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International Outlook for Privately Protected Areas

Country Profile: SOUTH AFRICA

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Introduction:

This country profile is part of a study by the International Land Conservation Network (ILCN) and United Nations Development Program (UNDP) summarizing the **legal, policy, and institutional mechanisms used to establish and incentivize privately protected areas (PPAs) in 30 understudied countries.**

PPAs contribute to the achievement of global conservation goals and biodiversity targets by contributing to landscape-scale conservation, connectivity and ecological-representativeness of protected areas.

For the purposes of this profile, an area is considered a PPA if it conforms to the definition agreed upon by the International Union for the Conservation of Nature (IUCN). Generally speaking, a PPA's protection must be recognized and durable (with long term conservation intent); it must be governed by a private or non-governmental entity; and it must be governed and managed to meet the general conservation standards of a protected area (PA) as laid out by the IUCN.^{1,2} **Note: Alongside currently existing mechanisms in these countries, this study also references mechanisms that represent *potential opportunities for the creation of PPAs.***

The data in this profile is based on a 2018 desk review of law and policy documents, government reports, publications by multi-lateral organizations, scholarly literature, and other sources. For 28 of the 30 country profiles, data was reviewed by a volunteer in-country expert. We are grateful to these experts, whose names and the profiles they reviewed are listed in the appendix to the [International Outlook for Privately Protected Areas summary report](#).

Finally, this profile is intended to be a living document, which will be updated periodically as more information is submitted and time and resources allow. If you have a contribution, please contact the authors at landconservation@lincolninst.edu.

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¹ Mitchell, B.A., Stolton, S., Bezaury-Creel, J., Bingham, H.C., Cumming, T.L., Dudley, N., Fitzsimons, J.A., Malleret-King, D., Redford, K.H. and Solano, P. (2018). *Guidelines for privately protected areas*. Best Practice Protected Area Guidelines Series No. 29. Gland, Switzerland: IUCN. xii + 100pp.

² Dudley, N. (ed.) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN. x + 86pp. WITH Stolton, S., Shadie, P. and Dudley, N. (2013). *IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types*, Best Practice Protected Area Guidelines Series No. 21. Gland, Switzerland: IUCN

SOUTH AFRICA (*Republic of South Africa*)

Outlook for Privately Protected Areas

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I. Country Overview

Land Area, History and Biodiversity

South Africa is the southernmost country in Africa and the largest country in Southern Africa with a land area of approximately 122m hectares (ha)³ home to close to 57 million people.⁴ South Africa is a multiethnic society encompassing a wide array of religions and cultures, with 11 official languages. South Africa is an incredibly diverse country with a wealth of natural resources. South Africa also has a varied history involving the disenfranchisement of the majority of the population and racial segregation imposed by apartheid. Since 1994, all South Africans have enjoyed political representation and freedom and protection for basic human rights within South Africa's democracy, with South Africa fondly referred to as the 'Rainbow Nation'. South Africa is also deemed an upper-middle-income economy as well as a newly industrialised country by the World Bank.⁵ South Africa faces challenges regarding addressing historical issues of the past and growing needs for its economy as well as increasing biodiversity loss primarily from habitat loss and degradation.⁶ These factors create the backdrop for private and communal land conservation in the country.

South Africa's biodiversity value is exceptionally high. South Africa is recognised as one of the world's 17 mega-diverse countries, containing three of the 34 global biodiversity hotspots. Functional, natural landscapes throughout the country are estimated to generate value to the economy of at least R275 billion per year.⁷ This equates to approximately seven per cent of the national gross domestic product (GDP), and is three times the combined value contributed by agriculture, forestry, and fisheries.⁸ South Africa's diverse ecosystems and wealth of biodiversity underpin the health and wellbeing of its people and its economy. The South African government's National Development Plan 2030 recognises the "need to protect the natural environment in all respects" and protected areas form part and parcel of the implementation plan to achieve this goal.⁹ The South African government recently pledged radical

³ 1,213,090.0 km². World Bank. 2016. Accessed November 2018. <https://data.worldbank.org/indicator/ag.lnd.totl.k2>.

⁴ 57.7 million. Government of South Africa. 2018. Mid - year population estimates. Pretoria: Statistics South Africa.

⁵ World Bank. 2011. "South Africa." Accessed November 2018. <https://data.worldbank.org/country/south-africa>.

⁶ Marnewick MD, Retief ER, Wright DR, Theron NT. 2015. South Africa's Important Bird and Biodiversity Areas Status Report 2015. Johannesburg: BirdLife South Africa.

