In a participatory process after Independence, Namibia developed an innovative EA policy which was formally approved by Cabinet in 1994. This will be formally incorporated as a chapter of the Environmental Management Act.

Namibia’s EA policy provides that all policies, projects and programmes should be subjected to EA procedures, regardless of where these originate. These procedures should aim for a high degree of public participation, should consider the environmental costs and benefits of projects proposed, and so on. It refers to policies, areas and activities which may have significant environmental effects. Provision will be made to include other activities which may adversely affect biodiversity in Namibia. In line with IUCN guidelines, EAs are conducted at an early phase of project development, allowing for identification and avoidance of adverse impacts. Namibia’s EA policy is an especially strong one. It would, however, benefit from more stringent mechanisms for incorporating biodiversity impact studies into the EA process.

5.8 Conclusions and the way forward

Although there is a body of legislation in place in Namibia which conserves biodiversity, it was formulated with general conservation ideals, rather than explicitly biodiversity, in mind. For example, parks and reserves were declared for general conservation and recreation purposes, not specifically to conserve biodiversity. New laws being developed under Namibia’s environmental legislation project must take account of the country’s unique and valuable biological diversity. Where necessary and appropriate, they must specifically provide for biodiversity conservation.

Policy principles underpinning future legislation

It is clear from our survey that current Namibian environmental laws adopt a traditional “command and control” approach to conservation. While we do not recommend a radical departure from this, a significant shift is clearly needed. Future legislation should be underpinned by the following general policy considerations.

- The integration of biodiversity conservation aims into land-use and national planning laws

A distinction must be made in Namibia between commercial and communal lands. Different tenure philosophies and legislation underpin each: while private individual ownership typifies the former, group and communal tenure is the main feature of the latter. The Agricultural Commercial Land Reform Act (6 of 1995) was recently passed, while a draft Communal Lands Bill has been circulating since 1995.

Ways to accommodate biodiversity conservation in these developments are:

- development of the conservancy concept;
- legal requirement of environmental assessment procedures for relevant development projects and policies;
- creation of intersectoral structures and mechanisms for improved information flow between sectors.

Each of these is linked to a number of general considerations set out below.

- Devolution of natural resource rights and responsibilities

Government administration in Namibia is characterised by strong central control. Thirteen administrative regions have been declared, but their Regional Councils lack legislative and executive capacity, and their powers, set out in the Regional Councils Act (22 of 1992), are ill-defined.

Conservation efforts will succeed only where there is direct community involvement in the
management, conservation, and use of natural resources. New legislation must accordingly promote community policing and enforcement as far as possible. This will succeed only if the benefits of involvement accrue to local and regional levels. In the communal lands context, this principle is inherently linked to the role of customary law, as described below.

*Recognition of the role of customary law*

The Namibian Constitution stipulates that customary law shall remain valid to the extent that it does not conflict with the Constitution or statutes (Article 66). It is clear that if Namibia is to succeed in conserving biodiversity, it must incorporate existing legislation into overall conservation structures. So too, related projects and policies of other ministries need to have biodiversity conservation in mind and consult with relevant actors.

At the end of the day, economic benefits must return to local people. The Traditional Authorities Act (17 of 1995) gives legislative recognition to traditional authorities, and requires rural communities to use the natural resources at their disposal in a sustainable way (section 10:2c).

*A new conservation ordinance*

The IUCN has evaluated different types of protected area, identifying six categories.\(^7\) We urge Namibia to move now to declare multiple-use areas as outlined below. People could remain living in such areas, their animals may graze in certain zones, and communities need not be moved. A major advantage of multiple-use protected areas is that community alienation is normally minimised. Such protected areas bring a greater feeling of ownership to local communities, and hence enhance their understanding of conservation.

1. **Strict Nature Reserve**: protects ecological processes and genetic resources in a dynamic evolutionary state for research, environmental monitoring, education, and future potential.

2. **Wilderness Area**: protects large tracts of pristine natural habitat.

3. **National Park**: protects outstanding natural and scenic areas for use in science, education or recreation.

