

THE STATUS OF ENVIRONMENTAL LAW AND POLICY DEVELOPMENT AND IMPLEMENTATION IN BOTSWANA

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1. BACKGROUND:

- 1.2. Botswana is a landlocked country and straddles the Tropic of Capricorn in the centre of Southern Africa. It has a total population of about 1.7 million people and has a land area of 582 000 km² which is the size of Kenya, France or Texas. The state-owned land constitutes 25% of the total land area and is devoted mainly for National Parks, Game Reserves and Forests Reserves while, the freehold accounts for about 5% and is privately owned and is mostly used for commercial farming. The remaining 70% of the total land area is communally owned and this is where subsistence farming is practised.



- 1.3. Botswana is generally flat and its climate is largely arid or semi-arid with the extreme south-western part falling under the arid zone. Most rainfall occurs as localized showers and thunderstorms. The mean annual rainfall ranges from 250 mm in the extreme southwest to 650 mm in the extreme northeast. The country is prone to drought, which recurs in cyclical patterns of 10 to 16 years. However, since the 1980s drought has become a permanent feature of this country. Water therefore is a scarce and valuable resource in Botswana. Permanent surface water can only be found in the Okavango Delta and Chobe river systems.
- 1.4 The main vegetation types are closely correlated with the climatic conditions. Away from the swampland of the Okavango delta, the vegetation has to withstand long dry periods of each season and also has to cope with drought. There are belts of forests and dense bush in the north sustained by higher rainfall of the area. Farther south the vegetation is characterised by grass savannah and scrub savannah where both rainfall and soils are poor.

- 1.5 Botswana's main natural resources are range and arable land, rich wildlife habitats supporting large animal populations, and a variety of known mineral deposits (e.g. diamonds, copper, coal and nickel). Arable land is estimated at less than 5% of the land area. Unreliable rainfall makes arable agriculture risky. Much of arable agriculture takes place in freehold farms in the east. Much more of the land is suited for extensive beef production, and is reflected in the fact that cattle numbers outnumber humans.
- 1.6 Botswana is known for its abundance and variety of wild animals. The country has vast wilderness areas with wildlife. There has been a significant increase in the populations of some wildlife such as elephant, impala, gemsbok, and giraffe. Most other populations are reported to be stable and at the same level that they were in the mid-eighties. Notwithstanding these trends, land use conflict between wildlife and agriculture continue to be a major source of controversy between those who suffer damage and Government. Most of the conflicts are due to the fact that livestock areas have encroached into the wildlife areas resulting in heavy losses to livestock owners. In other parts, arable agriculture has encroached into the wildlife area resulting in crop damages by wildlife.
- 1.7 Fuel wood is a major source of energy in Botswana accounting for 92% of rural household's energy needs and is increasingly becoming scarce hence the need for sustainable fuel wood management practices. The demand for fire wood far exceeds the natural regeneration process.
- 1.8 In 1966, Botswana was one of the poorest countries in Africa. More than eighty percent (80%) of the rural population depended on agriculture. For instance, in 1966 agriculture contributed approximately 43 percent (43%) to the Gross Domestic Product (GDP). By 1999/2000 mining alone (especially diamonds) accounted for one third of GDP, whilst the contribution from agriculture fell to 2.6%. The trade, hotel and tourism sector now is the second largest contributor to the GDP after the mining sector. Other sectors such as banking services, communication and manufacturing have gathered momentum over the years.

2. SOCIAL AND ECONOMIC BACKGROUND:

- 2.1 Since independence, the social and economic platforms of Botswana have radically changed. In the economic sphere, the country has changed from being a poor country with a small industrial and commercial base with less environmental concerns to a rapidly growing economy. At independence, it was listed as one of the least developed countries of the world. Its economy largely depended upon agriculture, albeit on a relatively small scale, income from the customs union and the export of labour to the South African mines, farms and factories. However, since the latter part of the 1980's there has been tremendous improvement in the economy of Botswana particularly with the discovery of diamonds. Mining has, therefore, resulted not only in economic expansion and development but also in the establishment of other industries, which have transformed the economic shape of the country to one of the few rapidly developing economies of the world.
- 2.2 Other sectors such as tourism and industry have also contributed to the economic development of the country. These sectors have, in recent years, made a substantial contribution to the revenues of Botswana (tourism generates 29% income and industry 18%). The increases in revenue have enabled significant expansion of government services and secondary economic activities that are spread out around the country. Similarly, and most significantly, economic development has also resulted in significant improvement in the social life of the people of Botswana.

3. ENVIRONMENTAL ISSUES IN BOTSWANA:

- 3.1 Concomitant with economic expansion and development has been the emergence of challenges which the country has to contend with. One of the major challenges is the reduction of environmental quality. While the country is endowed with a variety of natural resources, many of them are under pressure. This has raised the question of whether they can actually sustain the needs of future generations. The following are some of the environmental challenges faced by the country and indications of some of the pressures on the natural resources.
- 3.2 The main environmental problems in Botswana include the following include:
- The growing pressure on water resources as a direct consequence of the increases in population, rapid urbanisation and development. With more people moving into the urban centres and major settlements, the demand on the already scarce water resources has escalated, presenting a serious problem to the country which is drought prone. In response to this problem, the Government has come up with the National Water Master Plan which contains measures aimed at conserving the country's water resources;
 - Degradation of rangeland resources due to, for example, poor range management practices and the incidence of drought. Over grazing is a serious problem especially in communal grazing areas. It is usually because of the disparities between livestock numbers and the carrying capacity of a fragile environment. The concentration of wildlife in National Parks and Game Reserves in large numbers (particularly elephants) is also another reason for rangeland degradation;
 - Depletion of wood resources both in commercial harvest of forests and as the main source of domestic fuel in most settlements. For many rural communities, wood is the major source of energy. Its domestic usages include cooking and heating. Commercial wood harvesting, however, has also now become a problem around the major settlement areas. People harvest wood for their own domestic use but also to sell as firewood. So acute has this problem become that in some cases people resort to cutting down live trees for firewood to meet the demand. Very little regard has been paid to ensuring that the yields are sustainable;
 - Over-exploitation of some veld products and vegetation resources. This has damaged the regenerative capacities of these products to provide for both subsistence and commercial needs. Some communities rely on these resources for their livelihood but because of over harvesting, they have come under pressure. The over harvesting/ exploitation of some of these products, (e.g tubers, fruits, reeds, wood, etc.) has compromised their regenerative capacity to provide for both subsistence and commercial needs;
 - Depletion of wildlife resources mainly due to competition from other land uses such as livestock grazing, arable farming, human settlements and poaching, especially in the communal areas - cattle-post and lands areas;
 - Pollution of air, water, soil and vegetation resources. This is largely concentrated around the urban areas due to industrial development and the high numbers of vehicles which emit pollutants into the atmosphere. A particularly serious example of an industrial process which is causing this kind of problem/ pollution is the copper nickel mine in the town of Selebi Phikwe which is in the Eastern part of the country. Sulphur dioxide is emitted into the atmosphere and has had a negative impact on the vegetation in certain parts; and
 - Lack of sectoral coordination and an overarching environmental legislative? framework. The different natural resources are managed and regulated by policies and legislation which have not been well coordinated. This has been mainly due to

the non existence of an institution with the appropriate capacity to coordinate the implementation of environmental laws and policies governing the various sectors

4. POLICY FRAMEWORK:

4.1 The Government has been committed to the protection of the environment and the concept of sustainable development which entails ensuring that present generations consume no more than the annual output or yield of those natural resources which are renewable, and that the ability of future generations to meet their own needs from the said resources will not be compromised. They must have access to capital stocks of natural resources, at least similar to those presently available to them. In this regard, it is worth noting that Government's commitment to sustainable development is not in doubt. It is one of the four main planning objectives of the National Development Plan (hereinafter referred to as NDP). This commitment is also captured in Vision 2016.

4.2 It is against this background that Government, in 1983 accepted the need for the preparation of a National Conservation Strategy (hereinafter referred to as "the NCS"). The main objectives in formulating the Strategy were to pursue policies which would -

- Increase the effectiveness with which natural resources are used and managed, so that beneficial interactions are optimised and negative environmental impacts are minimised;
- Integrate the work of the different sectoral Ministries and interest groups, thereby improving the development of natural resources through conservation.

4.3 The following are some of the Strategy goals identified by Government:

a. Development Goals:

- The establishment of a balance between population growth and the supply of natural resources;
- The development of multiple rather than single purpose, natural resource uses. Wildlife resources for instance are now used not only for subsistence, but for game viewing, processing of wildlife products, game farming, etc.
- The education of, and participation by, members of the society in improving the environment;
- The development of links with neighbouring countries in conserving natural resources;
- The development of new and better natural resource uses which are sustainable.

b. Conservation Goals:

- The protection of endangered species; As a party to the Convention on the International Trade of Endangered Species, Botswana has taken steps to control the trade in species of wild animals and plants which are, or may be, threatened by extinction. These measures have seen the growth of the elephant population which was once threatened by extinction;
- The conservation of all main ecosystems, wildlife and cultural resources;
- The maintenance of stocks of renewable resources, whilst increasing their sustainable yields;
- The control of the depletion of exhaustible resources such as minerals;

- The restoration of degraded renewable natural resources; and
- The prevention and control of pollution.

4.4 Against the background of all these environmental problems, since the adoption of the NCS, a number of activities have been undertaken in the general area of environment aimed at designing strategic measures to address some of the foretated environmental problems and issues. The activities that have been undertaken under the aegis of the NCS include the following:

a. The National Conservation Strategy Action Plan:

The Action Plan defines the strategic measures of the NCS which should affect policy formulation and implementation in the whole country. The Action Plan addresses specific environmental issues such as policies, planning and administrative measures; economic incentives and disincentives and economic diversification for sustainable development; integrated multi-sectoral conservation programmes and projects; improved public awareness, education and training and legislative reforms and provisions. Whilst most of the recommendations of Action Plan are at various stages of actual implementation, on a broader sense, they are a clear indication of some of the major activities that have been undertaken to thrash out pertinent issues in protecting the environment.

b. Policies:

The following are some of the policies which give effect to the Strategy:

- The National Policy on Natural Resources and Development;
- The Wildlife Conservation Policy, intended to obtain a better yield or economic return from land allocated for wildlife while also ensuring the continuity of the resource. It encourages sustained wildlife utilization in the Wildlife Management Areas and preservation of wildlife resources in National Parks and Game Reserves;
- The Draft Botswana Wetlands Policy and Strategy, which is in the process of being approved. It is intended to promote the conservation of Botswana's wetlands in order to sustain their ecological and socio-economic functions as well as providing benefits for the present and future well being of the people;
- The Forest Policy - Its aim is the protection, development and sustainable utilization of forestland and forest resources for social, economic, ecological and environmental benefits for the present and future generations of Botswana.
- The Draft Community Based Natural Resources Policy has been implemented since 1990. The spirit and intent of the CBNRM Draft Policy is to ensure direct community participation in the utilisation of resources and to ensure that benefits accrue to the communities. Additionally, participation of communities in resource management is regarded as an important factor in sustainable use of natural resources and improvement in rural livelihoods. CBNRM is therefore, both a conservation and rural development strategy, involving community mobilisation and organisation, institutional development, training, enterprise development and monitoring of the natural resource base. Maintaining environmental integrity is a key component of social and economic development and calls for involvement of all players in social and economic development initiatives.

c. Vision 2016:

Botswana's Vision 2016 enjoins the country to pursue sustainable economic growth and development. This entails, in part, striking and maintaining a delicate balance between the use of renewable resources and their regeneration. It also involves the mitigation or avoidance of negative environmental impact in the exploitation of non renewable resources. The Vision urges an integrated approach towards environmental conservation and development. It seeks to remove, or considerably contain, any damage to the environment resulting from industrialisation and/or any use of natural resources. The Vision is informed by an over arching consideration of sustainable use and management of the environment. Communities are recognised as important role players in the attainment of all these objectives.

The adoption of the Vision marks an important step in placing environmental conservation at the fore-front in all development projects past, present and envisioned. The residual risk of harm to the environment must always be carefully considered and effectively dealt with.

5. CURRENT INSTITUTIONAL STRUCTURES:

Like in other countries, various institutions in Botswana are charged with the responsibility of managing and coordinating the environment. While this sectoral approach to the management of the environment cannot be avoided, a more integrated approach is desirable. Prior to the approval of the NCS in 1990, no policy mechanism existed which established an organisation that could coordinate, supervise, superintend and oversee the discharge of environmental obligations by the various actors.

Government established three years ago the Ministry of Environment, Wildlife and Tourism to be the overall coordinator of the environment in support of sustainable development. The vast majority of the national and international environmental legislations and conventions (including the tree Rio and post- Rio Conventions are now housed under this Ministry. Prior to that environment and natural resources management activities were scattered among various Ministries. Despite the restructuring and rationalisations of functions of Ministries, some of the environmental legislation are still being housed under other Ministries.

Within the Ministry of Environment, Wildlife and Tourism, the Department of Environment Affairs (DEA) is the institution designated to protect environment and natural resources in order to foster sustainable development through the coordination and monitoring of the implementation of national policies, strategies and programmes pertaining to conservation and protection of Botswana's natural resource base. The DEA oversees the environment portfolio and acts as Government's 'watchdog' on environmental issues.

6. THE LEGAL REGIME FOR THE PROTECTION OF THE ENVIRONMENT:

- 6.1 The Government of Botswana attaches great importance to the country's natural resources. Since independence, there have been legislative attempts to control and manage the environment. Although the instruments were not specific on the environment, they nevertheless made provisions for the utilisation, management and coordination of some specified issues and matters of direct relevance to the environment. The following are some of the pieces of legislation directly or indirectly dealing with environmental issues:

- Wildlife and National Parks Act, Cap 38:01, which provides for the conservation and management of wildlife, control and management of game parks and game reserves, and giving effect to the Convention on the International Trade of Endangered Species and any other international conventions to which Botswana is a party, for the protection of fauna.
- Waste Management Act, Cap. 65:06, which provides for the regulation and management of controlled waste (that is, household, industrial, commercial, clinical, or hazardous waste) in order to:
 - Prevent harm to human, animal and plant life;
 - Minimise pollution of the environment;
 - Conserve natural resources; and
 - Cause provisions of the Basel Convention to apply in regulating the trans-boundary movement of hazardous wastes and their disposal.
- Atmospheric Pollution Act, Cap 65:03, which provides for the prevention of the pollution of the atmosphere by industrial processes.
- Agricultural Resources (Conservation) Act, Cap. 35:06, which provides for the conservation of agricultural resources, which are defined as animals, birds, plants, waters, soils, fish, etc.
- Fish Protection Act, Cap. 38:05, which provides for the protection and sustainable management of fish resources.
- The Environmental Impact Assessment Act, 2005 (Act No. 6) - . The EIA Act requires that the environmental implications of policies, plans and projects must be evaluated to provide the decision-makers with an indication of the likely consequences of developmental activities (before approval) so as to balance the competing demands of development and environmental protection.
- The Public Health Act, which protects the quality of water used by the public, by inter alia, controlling the disposal of polluted water.
- Water Act – Cap: 34:01:- The objective of the Act is to define the ownership of any rights to the use of water; to provide for the grant of water rights and servitudes and make any other provision incidental to the broad objectives of the Act. The Act clearly states that there shall be no right of property in public water. The control and use of water shall be regulated as provided for under the Act or under the Waterworks Act.
- Waterworks Act – Cap: 34:03:- This legislation provides for the constitution of water authorities in townships and confers certain duties and powers upon such established water authorities. It also provides for the acquisition of existing waterworks and provides for the consideration of matters incidental to the principal objectives of the Act. Section 22 of the Waterworks Act criminalizes and penalises for the pollution of water within waterworks area.
- The Town and Country Planning Act – Cap: 39:09 :-The Town and Country Planning Act's major objective is the orderly development of land in towns and under District Councils and to preserve and improve the amenities found therein. One of the Act's requirements is that government and private development plans be accompanied by proposals for protection of the environment, including standards and operational guidelines for the intended land uses. Section 23 provides for the protection of trees

and woodlands. This could be expanded to provide for the protection of other areas of biodiversity.

- Aquatic Weeds Control Act Cap: 34:04: The Aquatic Weeds Control Act criminalizes the importation of aquatic weeds into Botswana and from one place to another within the boundaries of Botswana. The Regulations to the Act require that certain procedures be followed in order to better enforce the Act.
- Tribal Land Act - Cap. 32:02:- The Act establishes the Land Boards, vests tribal land in such Land Boards and defines the powers and duties of such Land Boards. According to section 10 of the Act, tribal land is vested in the Land Boards for the benefit and advantage of the tribespersons. Land Boards are therefore custodians of the land and hold the land in trust for the people. The implication is that this trusteeship should accrue benefits and be advantageous to the communities. It follows therefore that in the use of communal land there should be some form of mechanisms put in place that allow for the benefits to flow back to the community.
- Tourism Act No. 22 of 1992:- The Act makes provision for the regulating of the tourism industry with regard to promoting its development and well being.
- Building Control Act Cap. 65:02:- The objective of the Act is to authorise the making of building regulations and to provide for matters incidental thereto. Any building activities done by or authorised by a District Council and Town and Country Planning Board are subject to the Building Control Act. The Act covers the erection of temporary and permanent structures and sanitation in commercial areas.
- Monuments and Relics Act:- This Act is important in that it protects objects or artefacts that are part of Botswana's cultural, social and political heritage. This covers both past and present heritage.

7. CHALLENGES:

7.1 While Government has shown its commitment to environmental issues through development and implementation of the different policies and legislation, there are several challenges that impede on achieving the intended objectives. Some of these challenges include the following:

- The legislation to give effect to these policies still remains inadequate and fragmented;
- There is no overarching environmental legislative framework under which the various pieces of operate, so that all the sectors are well coordinated;
- There is lack of capacity to effectively enforce the various pieces of legislation;
- The institution (Department of Environmental Affairs in the Ministry of Environment, Wildlife and Tourism) charged with the coordination of environmental issues and activities of the various sectors to ensure that their legislation works together coherently does not operate on any legislative basis to effectively monitor and coordinate environmental issues in the country;
- The current low status conferred to the Department of Environmental Affairs makes coordination mechanisms ineffective since it is not accorded the respect and reverence commensurate with the mandate it is charged with; and
- Unlike in other countries such as South Africa and Namibia, the Constitution of Botswana does not have provisions relating to or giving citizens environmental rights. Botswana's Bill of rights however contains provisions which protect most of the fundamental human rights such as the right to life, the right to a speedy and fair trial, the right to freedom of association, the right to freedom of expression, etc.

