant Minister or the MEC.</td>
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<tr>
<td>Establishment of PAs on non-governmental land</td>
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<tr>
<td>40. Are their provisions for changing the status of PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)</td>
<td>in respect of private land incorporated within a protected environment – obtain the consent and notify the landowner in writing of the intended declaration.</td>
</tr>
<tr>
<td>41. Is there a process for abolishing PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)</td>
<td>publish the intention to issue a notice to establish a protected area in the Gazette and in at least two national newspapers distributed in the area in which the affected area is situated. The publication must:</td>
</tr>
<tr>
<td>42. Are the levels of authority the same for questions 38-41, or are they different (e.g. higher level for abolition than for creation of PAs)</td>
<td>invite members of the public and interested and effected persons to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the Gazette; and</td>
</tr>
<tr>
<td>43. Are there specific provisions regarding questions 38-41 which are specific to transboundary PAs, or those listed under international agreements (e.g. Ramsar, World Heritage)</td>
<td>contain sufficient information to enable members of the public to submit meaningful representations or objections; and</td>
</tr>
<tr>
<td>44. Are there provisions related to the establishment by the government of PAs on land which is not government-owned; if so specify these provisions in relation to</td>
<td>include a clear indication of the area that will be affected by the declaration.</td>
</tr>
</tbody>
</table>

- The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.

- The Minister or MEC must give due consideration to all representations or objections received or presented.

- The Minister and MEC must finally publish a notice in the Government Gazette.

40. Are their provisions for changing the status of PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)

See 39 above.

41. Is there a process for abolishing PAs? Describe the authority entitled to do so and the process (incl. poss. for public partic.)

See 39 above.

42. Are the levels of authority the same for questions 38-41, or are they different (e.g. higher level for abolition than for creation of PAs)

Generally the same. See 38 and 39 above.

43. Are there specific provisions regarding questions 38-41 which are specific to transboundary PAs, or those listed under international agreements (e.g. Ramsar, World Heritage)

No.

44. Are there provisions related to the establishment by the government of PAs on land which is not government-owned; if so specify these provisions in relation to

The process is generally identical with the following exception:

- in respect of private or communal land incorporated within a
| 45. | Are there provisions related to the recognition/inclusion in the PA System of PAs established by “conservation agreements” with - individual private owners? - land trusts? - local and/or indigenous communities? | ‘Land Incorporation Agreements’:

- See 44 above regarding these agreements.

‘Management Agreements’:

- Once established, the Government must in writing assign the management of the protected area to a management authority (section 38).

- Such assignment can only take place with the concurrence of the prospective management authority (section 39(1)).

- The range of persons or institutions to which this function can be assigned includes suitable persons, organisations and organs of state, thereby enabling the Government to devolve the management of protected areas to the public where suitable.

- Once appointed, a management authority must prepare and submit a comprehensive management plan to the Government for approval (section 39).

- The protected area must be managed in accordance with the management plan and mandatory content includes: planning measures, controls and performance criteria; programmes for the implementation of the plan and its costing; procedures for public participation; and the implementation of community-based natural resource management where appropriate (section 41(1) and (2)).

- Discretionary content includes: provisions aimed at developing economic opportunities within and adjacent to the protected area; the development of local management capacity; and financial and other support necessary to ensure the effective administration and implementation of the management plan (section 41(3)).

- private property
- land owned by indigenous or local communities and in which cases they provide/do not provide for compensation

- special nature reserves, national park or nature reserve – the relevant Minister or the MEC must enter into written agreement with the relevant private or communal landowner.

- in respect of private or communal land incorporated within a protected environment – the Minister or MEC must obtain their consent and notify them in writing of the intended declaration. No formal written agreement required.
Although the Protected Areas Act does not provide for the conclusion of a formal contract between the Government and the management authority, if one considers the management regime holistically it effectively constitutes a form of contractual relationship, a ‘management agreement’, in that: the management authority must agree to its appointment; the management plan sets out the reciprocal obligations of the state and the management authority; the content of the management plan needs to be approved by both parties and provision is made for the termination of management relationship if the appointed management authority fails to comply with the terms thereof (section 44).