⁷ Turpie, J.K., K.J. Forsythe, A. Knowles, J. Blignaut, and G. Letley. 2017. Mapping and valuation of South Africa's ecosystem services: A local perspective. *Ecosystem Services*, 27B: 179-192. <http://dx.doi.org/10.1016/j.ecoser.2017.07.008>.

⁸ The Environment for Development. 2017. Accessed November 2018. <http://www.efdnitiative.org/news/archive/sas-natural-environment-contributes-billions-gdp>.

⁹ Government of South Africa. 2015. The National Development Plan. Pretoria: Department: The Presidency.

transformation and growth through the Biodiversity Economy which seeks to boost socio-economic transformation through Eco-tourism, Bioprospecting and the Wildlife Economy, all of which are made possible by landscape level biodiversity conservation and management.¹⁰

Legal Framework, Land Ownership and Tenure

The Constitution of South Africa¹¹ (the Constitution) is the supreme law of South Africa. It is the country's legal foundation and sets out the rights and duties of South African citizens, including the rights associated with the environment and with property rights. South Africa has a hybrid legal system: a civil law system based on Roman-Dutch law, a common law system based on British Civil Procedure, and African Customary Law, of which there are many variations. There exists a complex but competently practiced interrelationship between these facets of South African law, with the Constitution acting as the ultimate legal benchmark.

Regarding property law specifically: this area of law covers both private and public law, and with regards to private law, recognises and protects real and personal rights. The traditional sources of the law of property in South Africa are common law, precedent and legislation. The Constitution has given additional importance to customary law, which is now, where appropriate, accorded equivalent consideration with common law, case law and statutory law. The system of private property based in Roman-Dutch law offers more secure title, with property rights registered in the Deeds Office, than the system of communal land tenure which derives from customary systems.¹² Land claims on communal land are navigated by customs, but land that is community held is most often not the property of the community and is held in trust by the South African state, and/or managed by local or tribal leaders.¹³ The *Communal Land Rights Act No. 11 of 2004* (the Communal Land Rights Act) was adopted to transfer the ownership of communal lands, not to residents, but to the traditional leaders of those communities.¹⁴ This remains a controversial act and is criticized for not improving tenure security for the residents, but consolidated control over the land in the hands of local rulers. The Communal Land Rights Act was ruled unconstitutional in 2010, and conflict continues over the administration of these lands. Land tenure in South Africa is thus mixed, with tenure offered through secure title or through trusts.

Property rights are also enshrined in the Constitution through section 25¹⁵. The right to ownership is a key component in South Africa's property law regime. Notably, section 25, legitimates actions taken by the government to redress historical expropriations of land. It states that the government "must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis," including "comparable redress."¹⁶ This is now under question as a result of recent indications by South Africa's President to investigate land

¹⁰ Government of South Africa. 2018. Biodiversity Economy Indaba ends with pledges for radical transformation and growth. Department of Environmental Affairs. Accessed November 2018.
<https://www.environment.gov.za/mediarelease/biodiversityeconomyindabaendswithpledges>.

¹¹ Government of South Africa. 1996. The Constitution of the Republic of South Africa Act No. 108 of 1996.
<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

¹² Pienaar, Gerrit. 2013. Land Tenure Security: The Need for Reliable Land Information. *The Journal of the Helen Suzman Foundation*.
<http://hsf.org.za/resource-centre/focus/focus-70-on-focus/focus-70-oct-g-pienaar.pdf/view>.

¹³ *Ibid.*

¹⁴ Government of South Africa. 2011. The Communal Land Rights Act No.11 of 2004.
www.ruraldevelopment.gov.za/phocadownload/Acts/communal%20land%20rights%20act%2011%20of%202004.pdf.

¹⁵ Government of South Africa. 1996. Section 25 (Property) of the Constitution of the Republic of South Africa, Act 108 of 1996.

¹⁶ Land redistribution is non-forcible, and based on the "willing buyer, willing seller" approach, through which lands are transferred to claimants with the government as the intermediary.

Branson, Nick. 2016. Land, Law and Traditional Leadership in South Africa. Africa Research Institute.
<https://www.africaresearchinstitute.org/newsite/publications/briefing-notes/land-law-and-traditional-leadership-in-south-africa/>.

expropriation without compensation. Land is a topic that is currently under contention in South Africa, and of course, interacts with the right to the environment, section 24¹⁷ of the Constitution. It is within this unique legal and historical context within which South African private and communal land conservation efforts, resulting in Privately Protected Areas (PPAs), falls.