Although there is no specific provision conferring the right to a safe and healthy environment, as is the case in Botswana, some petitioners have brought their action against violation of the right to a clean and healthy environment, in the context of the right to life. In India, in the case of *L.K. Koolwal v. Rajasthan*, the court held that residents' right to life had been violated by the city's failure to implement adequate sanitation measures. The court held that the maintenance of health, preservation of sanitation and environmental protection fell within the scope of Article 21 of their Constitution which provides the right to life. In Pakistan, in the case of *Shehla Zia and Others v. WAPDA*, the Pakistan Supreme Court found that the constitutional right to life was broad enough to encompass "protection from being exposed to the hazards of electromagnetic fields or any other such hazards which may be due to the installation or construction of any grid station, factory, power station, or such like installation.

There has been no test case of this approach in Botswana, but the absence of a provision dealing specifically with environmental rights may raise the issue of locus standi for any person who wishes to bring action to have any environmental law enforced in their favour, if the person or group or group of persons has not directly suffered some special damage.

8. ATTEMPTS BY GOVERNMENT TO ADDRESS THESE CHALLENGES:

- Government established a new Ministry of Environment, Wildlife and Tourism to address the issue of ineffective coordination. The Ministry has grouped together most of the Government institutions whose functions or mandate deal with environmental issues.
- The Ministry of Environment, Wildlife and Tourism has issued instructions for the drafting of an Environmental Management Act. Once the Bill is passed into an Act by Parliament; it should:
 - address the problem of the lack of a legislative basis for the Department of Environmental Affairs as the basis for coordinating all environmental policy matters within Government and orchestrating their achievement by sectoral ministries;
 - Ensure that the Department of Environmental Affairs has powers to intervene or demand certain courses of action in instances where the environment is being compromised through policies or development activities;
 - Harmonize or rationalize the existing environmental legislation and institutions; and
 - Harmonize the existing environmental legislation with international instruments on the environment

The proposed legislation is not planned to integrate the existing environmental legislations. The existing Acts will continue to be implemented by various institutions but under the umbrella of the main Act.

- The Partnership for the Development of Environmental Law and Institutions in Africa (PADELIA) project housed by UNEP but funded by Dutch Government is assisting selected African countries to develop strong legal regime with supporting institutional arrangement. In Southern Africa, countries that are participating in this project are Botswana, Lesotho, Swaziland and Malawi. The major objectives of the project are to:

- To conduct review of environmental law on bio-safety, hazardous waste and Environmental Impact Assessment legislation. The review is geared towards identifying conflicts at country and regional level;
- Train judges, magistrates and lawyers on environmental law;
- To enhance the capacity of the environmental institutions to enforce environmental legislation at regional and national levels; and
- To strengthen and harmonise environmental law at regional and national levels.

Botswana has already started the implementation of this project and the major outputs expected will be:

- The harmonisation of existing laws on environmental hazardous waste, air standards, water and water quality issues;
- Development of drafting instructions for the promulgation of legislation dealing with genetic resources and access and benefit sharing;
- Development of a training manual for environmental law (done);
- Training of lawyers, magistrates, prosecution officers and judges on environmental law; and
- Simplification or translation of environmental law into the local language.

9. INTERNATIONAL CONVENTIONS AND REGIONAL AGREEMENTS AND PROTOCOLS

9.1 Conventions:

9.2 The number of treaties and conventions signed and/or ratified by the country bear testimony to Botswana's commitment to sustainable development. These treaties and conventions include:

a. Stockholm Convention on Persistent Organic Pollutants (POPs):

Botswana acceded to the POPs Convention in 2002 and the National Focal Point is the Department of Environmental Affairs of the Ministry of Environment, Wildlife and Tourism.

In order to meet Botswana's obligation under the Convention, Government is in the process of developing a National Implementation Plan (NIP) which will outline measures for initiating future activities to protect human health and the environment. Botswana is assisted by GEF through the United Nations Industrial Development Organisation (UNIDO). A National Implementation Committee for the Stockholm Convention (NICPOPs) has been established and comprises of major stakeholders from government and Non Governmental Organisations in chemical management. During 2002, obsolete stocks of POPs pesticides were transported to UK for incineration. Some stocks have been identified through a countrywide survey and are awaiting disposal. There has never been inventories on dioxins, furans, PCBs and HCBs but they are real possibilities because Botswana has sources which produce them such as incineration of hospital waste, mines, open burning of waste, industries etc. Contamination of chemicals has never been assessed but possible pollution cannot be ruled out. Assessment on health impacts to the population has not been made.

Botswana is participating in a SADC region PCB project. The aim of this project is to develop national capacities for environmentally sound management of PCB and PCB containing equipment. The project is implemented within the framework of the POPs Convention.

b. The Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal

Botswana acceded to the Basel Convention in 1998 and the National Focal Point is the Department of Waste Management and Pollution Control of the Ministry of Environment, Wildlife and Tourism. It has been incorporated into domestic law by the Waste Management Act No. 15 of 1998.

Botswana has already put in place mechanisms for the implementation of the Convention. For example, the producer of hazardous waste fills a Notification Form which among others requires information regarding the exporter and importer's contact details, final disposal facility and contact person details, amount of hazardous waste as well as its description, points of exit and entry and countries of export, transit and import. This form has to carry a stamp of authorization by the Competent Authority of the state of export who shall forward it to their counterpart in all the countries that such waste will be carried through. This is to seek consent for the movement to take place prior to the actual exportation of the waste. The country or countries of transit and final destination will then either give or refuse consent. Movement cannot take place until such consent is given by the state of export.

The Movement Form on the other hand requires information on the exporter and the importer as well as other information relating to mode of transportation, names of carriers involved and registration, dates of shipment and certification by the exporter or importer to the effect that the shipment has been received and disposal actually completed. This information is essential to both ensure that no unauthorized dumping of wastes will take place as the documentation clearly states where the shipments originate and where they are destined for. It further serves as proof to customs officials that whatever shipments enter through ports of entry are officially authorized.

Botswana is also a founding member of the Basel Training Centre for Technology Transfer for English speaking Africa based at Vista University in South Africa. This Centre serves to provide training and capacity building for improved management of hazardous wastes in line with the requirement of the Convention.

c. Convention on Biological Diversity:

Botswana ratified the Convention on Biological Diversity in 1990 and the National Focal Point is the Department of Environmental Affairs of the Ministry of Environment, Wildlife and Tourism.

As part of facilitating the implementation of the CBD, the following progress or activities have been done:

- A National Biological Diversity Authority (NBDA) has been established comprising members from both Government and Non-Governmental Organisations (NGOs);
- A stock-take report of biological resources and related issues was produced in 2003. The report gives a general background of biodiversity conservation in the country. This covers the current status of fauna and flora, agro-biodiversity, socio-economic, legal, biosafety aspects as well as the clearing house mechanism. It also has information on species conservation gaps and needs.
- The National Biological Diversity Strategy and Action Plan (NBSAP) was completed in December 2004. The NBSAP has a biodiversity vision for the country. The NBSAP is based on 11 Strategic Objectives, which are designed to fulfil the biodiversity vision. The first calls for a better understanding of biodiversity and ecological processes; the fifth one encourages coping with environmental change and threats to

biodiversity; the eighth calls for safe industrial and technological development and other services based on national biodiversity resources for future prosperity and the last one is on the implementation of the Strategy and Action Plan.

Botswana is also participating in the Southern Africa Biodiversity Support Programme (SABSP). The programme is being funded by GEF through the UNDP. The overall goal of the SABSP is to improve cooperation and to build capacity both within and between participating nations and to integrate sustainable use into biodiversity conservation and other sectoral programmes. The global agenda 21, the CBD, the Environmental initiatives of NEPAD and SADC documentation all stress the need to build capacities of states to enhance the implementation of the CBD. The WSSD declaration on biodiversity calls for mainstreaming biodiversity into sectoral and cross-sectoral plans, programmes and projects in order to significantly reduce biodiversity loss by 2010. The specific objectives are:

- ❖ To improve the availability and accessibility of information and its application in conservation and planning and management. The importance of information in planning and management of any conservation initiative is self-evident. The programme expects to do this by establishing a Regional Biodiversity Information System (RBIS) and a Regional Biodiversity expertise Network (RBEN);
- ❖ To promote regional cooperation in the fulfilment of the overall goal of the SABSP, the programme planned to prepare a regional Biodiversity Strategy and Action Plan (RBSP), synthesised from the national biodiversity Strategy and Action Plans (NBSAPs) of the participating member states;
- ❖ Institutional capacity building:- by training cadres of Southern African nationals in biodiversity conservation and management skills; and
- ❖ The demonstration of application of integration of effective practices of sustainable resource use into national and regional conservation and other sectoral planning through pilot activities as called for by work programmes of the CBD, WSSD declarations and the environmental initiatives of NEPAD. Examples include South Africa's focus on Alien Invasive species (AIS) and access and Benefit Sharing (ABS). NEPADs action plan also recognises that alien invasive species (AIS) is now a major public, policy and political concern

Each of the participating countries is expected to provide information to feed into the regional programme. A draft strategy has been prepared and will soon be forwarded to SADC for adoption.

d. Convention to Combat Desertification (CCD):

Botswana signed and ratified the Convention on Biological Diversity in 1995 and 1996 respectively. The National Focal Point is the Department of Environmental Affairs of the Ministry of Environment, Wildlife and Tourism.

A draft National Action Programme (NAP) to combat desertification has already been developed. The draft NAP recognizes linkages between poverty and land degradation and the need to adopt plans, strategies and legislation aimed at addressing poverty at community level. The Department of Environmental Affairs is currently preparing the first country report for the CCD.

The main constraints in the implementation of activities under this Convention have been the shortage of manpower and the delay in finalization and adoption of the National Action Programme.

e. The Convention on Wetlands of International Importance Especially as Water Fowl Habitats (Ramsar Convention 1997),

Botswana signed and acceded to the Ramsar Convention in 1997. The National Focal Point is the Department of Environmental Affairs of the Ministry of Environment, Wildlife and Tourism.

In recognition and compliance with the convention, a Draft National Wetlands Policy was prepared in 2000 to promote the conservation and management of wetland resources in Botswana. In addition, Botswana listed the Okavango Delta as a Ramsar site (largest Ramsar site in the world- 55 374km²) and is currently preparing an integrated management plan for the Delta.

f. The United Nations Framework Convention on Climate Change (UNFCCC)

Botswana signed and ratified the UNFCC in 1992 and 1994 respectively. The National Focal Point is the Department of Meteorological Services of the Ministry of Environment, Wildlife and Tourism.

Actions taken to implement the convention are:

- Botswana prepared and submitted the Initial National Communication report on the national programme on policies and measures to address climate change to the Conference of Parties in 2001;
- An inventory of greenhouse gases in Botswana using 1990 and 1994 as base years;
- Studies of vulnerability and adaptive capacity of livestock (rangeland), crop agriculture, forest, health and water resources sectors have been completed;
- Studies on mitigation options for energy and non-energy sectors (land use and forestry, agriculture, waste and industry) have been completed;
- A process to raise awareness on issues pertaining to climate change is ongoing; and
- Botswana maintains systematic observations of weather, climate and climate related issues in accordance with the World Meteorological Organization (WMO), World Weather Watch (WWW), World Climate Programme (WCP), Global Climate Observation System (GCOS) and Global Atmosphere Watch (GAW).

g. The Convention on the International Trade in Endangered Species (CITES)

Botswana acceded to CITES in 1977. The National Focal Point for controlling international trade in wildlife products is the Department of Wildlife and Nation Parks (DWNP), while the Department of Forestry and Range Resources is responsible for controlling international trade in flora. Both Departments are within the Ministry of Environment, Wildlife and Tourism. The convention has been incorporated into municipal law by the Wildlife Conservation and National Parks Act No. 28 of 1992).

In terms of implementation, Botswana is actively involved in the implementation of the Convention. For example:

- One needs to acquire a CITES permit before importation and exportation of the CITES protected species. In case of the appendix I species one is required to produce CITES import permit from the CITES management authority of the importing country before an export permit is issued;
- The derivatives of CITES protected species such as cheetahs, leopards, crocodiles and elephants are marked or tagged in accordance with CITES requirements;

- In line with the Wildlife Conservation and National Parks Act, a system of registration of CITES protected species has been put in place;
- A Central Stores has been constructed where Ivory is marked and weighed, allocated a serial number, tusks punch dyed and allocated a parlot according to source. Ivory of unknown origin or poached is kept separately from Botswana's stockpile for ease of inspection by the CITES Secretariat and all information computerised;
- The DWNP has an ivory management database that was developed by TRAFFIC. The data is being audited annually.
- Presently DWNP is actively involved in disseminating CITES information to customs officials where they are provided with information on CITES requirements, various specimens tags, stamps, permits and samples of wildlife products protected under CITES; and
- DWNP has established an effective Anti Poaching Unit, with its own fixed wing aircrafts, a helicopter and Boats. The Anti Poaching Unit efforts are being complemented by the Botswana Defence Force (BDF), the police and their Intelligence Units. The BDF has soldiers deployed in anti-poaching work throughout the country with majority based in the elephant ranges.

h. The Convention Concerning the Protection of World Cultural and Natural Heritage

Botswana acceded to the Convention Concerning the Protection of World Cultural and Natural Heritage in 1998 and the National Focal Point is the Department of National Museum, Monuments and Art Gallery of the Ministry of Labour and Home Affairs.

Under this Convention, a number of cultural and sites of historical importance (such as the Okavango Delta and Tsodilo Hills) have been protected and designated Heritage sites and management plans prepared to manage the sites.

i. The United Nations Convention on the Law of the Sea

Botswana ratified the United Nations Convention on the Law of the Sea in 1990 and the National Focal Point is the Attorney Generals Chambers.

Not much has been done in the implementation of the convention because Botswana is a land locked country with no marine ecosystem.

j. Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances.

Botswana signed the to the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances in 1984 and the National Focal Point is the Drugs Regulation Unit (DRU) of the Ministry of Health.

The DRU works hand in hand with the Drug Unit of the Diamond and Narcotic Squad of the Botswana Police. The Police arrest traffickers and seize provide data for seizures to the DRU for inclusion in the report on drug movements to International Narcotics Control Board (INCB). INCB is an independent treaty-based body that also monitors implementation of the Single Convention on Narcotic Drugs (1961) and other related treaties.

Mechanisms have been put in place for monitoring and controlling the import of narcotic drugs and or psychotropic substance into Botswana. Applicants have to provide information detailing the name of applicant; qualification and their registration number; company name and address; name of drug to be imported; quantity; purpose for

importing; name and address of exporting firm; route of supply; and port of entry. The exporting country on receipt of an import permit, issues an export permit to the exporting firm with a copy to the importing authority. The applicant on receipt of the drugs informs the D.R.U and keeps a register and show of all the transactions on the drugs kept.

The DRU in turn reports to INCB on forms prescribed by INCB information detailing: annual statistics of consumption and seizures of narcotics; annual estimate of requirements of narcotic drugs; annual statistical report; annual information on substances frequently used in the illicit manufacture of Narcotic Drugs and Psychotropic substances; quarterly statistics of imports and exports of narcotic drugs; and quarterly statistics of imports and exports of psychotropic substances listed in schedule II of the 1971 Convention.

k. The Commission for Sustainable Development (CSD) - Agenda 21:

Botswana acceded to the principles of Agenda 21 in 1992 and its National Focal Point is the Department of Environmental Affairs of the Ministry of Environment, Wildlife and Tourism

In conformity with the principles of Agenda 21, Botswana's long term planning for sustainable development are based on the following four pillars: human resource development; sustainable use of natural resource; sustainable economic growth and diversification; and democratic institutions within a market economy

Based on these pillars, various strategies, plans, policies have been developed and implemented over the years towards achieving the objectives of Agenda 21. Two national reports have been prepared and presented during the last two World Summits on Sustainable Development (WSSD), covering issues including HIV/AIDS; poverty reduction; depletion of water resources; over-use of woodlands and veld products; pressure on wildlife; pollution, waste and sanitation; climate change; energy utilisation; and actions being taken by Government to address them. Aspects of Agenda 21 have also been incorporated in the Environmental Key Note Paper which guides the preparation of ministries and districts sector chapters for the National and District Development Plans.

9.3 Protocols and Regional Agreements:

a. The Montreal Protocol on Substances that Deplete the Ozone Layer

Botswana acceded to the Montreal Protocol on Substances that Deplete the Ozone Layer in 1991. The National Focal Point is the Department of Meteorological Services of the Ministry of Environment, Wildlife and Tourism.

The progress in implementation of this protocol is the same as discussed in relation to the UNFCCC

b. The Permanent Okavango River Basin Commission (OKACOM)

- Recognizing the regional and international importance of the Okavango River Basin (ORB) with a catchment area of approximately 704 000km², the Governments of Angola, Botswana and Namibia convened the first meeting of the riparian States in Windhoek in 1993. The Permanent Okavango River Basin Commission (OKACOM)

was subsequently established in 1994. According to the agreement, the three countries are required to:

- Negotiate all trans-boundary water issues through OKACOM;
- An Inter-Ministerial representation at high level advises on all technical and policy issues to do with water resources of the basin;
- Each country is required to give prior notification of planned and unplanned development activities affecting the ORB; and
- Formulate, develop and implement an integrated management plan for the basin

In terms of implementation, the following have been achieved:

- The respective Ministers responsible for water issues in each country have appointed Commissioners (3) who report directly to the Minister. In Botswana, the Department of Water Affairs in the Ministry of Minerals, Energy and Water Resources is the National Focal Point, while one of the Commissioners from the Department of Environmental Affairs in the Ministry of Environment, Wildlife and Tourism provides support on issues pertaining to the environment;
- Through support from GEF, a Trans-boundary Diagnostic Analysis (TDA) through a consultative process with the basin stakeholders to establish the current status of the basin as a whole was completed during 1999 so as to prepare a Strategic Action Programme (SAP). The TDA identified causes of degradation, and imminent threats, and indicated critical gaps in information, policy and institutional arrangements at national and regional level that need to be addressed; and
- USAID is providing support through the Okavango Integrated River Basin Management Project (IRBM) which aims at:
 - Strengthening institutional, legal/regulatory, technical, and community capacity to manage the Okavango River Basin;
 - Information for information for planning, policies and management providing data and scientific analysis in support of river basin management decisions; and
 - Community participation and enterprise to strengthen linkages with stakeholders and improve incentives for community participation.

c. The SADC Protocol on Shared Watercourses Systems

This SADC protocol calls for equitable utilisation of shared water courses and monitoring of the implementation of integrated water resource plans in shared water causes. It was through this protocol that the OKACOM comprising Botswana, Namibia and Angola was established. Similar Commissions have already been established for the Zambezi and Limpopo River Basins

In addition to the above Conventions, Protocols and Agreements, Botswana has also signed/ratified or acceded to the following:

- The London Amendment to Montreal Protocol (1992);
- The Copenhagen Amendment to Montreal Protocol (1992)
- The African Convention on the Conservation of Nature and Natural Resources (The Algiers Convention);
- Protocol on Combating Illicit Drug Trafficking in Southern African Development Community;
- Protocol on Energy in Southern African Development Community;
- Protocol on Mining in Southern African Development Community;

- Cartagena Protocol on Biosafety to the Convention on Biological Diversity; and
- The Southern African Centre for Ivory Marketing (SACCIM)

10. Challenges in the Implementation of International Conventions and Regional/International Agreements and Protocols

10.1 The implementation of the various international conventions and regional/international agreements and protocols are underway but there are a number of challenges which have affected their effective implementation. Some of these challenges include the following:

- The provisions of the conventions require substantial flows of new and additional financial resources which are inadequate in a developing country like Botswana;
- Botswana's membership, particularly to CITES, prohibits it from utilizing some of our resources that we have conserved, particularly the elephant herds which are now too large for our wildlife habitats, and are already doing irreparable damage to the ecosystem. Botswana's own herd is estimated at 120 000. Botswana's efforts together with a group of five countries in Southern Africa to have some utilization schemes developed have been strongly resisted by the international community. The worrisome thing about this particular issue is that objective scientific facts are being ignored. It is in this context that, Southern African countries seek to ensure that regulated trade in ivory is permitted by CITES. Such trade could significantly enhance the value of elephants to those who live with them on a daily basis, thus, providing an incentive for the protection and conservation of this vital resource.
- The principles contained in the great majority of these instruments, at least those which are of a legally binding in nature, have not been incorporated into the national legal regimes and accorded municipal legal effect thereby made easily available to national authorities for implementation.