These management agreements provide an important mechanism for the Government to share the responsibility and cost of managing South Africa’s protected areas, which in the past largely fell within its exclusive purview, with the public. The prescribed content of the management agreements also reflects an express recognition by the Government of the need to move towards a more human-centered approach to conservation and to manage protected areas within their broader socio-economic context.

Co-management agreements:

- Yes. The Protected Areas Act provides for the conclusion of co-management agreements. The management authority may enter into an agreement with another organ of state, a local community, an individual or other party (section 42).

- The contents of these agreements can include:
  - the co-management of the area by the parties; or
  - the regulation of human activities that affect the environment in the area.
  - the delegation of powers by the management authority to the other party to the agreement;
  - the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties;
  - the use of biological resources in the area;
  - access to the area;
  - occupation of the protected area or portions thereof;
  - development of economic opportunities within and adjacent to the protected area;
### 10. Requirement For Management Plans

| 46. | Is there a requirement for individual PA management plans? If so, describe:  
- generic elements (e.g., zoning)  
- procedure for preparation (who is involved?)  
- who approves  
- legal status of approved plan (binding nature, enforceability)  
- authority(ies) responsible for implementation of the plan and powers. |  
| --- | --- |  
| | - development of local management capacity and knowledge exchange;  
- financial and other support to ensure effective administration and implementation of the co-management agreement; and  
- any other relevant matter. |  
| | The contents of these agreements must:  
- provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and  
- be consistent with the other provisions of this Act. |  
| | Once established, the Government must in writing assign the management of the protected area to a management authority (section 38).  
- Such assignment can only take place with the concurrence of the prospective management authority (section 39(1)).  
- The range of persons or institutions to which this function can be assigned includes suitable persons, organisations and organs of state, thereby enabling the Government to devolve the management of protected areas to the public where suitable.  
- Once appointed, a management authority must prepare and submit a comprehensive management plan to the Government for approval. (section 39).  
- The protected area must be managed in accordance with the management plan (section 40). The contents of these agreements can include:  
- the co-management of the area by the parties; or  
- the regulation of human activities that affect the environment in the area.  
- the delegation of powers by the management authority to the other party to the agreement;  
- the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties;  
- the use of biological resources in the area;  
- access to the area;  
- occupation of the protected area or portions thereof; |
- development of economic opportunities within and adjacent to the protected area;
- development of local management capacity and knowledge exchange;
- financial and other support to ensure effective administration and implementation of the co-management agreement; and
- any other relevant matter.

- The contents of these agreements must:
  - provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and
  - be consistent with the other provisions of this Act.

- When preparing a management plan for a protected area, the management authority concerned must consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area.

- The management plan must take into account any applicable aspects of the integrated development plan of the municipality in which the protected area is situated.

- The management authority may amend the management plan by agreement with the Minister or the MEC, as the case may be.

- Provision is made for the termination of management relationship if the appointed management authority fails to comply with the terms of the management plan (section 44).

47. Are there provisions for monitoring the implementation of Management Plans? If so specify.

- Strangely no express provision is made for the duration and review of management plans.

- However, in terms of section 43, the Minister and MEC may establish indicators for monitoring performance with regard to the management of national protected areas, provincial and local protected areas and the conservation of biodiversity in those areas.