4. **Natural Monument**: protects areas with significant natural features.

5. **Habitat / Species Management Area**: protects areas with nationally significant species, species groups, biotic communities or other natural features. May allow controlled harvesting of some resources.

6. **Protected Landscapes and Seascapes**: protects areas of nationally significant and scenic natural and cultural landscapes for recreation and tourism, especially where traditional land use is maintained.
Managed Resource Protected Area: areas managed mainly for the protection and sustainable use of specific resources.

Anthropological Reserve / Natural Biotic Area: area which allows the traditional lifestyle and resource use of indigenous societies to continue in a sustainable manner, undisturbed by modern technology.

Multiple Use Management Area / Managed Resource Area: area allowing for sustained production of water, timber, wildlife, pasture or tourism, with conservation intended to support these economic activities.

Biosphere Reserve: area which conserves the diversity and integrity of natural ecosystems, biotic communities, and genomes for present and future use in research, education and training.

World Heritage Site: protects areas with natural or cultural features of outstanding global significance.

These categories were considered and debated at a 1997 workshop on the new Wildlife and Parks Management draft bill. A conference in June 1996 also debated the extent to which different wilderness concepts are compatible with Namibia's conservation strategy. Based on these and other discussions, the draft bill provides for seven categories of protected area (Box 5.3).

Species protection

The schedules of categories of protected species need re-examination and revision to ensure that they reflect current biodiversity conservation priorities, as reflected by Namibia’s red data lists. Certain taxonomic groups enjoy no protection at all under the Ordinance, for example invertebrates. Members of the National Biodiversity Task Force and their colleagues should report whether taxa in their fields of expertise are adequately protected by the Ordinance.

Box 5.3 Protected area categories in draft Namibian legislation

The draft Wildlife and Parks Management Bill provides for seven categories of protected area modelled loosely on the IUCN system:

a. **Strictly protected area**, to protect its outstanding or representative ecosystems, geological or physiological features or species to be made available primarily for scientific research or environmental monitoring;

b. **National park**, to protect the ecological integrity of one or more ecosystems for present or future generations, to exclude exploitation or occupation inconsistent with such protection or to provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities;

c. **Multiple use park**, to ensure long term protection and maintenance of its biological diversity while providing at the same time a sustainable flow of natural products and services to meet community needs;

d. **People’s park**, to enable people who traditionally live in the area to engage in a variety of consumptive uses;

e. **Site of interest**, to protect a particular site of scientific, natural, cultural, historical or archaeological interest;

f. **Recreational area**, to develop particular recreational opportunities;

g. **Private park**, to enable a private owner to engage in wildlife management opportunities.

In terms of these provisions, the Minister of Environment and Tourism may declare any area of land and adjoining waters as one of these categories, by notice in the Government Gazette, and may provide interim protection to any area being surveyed for such purpose.
Devolution of rights and responsibilities

The Regional Councils Act (22 of 1992) sets out the general powers of Regional Councils, but does not clearly state the responsibilities of central and regional government. For example, it stipulates that traditional authorities are responsible for ensuring that resources are used on a sustainable basis (section 12), but makes no reference to central government agencies which play a key role in regulating and monitoring resource use. The new Wildlife and Parks Management Act will have to address this issue.

Incorporation of customary law

It is evident that the success of any biodiversity project in the communal areas will to a large extent depend on the active participation of local communities. New legislation is taking cognisance of customary laws which apply in different contexts, and a research project has been initiated by the Environmental Legislation Programme to assess the best way of incorporating customary law.

Concluding remarks

The success of Namibia's National Biodiversity Programme will to some extent depend on whether appropriate legal, administrative and institutional mechanisms are put in place. The involvement of all sectors -- public and private -- should be sought in this regard. This chapter has shown that a beginning has been made with the legal aspects.

References


4 The section on water legislation has benefited greatly from the input of Piet Heyns.

5 This view was reflected in the FAO International Undertaking on Plant Genetic Resources (FAO Conference Resolution 3 of 1991).