11. CONCLUSIONS:

11.1 Botswana is a party to numerous international treaties and instruments and has in place national legislation on the environment meant to address the various environmental problems facing the country. As the economy of Botswana continues to grow resulting in industrial expansion in major centres (cities, towns and big villages) and social activities increase, there is going to be even a greater need to design legislative and administrative mechanisms to address environmental problems generated by these activities.

11.2 Coupled with issues related to lack of resources, uncoordinated and fragmented instruments, lack of capacity, etc, these instruments pose major challenges to Botswana in relation to the protection and management of the environment. In the first instance, they impose an obligation on Botswana to protect the environment on the basis of the standards set out therein. Secondly, they enjoin Botswana to establish machinery within its own municipal legal system for purposes of implementing prescriptions undertaken under these agreements. It, therefore, means that any measures that are meant for the protection of the environment and conservation of natural resources should be in consonance with the stipulations of these international agreements and instruments.

- 11.3 The solution to the environmental problems and issues would, by and large, depend, *inter alia*, upon the effective implementation of the environmental instruments. Against this background, it is evidently clear that there is urgent need to provide support to developing nations like Botswana to address the challenges facing the implementation of national and international environmental instruments. This also calls for commitment from the various actors. Without this commitment, the function of the environmental legal regime meant for the protection and conservation protection of the environment can only remain a distant dream.

COUNTRY REPORT – THE GAMBIA

INTRODUCTION AND BACKGROUND

Following nearly two decades of severe environmental degradation, the Government of The Gambia in 1993 undertook implementation of a program of environmental and natural resources management entitled Gambia Environmental Action Plan (GEAP). At the core of GEAP was a recognition that for economic development and growth to be sustainable the environment and natural resources must be properly managed.

During the previous two decades, a combination of adverse weather conditions (particularly drought) and unsustainable human practices (including poor agricultural practices, a high rate of population growth and a significant rate of rural-urban population drift) led to a severe deterioration of the environment. The Banjul Declaration of 1977 was the first policy instrument to focus on the need for environmental conservation. Then in 1981 the government created the Environment Unit to advise it on matters related to the environment. By 1987, The Gambia found itself confronted with the familiar litany of problems associated with environmental degradation: salt water intrusion into the fresh water zone of the river system; salt water seepage into the upper aquifer of the fresh water system in the coastal areas; deforestation and desertification; breakdown of urban infrastructure and environmental health facilities; and the loss of natural resources. In that year, the government enacted the National Environment Management Act. Amidst an atmosphere of crisis, the GOTG acknowledged in 1994 that the situation had become untenable and set up the National Environment Agency (NEA), to co-ordinate implementation of the Gambia Environment Action Plan (GEAP) which was adopted in 1992.

The first phase of implementation of the GEAP addressed specific environmental problems. It established an institutional framework to raise awareness of the state of affairs and addressed activities that had severely affected the environment. Several donor agencies, including USAID, UNDP, GTZ and the World Bank each supplied short term technical advisors to work with NEA and assist in implementation of a package of measures necessary to arrest the escalating environmental problems in the country. The donors provided funds for all of the programs, while the government provided funds for the recurrent expenditure of NEA.

Despite the accomplishments of GEAP Phase I in responding to the needs to deal with specific environmental problems, such problems are on the increase. The Gambia has yet to achieve the level of sustainable institutionalisation of mechanisms necessary to ensure that environmental considerations are incorporated into major developments that are either being planned or implemented in The Gambia.

Environmental Legislation

The following are key legal instruments for environmental protection and natural resources management in the Gambia.

NATIONAL ENVIRONMENTAL MANGEMENT ACT 1994

In 1994, the National Environmental Management Act (NEMA) establishing a National Environment Management Council (NEMC) and a National Environmental Management Agency was enacted. To supplement these bodies, technical working groups and committees

are also created under the Act that would be charged with the duty of caring for the environment in various ways.

In the quest for a cleaner environment, the Act mandates the carrying out of certain functions and empowers the Agency with certain powers. The Agency is to establish criteria for environmental quality in particular, inter alia, those of effluent and solid waste. On the issue of pollution control, section 38(1) of the Act prohibits persons from discharging dangerous material, substance, oil or mixture containing oil into any waters or other segment of the environment unless done in accordance with the regulations made by the Council.

HAZARDOUS CHAMICALS AND PESTICIDES CONTROL MANAGEMENT ACT, 1994

The purpose of the Act is the control and management of the manufacture, distribution and use of hazardous chemicals and pesticides. The Act establishes a Hazardous Chemicals And Pesticides Control Management Board responsible for the registration, control, and management of all hazardous chemicals and pesticides in the country.

Section 25(1) of the Act empowers inspectors appointed under the Act to enter and inspect premises where contaminated food, foodstuff, food products and by-products are reasonably believed to be contaminated by chemicals or pesticides are kept; seize detain remove and take samples of such food; submit such samples for analysis.

A person is prohibited from disposing of any chemical, pesticide or container used for the storage, distribution or handling of a chemical or pesticide unless done in accordance with guidelines issued by the Board.

The Act prohibits a person from disposing of a chemical, pesticide or container used for the storage, distribution or handling of the same unless done in accordance with the guidelines set by the Board.

ENVIRONMENTAL PROTECTION (PREVENTION OF DUMPING) ACT, 1988

The Act makes provision for the prevention of the dumping of industrial wastes and for the protection of the environment. This Act defines dumping as "any disposal of wastes into land within The Gambia or into any waters under the jurisdiction of The Gambia".

Unless otherwise issued with a permit under Regulations made under the Act, a person is prohibited from dumping or attempting to dump onto land in the Gambia or any waters within the jurisdiction of the Gambia waste produced from a source outside the Gambia.

NATIONAL WATER RESOURCES COUNCIL ACT

The Act establishes National Water Resources Council, which is vested with the responsibility, inter alia, of formulating the policy of the Government on water resources development, water utilization and conservation, and of anything incidental to the development and utilization of water resources. The Council is also required to approve plans submitted by the National Water Resources Committee, which is also established under the Act.

The National Water Resources Committee is responsible for, among other things, the co-ordination and approval of any project or scheme relating to the use, development and conservation of water resources with regards to quantity and quality, and the promotion of the rational use of available water resources including the abatement of its harmful effects.

To further strengthen the water resource base of the country, a Department of Water Resources is also established under the Act. The functions of the Department include the monitoring and safeguarding of the quality of water resources, and the preparation of plans for investigating the rational management, use, control and protection of water resources.

PUBLIC HEALTH ACT 1990

The Public Health Act was enacted to make provision for public and environmental health and connected matters.

The Act empowers the Minister (now Secretary of State) to make regulations relating to the collection, removal and sanitary disposal of rubbish, night soil and other offending matter. The Act also mandates the Director of Health Services, who heads the Department of Public Health (DPH), inter alia, to abate nuisances and to remove or correct any condition that may be injurious to public health.

Under the Act, a person is prohibited from selling or distributing food, which is unwholesome or unfit for human consumption or is infected or infested as to likely to be unwholesome or unfit for human consumption.

Environmental Policy

The main environmental policy is the GEAP. As a follow-up to GEAP I the GEAP II strategy document has been formulated and adopted by the council,

A SUMMARY OF THE GEAP PHASE II STRATEGY DOCUMENT

The strategy for implementation of GEAP II has two main principles, namely:

Building on the gains that have been made and overcoming constraints encountered in the implementation of GEAP I.

Identifying and implementing new actions aimed at meeting the emerging challenges brought about by more recent developments.

The strategy has identified nine basic themes through which Gambia can develop a fully effective and financially self-sustaining environmental management system in the long term. These themes have been identified as:-

A. Improving the Performance of the Policy and Institutional Framework

The institutional framework will be strengthened to address some of the shortfalls in GEAP I design and implementation, whilst at the same time trying to meet the emerging needs and challenges of GEAP II. The framework will be redesigned in order to improve the performance of the policy and institutional framework.

1. The National Environment Management Council (NEMC)

NEMC was dormant for the most part during the first phase of implementation. Thus, making the Council operational is critical for this phase of implementation as this ensures that there is continued political commitment to the GEAP II implementation process.

2. The Technical Advisory Committee and Cross-sectoral Working Groups

While the cross-sectoral working groups were established in GEAP I, the Technical Advisory Committee (TAC) was not, as required by NEMA. In accordance with the provisions of NEMA, GEAP II will establish the TAC, which will comprise 15 members to be appointed by Council on the advice of the Executive Director.

3. The National Environment Agency (NEA)

NEA's mandate will be reviewed to give it stronger enforcement powers so that it can regulate the management of the environment in a more effective manner. In addition, the needs of the sectors and the different stakeholder groups will be reviewed and institutional mechanisms devised to make sure that the NEA becomes more responsive to these needs. **This means that the internal organization of the agency will itself be reviewed as programs and staffing needs do change over time. Additional staff will be employed as required to enable NEA respond adequately to the program needs.**

4. Other Stakeholders

Although the development of environmental policy through GEAP I was one of the most participatory processes in The Gambia, the level of participation of local communities and other stakeholders in the implementation process remains inadequate. In an effort to secure positive action on the ground, capacities will be built/strengthened at various levels of the national and local institutions for effective development and implementation of GEAP II.

B. **Incorporating Environmental Considerations into the Economic Decision-making Framework**

1. The Macro-Economic Decision Making Processes

The major macro-economic decisions are taken at the level of the Cabinet, the High Level Economic Committee and the Department of State for Finance and Economic Affairs (DoSFEA). Currently, elements of the GEAP are not integrated into this decision-making processes. **During GEAP II implementation, the government will put in place institutional mechanisms, which will ensure that the two main GEAP support institutions, namely NEMC and NEA, are part of that process.**

2. The Municipal Development Decision-making process

With the creation of the Area Environment Committees (in each Area Council), the Kanifing Municipal Environment Committee and the Banjul Environment Committee,

legal provisions will be made for these Committees to integrate environmental considerations into all plans, projects, and strategies of the Area Committee, the Municipal Committee, or the City Committee, as the case may be.

3. Engaging the Stakeholders in the Productive Sectors of the Economy

Targeted and specialized sensitization and training programs will be developed for policy and decision makers in parastatal organizations and the private sector firms for them to appreciate the need to incorporate environmental concerns in the micro-economic decisions. This is important in that these stakeholder groups make major decisions with respect to micro-economic issues and their understanding of the issues at stake could influence the way they make decisions.

C. Advocacy and Sensitization for Sustainable Development

The preparatory process of GEAP II capitalized on the recent expansion of the mass media in the country to further raise the awareness of all residents in The Gambia, and to solicit greater popular support for GEAP II. With this experience in mind GEAP II would develop a comprehensive and aggressive awareness and sensitization campaign to target staff of sectors not directly involved in its implementation, but who are nonetheless important elements in the national decision-making process. **These would include the National Assembly, Directors of Public Enterprises, and selected private sector policy and decision-makers.**

D. Support for Decentralization and Local Government Reform for Community Based Natural Resource Management and Sustainable Development Planning

1. Decentralization of Environmental Management

In an effort to extend coverage beyond Greater Banjul, GEAP II will involve other stakeholders especially where the issues will look at practical solutions of location-specific problems directly affecting the villagers within their immediate locality. As indicated in the management arrangements for GEAP II, implementation will be decentralized. NEA would effectively utilize the structures already in existence in local communities in its attempt to decentralize the GEAP II implementation to implement Local Environment Action Plans (LEAPs)

2. Establishment of Viable Community-based Natural Resource Programs

Farmers engaged in non-sustainable agricultural practices would be provided with viable alternatives by the sectors concerned. The National Agricultural Research Institute (NARI) has an adaptive demand-driven agricultural research system that develops appropriate technologies (i.e. Integrated Pest Management, Biological Pest Control Mechanisms, Soil Fertility Amendment Strategies, etc) for farmers. Under GEAP II, an effective collaborative mechanism would be developed between NEA and NARI to promote the generation, dissemination and utilization of such

appropriate technologies so that farmers have the best practices and options for crop and livestock production.

3. Increased Role for Non-Governmental and Community Based Organizations

The number of International and National Non-Governmental Organizations (NGOs) operating in the country has increased over the last decade. These NGOs have different mandates and are operating at field level with Community-Based Organizations (CBOs) in environmental and natural resources management concerns. They can be more effective working with CBOs.

4. “Bottom-up” Planning Process - a Divisional Co-ordinating Committee Initiative

Under GEAP II, policy development and implementation will be made much more participatory. This calls for a “bottom-up” approach to policy development which will take into account the very basic requirements of the community and since its implementation requires very little official supervision, its sustainability is assured. The division- and village-based structures will be used in this effort.

E. Strengthening Public And Private Sector Capacity To Manage The Environment

As indicated earlier, the professional capacity of both the NEA and line departments would be enhanced in order that the expected outputs of GEAP II are met. **In the private sector there is a clear need for training and skills development in the areas of environmental policy analysis, environmental impact assessment environmental auditing, and environmental legislation. These would be provided under GEAP II and that should help in the incorporation of EIA as a tool in environmental management**

F. Strengthening The Regulatory Framework And Enforcement Of The Regulatory Codes

Though gains have been made through the enactment of legislation, the weak regulatory framework and the lack of action in enforcing the relevant regulatory provisions pose one of the most serious challenges to GEAP II. These challenges include the enforcement of environmental impact assessment regulations, the enforcement of mitigation measures, the implementation of environmental audits, and the implementation of an industrial registration and discharge permitting system.

The growth in economic activity that is envisaged in the various productive sectors in the next few years, calls for the urgent need to put in place adequate safeguards to maintain a sound, sustainable and healthy environment.

G. Sustainable Management and Protection of the Coast and its Resources

The coastal zone in The Gambia is one of the most economically active in the areas of tourism, fisheries, sand mining for construction, and trade. At the same time, the area is significant for its ecologically sensitive sites, such as mangrove swamps, bird

sanctuaries and forest parks, and for its important landmarks such as cemeteries and cultural heritage sites.

Over the years, unregulated development and uncontrolled exploitation of its resources have had a negative environmental and social impact on the area. The area is also seriously affected by erosion that is threatening important infrastructure and heritage sites.

One of the main reasons for inaction in this area is the absence of an institutional framework through which this area can be regulated. GEAP II would emphasize the proper management of the TDA and the coastal resources, and will put in place a process to establish an appropriate institutional framework that will be provided with strong legal backing for the regulation of this area.

H. Improving the Performance of Implementing Institutions in Environmental Quality Monitoring and Enforcement and in Solid Waste Management

In Greater Banjul and urban centers in the Provinces, unplanned urbanization and rapid population growth have placed considerable pressure on natural resources and on municipal and other facilities. The authorities have not been able to cope with the result that there is a shortage of proper housing, unsanitary living conditions, and inadequate health facilities, to name a few.

A strategy to address waste management problems identified the following hierarchy of options, listed in the order of preference: waste reduction; re-use and recycling; composting; incineration with energy recovery; land filling; incineration without energy recovery; and, encapsulation and stabilization. Those higher in the hierarchy nearer to the beginning are considered to be more sustainable. They will be considered for implementation under GEAP II.