- Once so prescribed, the management authority of a protected area must:
  - monitor the area against the indicators set in terms of subsection (1) or (2); and
  - annually report its findings to the Minister or MEC, as the case
<table>
<thead>
<tr>
<th>48.</th>
<th>Is a reporting system created to review the effectiveness of the management plan? If so, specify.</th>
<th>See 47 above.</th>
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</table>
| **11. Buffer** | **49.** Are there provisions for the creation of buffer zones around PAs? If so describe, in particular:  
- how they are established  
- what their legal status is  
- the restricted activities therein  
- if there are provisions for their integration into land use plans | • One of the express purposes for which protected environment can be declared under the Protected Areas Act is to create a buffer zone for a special nature reserve, national park or nature reserve declared under the Act (section 28(2)(a)). See further the purposes for which protected environments can be declared set out in 23 above.  
• Bioregions, bioregional plans, biodiversity management plans and agreements prescribed under the National Environmental Management: Biodiversity Act can be used to regulate areas adjacent to protected areas as buffer zones. See 27 for a discussion of these instruments.  
• Zoning Schemes, in the form of zoned open space can be used to retain areas around protected areas as buffer zones (these zoning schemes are regulated under provincial planning ordinances and laws). |
| **50.** Are there provisions for the creation of corridors connecting individual PAs? If so describe, in particular:  
- how they are established,  
- what their legal status is  
- the restricted activities therein | • The express purposes for which protected environment can be declared under the Protected Areas Act include linking special nature reserve, national park or nature reserve declared under the Act (section 28(2)(a)). See the purposes for which protected environments can be declared set out in 23 above.  
• Bioregions, bioregional plans, biodiversity management plans and agreements prescribed under the National Environmental Management: Biodiversity Act can be used to regulate areas adjacent to and between protected areas. See 37 above for a discussion of these instruments.  
• Zoning Schemes, in the form of zoned open space can be used to link protected areas. These zoning schemes are regulated under provincial planning ordinances and laws. |
| **12. Connectivity** | **51.** If no legal status is provided for creation of corridors, can these be recognized by the instrument in other ways (in the PA System, or in land use plans?) | See 50 above. |
### 13. Individual PAs: Development proposals and Activities

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<th>Item</th>
<th>Description</th>
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<tr>
<td>52.</td>
<td>Are specific activities prohibited or allowed within PAs, or specific types of PAs; if so describe (as the case may be by types). Give special attention to e.g.:&lt;br&gt;- recreational uses&lt;br&gt;- commercial activities&lt;br&gt;- access to genetic material&lt;br&gt;- introduction of invasive species</td>
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There are various ways in which these activities are regulated:

- All management authorities can prescribe internal rules regulating these activities within their particular protected area (section 52)
- Various activities are specifically regulated under the Protected Areas Act:
  - Access to special nature reserves is regulated by the management authority in consultation with the Minister (section 45)
  - Access to national parks, nature reserves and world heritage sites is subject to the written permission of the management authority (section 46)
  - Use of aircraft in special nature reserve, national park or world heritage site is prohibited at certain levels (less than 2500ft) and subject to the written permission of the management authority (section 47)
  - Commercial prospecting and mining activities are (section 48):
    - Prohibited in special nature reserves, national parks and nature reserves
    - Allowed subject to the written consent of the Minister in protected environments. (section 47)
  - Commercial and community activities national parks, nature reserves and world heritage sites (section 50):
    - The management authority of a national park, nature reserve and world heritage site may, subject to the management plan of the park, reserve or site:
      - carry out or allow:
        - a commercial activity in the park, reserve or site; or
        - an activity in the park, reserve or site aimed at raising revenue;
      - enter into a written agreement with a local community inside or adjacent to the park,
reserve or site to allow members of the community to use in a sustainable manner biological resources in the park, reserve or site; and
  o set norms and standards for any activity allowed above.
  o an activity allowed above may not negatively affect the survival of any species in or significantly disrupt the integrity of the ecological systems of the national park, nature reserve or world heritage site.

- The management authority of the national park, nature reserve or world heritage site must establish systems to monitor:
  o the impact of activities allowed on the park, reserve or site and its biodiversity; and
  o compliance with:
    ▪ any agreement entered into above; and
    ▪ any norms and standards set above.