Land conservation in the country is therefore both a priority, for protecting South Africa's vast wealth of biodiversity as well as securing its ecological infrastructure to the benefit of its people and economy, and a complex endeavor whereby historical issues of the past must be redressed as a matter of urgency.¹⁸ South Africa's unique implementation of private and communal land conservation has seen successes in both land reform and biodiversity conservation, intersecting with the creation of Biodiversity Economy opportunities. Illustrating that, despite a complex context, South Africa's needs of land reform, biodiversity conservation and improved livelihoods are being simultaneously met at PPAs in different parts of the country.

The *2017 State Land Audit: Private Land Ownership by Race, Gender and Nationality*¹⁹ released in 2018 (the Land Audit) by the Department of Rural Development and Land Reform quotes a number of figures illustrating land ownership in South Africa. It shows that 114,223,276 ha, or 94 per cent, of the total land territory is registered in the Deeds Office. The outstanding 7,701,605 ha, or 6 per cent, is unregistered trust state land in the Eastern Cape and Limpopo provinces at 5,545,156 ha.

The Land Audit also shows that individuals, companies, and trusts own 89,523,044 ha, or 90 per cent, of the 114,223,276 ha registered. Individuals own 37,800,986 ha, or 39 per cent, of this total land; followed by trusts at 29,291,857 ha, or 31 per cent; companies at 23,199,904, or 25 per cent; CBOs at 3,549,489 ha, or 4 per cent; and co-ownership at 883,589 ha, or 1 per cent. The Land Audit has, however, come under heavy criticism regarding the numerous numerical errors in the text and tables of the Land Audit, placing the reliability of the data presented in question.²⁰ The methodologies used have also been placed under scrutiny and more importantly, the inferences made from the report are noted as questionable.²¹

What does, however, remain, is that a large percentage of land in South Africa is privately-owned, one of the highest proportions of any country worldwide (refer to figure 4).²² In such a landscape, private and communal land conservation efforts have expansive potential and could create knock-on benefits for biodiversity conservation, land reform and improved livelihoods through the Biodiversity Economy. Emphasis on redressing historical access to land and the creation of socio-economic growth within the framework of legitimate biodiversity conservation must remain a vital factor in all private and communal land conservation efforts, as can be seen in the Nambiti Private Game Reserve Case Study.

¹⁷ Government of South Africa. 1996. Section 24 (Environment) of the Constitution of the Republic of South Africa, Act 108 of 1996. f

¹⁸ Government set the goal of putting 30% of land under the ownership of black citizens by 1999. The target date was later postponed to 2014, and then postponed again, to 2025. By 2015, about 8m ha had been transferred through restitution and redistribution combined, amounting to about one-third of the target.

Walker, Cheryl. n.d. The Distribution of Land in South Africa: An Overview. PLAAS: Institute for Poverty, Land, and Agrarian Studies. Land Reform Fact Check Series. www.plaas.org.za/sites/default/files/publications-pdf/No1%20Fact%20check%20web.pdf.

¹⁹ Government of South Africa. 2017. The Land Audit Report: PHASE II: PRIVATE LAND OWNERSHIP BY RACE, GENDER AND NATIONALITY. Pretoria: Department of Rural Development and Land Reform.

²⁰ South African Institute of Race Relations. 2018. *Who Owns the Land?* Johannesburg: South African Institute of Race Relations.

²¹ *Ibid.*

²² Alexander Ross Paterson. 2009. Legal Framework for Protected Areas: South African. IUCN EPLP- No. 81. p. 13. https://www.iucn.org/downloads/south_africa.pdf.

Nambiti Private Game Reserve: PPA, Biodiversity Economy and Land Reform Success

Based on the Nambiti Private Game Reserve Case Study by G. Martindale. Edited by Candice Stevens

Nambiti Private Game Reserve (Nambiti) is a 9,859 ha “Big-5” reserve situated near Ladysmith in KwaZulu-Natal (KZN), South Africa. Nambiti has an interesting history in that it was formed by a group of businessmen through the purchase of a number of farms and re-introduction of game and then subject to a successful land claim and is now owned by the Senzo’kuhle Nkos’uNodada Communal Trust. What has followed is a successful partnership between the land claimants and the previous landowners. The Senzo’kuhle Nkos’uNodada Communal Trust is a legal entity that represents 136 successful land claimants from the Elandslaagte Community. The land was transferred to the community in June 2009 and is not under any tribal authority, all decisions are taken by the Trustees. Operations at Nambiti are multi-faceted, combining 10 luxury game lodges catering to local and international tourists, live capture and sale of game and more recently, the production of venison. Nambiti has been declared as a nature reserve, through the KZN Biodiversity Stewardship Programme, in terms of Section 23 of the Protected Areas Act. Nambiti provides an inspiring case study and model as it combines clear biodiversity conservation imperatives, strong financial and economic imperatives, all within the context of a community/private sector partnership. It effectively showcases how biodiversity conservation, the declaration of a PPA, land reform, and sustainable economic opportunities can fit hand in hand.