I. Developing a self-sustaining Environmental Management System for The Gambia

The government will launch the following initiatives to assure that there are sustainable financing mechanisms for the environment in The Gambia:

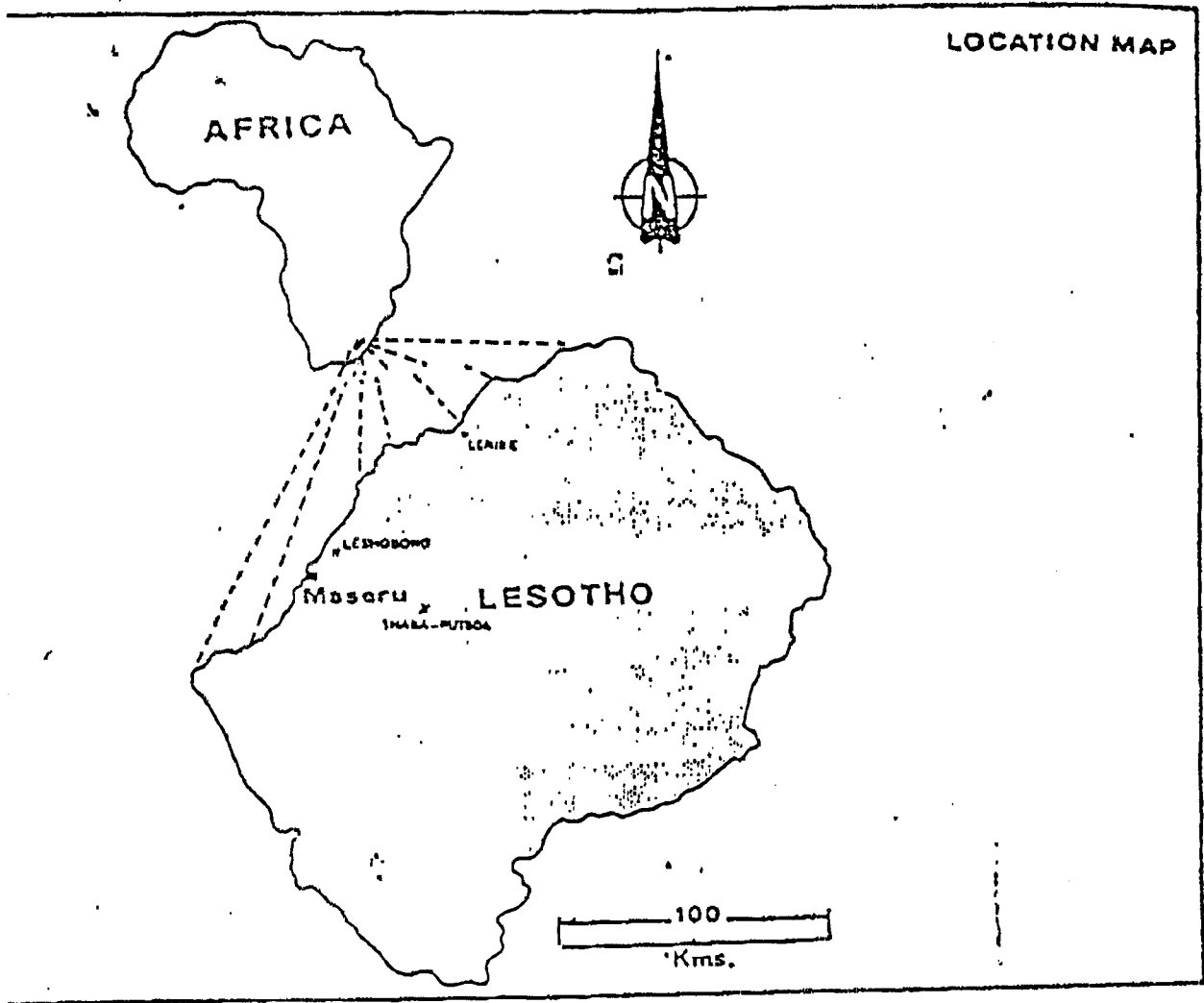
- a. Revenue Retention Mechanisms.**
- b. An Endowment Fund.**
- c. Management/Agency Fees for Project Implementation**

**REPORT ON THE STATUS
OF
IMPLEMENTATION OF ENVIRONMENTAL
LAW AND POLICY
IN LESOTHO**

*Produced for the Commonwealth Seminar on the Implementation of International
Environmental Instruments and Policy Development held at Grande Baie, Mauritius.
October 31 – November 6, 2005*

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OCTOBER 2005



CONTENTS

1.0	Introduction	4
	Objectives of the Meeting	4
	Objectives of Lesotho in the Meeting.....	5
	Brief Background of Lesotho	5
2.0	Genesis of Environmental Management in Lesotho	6
2.1	Constitution	6
2.2	National Environment Action Plan	6
2.3	Post-Rio Summit Initiative	7
2.4	Establishment of NES	7
2.5	National Environmental Policy for Lesotho	7
2.6	Environment Act 2001	8
2.7	International Environmental Convention and their Implementation at National Level.....	9
2.8	Conclusion and Recommendation	13

1.0 Introduction

Sustainable utilization of natural resources, hence protection of the environment has been a cultural practice of Lesotho from pre-colonial era. The chief and his advisors would schedule harvesting of certain natural products, or control utilization of the rangeland. As human population grew, various interventions were made especially during colonial times to combat land degradation.

Global initiatives, on the wise use of environmental resources in the early 1970's, provided an impetus for a formal orthodox approach to environmental management in Lesotho. As a result Lesotho was one of the pioneer countries to produce a National Environmental Action Plan (NEAP) in 1989. After the Rio Summit of 1992 the government committed itself to the aspirations endorsed in the Agenda 21 by establishing an institution that coordinated the implementation of Agenda 21 for Lesotho and focal point for all international conventions on the environment in 1994. This necessitated formulation of a national Policy on the Environment in 1998 and the framework law on the environment- Environment Act 2001.

Lesotho became a Party to many key conventions on the environment since 1992, and collaborated with regional and global endeavours in ensuring that the conventions are observed and implemented at national level.

This brief report presents the genesis of formal environmental management and the commitment to the ideals of sustainable development by the government of Lesotho, which led to formulation of environmental policy and law. It highlights continuing activities that are undertaken to ensure that environmental policy and law translate into activities that are executed at grassroots level as underpinned by international environmental instruments to which Lesotho is a Party. An attempt is made at the end to highlight remedies to the impediments that still stall full implementation of the Environmental Policy.

Objective of the Meeting

The objective of the Seminar is to promote the implementation of international environmental conventions at the national level by identifying the gaps in member countries' existing legislative/regulatory arrangements. The seminar will also examine any existing regional arrangements which may be utilised for the furtherance of this objective.

Objective of Lesotho in the Meeting

Lesotho's expectation by participating in this seminar is to learn and adopt appropriate and new ways that are meant to have a comprehensive and integrated legislative framework required by regional and international conventions on the environment, coupled with the appropriate policy indicators that may be recommended to member governments by this meeting.

Brief background on Lesotho

Lesotho is a small land locked country of 30,355 sq. km, entirely surrounded by the Republic of South Africa (RSA). It lies on the western side of the Drakensberg massif between latitudes 28 degrees and 30 degrees south and longitude 27 degrees and 30 degrees east. Approximately 70% of the land lies above 2000m. There are four principal physiogeographic zones most widely recognised- the Lowlands, Senqu (Orange) River Valley, Foothills, and Mountains. Table 2 gives the land area occupied by each zone, percentage of occupancy, and altitude range.

Table 1: *Principal Physiogeographic zones of Lesotho*

Zone	Area (Sq. km)	% of total land area	Altitude Range
Lowlands	5760	19	1400 – 1800m
Senqu Valley	2430	8	1400 – 1800m
Foothills	2430	8	1800 – 2200m
Mountains	19730	65	2200 – 3400m

Source: May (1994) and Berding (1984)

Zonal Characteristics

The Lowlands: Long-term inappropriate land use combined with intense rain events has resulted in serious sheet erosion leaving only shallow, rocky soils on plateaux tops and slopes; often exposing sterile areas of underlying impervious clay. Gully erosion is a prominent feature of the lowlands (Kingdom of Lesotho, 1996).

The Senqu (Orange) River Valley: It is broadly similar to the Lowlands, with the exception of alluvial deposits within the valley floor and the cutting of the underlying strata by the river. The soil is drier because of accelerated drainage and the effect of the rain shadow in which the valley lies.

The Foothills: Soils are generally more fertile than those of the lowlands, particularly the black soils based on basalt.

The Mountains: They are predominantly basaltic overlying the older sedimentary strata common at the lower elevations. The western edge of the zone is, for most of its length, a steep dramatic escarpment cut by deep valleys.

2.0. Genesis of Environmental management in Lesotho

Commitment to the ideals of sustainable management of natural resources is enshrined in key development documents (National Vision 2020) and key legal frameworks and plans (Constitution). This section gives an overview of steps which have been taken towards a comprehensive implementation of environmental law in Lesotho.

National Constitution

The need for sound management and protection of the environment is enshrined in Section 36 of the Constitution, as revised in 1993. The contents of this section provide a Vision for promotion of sustainable development ideals through environmentally sound socio-economic development initiatives.

Section 36 of the Constitution states: *"Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure all citizens a sound and safe environment adequate for their health and well-being"*.

National Vision 2020

The aspiration for a well managed environment is spelt out in the National Vision 2020 as follows: "Lesotho shall be renowned for its environmental management. The country's diversity of life systems will be supported and protected by a nation which is environmentally conscious and whose people are in balance existence with the natural environment. Basotho will derive continuing benefits from the conservation and sustainable use of their biological diversity. The several global conventions and treaties that Lesotho has signed and ratified shall be translated into concrete actions which will sustain care and management of the environment at large....There will be institutional and legal frameworks to promote and protect a healthy and sustainable environment...."

The vision for environmental management is therefore: **To promote and ensure that the present and future development of Lesotho is socio-economically and environmentally sustainable.**

National Environmental Action Plan (NEAP)

The commitment to proper management of the environment was reflected in the National Environmental Action Plan (NEAP) of 1989, which was prepared for participation in the 1992 Rio Conference.

THE MAIN OBJECTIVE OF NEAP WAS:

"To provide a framework for incorporating environmental considerations into the national economic development planning and to focus and facilitate the coordination of the nation's environmental endeavour". It formed the basis for Agenda 21 of Lesotho.

3.0. Post-Rio Summit Initiatives

Following the Rio Summit of 1992, Lesotho developed mechanisms to deal with environmental issues and embarked on relevant initiatives. These are briefly explained below.

Establishment of the Lesotho National Environment Secretariat (NES).

The government of Lesotho established the National Environment Secretariat (NES) in the office of the Prime Minister in April 1994 as a custodian of Lesotho's National Environment Policy, and for the co-ordination of the implementation of Agenda 21 and the National Environment Action Plan (NEAP) of Lesotho. In 1998 NES was relegated to a Department in the Ministry of Environment, Gender and Youth Affairs, and in 2002 moved to the Ministry of Tourism, Environment and Culture to date.

The Department of Environment is the focal point of the Government of Lesotho for all international and regional multi-lateral environmental agreements to which the country is a Party.

The mission of the Department of Environment is promotion of socio-economically and environmentally sustainable development in Lesotho. This aim will be realized by four broad roles/functions:

- 1) Co-coordinating, advising and regulating environmental management at all levels in the country and advising on the application of environmentally sound technologies and concepts.
- 2) Setting standards and guidelines and monitoring compliance with environmental impact assessment for all development activities.
- 3) Disseminating information regularly on environmental issues and ensuring Lesotho's adherence to environmental treaties and international conventions to which it is a party.
- 4) Empowering and creating awareness among local communities and other stake holders on conservation of the country's environment to achieve sustainable development.

National Environmental Policy for Lesotho

The first National Environmental Policy for Lesotho was formulated in 1996 and revised in 1998. The goal of the national policy on the environment is to ensure the protection and conservation of the environment with a view to achieving sustainable development for Lesotho.

It acknowledges that the complexity of environmental issues require a comprehensive and coordinated environmental management policy that is backed up by framework legislation. It aims at bridging the gap created by fragmented approach to environmental management, and enhancing and supporting sectoral linkages for sustainable development.

The purpose of the National Environmental Policy is to facilitate sustainable development based on the sound management of natural resources. The management of natural resources requires integrated multi-sectoral programmes which would take into account employment generation, poverty reduction, environmental and natural resources rehabilitation and development in rural and urban areas.

The National Environment Policy does not intend to usurp the powers of sectoral ministries, nor does it seek to replace sectoral policies. It reinforces them and focuses on areas of high environmental priority for the Kingdom of Lesotho.

It confirms that the mitigation and solution of environmental problems requires coordinated programmes and activities by the different sectors of government and society. An enabling policy to allow both Government and public to integrate environmental considerations in their development activities is therefore essential.

The Policy is implemented through three broad national development priorities- social and economic dimension, sustainable management of national resources, and getting people involved. The framework law on the environment enables coordination of implementation of the environment policy.

Environment Act 2001

The framework law on the environment was passed by Parliament in the year 2001. This law calls for integration of environmental concerns in all sectoral development programmes, and plans through the environmental impact assessment (EIA). Drawing its strength from the Constitution and the Environment Policy, the Environment Act 2001 compels for review of other sectoral laws in line with it.

The Environment Act 2001 was to be implemented by a semi-autonomous body called Lesotho Environment Authority (LEA).

It was, however, perceived expensive for the government to implement the environment law by this institutional arrangement. Hence the law is being amended to be implemented by the Department of Environment in the Ministry of Tourism, Environment and Culture which means it will be implemented by substantive public officers.

It (law) has 16 Parts which among others address (i) Environmental planning at district and national levels (ii) Environmental Impact Assessment, Audits and Monitoring, (iv) Environmental Quality Standards, (v) Institutional Arrangement, (vi) Pollution Control, (vi) Environmental Management, (vii) Environmental Restoration Order, (viii) Inspection Analysis and Records (ix) International Environmental Conventions, (x) Information, Education and Public Awareness, and (xi) Financial Provisions.

Most of the accessory instruments that are required to realize full implementation of this environmental law will be put in place one by one when the law is in force. There is need for assistance by way of capacity building in the form of equipment and expertise for various attributes of the environment. A cooperation is in process for bilateral assistance between the government of Lesotho and that of the people's Republic of China in environmental management.

International Environmental Conventions and their Implementation at national Level
Lesotho is a Party to all of the international environmental conventions in question, and has endeavoured and continue to adopt them into national legislation. The Department of Environment is tasked with coordination of implementation of the obligations of all environmental conventions to which Lesotho is a Party. An outline of activities that are meant to infuse implementation of these conventions is presented below.

1. The United Nations Convention on the Law of the Sea

Lesotho signed this convention 10th December 1982 but has not ratified it. There is therefore no information on any activities that relate to domestication of this convention.

2. Convention on Biological Diversity

The Convention on Biological Diversity (CBD) was ratified in January 1995. Since then the government of Lesotho has participated in all regional and global undertakings that were meant for all Parties to realize the purpose of this convention. These regional and global initiatives were in the form of projects which facilitated quick adoption of the convention. Key projects are briefly explained below.

- Country study on the status of biological diversity was done in the year 2000 and culminated in the National Biodiversity Strategy and Action Plan of 2001, which is meant to guide all developments that require biological diversity as primary resource or an input for production.
- The first State of Environment Report was published in 1999. The main purpose of the state of environment report is to provide information on the interaction between environmental resources and development activities hence militate for review of policies if necessary. The second report was published in the year 2002.
- Several projects were implemented, which in essence endeavoured to explore new interventions that could relief pressure exerted on natural resources by local communities and influence policy review at the same time. These are:
 - (i) *Conserving Mountain Biodiversity in Southern Lesotho (CMBSL)*, which created protected areas of biodiversity hotspots, proposed management plans within and outside these areas. This project operated from 1999 to 2004. It provided training for local authorities to manage environmental resources in their jurisdiction.
 - (ii) *Maloti Drakensberg Transfrontier Conservation and Development project (MDTP)* is the only transboundary project Lesotho has at the moment. It is a bilateral project between Lesotho and South Africa which seeks to foster joint management of the Drakensberg/Maloti mountains bioregional diversity. It also seeks to empower local communities to venture into eco-tourism activities which co-exist with biodiversity resources or are underpinned by presence of well managed biological diversity. The project began in the year 2002 and will phase out in 2007. It has strengthened local governance structures and provided training within key ministries to perpetuate activities began by the project.
 - (iii) *Capacity Building on Environmental Management (CBEM)* project's objective was to build capacity of line ministries and Non-governmental organizations in environmental management issues especially the Environmental Impact Assessment (EIA) in the country. Over 40 individuals were trained and they formed

Environmental Units in their respective institutions which ensure that environmental concerns are integrated in their sectoral projects. The project ran from 1999 to 2002.

- (iv) *Southern Africa Biodiversity Network (SABONET) project* facilitated establishment of herbaria and record keeping of plant species in Lesotho, and networking with other countries in the region. This was a regional project for ten nations.
- (v) *Lesotho Highlands Water Project (LHDA)*. This is a project for transfer of water to South Africa from the wetlands of Lesotho. It has however contributed in rescuing some of the biodiversity in the project area which could otherwise inundate under the water to either extinction or diminished population. Three Nature Reserves were established and one botanical garden- These are Tschlanyane, Bokong and Liphofung nature reserves and one botanical garden at Katse village. Preparations are underway to gazette these nature reserves.
- (vi) *The Lesotho Biodiversity Trust* was established in December 2004 as a bilateral Trust between Lesotho and South Africa. One of its objectives is to support the government in meeting its obligations in terms of the international Convention on Biological Diversity, as well as other conventions and protocols related to biodiversity matters.
- (vii) *The Partnership for the Development of Environmental Law and Institutions in Africa (PADELIA) project's* objective is to train the judiciary on the execution of environmental cases and improve law teaching institutions in Lesotho. It has reviewed several laws in line with the Environment Act 2001.

Cartagena Protocol on Biosafety

Lesotho ratified the Cartagena Protocol on Biosafety on 20th September 2001. It participated in the capacity building project for implementation of the Protocol at national level. This enabling project sponsored development of National Biosafety Framework, the Biosafety Policy and the Biosafety Bill. The Policy has been approved by Cabinet, hence the Bill is being prepared for debate by the Parliament. A project proposal for testing the draft Biosafety Framework has been submitted to UNEP for funding.

PAGE MISSING

- A countrywide study of the status of biodiversity is planned under the Southern Africa Biodiversity Support Programme (SABSP). Work has started on the formulation of a mechanism for access and benefit sharing (ABS) on utilization of biodiversity resources.
- The National Capacity Self Assessment (NCSA) project commenced its work in July 2005. This is an eighteen months project that assesses national capacity to implement five conventions- UNCCD, UNCBD, RAMSAR, UNFCCC, and CITES.

4.0. Conclusion and Recommendations

The foregoing activities indicate the commitment made by the government of Lesotho in trying to honour her obligations in the conventions she is a party to. Efforts have been made to entrench environmental issues in sectoral plans even without the environment law being operational. For example the environmental impact assessment (EIA) of development activities scheduled in the Environment Act 2001 is observed by all stakeholders in the country. Several advisory technical committees are established and coordinated by the Department of Environment. These are: the Committee on Waste Management (COWMAN) which advises on waste management issues; Chemical Management Committee (CheMaC), which advises on management of active chemicals in the country; Committee for Environmental Data Management (CEDAMA), which coordinates collection of environmental data, Sustainable Development Technical Committee (SuDTeC), which is meant to ensure infusion of the

RECOMMENDATIONS

STATUS OF IMPLEMENTATION, OF INTERNATIONAL ENVIRONMENTAL CONVENTIONS, IN THE GAMBIA

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INTRODUCTION:-

International Environmental Conventions, are multilateral Conventions in the international arena, which aim at the promotion and enhancement of environmental preservation, thus attaining the tenets of "sustainable development" on a global level. The concept of "sustainable development", was authoritatively defined in the famous Brudtland Report of 1987 entitled "OUR COMMON FUTURE" in the following words - "Development that meets the needs of today, whilst not affecting the ability of future generations, to meet their own needs".