- No development, construction or farming may be permitted in a national park, nature reserve or world heritage site without the prior written approval of the management authority.

- Regulation or restriction of development and other activities in protected environment (section 51).

- The Minister or the MEC may by notice in the Gazette restrict or regulate in a protected environment under the jurisdiction of the Minister or the MEC:
  o development that may be inappropriate for the area given the purpose for which the area was declared; and
  o the carrying out of other activities that may impede such purpose.

- Many other forms of activities taking place in special nature reserves, national parks and world heritage sites are regulated under GNR3838 in GG 28181 dated 28 October 2005. These
include the following:

- Use of biological resources (Reg 5)
- Access (Reg 6)
- Collection of data (Reg 7)
- Admission (Reg 8)
- Entrance and accommodation fees (Reg 9)
- Staying overnight (Reg 13)
- Times of entry and travel (Reg 14)
- Vehicles (Reg 15-18)
- Commercial and communal activities (Reg 19-22)
- Use of water areas, land and airspace (Reg 23-30)
- Community-based natural resource management (Reg 31-32)
- Prohibited activities (Reg 38)
- Interference with soil and substrata (Reg 39)
- Littering (Reg 40)
- Pollution of water (Reg 41)
- Removal and dumping in water areas (Reg 42)
- General prohibitions (Reg 43)
- Firearms (Reg 44)
- Prohibition or restriction of the use of biological resources (Reg 45)
- Prohibition or restriction of landuse (Reg 46-48)
- Pets (Reg 49)

| 53. | Is there a statutory basis for public participation or consultation on proposed development or activities? If so, specify. | Extensive provision is made for public participation and consultation in the context of establishing, amending or disestablishing protected areas. See 38 above. Extensive provision is made for public participation and consultation where people seek to undertake activities in protected areas which trigger EIA requirements under the National Environmental Management (107 of 1998) read together with its EIA Regulations (GNR 385-387 Government Gazette 28753 dated 21 April 2006). See 58 below. |
| 54. | In the case of allowed activities, who has the authority to grant use/access to the PA resources (e.g. forest products, genetic resources) | The majority of the activities listed in 52 above may take place with the written permission of the management authority. See the individual regulations. The granting of the permission is generally only granted where the proposed activity does not conflict with the management plan of the area. See the individual regulations. |
55. Indicate provisions authorizing more detailed regulation of activities based on an approved management plan (e.g. zoning)  

With the exception of prospecting and mining activities (which fall within the purview of the Minister), the remainder of activities fall within the purview of the management authority.

See 52 above.

56. Are local communities/indigenous concerns addressed? If so describe.

Yes.

The interpretation and implementation of the Protected Areas Act is subject to the national environmental management principles prescribed in section 2 of the National Environmental Management Act (107 of 1998) (see section 5 of the Protected Areas Act). These principles include:

- ‘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.’ (section 2(4)(f)).

- ‘Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.’ (section 2(4)(g)).

In addition, the Protected Areas Act recognizes that the government must ‘implement this Act in partnership with the people’ (section 3(b)).

Regarding practical implementation:

- Local and indigenous communities can be appointed to manage protected area (section 38).

- Co-management agreements can be concluded with local and indigenous communities (section 42).

- Where the local or indigenous community is not appointed as the management authority:
  - the respective management authority has discretion to make provision for community access and use in their management plan (section 41(2)(f)).
  - the respective management authority can enter into a written agreement with a local community inside or...
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<th>Q.</th>
<th>Question</th>
<th>Answer</th>
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| 57 | Are other cultural, social or spiritual considerations addressed? If so, describe. | Yes. The interpretation and implementation of the Protected Areas Act is subject to the national environmental management principles prescribed in section 2 of the National Environmental Management Act (107 of 1998) (see section 5 of the Protected Areas Act). Under NEMA, ‘environment’ is broadly defined as follows:  
  - ‘environment’ means the surroundings within which humans exist and that are made up of –  
    - the land, water and atmosphere of the earth;  
    - micro-organisms, plant and animal life;  
    - any part or combination of (i) and (ii) and the interrelationships among and between them; and  
    - the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;  
  
  NEMA’s 18 principles accordingly incorporate both environmental and cultural values. The interpretation and implementation of the Protected Areas Act, which is guided by these principles, is accordingly founded on cultural and environmental considerations.  
  