The properties had historically been used for extensive livestock production, as well as limited crop production, primarily maize. Internal farm fences and alien vegetation were removed and game was re-introduced. In addition to a variety of plains game that were re-introduced, the following important re-introductions have taken place: white rhino, elephant, lion, buffalo and black rhino. Following the establishment of the reserve, 20 lodge sites were identified and surveyed. Only 10 lodges have been developed but this has led to a relatively high density of tourism use within a reserve that is less than 10,000 ha. The Senzo’kuhle Nkos’uNodada Communal Trust and its beneficiaries benefit from Nambiti in a number of ways, including:

- Through payment of a lease fee for the use by other lodges and traversing rights.
- Ownership and operation of Springbok Lodge, the largest lodge on site, and another currently undeveloped lodge site.
- Sharing in the profits earned by the operation of the reserve and other associated natural resource management, such as live off-takes and the sale of venison.
- Preferential employment within the reserve.

An accountant, appointed by the Senzo’kuhle Nkos’uNodada Communal Trust, manages the distribution of profits from the lease fee, and twice yearly it is distributed into the individual bank accounts of each of the 136 land claim beneficiaries. It is significant that the money is paid to each individual rather than to a single bank account as it ensures that each beneficiary receives an equitable share of the lease fee.

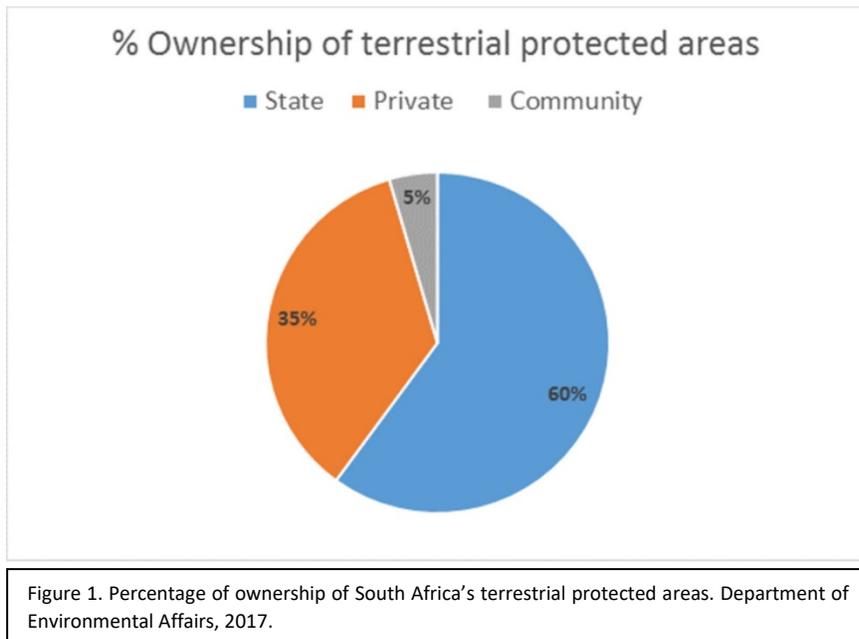
Engagement with the KZN Biodiversity Stewardship Programme began in late 2009, with the site assessed in 2010, qualifying to be declared as a nature reserve, the highest level of protection available, and ultimately declared a nature reserve in 2013. Nambiti is of significant biodiversity and ecological value. The reserve falls on an ecotone between two vegetation zones: Tugela Thornveld and Northern KwaZulu-Natal Moist Grasslands. These vegetation types are all currently heavily under-represented in the protected area system and are subject to a number of pressures from agriculture, urbanisation and mining. Accordingly, the protection of the reserve makes a significant provincial and national contribution towards the achievement of protected area targets. There are a significant number of endemic and threatened plant and faunal species at the site. This biodiversity conservation, which underpins the success of the sustainable livelihoods at this land reform site, would not have been possible without the KZN Biodiversity Stewardship Programme. The programme seeks to support landowners and communities in their conservation efforts through formal legal agreements and the provision of ecological expertise and advice to assist in effective management.