The Brudtland Report, was produced by the World Commission On Environment And Development. (The Brudtland Commission).

Since the famous United Nations Conference on the Environment and Development (U.N.C.E.D), which was organised in Rio de Janerio in Brazil in 1992, the World has indeed witnessed the emergence of a proliferation of International Environmental Conventions, for the sustenance and betterment of Planet - Earth.

The Republic of The Gambia, is indeed a bona fide signatory, to a plethora of International Environmental Conventions. After signing these Conventions at the appropriate Diplomatic Conferences, The Gambia then has the duty or obligation under International Law, to implement these Conventions mutatis mutandis (i.e. with necessary changes and amendments) into its domestic laws.

This paper intents to critically assess, the status of implementation of three International Environmental Conventions into Gambian laws, namely:

1. The United Nations Convention On The Law Of The Sea.
2. The United Nations Convention To Combat Desertification and
3. The United Nations Framework Conventions On Climate Change (U.N.F.C.C.C.)

THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA :-

The preamble of this Convention inter alia states-

“Recognizing the desirability of establishing through this Convention, with due regard of the Sovereignty of States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.”

In 1982, the then Honourable Attorney General and Minister of Justice of The Gambia, MR. Fafa Edrisa Mbye, signed on behalf of the Republic of The Gambia, at Montingo Bay in Jamaica, West Indies, both the United Nations Convention On The Law Of The Sea and The Final Act of the Conference on The Law Of The Sea. In the same year, MR Mbai tabled the Convention before The Gambian Parliament for ratification. It was accordingly ratified by the first arm of government, and the Instrument of Ratification was subsequently dispatched to the Secretariat of the Convention, through the appropriate diplomatic channels.

These landmark legal events in the realms of International Law, were encapsulated in a book entitled – **“ IN THE SERVICE OF MY BELIEFS”**, which was authored by MR Mbai. An autographed copy of the aforesaid masterpiece publication, was graciously presented to me by Mr. Mbai, and I am most grateful to him, for this act of benevolence.

THE UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION

According to the findings of my in-depth environmental research, this Convention was opened for signature at the U.N.C.E.D. in 1992. The Gambian delegation to the U.N.C.E.D. signed the Convention, on behalf of The Republic of The Gambia. Article 1 (A) of the Convention defines “desertification” as **“land degradation in arid, semi- arid and dry sub-humid areas resulting from various factors, ”**

Article 1 (B) of the Convention defines “combating desertification” as **“including activities which are part of the intergraded development of land in arid, semi – arid and dry sub-humid areas for sustainable development which are aimed at:**

- (i) **Prevention and / or reduction of land degradation.**
- (ii) **Reclamation of desertificated land”**

The Gambia signed the Convention in June 1994. In June 1996, the Convention was tabled before the Gambian Parliament for ratification. It was ratified without reservations and the Instrument of ratification, was subsequently dispatched to the Secretariat of the Convention, via the Department of State For External Affairs.

THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (U.N.F.C.C.C.)

This Convention was also opened for signature, at the U.N.C.E.D. in June 1992. The Gambia's high-powered delegation to the U.N.C.E.D. also signed this Convention, on behalf of The Republic of The Gambia.

Annex A of the Convention, contains: Greenhouse gases, Sectors/Source categories, Industrial process, solvent and other product use, Agriculture and waste.

Annex B of the Convention, contains the list of State – Parties to the Convention at the time it was adopted in New York on the 9th of May 1992, and the quantified emission limitation or reduction commitment for each State – Party which has ratified the Convention,. This includes Countries, that are undergoing the process of transition, to a market economy.

The ultimate objectives of the Conventions, are stated in Article 2. Article 2 (1) inter alia states:- **“Each Party included in Annex 1, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall**

- (A) **Implement and/or further elaborate policies and measures in accordance with its national circumstances such as**
- (i) **Enhancement of energy efficiency in relevant sectors of the national economy**
- (ii) **Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements, promotion of sustainable forest management practices, afforestation and reforestation.....”etc.**

The U.N.F.C.C.C. was ratified by the Gambian Parliament without reservations, in June 1994.

ENFORCEMENT OF INTERNATIONAL ENVIRONMENTAL CONVENTIONS BY GAMBIAN COURTS

The very fact that the Gambian Parliament/National Assembly has ratified an International Environmental Convention, does not necessarily mean, that it would be enforced by the Gambian Courts. To facilitate the enforcement by Gambian Courts, of an International Environmental Convention which has been ratified by the Gambian Parliament/National Assembly, such a Convention needs to be domesticated, by way of an Act of Parliament/National Assembly.

Section 7 of the 1997 Constitution of The Second Republic Of The Gambia, states that **“In addition to this Convention, the laws of The Gambia consist of:**

- (A) Acts of the National Assembly made under the Constitution and subsidiary legislation made under such Acts,
- (B) Any Orders, Rules, Regulations or other subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law
- (C) The existing laws including all decrees passed by the Armed Forces Provisional Ruling Council.
- (D) The Common Law and principles of Equity.
- (E) The Sharia as regards matters of marriage, divorce and inheritance among members of the communities to which it applies."

Since International Conventions are not part and parcel of the above list, a Judge or Magistrate can therefore rightly refuse to enforce any International Environmental Convention, which has not been domesticated by an Act after its ratification by the National Assembly.

However, notwithstanding the aforesaid, a Judge or Magistrate who is a Judicial Activist may enforce an International Environmental Convention, which has been ratified by the National Assembly but not domesticated by an Act, by virtue of the maxim in the doctrine of Equity, which says - "EQUITY REGARDS AS DONE, THAT WHICH OUGHT, TO HAVE BEEN DONE".

This maxim of Equity is very powerful and invincible, because the ratio decidendi of the celebrated **EARL OF OXFORD CASE** is that - "WHERE EQUITY AND COMMON LAW CONFLICT, EQUITY SHALL PREVAIL".

CONCLUSION:-

To conclude, although it is advisable for an International Environmental Convention to be signed, ratified and domesticated, to facilitate its enforcement by Gambian Courts, nonetheless, it does not necessarily mean, that an International Environmental Convention, which has been signed and ratified but not domesticated, would not be enforced by the Gambian Courts.

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THIS PAPER WAS DELIVERED BY DR. HENRY D.R. CARROL, AT
THE COMMONWEALTH SEMINAR FOR THE AFRICAN REGION,
ON THE IMPLEMENTATION OF INTERNATIONAL
ENVIRONMENTAL INSTRUMENTS AND POLICY DEVELOPMENT,
HELD AT MAURETIUS, FROM 31ST OCTOBER TO 6TH NOVEMBER
2005.

* * * *

Sgd)


DR. HENRY D.R. CARROL

Commonwealth Seminar on the Implementation of International Environment Instruments and Policy development

COUNTRY REPORT - MAURITIUS

Introduction

The State of Mauritius comprises the islands of Mauritius, Rodrigues, Agalega, Tromelin, St Brandon, the Chagos Archipelago including Diego Garcia and a number of outlying islets. They are dispersed over a wide geographical expanse of the Indian Ocean. The island of Mauritius is the largest in the group and covers a land area of 1865 km².

The Republic of Mauritius attaches prime importance to both national and global environmental problems. Our country acknowledges fully the serious consequences resulting from the degradation of the environment and its impact on the quality of life, health and on the economy. As a small island state with a fragile ecosystem and limited resources we have no choice but to put environmental protection high on our agenda. Mauritius is fully conscious of the fact that individual action towards sustainable development can only work as part of a coordinated international plan of implementation. In this context, Mauritius continues to support international initiative and in a spirit of international co-operation, has signed some 36 environment related conventions and Protocols which are at **Annex I**

Mauritius has been implementing the obligations of most conventions and protocol that have been signed to varied levels. Remarkable success has been achieved in respect of the implementation of the Montreal protocol on substances that deplete the Ozone Layer due to good administrative capacity, training, leadership, legislative frameworks and strong political will. However, concerning the three Rio Conventions (CBD, UNCCD and UNFCCC) on the agenda of the seminar, works are in progress. The Government has enlisted the implementation of International Environmental agreements in its 2005 -2010 Programme and is committed to comply with all the obligations.

The seminar would be a forum to share experiences among member countries and learnt from resource persons on effective and efficient implementation of the enlisted conventions.

2.0 Local Policies and Strategies

The national environmental strategy of Mauritius is viewed as an investment into sustainable development. The National Environment Commission under the

chairmanship of the Prime Minister is the apex policy-making body. The National Environment Action Plans and accompanying Environment Investment Programmes for the past two decades have enabled the implementation of priority programmes and projects geared at protecting and restoring the environment. The implementation of Agenda 21, BPOA, JPOI as well as of MEAs to which Mauritius is a party have been undertaken to the limits of our developmental capacity.

2.1 Amendment of the Environment Protection Act

In order to meet the challenges of the environment and development the Environment Protection Act of 2002 has been amended to introduce new features such as –

- (i) Environmental Stewardship’ – A pledge that ‘every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius
- (ii) Institutional strengthening – setting up of police de l’Environnement to assist the Director of DOE and Island Chief Executive of Rodrigues in the enforcement of environmental laws.
- (iii) Setting up of National Network for sustainable Development which shall be a forum for discussion and consultation among the public sector, private sector and NGO’sd on environment matters.
- (iv) New procedures for processing of undertakings according to their categorization common undertakings such as poultry rearing requires a Preliminary Environmental Report.
- (v) Public participation is enhanced through the decentralisation of access to EIA reports at the level of local authorities and through the website.
- (vi) Strengthening the existing enforcement mechanism –
 - (a) provision for a ‘stop order’ to check activities and developments operating without a relevant permit.
 - (b) Empowerment of an authorized officer including a police officer, to conduct prosecution in respect of an offence under an environmental law.
 - (c) Provision for fixed penalties
 - (d) Increase in the quantum of fines ranging from Rs 10,000 to Rs 500,000.

- (vii) Provision for pollution control in an industry by means of industrial waste audit.

2.2 : Status on the implementation of the United Nations Convention on the Law of the Sea (UNCLOS, 1983), Convention on the Continental Shelf and Convention on the High Seas

Mauritius ratified the UNCLOS on 4 November 1994 and the latter entered into force on the 16th November 1994.

The Agreement for the Implementation of the provisions of UNCLOS relating the conservation and management of straddling fish stocks and highly migratory fish stocks was ratified on 25 March 1997.

Certain provisions on marine pollution have effectively been brought into national legislation through regulations.

Progress achieved so far :

-The Environment Protection Act 2002 provides for a section on 'Dumping in the zone' which prohibits the dumping of solid waste and other noxious substances into the sea. The 'Standards for effluent discharge into the ocean' under the EPA also regulates discharges into the sea.

The Maritime Zone Act 2005 states that the United Nations Convention on the law of the sea shall have force of law in Mauritius.

Baseline Delimitation and Continental Shelf Projects

The Mauritius Oceanography Institute was set up in 2000.

Two of the major projects already undertaken by Mauritius Oceanography Institute since its creation are the Delimitation of Baseline Project and the Continental Shelf Project, both of which are dealt with in Part II and Part VI of UNCLOS

The MOI was entrusted with the task of formulating a claim to the UN Commission on Limits of Continental Shelf (CLCS) for an extension of the continental shelf in areas beyond the 200 M Exclusive Economic Zone of the

Republic of Mauritius. In 1999, MOI initiated the Continental Shelf Project. A desktop study was commissioned to define the scope of our claim for an extended Continental Shelf. Concurrently, a legal study was undertaken to produce a well researched legal background to inform and support negotiations with our neighboring countries.

In order to complement the Continental Shelf Project, MOI in collaboration with the Ministry of Housing and Lands carried out a review of the baselines of our territorial seas and the EEZ with a view to maximising the areas of our maritime zones.

Expeditions to undertake multibeam bathymetry and seismic surveys on the Mascarene Plateau, the Southern Chagos Ridge and the Central Indian Ridge in early 2002. These surveys were carried out with a view to obtain the necessary data on the continental margin in and around our EEZ in support of our claim for an extended continental shelf.

The claim to UNCLOS is likely to further extend the maritime jurisdiction of the Republic of Mauritius, and must be submitted to the UN Commission on the Limits of the Continental Shelf before 2009.

Other major achievements of the MOI

The MOI is responsible for the formulation, implementation and coordination of scientific programmes relating to the protection, exploration and development of marine living and nonliving resources in the maritime zones of the Republic of Mauritius. It is also involved in modeling of the coastal and oceanic processes within the maritime jurisdiction of the Republic of Mauritius as well as in the Indian Ocean. The MOI aims to undertake quality scientific research in collaboration with local and international institutions and to contribute to the regional and global matrix of ocean sciences.

The following projects were completed in the last five years

Mapping of marine ecosystems of the South East coast of Mauritius

The geo-spatial information and mapping project initiated by MOI through the funding by the "Commission de L'Océan Indien" aimed at the construction of a series of maps to classify major coastal habitats and eventually assess their vulnerability to environmental hazards. The study involved both actual field surveys together with the application of satellite/aerial remote sensing. The final output was an atlas that was launched in August 2005.

Study of Short Period Sea Level Oscillations

A study of short period sea level oscillations aims to increase the understanding of the physical forcings in the coastal areas of Mauritius and Rodrigues. Pressure

recorders, measuring sea level at high frequencies, have been deployed at various locations around the lagoons and outer reef. The result will help to address issues of coastal erosion, pollutant dispersal and navigation safety.

Bioprospecting

Information regarding the medicinal properties or traditional uses of marine organisms hardly exists in the world as well as in Mauritius. The validation of the known medicinal virtues of marine molluscs is a manner to start bioprospecting the sea. This research involves the pharmacological testing of extracts for bioassays relevant to their medicinal properties and ultimately purification and isolation of the bioactive compound(s).

Lagoon and Reef Watch Movement

Since February 2002, the Mauritius Oceanography Institute has taken the lead of the Lagoon and Reef Watch Movement, which works towards the sensitisation of the Mauritian public on the marine and coastal environment. The Lagoon and Reef Watch Movement is an initiative of the National Environment Fund, and is unique as it groups governmental and private bodies as well as a number of NGOs.

Current projects

The Mauritius Oceanography Institute has embarked on four projects in various fields of oceanography that will be completed in the next three years:

1. Database of marine organisms of the Mauritian maritime zone

The correct identification and naming of living organisms is the basis of research in the field of diversity of living organisms and their management. This project aims at producing a database of marine species in Mauritian waters, which will be linked the existing databases on marine organisms such as Marine Species Database for Eastern Africa (MASDEA) and Ocean Biogeographic Information System (OBIS). The Mauritian marine species database will use the World Wide Web for access and networking. The product will also be published in the form of a CD-ROM and will be made available to a wide range of end-users. This database of marine organisms will be a standard reference for research management and training in the field of marine species diversity in Mauritian waters.

2. Modelling and mapping oceanic processes of South West Indian Ocean: a satellite- based approach.

The ocean is a dynamic and fluctuating environment where numerous processes operate. Observing this ocean variability by conventional means has proved to be difficult and costly. This project on modelling and mapping the south-west

Indian Ocean is effectively geared towards the study of the oceanic processes in this part of the globe. The approach will mainly consist on measuring oceanographic parameters via the medium of sensors mounted on board satellite while its main objective is the mapping and characterisation of oceanic processes, more precisely of biological production and general circulation in the south-west of Indian Ocean. The subsequent outputs shall constitute a pioneering effort in the setting up of operational oceanography by bridging the gap between research and operation.

3. Bioprospecting Mauritius waters

The Mauritius Oceanography Institute Act and Vision 2020 document of the Ministry of Economic Development and Regional Co-operation emphasise the need to exploit natural products derived from our unique flora and fauna. In that respect and considering the fact that the use of Marine organisms towards the unveiling of new drugs is gathering much importance today, the MOI is undertaking a project which entitled: “Biological activities of Marine Substances form Mauritius Waters”. This is a joint collaborative project involving local as well as international institutions. The objective of the project will be to assess the biological activities of the extract of certain classes of marine organisms which have already given new drugs in use today on some chosen bioassays. The vast EEZ of Mauritius might possess marine organisms not yet investigated by the scientific community and might be hosting new interesting compounds. In the same token, research towards the isolation of new bioactive compounds are being undertaken by the University of Mauritius, in collaboration with the Mauritius Oceanography Institute and other local and international institutions.

4. Study of the lagoon-beach interactions at specific sites around Mauritius for a better control of coastal erosion

The main aim of the project is to characterise processes leading to coastal erosion at specific places around Mauritius through a geomorphologic study of the beach in conjunction with a hydrodynamics and sediment dynamic study of the lagoon.

The goals of this study shall be achieved through the following specific objectives:

1. Review of previous scientific work carried out in the lagoons around Mauritius.
2. Time series measurement of the dynamical regime of the region under study, including bathymetry, currents, waves and tides.
3. Quantitative and qualitative analysis of bottom sediment, suspended particulate matter and beach composition.
4. Time series measurement of beach profiles
5. Determination of the sediment budget for the reef-lagoon-beach system under study and determination of the beach evolution.
6. Mapping of the beaches and lagoons using GIS
7. Develop an understanding of the hydrodynamic processes and circulation patterns.

8. Production of bathymetric and morphological charts for the regions under study.

Promotion of international cooperation

The Mauritius Oceanography Institute also plays an important role in promoting international cooperation in the field of marine scientific research. MOI is the focal point for the Intergovernmental Oceanographic Commission of UNESCO, a member of the Indian Ocean Global Observation System (IOGOOS) and the Agulhas and Somali Current Large Marine Ecosystem Steering Committee.

2.3 STATUS ON THE IMPLEMENTATION OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

CITES has been effective in Mauritius since 27 July 1975.

The convention requires that the Government designates Management Authorities and Scientific Authorities for the purpose of granting import/export permits and certificates.

The Conservation Unit and the National Parks and Conservation Service (NPCS) are both the Management Authority and Scientific Authority. The Management Authority grants permits or certificates for the import and export or re-export of CITES prescribed species on behalf of the state party. The NPCS issues permits for the export of monkeys, blood samples of birds, leather, etc and submits annual reports to the Secretariat regularly.

The CITES provisions are incorporated in the Wild Life Regulations were proclaimed in 1998

2.4 STATUS OF THE IMPLEMENTATION OF THE CONVENTION ON BIOLOGICAL DIVERSITY

Mauritius signed the Convention on Biological Diversity (CBD) on 10 June 1992 and became the first country to ratify it on 04 September 1992. The CBD entered into force on 29 December 1993.

The Ministry of Environment and NDU is the national focal point for the Convention and the National Parks and Conservation Service (NPCS) of the Ministry of Agriculture, FT & NR is the technical focal point.