  This is reflected in the purpose for which protected areas can be declared which include: contributing to social, cultural and spiritual development (section 17(k)). |
| 58 | Are there provisions in the instrument for EIA with respect to activities within PAs? If so, specify. | The Protected Areas Act makes no direct provision for EIA. EIA is regulated primarily by the National Environmental Management Act (107 of 1998) and the EIA Regulation promulgated under it in GNR 385-387 Government Gazette 28753 dated 21 April 2006. These regulations list a myriad of activities which require an environmental authorization issued by the Minister or relevant MEC. Prior to granting such an authorization, the applicant must submit either a scoping report or full EIA to the authorities. These regulations apply irrespective of whether the activity takes place within or adjacent to a protected area. Extensive provision is made for public consultation throughout the EIA process. |
| 59 | Are there provisions in the instrument for EIA with respect to activities outside PAs which may affect the PA concerned, eg - in the buffer zone - elsewhere | Yes. Many activities which may take place adjacent to a protected area are listed in the EIA Regulations and would accordingly be subject to mandatory EIA. |
| 60 | Are officers responsible for enforcement designated? If so, who appoints them and what necessary qualifications must they have (if any)? | No. The Protected Areas Act does not expressly designate the officers responsible for enforcement of rules and regulations governing protected areas. |
• However, the Protected Areas Act is defined as a ‘specific environmental management Act’ under the National Environmental Management Act (107 of 1998).

• NEMA provides for the designation of environmental management inspectors by the Minister or relevant provincial MEC (section 31B and 31C).

• The role of these inspectors is to enforce compliance with specific environmental management Acts – such as the Protected Areas Act.

• The functions of these inspectors is to (section 31G):
  • monitor and enforce compliance with a law for which he or she has been designated in terms of that section;
  • investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute:
    o an offence in terms of such law;
    o a breach of such law; or
    o a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.

• The general powers of these inspectors include (section 31H):
  o question people
  o inspect, or question a person about and document, book, record, electronic information and copy of make extract thereof
  o require persons to deliver any records etc to the authorities
  o inspect, or question a person and if necessary remove any specimen, article and substance;
  o take photographs and recordings
  o take samples
  o remove things