Nambiti is a South African success story. The role that this PPA plays from a biodiversity conservation and socio-economic perspective can be summarised as follows:

- Contribution to biodiversity and protected area expansion targets through declaration as a nature reserve, the protection of habitat that is under-represented in the protected area system and protection of a number of rare and threatened species.
- A monthly turnover in excess of R4 million, which has significant implications for the local and regional economy.
- Employment of 54 people in reserve operation and management and over 170 people in the reserve’s lodges, meaning that over 220 people are employed at the reserve.
- Revenue generation through live game sales.
- Sustainable production of game meat for commercial sale, including the provision of an important local source of affordable meat to the communities living around the reserve.

Protected Areas

The Department of Environmental Affairs (DEA) in South Africa notes 10,245,556 ha of South Africa as protected areas, or 8.4 per cent of the territory. Combined with South Africa's conservation areas, equates to 15,246,992 ha, or 12.51 per cent of South Africa. (Note: The World Database on Protected Areas shows 9,792,800 ha of land – 8% of the country – protected.²³ Differences between statistics may be due to differences in methodologies or out of date reporting).²⁴ This represents a nearly three-fold increase from 1995, at which time 5.4 per cent of the land area was protected.²⁵ It should also be noted here that substantial contributions are being made to South Africa's conservation estate, both through the establishment of protected and conservation areas, through the engagement of the national biodiversity stewardship initiative (discussed below).²⁶ According to DEA, marine protected areas total 18,616,180 ha.



DEA figures (see Figure 1.), illustrate that currently, 35 per cent of the terrestrial protected area estate in South Africa is privately owned and 5 per cent communally owned. The breakdown given by DEA regarding the percentage and types of protected areas in South Africa is as follows (see Figure 2): National Parks: 42 per cent, Nature Reserves: 38 per cent, Protected Environment: 6 per cent, Mountain Catchment Areas: 6 per cent, iSimangaliso (combination area): 3 per

cent, Forest Wilderness Areas: 3 per cent, Special Nature Reserves: 2 per cent, Forest Nature Reserves: 0 per cent.

²³ UNEP-WCMC. 2018. "Protected Area Profile for South Africa from the World Database of Protected Areas." Accessed November 2018. <https://www.protectedplanet.net/country/ZAF>.

²⁴ DEA centrally keep records of all protected areas, regardless of ownership or management as long as they are declared under the Protected Areas Act and also records certain categories of conservation areas. Importantly, DEA has noted a certain incongruity within WDPA records regarding the reporting on protected areas and conservation areas. Some of these figures may therefore not be fully accurate and this should be noted here.

²⁵ Department of Environmental Affairs South Africa. 2004. Biodiversity and Conservation: Ten Year Review. https://www.environment.gov.za/sites/default/files/docs/10yeteersreview_biodiversity_conservation.pdf.

²⁶ South African National Biodiversity Institute (SANBI). 2017. The business case for biodiversity stewardship. A report produced for the Department of Environmental Affairs. Developed by Cumming, T., Driver, A., Pillay, P., Martindale, G., Purnell, K., McCann, & Maree, K. South African National Biodiversity Institute, Pretoria.

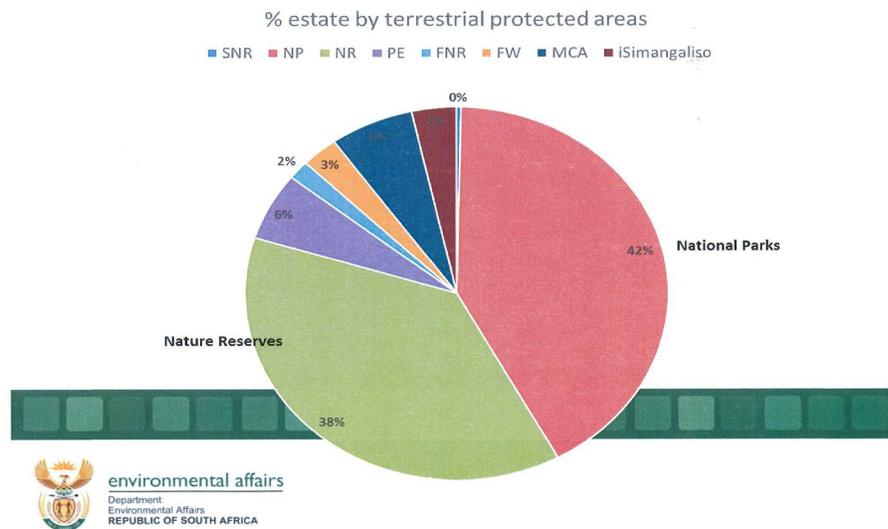


Figure 2. Percentage estate of South Africa's terrestrial protected areas. Department of Environmental Affairs, 2017.