The main objective of the Convention is the conservation of the biological diversity of plants and animals species and to promote sustainable use of its components, and encourage equitable sharing of benefits arising out of the utilisation of genetic resources. Such equitable sharing includes appropriate access to genetic resources, as well as appropriate transfer of technology, taking into account existing rights over such resources and such technology.

- ❖ First National Report on CBD for the Republic of Mauritius was submitted to the CBD's Secretariat in 22 January 2001;
- ❖ Second National Report on CBD for the Republic of Mauritius was submitted to the CBD's Secretariat in 10 march 2003.

In a letter dated 20 December 2004, the Secretariat of CBD and the GEF has proposed that eligible country Parties may request GEF assistance up to USD 20,000 for preparing their third national report on Biodiversity.

The GEF Operational Focal Point UNEP has informed the Ministry that financial assistance for the project has been approved. A Memorandum of Understanding needs to be concluded and signed between UNEP and this Ministry.

Flora

The extent of actual native forest area remaining is estimated to only 2% of the original vegetation. Native biodiversity is now mainly confined to the south-western region of the island together with a few other remote areas on mountain regions and on offshore islets.

Fauna

Of the 44 species endemic land vertebrates (mammals, birds and reptiles), 21 are now extinct.

Eleven species of land birds have so far escaped extinction in Mauritius. Extensive conservation works, carried out both in captivity and through management in the wild, have saved three of the nine endemic bird species from extinction. Captive breeding and the release of captive bred or reared birds, as well as other management techniques such as supplementary feeding, provision and monitoring of nest boxes, double clutching, control of animal pests etc have been undertaken.

Forest and terrestrial biodiversity in Mauritius

4.1 Principal Measures to conserve and sustainable use forest and terrestrial biodiversity

- ❖ 16 Nature Reserves have been declared to preserve the native ecosystem.
- ❖ 9 extensively managed plots called Conservation Management Areas, ranging from 1.5 ha to 19 ha have been designated within the National Park
- ❖ Areas of forest on the Pas geometrique constitute 2,110 ha, of which 652 is managed by the Forestry Service
- ❖ An ex-situ collection of the more commonly used native medicinal plants have been established in the Sir Seewoosagur Ramgoolam Botanical Garden at Pamplemousses by Chinese mission team
- ❖ At present the consumptive use of biological resources is mainly restricted to forest plantations as no exploitation is allowed in the native forests.
- ❖ At Black River Gorges NP a visitor centre, an information centre, and three field research stations have been completed, whilst the Gerald Durrell Endemic Wildlife Sanctuary (ex-Captive Breeding Centre) has been expanded and improved.
- ❖ A substantial amount of research has been performed in forest biodiversity.

4.2 Policy and legislation

- ❖ National Forest Policy has been revised.
- ❖ Forest and Reserves Act 1983.
- ❖ Wildlife and National Parks Act 1993
- ❖ Establishment of a Wildlife and National Parks Advisory Council.
- ❖ Establishment of a National Parks and Conservation Service.
- ❖ Establishment and management of National Parks and other reserves.

5. Coastal and marine biodiversity

The following activities are being undertaken as part of managing the coastal and marine biodiversity :

- Marine pollution monitoring
- Marine ecosystem monitoring
- Physical oceanography
- Studies on Ecotoxicology
- Sand resources monitoring
- Monitoring of marine Parks
- Monitoring of marine reserves
- Setting up of marine parks infrastructures
- Scientific investigations and publications
- Extension and public relations
- Management and monitoring of fishing reserves
- Survey of islets around Mauritius
- Gear development and bathymetric surveys
- Training of fishermen
- Fish inspection service
- Coastal fisheries
- Offshore demersal fisheries
- Monitoring of fishing vessels
- Stock assessment (lagoon)
- Tuna fisheries
- Seed production
- Pond management and marine aquaculture extension
- Berri-rouge culture and development

6. Strategies and activities towards agricultural diversity

The ongoing activities in this sector include;

- Monitoring of viability of accessions in the genebank. Regular germination tests for seeds in storage are done to assess viability. This is followed by multiplication, regeneration and characterisation of accessions.
- Establishment of field genebanks for fruit species and tuber crops.
- Maintenance and management of sugar cane accessions in the field.
- Evaluation of accessions.
- Utilisation of gemplasm in sugar cane breeding programme.
- Release of new varieties of sugar cane
- Evaluation of palm species
- Training of students studying agriculture at degree level at the University of Mauritius.

- SADC Plant Genetic Resources Centre. This is a regional genebank for all the SADC countries. Mauritius joined this organisation in 1996. Each country is responsible for its own plant genetic resources activities and an annual planning meeting is held in Lusaka, Zambia to review the work in the sector and to discuss related issues.
- SADC project for the management of farm animal genetic resources in the SADC region.

2.5 STATUS ON THE IMPLEMENTATION OF THE PROTOCOL ON BIOSAFETY

The Protocol seeks to protect biological diversity from the potential risks posed by living modified organism resulting from modern technology.

The Genetically modified organism Act 2000 was enacted to comply with its obligations under the Biosafety Protocol.

- It provides that no person shall develop, use, market, produce, release into the environment, transit, import or export GMP unless he is a holder of a GMO permit.
- A National Biosafety Committee was set up to advise the Minister on all aspects concerning the importation, exportation, transit, development, research, production, use, marketing, sale and release of genetically modified organism.
- publish guidelines and a code of practice for all uses of GMO.
- Encourage public participation in decision making.
- Examine the effect of a GMP application on the environment, human and animal health.

2.6 Status on the implementation of UNFCCC at National Level

1. Mauritius signed the UNFCCC on June 1992.
2. Objective of Climate Change Convention is to stabilize the atmospheric concentrations of greenhouse gases at a level that would prevent dangerous interference with the climate system in

terms of global warming and sea level rise and also not to jeopardize human welfare and food production in future.

3. A National Climate Committee (NCC) was established in June 1991 to:
 - i. Monitor progress in the science of Climate Change
 - ii. Evaluate possible impacts of Climate Change on key sectors of the economy
4. NCC established five Working Groups to evaluate the impacts of Climate Change in the following sectors:
 - i. Agriculture
 - ii. Coastal Zone
 - iii. Energy and water resources
 - iv. Human health & welfare
 - v. Preparation of GHG Inventory
5. A Climate Change Action Plan was prepared & approved by Government in November 1998.
6. United States Country Studies provided support for capacity building (attending workshops) and for effecting the following studies:
 - i. Inventory for GHG for 1990
 - ii. Assessment of coastal vulnerability to sea level rise (at limited sites)
 - iii. Assessment of impacts of Climate Change on agriculture especially sugar cane
 - iv. Assessment of vulnerability of fresh water resourcesThe results of these studies were put in the National Initial Communication Report.
7. GEF provided financial support through UNEP to prepare the National Initial Communication in April 1999.
8. At the COP meeting in Kyoto since there was not much progress by the Parties to reduce GHG emission, the Kyoto Protocol was discussed and finalized. This Protocol has provisions for quantified commitments for the Annex I Parties for the reduction of GHG.
9. The Protocol will not take effect until it is ratified by 55% of Parties emitting at least 55% of the six GHG.

10. *Mauritius has already adhered to the Protocol.*
11. Although more than 55% of the Parties have signed the Protocol, the total emissions of these Parties did not exceed 55%, but recently it has been announced that Russia has decided to sign/ratify it. So now it is hoped that the Protocol will come into force soon.
12. In the local context an Implementation Committee on Climate Change was set up at the Ministry of Environment in March 2001. Six meetings of the above committee have been held so far.
13. In 2003, the recommendations of this Committee regarding promotion of solar water heaters and a kit for the use of LPG in vehicles through a loan of Rs 25 000 from DBM were made and approved by Government.
14. A sub Committee of the Climate Change Implementation Committee was set up in 2004 to:
- i. Review all activities/projects which have been undertaken by ministries, parastatal bodies and NGOs in the context of Climate Change
 - ii. Review current activities being undertaken in the context of the Climate Change
 - iii. Taking into consideration the measures outlined in the National Climate Change Plan to propose activities in the context of:
 - a) Mitigation
 - b) Adaptation in relevant sectors.
15. So far five meetings of the sub committee have been held to discuss progress achieved and work that need to be done in different sectors. When all the sectors have been discussed, a report will be prepared.
16. A survey has also been conducted among stakeholders to know what is being done in the context of CC. The result of the survey is at Annex II.
17. In brief the results of the survey show:
- i. Involvement of few organizations in activities concerning Climate Change:

- ii. The NTA is involved with sensitization regarding vehicles exhaust emissions and road side checks of vehicles.
- iii. AREU is involved in sensitization of farmers on optimum use of fertilizers, irrigation water and agricultural waste and associated research works.
- iv. Forestry Services are involved in reforestation
- v. CEDREFI is involved essentially in sensitization of the public and school children on use of water, electricity, reduction of waste etc.
- vi. Mauritius Alliance of Women does sensitization of women and students on preservation of the environment.
- vii. Ministry of Fisheries does field work on monitoring of coral reefs and marine ecosystems.

Achievements at National Level of the UNFCCC and Kyoto Protocol

1. Setting up of a National Climate Committee (NCC) in 1991.
2. A Climate Change Action Plan was prepared and approved by Government in November 1998.
3. The National Initial Communication of the Republic of Mauritius was prepared in April 1999
4. An Implementation Committee on Climate Change was set up at the Ministry of Environment in March 2001. Eight meetings of the above committee have been held so far.
5. A sub Committee of the Climate Change Implementation Committee was set up in 2004 to review all activities/projects which have been undertaken by ministries, parastatal bodies and NGOs in the context of Climate Change
6. A survey has also been conducted among stakeholders to know what is being done in the context of Climate Change.
7. A Clean Development Mechanism Office has been set up in 2003 at the aegis of the Ministry of Environment & NDU and comprises different ministries, parastatal bodies and co-opted members.
 - At present the CDM Office has been working on the proposal from the French Government to consider the

Compagnie Thermique de Belle Vue (CTBV) as an AIJ/CDM project

2.7 Status on the implementation of the UN Convention to combat Desertification

Mauritius signed the UNCCD on 19 March 1995 and ratified it on 11 January 1996.

The focal Ministry is the Ministry of Environment and the National Focal Point is the Conservator of Forests of the Forestry Service (Ministry of Agriculture, Food Technology and Natural Resources). Mauritius is in the process of formulating a National Action Programme (NAP). This is the first National Report being submitted by the Government of Mauritius to the UNCCD Secretariat.

The GEF has approved a Project Development Facility Block A for the elaboration of a medium-sized project for identifying the capacity needs of Mauritius for Sustainable Land Management. The medium-sized project has been finalized and will be submitted to GEF.

There exists in Mauritius several laws that take care of land degradation and sustainable land use. No specific act needs to be passed .

5.0 Conclusion

Given the different stages of implementation of the conventions, there are crosscutting priorities such as strengthening of the capacities of member states to meet their obligations or responsibilities under these agreements, enhancing membership of governments, public education, awareness, strengthened scientific basis for decision-making, and strengthened international partnerships. Mauritius being a developing country and facing the immense challenges of combining development with sustainability, resources and know-how are constraints that hinder effective compliance. We may during the discussions in the seminar gather information and experience of other state members in looking for possibilities to further implement the conventions mentioned above on a regional level.

Annex 1

International Conventions to which Mauritius is a Party

Convention on Biological Diversity 1992

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973
- Convention for the Regulation of Whaling 1946
- Plant Protection Convention 1971
- Convention on Fishing and Conservation of the Living Resources of the High Seas 1958
- Convention on the Continental Shelf 1958
- Convention on the Territorial Sea and Contiguous Zone 1958
- United Nations Convention on the Law of the Sea (UNCLOS) 1982
- Agreement relating to the Implementation of Part XI of UNCLOS 1996
- Convention on the Prevention of Pollution from Ships as 1973, as modified by the Protocol of 1978 (MARPOL) and Annexes I (oil), II (noxious liquid substances in bulk), III (harmful substances carried in packaged form), IV (sewage), and V (garbage)
- Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 and Protocol of 1976
- Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1971 and Protocol of 1976
- Convention for the Safety of Life at Sea (SOLAS) 1974
- Convention on the International Regulations for Preventing Collisions at Sea 1972
- Convention on Load Lines 1966
- Convention on Standards of Training and Certification of watch keepers (STCW) 1978
- Agreement on the Organisation for Indian Ocean Marine Affairs
- Agreement for the Establishment of the Indian Ocean Tuna Commission
- UN Framework Convention on Climate Change 1992
- Convention on the Protection of the Ozone Layer (Vienna) 1985
- Protocol on Substances that Deplete the Ozone Layer (Montreal) 1987
- Amendment to the Montreal Protocol (London) 1990
- Amendment to the Montreal Protocol (Copenhagen) 1992
- Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel) 1989
- Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water 1963
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil thereof 1971

- Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques 1977
- Convention on the Prohibition of International Trade in Waste with Africa (Bamako) 1991
- Convention to Combat Drought and Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, 1995
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) 1971
- African Convention on Conservation of Nature and Natural Resources 1968
- Convention for the Protection of the World Cultural and Natural Heritage 1972
- General Agreement on Tariffs and Trade (GATT) 1947
- Stockholm on Organic (Pops)
- Cartagena Protocol on Biosafety

THE STATUS OF ENVIRONMENTAL LAW AND POLICY: DEVELOPMENT AND IMPLEMENTATION IN THE REPUBLIC OF NAMIBIA

Prepared by Teofilus Nghitila

Summary

Namibia's legal framework has been largely inherited from Apartheid South Africa and as such most laws are based on Roman Dutch common law. Many environmental laws and subsidiary regulations are accordingly outdated and inappropriate to the needs of an independent Namibia. The lack of a coherent and comprehensive environmental law framework is indicated as a key constraint in terms of environmental management. Against this background, Namibia embarked on a four-year donor supported programme with the aim of updating, reviewing and revising the raft of environmental legislation previously enacted.

The Constitution of Namibia is one of the primary legislation in SADC region that provides for the responsibility to protect the environment. It states that "...the State shall actively promote and maintain the welfare of the people by adopting ... policies aimed at ... the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory."

The government of Namibia instituted via its Ministry, Wildlife and Conservation (now the Ministry of Environment & Tourism - MET) a process to far-reaching reforms of policies & laws within the environment sphere. This was an attempt to alleviate many of the constraints that the environment places upon people. These reforms also were to encourage the various innovative collaborative partnerships between key players in the environmental field, such as various Ministries with environmental interests within their areas of jurisdiction.

Various key legal instruments and policy documents, and International Conventions and Agendas which Namibia has acceded to &/or ratified, have helped to frame the conditions that have guided past and current developments within the environment: the Constitution (Article 95), the Convention to Combat Desertification (CCD), the Convention on Biological Diversity, Namibia's Green Plan, Namibia's Drought Policy; National Land Policy; this is to name a few of the most important ones. These have guided, and are guiding, a radical realignment of Namibia's policies and laws away from past models, and helped to create conditions whereby Namibia can deal with the, sometimes, severe constraints that operate within the Namibian environment.

POLICY CONTEXT

1. Namibia gained its independence in 1990. It has a very progressive Constitution; Article 95 (1) sets the stage for the formulation of policies and legislation that aim at safeguarding the country's natural resource heritage for the benefit of current and future generations. For these ambitious objectives to be realised, political will and individual commitment will need to be fostered, while necessary capacity will need to be developed at all levels and awareness created regarding the importance of environmental management for sustainable development.

Policy Framework

2. At the United Nations Conference on Environment and Development (UNCED) in 1992, the Government presented a Green Plan which led to subsequent development of the 12 Points Plan for Integrated and Sustainable Environmental Management. The National Development Plan (NDP) is the major policy tool guiding national development in all sectors of the country. NDP I covered the period 1995/1996 – 1999/2000, NDP II, covered the 2000/2001 – 2001/2005 and NDP III which is in the process of being finalised, will cover the period 2005/2006 – 2006/2010. Both NDP I and II place a considerable emphasis on the need for human resource development, highlighting the noticeable shortage of skilled human resources and the over reliance on imported human resources to fill existing gaps. Insufficient institutional and individual capacity was identified as a major constraint to development during the formulation of NDP II. Accordingly, NDP II places a major emphasis on investment in skills up-liftment, training and institutional development and on strengthening environmental education and awareness. In addition, NDP II calls for the enhancement of the information base to facilitate integrated environmental planning within government, as well as fulfilment of international environmental obligations.

3. The Government has compiled an indicative 30-year planning framework known as Vision 2030. It aims to provide a sound framework for sustainable development planning, creating a long-term perspective within which the future 5-year NDPs can be designed and monitored.

4. The Government compiled a National Assessment Report for the World Summit on Sustainable Development- 2002. The Report identifies the need for clearly defining the sectoral mandates of line ministries in order to strengthen coordination to avoid confusion, duplication and/or shortfalls in services provided. Recommendations pertaining to capacity building include: 1. capacity building to constitute at least 10% of all development programmes; 2. consolidation of an environmental and economic data base and improvement of data access for the public; 3. improvement in the quality of education; 4. development of local management capacities, so that outside expertise can be properly directed and managed.

Policies and Acts

5. Namibia's legal framework has been largely inherited from South Africa and

is based on Roman Dutch common law. Many environmental laws and subsidiary regulations are accordingly outdated and inappropriate. The lack of a coherent and comprehensive environmental law framework is a key constraint in terms of environmental management. Namibia has recently embarked on a four-year donor supported programme with the aim of updating, reviewing and revising the raft of environmental legislation previously enacted.

6. Several national policies and sectoral policies have come into effect over the past decade including policies setting out the framework for park and forestry management and planning, community involvement in tourism development, biodiversity management and research, land-use planning, combating desertification and others. Some of the relevant policies are listed in Appendix I.

Decentralisation

7. Recognising the shortfalls of highly centralised governance systems, the Government embarked on a decentralisation drive in 1997. The process is spearheaded by the Ministry of Regional, Local Government and Housing (MRLGH). In 2000, two important pieces of enabling legislation for decentralisation were enacted: the Decentralisation Enabling Act and the Regional Development and Equity Provisions Act. The Decentralisation Enabling Act provides for and regulates the transfer of functions, staff and funds to regional councils and local authorities, while the Regional Development and Equity Provisions Act aims to ensure equity is achieved in the pursuance of socio-economic development. With assistance from the UNDP/NORDIC Fund, the MRLGH compiled a Decentralisation Implementation Plan (DIP). DIP identifies a number of critical issues pertinent to implementation of the decentralisation programme, for example: definition of the roles and capacity of line ministries to facilitate the effective delegation of functions, the systematic development of management capacity and structures at regional and local authority levels, and the harmonization of legislation.