• There specific powers include:
  o Seizure of items (section 31I)
  o Powers to stop, enter and search vehicles, vessels and
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<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>61. If so, what monitoring or other powers are they granted? Relate back to review of effectiveness of and feedback to the management plan.</td>
<td>See 60 above.</td>
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<tr>
<td>62. Does the instrument specify provisions to whom these officers report? If so, specify.</td>
<td>The overarching authority for these officers is the Minister of Environmental Affairs and Tourism.</td>
</tr>
</tbody>
</table>
| 63. Does the relevant agency have sole authority to enforce? If so, specify.          | Yes – in respect of protected areas declared under the Protected Areas Act. The employees of management authorities are generally appointed as environmental management inspectors in order to enable them to enforce the provisions of the Act. However, protected areas declared under other laws have distinct enforcement agencies. For example:  
  - Marine protected areas declared under the Marine Living Resources Act (18 of 1998) – fisheries control officers.  
  - Forest nature reserves and wilderness areas declared under the National Forests Act (84 of 1998) – forest officers.  
  - Provincial nature reserves, local nature reserves and private nature reserves declared under the following Provincial Ordinances and Acts – provincial and local conservation officers:  
    - Limpopo Environmental Management Act 7 of 2003  
    - Provincial Parks Board Act (Eastern Cape) 12 of 2003  
    - Western Cape Nature Conservation Laws Amendment Act 3 of 2000  
    - Nature and Environmental Conservation Ordinance 19 of 1974 (Cape)  
    - Nature Conservation Ordinance 12 of 1983 (Transvaal)  
    - Nature Conservation Ordinance 8 of 1969 (OFS) |
| 64. If the agency does not have sole authority to enforce, what other bodies are authorised to enforce? | See 63 above.                                                                                                                                 |
| 65. What is the relationship of agency enforcement officers to the police and other enforcement authorities? | Environmental management inspectors have the same powers as peace officers. Members of the South African Police Services are afforded the same powers as environmental management inspectors (section 31O). |
| 66. Do provisions specify enforcement powers and functions (arrest, stop and search, etc.). If so, specify. | Yes – see 60 above.                                                                                                                                 |
| 67. | Are there provisions for criminal enforcement? If so, specify. | Yes. A person is guilty of an offence if that person: |
|     |                                                          | - contravenes or fails to comply with a provision of the Act or any notice issued under it; |
|     |                                                          | - hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties; or |
|     |                                                          | - falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer. |
|     |                                                          | A person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. |
| 68. | Are there provisions for civil enforcement (as distinct from criminal enforcement)? If so, specify. | If the management authority of a protected area is not performing its duties in terms of the management plan for the area, or is underperforming with regard to the management of the area or the biodiversity of the area, the Minister or the MEC, as the case may be, must (section 44): |
|     |                                                          | - notify the management authority in writing of the failure to perform its duties or of the underperformance; and |
|     |                                                          | - direct the management authority to take corrective steps set out in the notice within a specified time. |
|     |                                                          | If the management authority fails to take the required steps, the Minister or MEC may: |
|     |                                                          | - terminate that management authority’s mandate to manage the protected area; and |
|     |                                                          | - assign another organ of state as the management authority of the area. |
|     |                                                          | No direct provision is made in the Protected Areas Act for civil enforcement. In addition, there are a range of statutory measures which could be invoked by citizens to compel the state to compel management authorities to comply with their statutory obligations: |
|     |                                                          | - in terms of section 28(12) |
| 16. Sanctions and incentives | 69. | Do provisions of the instrument provide for offences and related penalties? If so, specify. | - A person convicted of an offence is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment (section 89(2)). |
|     |                                                          | - In addition, owing to the fact that the Protected Areas Act appears in Schedule 3 of the National Environmental Management Act (107 of 1998) all the criminal proceeding provisions located in section 34 |
of the latter Act also apply to offences committed under the Protected Areas Act. These include:

- Civil penalties for damages to person or property
- Civil penalties equal to the cost of rehabilitation undertaken by the Government.
- Civil penalties equal to the costs spent in prosecuting the offence
- Civil penalties equal to the value gained as a result of the commission of the offence
- Vicarious liability
- Employee liability
- Director liability

70. Are the specified penalties an adequate deterrent for the seriousness of the offences?

| Probably sufficient when read together with NEMA provisions in section 34. |

71. Does the instrument include provisions for forfeiture, recovery of costs (eg pollution clean-up or restoration of ecosystems)?

| None are specifically provided in the Protected Areas Act but see 69 above regarding the array of penalties available under section 34 of NEMA. |

72. Does the instrument provide incentives or rewards for compliance with its provisions?

| No specific incentives are provided under the Protected Areas Act. However, the Local Government Municipal Property Rates Act (6 of 2004) provides for an array of property tax benefits of relevance to protected areas. |

In summary:

- Under the Property Rates Act, no property tax can be levied on "those parts of a special nature reserve, national park or nature reserve within the meaning of the Protected Areas Act, ...which are not developed or used for commercial, business, agricultural or residential purposes." (section 17(e)).