National Biodiversity Strategy and Action Plan (NBSAP)

The Convention for Biological Diversity (CBD) stipulates that all countries party to its international agreements are required to develop National Biodiversity Strategy and Action Plans (NBSAPs), with the aim of coordinating progress toward achieving conservation targets. South Africa's current NBSAP covers the period from 2015-2025.²⁷ This national policy document identifies protected area expansion as a key tool to achieving the overall objective of environmental protection in South Africa. South Africa's National Protected Area Expansion Strategy²⁸ (NPAES) notes that meeting national policy objectives, and international targets such as Aichi Target 11, requires the expansion of protected areas on state, private and communally owned land.²⁹ Additionally, South Africa's National Biodiversity Framework is a short to medium-term coordination tool that shows the alignment between the strategic objectives and outcomes identified in the NBSAP.

II. Law and Policy for Private Land Use

South Africa provides for the declaration of protected areas through national legislation, which is supported by overarching national environmental policy, on state or privately and communally owned land, with the consent of the landowner or community. South Africa protected areas legislation has no differentiation in the legal status, rights or responsibilities of the land on the basis of ownership. South Africa's protected areas on privately or communally owned land are, first and foremost, protected areas, and are a clear example of credible and official recognition of a Privately Protected Areas (PPAs). *Privately Protected Area* is not a legal nomenclature in South Africa. However, South Africa has an extensive network of privately and communally owned protected areas, constituting what are internationally recognised as PPAs and referred to as such within this study, which fall within South Africa's own

²⁷ Government of South Africa. 2015. National Biodiversity Strategy and Action Plan. Department of Environmental Affairs, Pretoria.

²⁸ Government of South Africa. 2010. National Protected Area Expansion Strategy for South Africa 2008. Priorities for expanding the protected area network for ecological sustainability and climate changes adaption. Department of Environmental Affairs, Pretoria.

²⁹ South Africa currently has an updated NPAES in draft form as of 2016.

legislative and policy framework. South Africa defines a protected area as a geographically defined area of land or sea that is formally protected in terms of the *National Environmental Management: Protected Areas Act No. 57 of 2003* (The Protected Areas Act)³⁰ and managed mainly for biodiversity conservation.³¹ Any protected area on private or communal land³² has nature conservation as its primary objective, whereas conservation areas³³ as defined in South Africa do not. Advanced and detailed spatial planning is also used in South Africa to determine protected area expansion strategies at both national and local levels. South Africa's extensive policy and legislative frameworks illustrate the distinction between protected areas and conservation areas. Protected areas and conservation areas in South Africa are recognised and reported on separately and provide a concrete example of the difference between a PPA and an OECM³⁴.

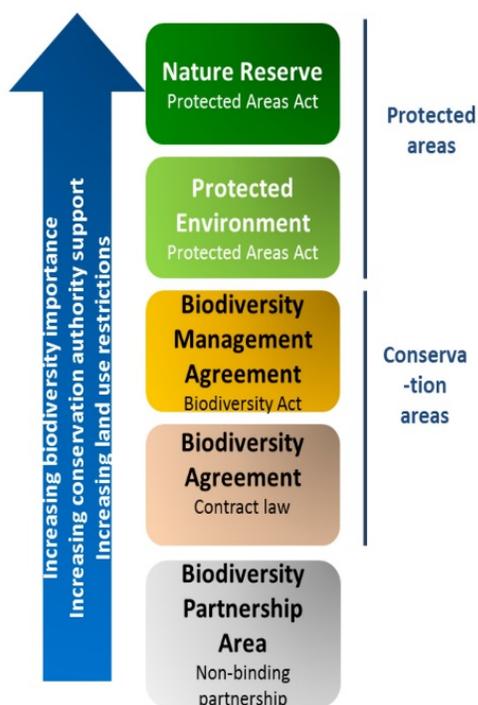


Figure 3. Hierarchy of biodiversity stewardship agreements. Biodiversity stewardship represents South Africa's detailed institutional structure and practical implementation framework that allows for the establishment of PPAs, as well as OECMS.