8. Many environmental management functions have been slated under the decentralisation plan for decentralisation in order to devolve resource management rights, responsibilities and functions to the local level. Functions likely to be devolved include rural water supply development and water management, management of communal lands, conservation, forest development and management, small mines development and management and rural electrification. It transpires that the local authorities and regional councils will play a major role in implementing the international environmental Conventions. Accordingly, there is an urgent need to clearly identify the capacity needs and priorities for environmental management across all tiers of government, at the systemic, institutional and individual levels.

Environmental Management Act

9. Namibia's Environmental Management Act is expected to be enacted sometime in 2006. This Act stipulates the establishment of Environmental Commissioner Office, which is expected to provide co-ordination services between ministries in the field of land use planning and environmental management.

INSTITUTIONAL ARRANGEMENTS

National Line Ministries

10. Following UNCED, the Government created a new Directorate responsible for providing broad environmental leadership, the Directorate of Environmental Affairs (DEA) with the mission: *to promote environmental protection, environmental planning and environmental coordination in support of sustainable and equitable use of natural resources and national development, and to protect the environment and human welfare from unsustainable, unhealthy and inappropriate practices.* This Directorate was placed within the Ministry of Wildlife and Tourism, at which point Cabinet decided to change the name of the Ministry to reflect its broader mandate, to that of the Ministry of Environment and Tourism (MET). The DEA was charged with placing the policy outcomes of UNCED and the aims of Agenda 21 on the Namibian political agenda. This Directorate, with the assistance of contractors and consultants representing a broad range of disciplines, works closely with other Government departments, NGOs, the private sector and CBOs to try and meet the inter-related social, economic and ecological challenges associated with the pursuit of sustainable development.

11. While various government institutions have assumed a lead role in the implementation of the relevant Multi-national Environmental Agreements, the multi-sectoral nature of most of the sub-issues that emanate from these agreements, usually demand the co-operation of more than one agency. Appendix VII summarises the roles of different government agencies. In view of the potential overlap in development planning functions between ministries, the Government established the National Planning Commission (NPC) to co-ordinate planning.

NGOs, CBOs and the Tertiary Institutions

12. There are approximately 200 national and international NGOs currently working in Namibia, of which around 20 are concentrating on the environment sector. There are about 50 community-based organisations, working mainly in the arena of natural resource management and tourism. The Namibian Non-Governmental Organisations Forum (NANGOF) is an umbrella body embracing about 100 national Namibian NGOs consisting of regional and national affiliates, working in a wide range of development areas. The goal of NANGOF is to facilitate the effective delivery of people-centred sustainable development in the country.

13. NGOs are playing a significant role in various arenas related to the environmental Conventions. In desertification, Namibia's Programme to

Combat Desertification (NAPCOD) is co-managed by the MET and the Ministry of Agriculture Water and Rural Development (MAWRD) in association with the Desert Research Foundation of Namibia (DRFN), the Namibian Economic Policy Research Unit (NEPRU) and the Namibia Nature Foundation (NNF). With regard to biodiversity, the Namibian National Biodiversity Programme is steered and implemented by a multisectoral National Biodiversity Task Force and 20 working groups (or projects with their own steering committees) consisting of a variety of government ministries, NGOs, tertiary institutions, CBO service organisations, unions and associations, and the private sector. Finally, the Namibia Association of community based natural resource management (CBNRM) Support Organisations (NACSO) represents a strong partnership of government, CBOs and NGOs working to support the development of communal area conservancies and other CBNRM initiatives.

14. Tertiary education institutions in Namibia, such as the University of Namibia, Polytechnic of Namibia and other vocational colleges, have a fundamental role to play in engendering capacity development in the country. Many of these institutes and subsidiary organizations (such as the Multidisciplinary Research and Consultation Centre (MRCC) of the University of Namibia) have been involved in on-going initiatives under the three Conventions, amongst other things by sitting on the steering committees of relevant national programmes.

Private Sector

15. The private sector, a primary utiliser of natural resources, has a significant role to play in spearheading environmental management in the country. The agriculture and tourism sectors are particularly important with regard to the maintenance of land quality and land based resources. The private sector in Namibia also has a relatively large contingent of expertise including a good pool of local consultants, which could contribute to the NCSA process.

National Initiatives

16. A range of initiatives are already underway focusing on capacity development goals under the biodiversity, climate change and land degradation/desertification areas and related fields such as decentralisation, HIV/AIDS and poverty reduction.

United Nations Convention on Biological Diversity (CBD)

17. The challenge for capacity development in this thematic area is accentuated by the fact that Namibia's wild resources are distributed across the country in different biomes. Namibia's national park system, which covers over 14% of the total land area, is not adequately representative of the four biomes in the country. The area of concentrated endemism is particularly neglected. Although freehold and community conservancies try to augment this gap, there is a dire need to reprioritise and reclassify nationally protected

areas. This collates to the need for appropriate capacity development across local spectrums in “hot spots” throughout the country. The Namibian government has adopted the principle that resource users are the best managers of the resources given that most rural communities rely on the use of biological resources for their existence. There is therefore now a shift away from a strict conservation approach to a more integrated approach focusing on livelihood diversification through the sustainable use and management of biodiversity. Appropriate capacity development activities geared to the management of different ecosystems are essential.

18. The Namibian National Biodiversity Programme is housed in the Directorate of Environmental Affairs (DEA). The National Biodiversity Task Force is represented by eight ministries and 15 departments within those ministries, two tertiary education institutions, parastatals and the private sector, and 10 NGOs and Unions. The 20 thematic working groups under the programme are housed in various ministries and other institutions. The programme has a number of on-going projects at the national level such as the National Tree Atlas Project, database and Red Data Book/Atlas production, and the Southern Namib Restoration Ecology (SNARE) Project. A range of research activities are also being undertaken.

19. The programme is also involved in several regional projects. The Southern Africa Biodiversity Support Programme funded by UNDP/GEF tries to promote the conservation and sustainable use of biodiversity in Southern Africa by strengthening regional biodiversity planning, interstate co-operation and information exchange. The Southern African Botanical Network (SABONET) Project also funded by UNDP/GEF has been assisting botanical institutions in 10 SADC countries to enhance their capacity to inventory, monitor and evaluate botanical biodiversity in the region.

20. UNEP/GEF rendered support for two biodiversity enabling activities, resulting in the Biodiversity Country Study (1998), an Interim National Report to the CBD (2000) and a National Biodiversity Strategy and Action Plan (2002). The National Biodiversity Strategy and Action Plan is a 10-year plan for biodiversity conservation in Namibia with concrete action plans for achieving the biodiversity goals. A Biosafety enabling activity was also carried out through UNEP/GEF from 1998 to 1999. The Government is currently finalizing the National Biosafety Framework for the protection of bio-genetic resources.

United Nations Convention to Combat Desertification (UNCCD)

21. Namibia’s Programme to Combat Desertification (NAPCOD) was launched in 1994. NAPCOD is an umbrella programme, housed at the Ministries of Environment and Tourism (MET) and Agriculture, Water and Rural Development (MAWRD), that accommodates a large variety of projects under its framework. A consortium of the Desert Research Foundation of Namibia (DRFN) and Namibia’s Economic Policy Research Unit (Nepru), two Namibian NGOs, is implementing the main components of the programme in support of the government initiative. NAPCOD steering committee members

include MET, MAWRD, Ministry of Lands, Resettlement and Rehabilitation (MLRR), MRLGH, NPC, Namibia Agricultural Union (NAU), Namibia National Farmers' Union (NNFU), and the Namibia Development Trust (NDT). NAPCOD is officially the National Action Programme (NAP) for the UNCCD.

22. NAPCOD's third phase started in 1999 and is ending in 2003. The main focus of NAPCOD III has been on strengthening capacity and enhancing drought preparedness amongst Namibia's communal and commercial farmers, and diverse private and public service organizations. Drought preparedness strategies include, for example, the enhancement of organizational capacity within communities, development and application of appropriate land uses and farm management strategies, agricultural product quality enhancement and diversification, investment in alternative livelihood development (supplementary to agriculture), development of economically and socially viable security and safety systems, and improvement of markets and marketing strategies. NAPCOD employs the FIRM approach (Forum for Integrated Resource Management) which places the community at the centre of decision making, i.e. the community defines what their needs are and then contacts the relevant service organisations for support.

23. Some of the principle projects being advanced under NAPCOD include the Bush Encroachment Project, the establishment of the Gobabeb Training & Research Centre, and the establishment of a national Counterpart Network, the Regional Awareness Project. A number of capacity development activities are also on-going such as the Natural Resource Accounts training, the Summer Desertification Programme targeted at students, Desertification 2000-2002 and SADC-DRFN Desertification Interact. Challenges still remain, particularly in terms of operationalising more integrated approaches that address the objectives of the biodiversity and desertification thematic areas.

United Nations Framework Convention on Climate Change (UNFCCC)

24. Namibia is characterised by high climatic variability, and vulnerability to drought. Although Namibia's green house gas emissions are insubstantial, its dependence on natural resources makes it particularly vulnerable to the effects of anthropogenic climate change. The impact of climate change in Namibia will be felt most by the most vulnerable sector of Namibian society i.e. the rural communities. Namibia has huge capacity constraints in terms of dealing with climate change mitigation and adaptation. The human resource base is very small and capacity development efforts must be geared to address this constraint amongst others.

25. Namibia signed the UNFCCC in 1995 and a Country Study was conducted and completed in 1998. The Study is composed of three separate documents, namely *A Greenhouse Gas Inventory; An overview of Namibia's vulnerability to climate change;* and *Emissions scenarios and mitigation options for Namibia.* The Initial National Communication to the Convention was completed in July 2002 and submitted to the UNFCCC on 8 October 2002.

26. The National Committee on Climate Change (NCCC) is housed in the Directorate of Environmental Affairs (DEA) in the Ministry of Environment and Tourism (MET) and is co-chaired by the National Meteorological Services. Current membership of NCCC includes the Ministry of Energy and Mines (MME), Ministry of Trade and Industry (MTI), Ministry of Agriculture, Water and Rural Development (MAWRD), NamPower, NamWater, the University of Namibia and private consultants.

Other Related Activities

National Capacity Building Assessment and Strategy

27. In 2000, the NPC conducted a National Capacity Building Assessment with assistance from UNDP and the World Bank. This analysed capacity building needs in both the public and private sectors as well as the educational sector, with a focus upon economic policy issues and economic development. NPC is also finalising a National Capacity Building Strategy for Namibia and a National Human Resources Plan 2000-2006. The former focuses on six key development areas namely, 1) the enabling environment, 2) the public sector, 3) the private sector, 4) civil society, 5) education, training and learning, and 6) HIV/AIDS and capacity building. The latter concentrates on building human resources to match the demand in various economic sectors including agriculture, fisheries, mining, water & electricity and tourism. These three documents provide an excellent analytical base for the NCSA.

Community Based Natural Resource Management (CBNRM) Programme

28. The 1996 Nature Conservation Amendment Act, granted landholders rights to establish conservancies and wildlife councils in communal areas. The Act uses conservancies as the means by which limited rights to manage and benefit from wildlife and tourism are given to a specified group of people living within communal areas. Namibia's CBNRM Programme started in 1995, seeking to improve the quality of life of rural Namibians by empowering people to care for their natural resources and to derive benefits from these resources. To date, 38,500 km² of land have been 'conserved' through the gazetting of 14 communal area conservancies, and at least 30 other conservancies are in various stages of development.

Environmental Information and Communication for Sustainable Development (Infocom) Programme

29. In response to increasing demand for environmental information, the Infocom programme was initiated in 1998. The Programme aims to: 1. compile baseline information on environmental processes and issues in Namibia; 2. increase public awareness of the environment; 3. make environmental information available to decision-makers; and 4. promote the wise use of this information in environmental management. It currently consists of three projects, namely the Regional Environmental Profiles Project, the Information and Communication Service for Sustainable Development in Namibia Project, and the Atlas of Namibia Project.

World Summit on Sustainable Development (WSSD)

30. Work on the Namibian preparatory process started early in 2001. A multi stakeholder approach was adopted at the beginning of the process and currently the process is very integrated in the sense that the key stakeholders i.e. government ministries, NGOs, and the private sector are all involved. A national secretariat was established, housed at the Desert Research Foundation of Namibia. The National Assessment Report has been finalised and its formulation involved a very participatory approach, with the funding coming from UNDP/Capacity 21. The Report analyses Namibia's achievements and shortcomings following UNCED, and therefore constitutes ideal background material for the NCSA.

Poverty Reduction Efforts

31. It is impossible to ignore environmental factors in any poverty reduction effort, given the intrinsic link between poverty and a host of issues such as land degradation, water, energy, biodiversity preservation, and climate change. UNDP and the World Bank's advocacy and systematic approaches to poverty issues have resulted in the drafting of the Poverty Reduction Strategy for Namibia, which was approved by Cabinet in 1998. The concomitant National Poverty Reduction Action Programme (NPRAP) for 2001-2005 was drafted in 2001 with support from UNDP and the Swedish International Development Agency (SIDA) and has subsequently been integrated into the NDP II. However, the natural resource management aspect is generally weak in the NPRAP, with strategies and targets related to the Convention thematic areas being limited to Community Based Natural Resource Management (CBNRM).

Integration between Thematic Focus Areas

32. Namibia has done a substantial amount of work with regard to the implementation of the three Conventions, in particular in the field of biodiversity and land degradation. The national programmes are well on their way and the ground laying foundations have been established. The Government of Namibia has recognised however that these efforts need to be more effectively coordinated and integrated to optimise capacity utilisation and reduce duplication in effort as the country cannot afford to waste its extremely limited finances, human power, and time. Integration of Conventions related work is regarded as a priority, recognising that:

- The information, reporting & research needs of many of the Conventions are very similar
- Several of the Conventions address land or resource degradation in a compatible way
- Integrated information systems can best predict and monitor environmental change
- Namibia's size makes it well suited to pioneering national integration efforts.

33. One of the key considerations for finding synergies is the cross-cutting

and inter-related nature of many of the thematic areas of the three Conventions. Some of the relevant issues are:

- Awareness and information exchange regarding the importance and relevance of the various Conventions to Namibia's sustainable development and to the livelihood security of Namibia's rural communities.
- Institutional mandates, co-ordination and processes for interaction and cooperation between all stakeholders
- Institutional management and performance
- Information management, monitoring and observation
- Mobilisation of science in support of decision making
- Individual skills and motivation
- Empowerment of natural resource users to manage resources sustainably

APPENDIX I

Examples of Policies and Legislation Relevant to the NCSA

- National Agriculture Policy
- National Water Policy
- National Environmental Health Policy
- National Policy and Strategy for Malaria Control
- National Population Policy for Sustainable Human Development
- Regional Planning and Development Policy
- Marine Resources Act
- Inland Fisheries Bill
- Inland Fisheries Policy
- Aquaculture Policy
- Namibian Trade Policy
- Namibia's 12 Point Plan for Integrated and Sustainable Environmental Management
- The Tourism White Paper and the Tourism Policy
- Land Use Planning Policy
- Environmental Assessment (EA) and the Draft Environmental Management Act (EMA)
- The Forest Act
- Conservation and Biotic Diversity and Habitat Protection Policy
- Wildlife Management, Utilization and Tourism in Communal Areas
- National Policy on Research, Science and Technology
- National Land Policy
- Communal Land Reform Bill
- White Paper Science and Technology Policy
- Biosafety Policy
- Prospecting and Mining in Protected Areas and National Monuments
- Community Based Natural Resource Management (CBNRM) Policy
- Integrated Water Resource Management and Water Demand Management Policies
- Environmental Management Bill and Pollution Control and Waste Management Bill (both still to be passed by parliament)

APPENDIX II

Key government agencies responsible for land use planning and natural resource management in Namibia

	Summary of the main functions of relevant Departments / Directorates
Ministry of Agriculture Water and Rural Development (MAWRD)	<p>Department of Agriculture Optimise agricultural production, increase value-adding & expertise, reduce imports Ensure local and national food security & provide drought relief</p> <p>Department of Water Affairs Bulk water supply and water distribution for humans, livestock & irrigation</p> <p>Directorate of Rural Development Reduce poverty and promote equitable distribution of wealth Promote equitable access to productive resources & halt rural-urban migration</p> <p>Directorate of Veterinary Services Controlling of stock diseases & improvement of stock health</p> <p>Directorate of Extension and Engineering Assisting communal & commercial farmers and facilitating feasibility studies</p> <p>Directorate of Agriculture, Research & Training Research, planning, training & community-based programmes (e.g. SARDEP)</p> <p>Directorate of Planning Policy, planning, economic analysis & evaluation of proposals</p>
Ministry Environment and Tourism (MET)	<p>Directorate of Parks and Wildlife Management of game reserves, extension, law enforcement & research</p> <p>Directorate of Scientific Services Specialist research, management planning, permit administration, information</p> <p>Directorate of Forestry Reforestation, extension, research, fire management, forestry control</p> <p>Directorate of Environmental Affairs Policy, research, CBNRM, EIA, pollution, legislation, Conventions, planning</p> <p>Directorate of Tourism Tourism planning and regulation</p>
Ministry of Fisheries and Marine Resources (MFMR)	<p>All Directorates Promote sustainable utilisation of marine resources & law-enforcement Research, setting of quotas & monitoring of resource & environment, EIAs</p>
Ministry of Mines and Energy (MME)	<p>Directorate of Mining and Geological Survey Promote & facilitate exploration & mining, and increase mineral production Research and monitoring (e.g. surveying & mapping), Law-enforcement, EIA's</p>
Ministry of Lands Resettlement & Rehabilitation (MLRR)	<p>Directorate of Rehabilitation and Resettlement and Land Resettle landless (esp. disadvantaged) citizens & rehabilitate the disabled Procurement and allocation of land for the above Land use planning and allocation of concessions & Permission to Occupy</p>

Ministry of Regional & Local Government & Housing (MRLGH)	Directorate of Regional and Local Government and Traditional Authorities Coordination Town & regional planning, zoning, and evaluation of development proposals Support to Regional Governors regarding the above
National Planning Commission (NPC)	Directorate of Development Planning Development planning coordination Directorate of Development Cooperation Donor assistance coordination

COUNTRY REPORT - SEYCHELLES

ENVIRONMENTAL POLICY AND REGULATORY FRAMEWORK.

Introduction

The Republic of Seychelles consists of 115 islands, lying about 4 degree South of the Equator and about 630 to 1300 miles off the Eastern coast of Africa. The islands have coralline and granitic characteristics.

