

Environmental & Sustainability Studies (ESS) 122

Lecture 7 Biodiversity and the Law

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UNIVERSITY *of the*
WESTERN CAPE

A place of quality, a place to grow, from hope to action through knowledge

CONSERVATION OF BIODIVERSITY

INTRODUCTION

- BIODIVERSITY (definition)
 - Different variations of living organisms including terrestrial (living on land) , marine and other aquatic ecosystems.
 - Differences within species, between species and ecosystems
- IMPORTANCE
 - It requires conservation because of its importance for
 - evolution purposes
 - maintaining life-sustaining systems of the planet
 - It provides so called ecosystem services which are crucial for human survival, e.g. food, fresh water, & pollination.

INTERNATIONAL ARENA

- May 2002 sixth conference of Parties to the Convention on Biological diversity.
- Parties agreed on Biodiversity targets
 - Which aim
 - » At the reduction of the current rate of biodiversity loss at global, regional and national level to contribute to poverty alleviation and to the benefit of all life on earth.
- This goal has not been met as there is still an indication of continued decline in biodiversity in all three of its main components
 - » Genes
 - » Species
 - » Ecosystems
 - This includes
 - The loss of forests
 - Continued decline in crop and livestock genetic diversity
 - Habitat change, overexploitation, pollution, invasive alien species and climate change are five main pressures directly driving biodiversity loss, and these are all either constant or increasing in intensity

BIODIVERSITY IN SOUTH AFRICA

- INTRODUCTION

- South Africa is rich in biodiversity, it ranks as the third most biologically diverse country in the world.
- Thus conservation of biodiversity in South Africa is important, not just for this country but globally.
- RSA has enacted a number of National Acts dealing specifically with the conservation of biodiversity.
- The one which stands out is the National Environmental Management: Biodiversity Act, which is aimed at implementing the Convention on Biological diversity

COMMON LAW

(not made by parliament or government,
unwritten law)

- RSA mixed legal system, Roman Dutch and Common law
- Consequences for conservation is that any animal not within physical control of a person is not protected from being hunted or captured by any other person.

GAME THEFT ACT 105 OF 1991

- The common law amended so that game farmed game remained property of the person who keeps or holds game
- They won't lose ownership of the game if it escapes from enclosed land, kraal or vehicle.
- The Act also prohibits any person from entering another person's land who has the intention to steal or luring game away from another person.
- It also provides the court with the power to award compensation for theft or malicious damage to game

NEM : BIODIVERSITY ACT 10 OF 2004

- Based on the **white paper** *on the Conservation and sustainable use of South Africa's Biological Diversity*
- Its objectives are to provide for the management and conservation of South Africa's Biodiversity through a number of mechanisms
 - Provides for equitable access to resources
 - Protection of species and ecosystems that require national protection
 - The sustainable use of indigenous biological resources
 - The fair and equitable sharing of benefits arising from bio prospecting indigenous biological resources
 - Act provides for the establishment of South African National Biodiversity Institute (SANBI)

Interpretation, objectives and application of the Biodiversity Act

- Objectives are to
 - To give effect to the ratified international agreements relating to biodiversity which bind South Africa
 - The provision for co-operative governance in biodiversity management and conservation
- It puts Biodiversity resources in the trust of the state (public trust doctrine)

RSA National Biodiversity Institute

- The act also establishes the national biodiversity institute in **chapter 2**.
- Sets out
 - Its governance structures
 - Its operating procedures
 - Details of administration and financial matters
 - Its powers over national botanical gardens.
- Functions also includes the monitoring and reporting on biodiversity matters in south Africa

- **CHARACTERISTIC FEATURES**

- It has to keep a **record** of all biodiversity in RSA to ensure that biodiversity resources survive.
- Promote **research** of all kind – must make taxonomy of all SA biodiversity resources
- **Oversee and overlook benefit sharing** when biosphering takes place as well as manage the process

Biodiversity planning and monitoring

- **In chapter 3 of the Act**
- Responsibility of the Minister
- Mechanism for management of biodiversity in SA

- Biodiversity management plans
 - Anyone can approach MINISTER to establish a protected environment, usually done from the point of view of civil initiative.(involves land owners who identify unique features on there property)
 - Such initiatives taken by people or state, they are identified as management authority for the specific land, then appointed in terms of an act by means of a notice in Government Gazette , thus they must draw up man plans for area they want to protect
 - Whole reason for this is to get civil society involved in Biodiversity protection

Threatened or protected ecosystems and species

- **Chapter 4 of the Act**
- Act provides for the
 - protection of threatened or ecosystems and species
 - Gives effect to the convention on international trade in endangered species of wild fauna and flora (CITES)
- **First step**
 - Is identifying them, on the basis of scientific knowledge (Systematic Conservation Planning)
- **2nd step**
 - List them on a sliding scale, from highly threatened to less threatened.
- **3rd step**
 - Find out which type of activities are performed in regard to these
 - Once identified
 - List them
 - They can either prohibit some and control other activities
- **4th step**
 - Conditionalise them
 - Either prohibit them
 - Or allow them subject to conditions .

Trade in listed or protected species

- Dealt with in part 3 of Chapter 4
- Meant to control and manage the trade of species which are threatened or endangered
 - 3 categories of protection which identify the endangered species:
 - Identified according to scientific criteria
 - Critically endangered
 - Endangered
 - Point of extinction
- Then introduce a system of control
 - Either prohibit
 - Impose strict control
 - Less strict control

Species and organisms posing potential threats to biodiversity

- **Chapter 5**

Invasive species

- Not indigenous species (coming from outside RSA or indigenous species to be trans located to a place outside natural distribution range in nature.)
- Introduced but provide a threat as can destroy everything around them
- Alien species do not necessary destroy something around them.

- System is the same as Chapter 4
 - Identify them according to the effect they have on the natural environment
 - List
 - Declared
 - Activity associated with them strictly controlled
- S 69 Biodiversity Act imposes a duty of care on a person who carry out permitted activities in respect of alien species in such a way that harm to biodiversity is prevented or minimised.
- Duty of care empowers competent authority to take steps to mitigate, rectify and rehabilitate when harm occurs.

Chapter 5: Genetically modified organisms

- Chapter 5, where G.M.O's released into the Environment or planted and the minister of opinion they pose threat to species or natural environment will not issue a permit for the release of GMO's
- He can stop the issuing of a permit until an environmental impact assessment has been conducted

Chapter 6: BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING

- Deals with the utilisation and sustainable utilisation of biodiversity resources of various kinds and various resources
- Most common is Bio-prospecting for manufacturing and distributing of pharmaceutical products and cosmetic products
 - Bio prospecting involves local communities and the utilisation of indigenous knowledge systems.

- Bio-prospecting – biodiversity resources are defined with respect to convention as common resources to man kind, that all countries should have access to biodiversity resources of earth.
- Therefore countries must allow scientist of other countries to have access to resources under their national control (which is conditionalised)
- Therefore access cannot be refused but can be conditionalised, which means controlled by means of legislation.
- Bio-prospecting can only take place with prior consultation of states, consensus and agreement with communities where bio prospecting is going to take place.

Permits

- **Chapter 7**
- Sets out the procedure for application, including requirement of independent risk assessment.
- The issuing authority is the national minister