South Africa's primary tool for protected area expansion, as well as the use and applicability of conservation areas, internationally referred to as OECMs, on private and communal land, is the *national biodiversity stewardship initiative*. Biodiversity stewardship is an approach to securing land in biodiversity priority areas through entering into agreements with private and communal landowners, led by conservation authorities and supported by conservation NGOs.³⁵ *Biodiversity stewardship agreements* provide for a hierarchy of agreements, under three key categories, from declared protected areas, with durations from 30 to 99 years or in perpetuity, to non-binding agreements. (See Figure 3). This hierarchy demonstrates a variety of legal mechanisms that may be used to establish a PPA. Notably, increasing levels of legal protection and permanence correspond with increasing levels of land use management restrictions and increasing landowner benefits and incentives, such as biodiversity tax incentives. Under category 1, biodiversity stewardship utilises three primary types of protected areas, Nature Reserves and Protected Environments principally, and National Parks (referred to colloquially as contract National Parks)³⁶ to declare formally recognised protected areas on privately or communally owned land at the voluntary election of the landowner or

³⁰ Government of South Africa. 2003. National Environmental Management: Protected Areas Act No. 57. Department of Environmental Affairs, Pretoria.

³¹ South African National Biodiversity Institute (SANBI). 2016. Lexicon of Biodiversity Planning in South Africa. Beta Version, June 2016. South African National Biodiversity Institute, Pretoria.

³² South African protected areas declared on communally owned land are not regarded in country as ICCAs as described by the IUCN but rather as PPAs.

³³ *Ibid.*

³⁴ Brent A. Mitchell, James A. Fitzsimons, Candice M.D. Stevens, Dale R. Wright. 2018. PPA or OECM? Differentiating between privately protected areas and other effective area-based conservation measures on private land. *Parks* Vol. 24 Special Issue June 2018. Pages 49 – 59.

³⁵ *Ibid.*

³⁶ National Parks fall within the mandate of South African National Parks (SANParks), the body responsible for managing South Africa's national parks per the Protected Areas Act, and who engage in the declaration of this form of PA on private or communal land in concurrent processes similar to those defined by the biodiversity stewardship approach.

community. Each of these types of PPA also require detailed management plans and annual management audits per legislation. Category 2 covers conservation areas and offers more flexible and less prescriptive legal instruments than category 1.

Biodiversity Stewardship Category 1: Protected Areas

National Parks and *Nature Reserves* are geographic areas with the highest biodiversity value and ecological infrastructure and are formally declared primarily for biodiversity conservation. Best practice in South Africa determines that the declaration term of these agreements requires a minimum of no less than 99 years or in perpetuity. The agreements involve more stringent management regulations, including prohibiting unsustainable land use, such as extractive activities. This top category of PPA in South Africa also gains access to a dedicated biodiversity tax incentive through the section 37D of the *Income Tax Act No. 58 of 1962* (the Tax Act).³⁷ National Parks and Nature Reserves are also entitled to a property rates exemption under section 17 of the *Municipal Property Rates Act No. 6 of 2004* (the Property Rates Act)^{38,39} Nature Reserves also require a mandatory title deed endorsement through property law, securing the land's protected area status regardless of subsequent changes to land ownership. They are declared on state, private or communal land through Section 23 of the Protected Areas Act. National Parks are governed at a national level while Nature Reserves are governed at a provincial level.

Section 28 of the Protected Areas Act allows for the declaration of *Protected Environments* on state, private and communal land. Protected Environments are protected areas that can be declared across multiple properties. This form of PPA targets somewhat larger areas with biodiversity value and landscape level ecological functioning and, due to its slightly flexible nature, has reduced management restrictions, allowing for biodiversity conservation to take place in production landscapes. Best practice dictates that Protected Environments are declared for a minimum of 30 years up to 99 years or in perpetuity. Management plans are developed for the area in conjunction with stakeholders and are implemented by landowners and communities with support from conservation authorities and conservation NGOs.⁴⁰