Currently, the main challenge for the government of Seychelles has been to balance the need to conserve its natural resources against development in order to sustain the country's growing population's needs. To date, research has shown that the islands hosts about 1500 known species of endemic plants and animals. About 47 per cent of the land area has been devoted as 'protected areas', considering that our total area is about 458 sq km. Indeed, there are numerous legislations in place to protect the species, sites and habitats. The Ministry of Environment and Agriculture in collaboration with quasi and non-governmental organizations, work closely in the implementation of these laws.

On an international level, Seychelles signed the Convention for Biological Diversity in 1992 and this led to the Cartagena Protocol for Biosafety in August 2004. Further examples of roles we played with the other conservation-minded nations in strengthening international cooperation and programs on environment are listed below:

- The Seychelles initiated the proposal for an Indian Ocean Sanctuary for whales and other marine mammals and played a key role in guiding the proposal successfully through the International Whaling Commission,
- The Seychelles participates actively in the development of the Indian Ocean Commission and its conservation work on the islands of the Southwest Indian Ocean,
- The Seychelles takes an active part in UNEP activities. For instance, in 1979 the Seychelles launched the original proposal for what is now the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

Following the Rio convention in Brazil in the 1990's, the government demonstrated its commitment with the Environmental Management Plan 1990-2000, succeeded by the Environment Management Plan 2000-2010.

POLICIES

The Environment Management Plan (EMPS) 1990-2000

This was set up with the assistance of UNDP, UNEP and the World Bank. The various projects that issued from its implementation achieved a 90 per cent success rate. It consisted primarily of inventory and monitoring duties such as:

- **The Control of Import and Export of Plants and Animals** to control the import and spread of exotic species and the export of endangered species and other wildlife.
- **The Conservation Strategy and National Parks Management Plans**
- **Preservation of Endemic Tree Species and Eradication of feral goats.**
- **The Protection of Endangered Sea Turtles Project** to tackle turtle exploitation leading to overall protection of all species of turtles.
- **Wildlife Inventories and Protection of Rare Species** were implemented with assistance from Non governmental organizations.

The Environment Management Plan (EMPS) 2000-2010

This established Seychelles as the first country in Africa to prepare the second generation of environmental management plans. As its 'true north', it sought to understand, monitor or cope with emerging environmental issues and gained its strength through the participation of all the stakeholders. The overall agreement is that progress is audited, monitored so that revision can be made on an annual basis. This would ensue in continued corporation amongst the stakeholders and innovations that would lead to sustainable development.

The National Biodiversity Strategy Action Plan

Presented in 1997 to show its commitment to the Convention on Biological Diversity. The NBSAP summaries the descriptive data and information in the Biodiversity assessment, identifies the country's vision for biodiversity and its objective, the needs and gaps, and the action needed to bridge the gaps. It also provides a timetable for action over a period of 5 years, the funding requirements, project descriptions, and the list of partner organizations involved in implementation.

The Seychelles's National Biodiversity Strategy and Action Plan were published as part of the country's commitments to the Convention on the Biological Diversity (CBD). It identifies priority areas for management. These have been reviewed during the current planning process and are as follows;

- Effective conservation is currently handicapped by lack of comprehensive and published policy Biodiversity law is a mosaic, in various pieces of legislation, some quite dated.
- There is currently a general lack of leadership in this area and mechanisms to foster it are mostly defunct except for one NGO-initiated forum,
- Various highly invasive species are causing major ecological imbalances in the Seychelles. This does not only include animals and plants but also bacterial and fungi species such as Takamaka wilt species,
- Certain critical habitats are under threat especially from development in the inner, developed islands. These include wetlands and ravine systems. There are various outstanding issues to do with management of habitats and species on outer islands that also need attention,
- The negative impact of other sectors e.g. land use, tourism, communication, has been proven to be highly significant in the plan period,
- Many of the reasons for destruction of biodiversity lie in the fact that people do not usually place monetary or other form of value on biodiversity and conservation,
- Conservation education and public information dissemination is on going, with many organizations involved, but their comparative advantages and the existing environment education committee are not being taken advantage of to deliver an integrated package.

A propose Biological Diversity and Conservation Area Act as been drafted and submitting for approval. It contains several provisions of common elements. The most important common factor is the fact that they are derived directly from commitments which the Seychelles has acceded to in international conventions.

Section 3 (fundamental purpose): This section, in keeping with the provisions of the new constitution, specifically sets forth the general objectives and commitments of the government under the propose Act.

Inclusion of stronger fundamental purpose provisions within the body of the propose Act is intended to reflect the importance of these undertakings, shows by the fact that only the National Assembly may alter this basic commitment to conservation and of biological diversity as stated.

Most of these statements are drawn directly upon the Rio Declaration, the biodiversity convention, the Nairobi Convention and the Africa Convention. They have been stated in a manner that encompasses the overlapping nature of various conventions, and makes them to the action of the Ministry of Environment and Natural Resources.

REGULATORY FRAMEWORK

The legislation is either specific environmental laws or duties specific to the environment prescribed in other laws. There are references in the Penal Code and the Constitution as to environmental protection.

Legislation dating back to early twentieth century has been updated through amendments in order to enhance the protective powers e.g. The Plant Protection Act, 1996.

Through the recommendations of the EMPS, the Environmental Protection Act was enacted in 1994 to strengthen the role of Environmental Impact Assessment. In line with international conventions, the Pesticides Control Act 1996 strengthened control of the importation and use of hazardous substances such as chemicals and pesticides.

Though there are still international conventions that have not been given legal effect. The oil spill contingency plan has been acted upon, together with neighboring states but no legislation has been introduced yet. Similarly, the International Convention for the Prevention of Pollution from ships have led to the planning of waste holding facilities, but it has not been viewed as a priority, hence no construction has ensued.

The establishment of the environment enforcement structure has helped the effectiveness and coordination of environment enforcement tremendously. This has been proven by the number of arrest, prosecution and eventual convictions, which have been recorded over the years and the improvement in the number of wildlife especially that of sea turtles migratory birds.

There is still a need for expertise in investigation, collection of evidence, inspection and technology to improve enforcement especially in the area of illegal trade of protected species, pollution violation, use of illegal refrigerant and the control on protected area.

In the area of justice, there is a need for capacity building for magistrates and prosecutors to ensure that they adopt a better approach to environment legislations and regulations and enabling them to understand the role played by the other environment enforcement agencies

CONCLUSION

The Seychelles, environment protection and sustainable use of natural resources are not just a policy choice and preference. They have always been a major part of the country's history and heritage. Today they are imperatives for its health, and economic welfare. The Environment Management Plans and the National Biosafety Plan are proofs of this commitment.

Yet the Seychelles government still believes that there is still much to do in terms of improving the use of technology and coordination at regional level to better enforce environmental laws and regulations. The laws themselves remain fragmented and some international conventions have yet to be introduced into laws. The results as to the

measure of effectiveness of public education remain ambivalent. It is hoped that the EMPS will address the lacunas in the laws and address the deficiencies in its implementation.

THE STATUS OF ENVIRONMENTAL LAW AND POLICY IN THE IN THE KINGDOM OF SWAZILAND

INTRODUCTION

This Paper is a discussion of the status of environmental law and policy in the Kingdom of Swaziland. The first part of the paper is an overview of the Kingdom focussing on its economy as well as the environmental problems that it faces. The second part will cover the role of the Swaziland Environment Authority in co-ordinating all bodies concerned with environmental matters in the Kingdom. It will also cover the existing legislative/regulatory arrangements and policy and the status of implementation of key Multilateral Environmental Agreements (MEAs).

Compliance with international environmental obligations is crucial for each party to international environmental agreements in order to make such agreements effective and thus avoid disputes. However, some international environmental obligations are stringent for certain parties, especially the developing countries; hence compliance becomes difficult. The Kingdom of Swaziland is no exception.

Implementation of an international environmental agreement involves the adoption or development of national legislation or administrative or other measures.

OVERVIEW OF THE KINGDOM OF SWAZILND

The Kingdom of Swaziland is located in the Southern Hemisphere with a total area of Seventeen Thousand Three Hundred and sixty-three square kilometers and an estimated population of about one million. The Kingdom is completely landlocked, bordered by the Republic of South Africa on the North, West and South and the Republic of Mozambique in the East.

The economy of the country is based on agriculture and agro-industry; hence it has a comparative advantage on products like wood pulp, sugar and fruit canning, which are the leading exports.¹ Industrial activity includes the manufacture of paper from wood pulp, distillery, sugar production, textiles, crafts and others. The major international markets include the Republic of South Africa, the European Union, and the United States of America.

Like most developing countries, the Kingdom is faced with the challenge to address the environmental challenges brought by certain development programs. These include the clearing of land for agriculture, excavation of landscape for construction of roads, the establishment of processing factories without comprehensive waste management plans. For instance, industries like distilleries produce hazardous waste that is disposed of into rivers thus adversely affecting the quality of water and the living resources therein. The pollution of watercourses by industrial waste is

¹ SEA, Swaziland Environment Action Plan, Vol. 1 (August 1997) p. 42

attributable to poor industrial planning which results in inadequate provision for treatment of waste before it is discharged into the environment.

Early national environmental laws related to specific aspects of the environment and dealt specifically with natural resource sectors like water, forests, fisheries, minerals and wildlife administered by different Government Ministries and Departments. These were mainly the Ministry of Natural Resources and Energy and the Ministry of Agriculture and Co-operatives (MOAC). There was basically no co-ordination between the different sectors. Examples of such legislation include the Forest Preservation Act, 1910, the Wild Birds Protection Act, 1914, the Protection of Fresh Water Fish Act, 1937, the Natural Resources Act, 1951, the Flora Protection Act, 1952 (since repealed by the Flora Protection Act, 2001), the Game Act, 1953 as amended, the Water Act, 1967 (Since repealed by the Water Act, 2003). The Water Act, 2003 provides inter alia, for the control of pollution of water by effluent.² The Flora Protection Act, 2001 provides for the protection of indigenous flora through a permit system.

THE ROLE OF THE SWAZILAND ENVIRONMENT AUTHORITY

Following the United Nations Conference on Environment and Development (UNCED) the Swaziland Environment Authority (SEA) was established by the Swaziland Environment Authority Act, 1992. The SEA is the overall coordinating body for incorporating environmental factors into Swaziland's development process. The SEA is also responsible for policy and Legislation development, research and training, environmental monitoring and management, raising environmental awareness and setting environmental standards. As the coordinator the SEA executes some of her functions through other government ministries/departments, parastatals or municipalities.

The SEA is faced with a number of constraints in its operations and among others these are:

Resources

1. Inadequate human resources to implement legislation effectively
2. Inadequate skills in some areas of environmental management (prosecution by inspectors where legislation stipulates so)
3. Lack of capacity – the MET is unable to monitor air pollution because there is no equipment to do so. Monitoring is done based on observation e.g. black or white smoke as opposed to measuring parameters stipulated in the Regulations

Existing Legislative/Regulatory Arrangements

In an effort to integrate environmental considerations in development policy, in line with the concept of sustainable development, the country has made considerable progress in formulation and implementation of environmental policies and legislations. These are namely the Environmental Management Act (EMA), 2002, Environmental Audit. Assessment and Review Regulations (EAARR), 2000, Waste Regulations, 2000, Ozone Depletion Substances, 2002, Draft Water Pollution Control Regulations, 1999, Draft Air Pollution Control Regulations, 1999, Draft Integrated

² Part VIII OF THE Water Act, 2003

Pollution Control Regulations, 1999, Draft Biosafety Legislation, 2005 and the Draft Environmental Policy.

Environmental Management Act (EMA), 2002

This Act promotes the enhancement, protection and conservation of the environment. It promotes environmentally friendly sustainable management of natural resources and all related matters. The main features of this legislation are a system of Integrated Pollution Control, Waste Management and Public Participation in decisions relating to the environment.³ It obligates the Government to co-operate with the international community in the protection of the environment. It obligates the Minister to cause to be ratified an MEA as soon as it is signed and give effect to it through national legislation.⁴

Environmental Audit, Assessment and Review Regulations (EAARR), 2000

These regulations are a tool for sustainable development for existing establishments and new development. Existing establishments that are a threat to environmental sustainability are listed and have to carry out environmental audits of their processes. For all new development an environmental assessment is to be done and Comprehensive Mitigation Plan prepared. The regulations outline the procedures for environmental audits and environmental assessment.

Waste Regulations, 2000

These regulations regulate the management of solid and liquid waste disposed of on land. Management of solid and liquid waste is outlined in the regulations. No person may collect, transport, sort, recover, treat, store dispose of or otherwise manage waste in a manner that is likely to cause negative impacts. No person shall dispose of commercial or industrial waste or household waste produced in urban areas, except at an approved waste disposal facility. It also prohibits the import of hazardous waste into the country. Some responsibilities pertaining waste are executed by the Ministry of Housing and Urban Development.

Ozone Depletion Substances Regulations, 2002

The objective of these regulations is to obtain a total ban of consumption of chlorofluorocarbons (CFCs) by 2010. They control consumption of ozone depleting substances (ODS) and intend to bring into line with the phase out schedule as outlined in the Montreal Protocol. They make a provision for licensing based on the phase out schedule which uses a quota system. They also control usage of equipment and export of agricultural products that use ODS.

Draft Water Pollution Control Regulations, 1999

These regulations aim to monitor water quality in the country through empowering institutions with monitoring obligations. The discharge of effluents exceeding standards prescribed in the regulations is prohibited and every operator who routinely discharges effluent into the environment is required to take all reasonable measures to avoid or mitigate any damage which may result from such discharges. Water quality standards are prescribed in the regulations. Water Pollution Control and monitoring

³ Parts V, VI and VIII of the Environment Management Act, 2002

⁴ Part VII of the Environment Management Act, 2002

is done by the Swaziland Water Resources Branch and Swaziland Water Services Corporation

Draft Air Pollution Control Regulations, 1999

These regulations aim to monitor air quality in the country through empowering institutions with monitoring obligations to ensure a high level of protection of the air quality. The regulations prohibit the emission of dark smoke from commercial or industrial facilities. Operators who routinely emit dark smoke to the atmosphere must notify the SEA on the nature of the emissions and may require that the operator keeps records of such emissions. These regulations prescribe air quality standards for a variety of pollutants. Air Pollution Control and monitoring of the atmosphere is done by the Meteorological Services department in the Ministry of Public Works and Transport.

Biosafety Legislation (draft), 2005

This legislation provides a guide for introduction, management and safe use of genetically modified organisms. Institutional arrangements, public participation, compliance and enforcement issues are outlined in the legislation. This legislation will be implemented by the SEA and the MOAC.

Multilateral Environment Agreements (MEA's)

Convention on Biological Diversity (CBD)

Ratified: 9 November 1994

Focal Point: Swaziland Environment Authority

Steering Committee: Among the first activities to be undertaken after ratification was the preparation of the Biodiversity Strategy and Action Plan (BSAP) starting in 1997. After the completion of the BSAP the steering Committee became the implementing body for the biodiversity programme and this was called the Biodiversity Programme Implementation Committee (BPIC).

Public Participation: First national workshop was held in 1997
Second national workshop was held in 1998
Several workshops have been held for the different components of biological diversity e.g. Invasive alien species

Reporting to COP: First report was produced in 1999
Second report was produced in 2004
Third report was produced in 2005

National Inventories: - BSAP in 1999 (this consisted among other aspects a national floral and faunal inventory.
- Red Data Lists

Implementation of Programme Recommendations:

- Through the Environmental Audit, Assessment and Review Regulations of 1996. These were updated in 2000
- A National Biodiversity Strategy and Action Plan was prepared in 2001
- Environment Management Act, 2002
- Biodiversity Conservation and Participatory Development Project (2004)
- Preparation of the draft National Biosafety Policy and Legislation (2005)
- Partnership for the Development of Environmental Law and Institutions in Africa (PADELIA), 2005

Convention to Combat Desertification (CCD)

Ratified: 7 October 1996

Focal Point: Swaziland Environment Authority in 1994 and then the Land Use Planning Section (MOAC) in 1996

Steering Committee: The National Steering Committee for Desertification (NSCD was established in 1998 and an NGO CCD Task Force in 2004

Public Participation: National workshop was held in 1996
National Forum was held in 1997

Reporting to COP: First report was produced in 1999
Second report was produced in 2002
Third report was produced in 2004

National Inventories: None

Implementation of Programme Recommendations:

- CCD National Plan was produced in 1999
- The CCD National Plan was reviewed in 2002
- Implementation of a Integrated Dryland Development Programme was initiated in 2003
- A Master Plan for Rehabilitation of Degraded Lands was produced in 2004

Convention United Nations Framework Convention on Climate Change (UNFCCC)

Ratified: 7 October 1996

Focal Point: Swaziland Environment Authority in 1996 and later the National Meteorological Service in 1998

Steering Committee: A UN FCCC Steering Committee was established

Public Participation: A national workshop was held

The second national communication has begun and three stakeholder workshops have been held

Reporting to COP: A report for the initial national communication was produced in 2002

National Inventories: Greenhouse gas inventory was conducted
The Initial National Communication

Implementation of Programme Recommendations:
- Self assessment / stocktaking exercise on climate change (2005)

Cartagena Protocol on Biosafety.

The country is a party to the **Cartagena Protocol on Biosafety**.

Ratified: The country is in the process of ratifying the Protocol

Focal Point: Swaziland Environment Authority and MOAC

Steering Committee: National Coordination Committee was established in 2003

Public Participation: First national workshop was held December 2002
The second national workshop was held in August 2005
For purposes of education and awareness regional workshops were held in June 2005

Reporting to COP: No report yet

National Inventories: Policies and legislation relevant to biotechnology and biosafety
Status of Biotechnology in the Country
Level of awareness on biotechnology and biosafety in Swaziland.

Implementation of Programme Recommendations:
Training on Risk Assessment for stakeholders and experts
Preparation of the Biosafety policy and legislation.

Convention on International Trade In Endangered Species

Swaziland is party to the CITES. The Convention was ratified in January 1997.
More information on its implementation will be provided at a later stage in October.

United Nations Convention on the Law of the Sea (UNCLOS)

The country has not yet ratified the **United Nations Convention on the Law of the Sea (UNCLOS)**. There is no national legislation on this subject. However, the country is getting technical assistance from the Commonwealth Secretariat to implement the convention. At a Commonwealth Seminar held in the country in June 2005, there were participants were taught on the rights and duties of landlocked states under the convention. A follow up seminar on the convention will be held in Lesotho later this year, where all the invited States are expected to have ratified the convention. The

relevant Ministry has been advised to cause the convention to be ratified prior to the forthcoming seminar so that the country can benefit from the assistance rendered by the Commonwealth Secretariat.

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