- The Property Rates Act identifies a specific range of categories of property which may be subjected to differential rating, rebates and reductions. These categories include: farm properties and small holdings held for non-commercial purposes; 'protected areas' (defined as ‘an area that is or has to be listed in the register referred to in section 10 of the Protected Areas Act) and properties used by "public benefit organisations" for various 'public benefit activities' which include conservation-related activities. (Sections 8(2)(d),(e),(f),(o) and (q); and section 15(1)).

- Cumulatively, these tax benefits could facilitate the contracting of private land within the protected areas framework.

- For a full discussion of these tax incentives see Paterson AR
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<tr>
<th>17. Finance</th>
<th>Does the instrument include specific provisions on how PAs are funded? If so, specify.</th>
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- The Protected Areas Act provides that the Minister may finance the acquisition of private land or a right in or to private land, or the cancellation of a servitude on, or a privately held right in or to, state land from (section 85):
  - money appropriated for this purpose by Parliament; or
  - the Fund, by agreement with South African National Parks.

- It further provides that South African National Parks may finance the acquisition of private land or a right in or to private land, or the cancellation of a servitude on, or a privately held right in or to, land owned by South African National Parks, from (section 85):
  - the funds of South African National Parks; or
  - the Fund, by agreement with the Minister.

- The Fund referred to above is the National Parks Land Acquisition Fund (section 77).

- The Fund is administered by South African National Parks and consists of:
  - any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
  - money appropriated by Parliament for the purpose of the Fund;
  - the proceeds of land sold by South African National Parks which it has acquired;
  - income derived from investing any credit balances in the Fund;
  - money borrowed by South African National Parks for the purpose of the Fund; and
  - money derived from any other source for the purpose of the Fund.

- The money in the Fund may be used:
  - to finance:
    - the acquisition of private land or a right in or to private land; or
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<th>Q</th>
<th>Question</th>
<th>Answer</th>
</tr>
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<tbody>
<tr>
<td>74.</td>
<td>Does the instrument include provisions authorizing special financial tools for the PA System or for specific protected areas? If so, describe.</td>
<td>See 73 above.</td>
</tr>
<tr>
<td>75.</td>
<td>Does the instrument include provisions for the PA agency to accept donations in cash or in kind?</td>
<td>Section 75 provides that the funds of South African National Parks include voluntary contributions, donations and bequests. SANParks is accordingly entitled to accept donations of cash. It must be remembered that SANParks only administers South Africa’s national parks. The remaining forms of protected areas are administered by provincial/local government authorities and private landowners/non-government organisations. In respect of the former, donations would simply fall into the general coffers of the state and would not be earmarked for protected areas expenditure unless specifically donated into the National Parks Land Acquisition Fund. In respect of the latter, cash donations can be made but would generally be subject to donations tax although recent amendments to the Income Tax Act do provide for various donation tax exemptions and tax deductions where such donations are made to certain public benefit organisations. No express statutory provision is made for donations in kind but in practice donations of this nature do occur (for example - the appointment of voluntary conservation officers to assist in the management of various protected areas).</td>
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<tr>
<td>76.</td>
<td>Does the PA agency have the power to collect, retain and utilize revenues (e.g. entrance fees, fees for services, concessions).</td>
<td>Once duly appointed, management authorities generally have a broad discretion to allow activities in the park to raise revenue on condition that such activities comply with the duly approved management plan. In this regard, section 50 specifically prescribes that a management authority of a national park, nature reserve and world heritage site may, subject to the management plan of the park, reserve or site, carry out or allow a commercial activity in the park, reserve or site; or an activity in the park, reserve or site aimed at raising revenue.</td>
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<td>77.</td>
<td>Does the instrument provide for revenues to be shared or given to local communities? If so, please specify.</td>
<td>The contents of co-management agreements can specifically provide for ‘the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties’ (section 42(2)b)). These issues will accordingly be regulated by the terms of any co-management agreement concluded between the management authority and the local community.</td>
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