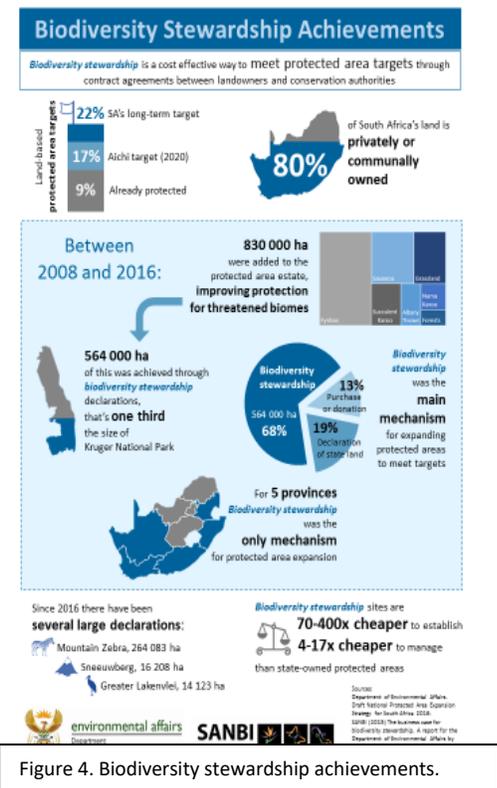


Figure 4. Biodiversity stewardship achievements.

³⁷ Government of South Africa. 1962. Income Tax Act No. 58 of 1962. Department of Finance, Pretoria.
³⁸ Government of South Africa. 2004. Municipal Property Rates Act No. 6 of 2004. Department of Cooperative Governance and Traditional Affairs, Pretoria.
³⁹ It should be noted that the current incentive regarding property rates exemptions for certain categories of PPA in South Africa is not uniformly applied across the country and is undergoing national debate.
⁴⁰ SANBI. 2014. Factsheet on biodiversity stewardship, first edition. South African National Biodiversity Institute, Pretoria.

stewardship was the only tool used. Biodiversity stewardship is also 70-400 times cheaper to establish a PPA and 4-17 times cheaper to manage than state owned protected areas.

Management best practice and legislative requirements within the context of South Africa's PPAs

By G. Martindale

South Africa's Protected Areas Act requires all protected areas to have a management plan drafted and submitted to the relevant conservation authority as well as have a management authority designated per site. The *Norms and Standards for the Management of Protected Areas in South Africa* (National Gazette No. 41224, 2017) and the *Regulations for the Proper Administration of Nature Reserves*, both developed in terms of South Africa's Protected Areas Act, include requirements for an assessment of the management of protected areas declared on privately owned land. The regulations require the designated management authority of a Nature Reserve to monitor and report annually on the status of the implementation of the reserve's management plan. The Norms and Standards require the management authority of a protected area to report annually on their progress towards meeting and maintaining the norms and standards. The reporting requirements of the Norms and Standards are met through the completion of a management effectiveness assessment using a South African-specific version of the Management Effectiveness Tracking Tool (METT), which was originally developed by WWF and the World Bank. METT assessments have been applied in some instances in South African PPAs for a number of years and have been shown to be an effective means of determining the management effectiveness of a protected area. They are particularly useful as a means of identifying and prioritising management activities to address deficiencies and improve the effectiveness of protected area management. Assessments are completed quickly and easily. Ideally, they are completed by the protected area's managers, as well as their staff and other stakeholders, as a form of self-assessment and should never be seen as a staff performance tracking tool. The assessments are best at comparing one site over time rather than creating a comparison between sites, as the repeat assessments provide trends in effectiveness over time and aid in the adaptive management of protected areas.

Biodiversity Stewardship Category 2: Conservation Areas

Biodiversity stewardship offers a hierarchy of mechanisms for land conservation with three categories that group the various mechanisms and agreements together based on the strength of their legal security, duration, biodiversity value and management requirements.⁴¹ Biodiversity stewardship category 2 speaks to agreements available through South African legislation, property law, and contract law. These agreements are not recognised in South African as protected areas and do not contribute to the protected area estate or targets. They are, however, recognised as conservation areas and form part of the larger conservation estate in certain instances. Each agreement within this category is required to be examined on its own merits to determine whether or not it would be regarded as a PPA or an OECM per IUCN criteria.⁴²

The three primary tools under this category are discussed below to illustrate the extended options for area-based conservation in South Africa. However, cognizance must be given to the fact that each agreement needs to be measured in its own right to determine whether it would constitute a PPA by definition. This category offers landowners and communities with more flexible options to safeguard the biodiversity and ecosystems on their land, should they elect not to pursue formally declared protected areas per national legislation. It should be noted here that landowner or community willingness is one

⁴¹ Draft National Biodiversity Stewardship Best Practice Guideline.

⁴² Cognizance must be given to the fact that these are internationally understood concepts that are being overlaid with South Africa's national context which utilizes nationally mainstreamed terms and concepts.

important factor but does not automatically determine the use of biodiversity stewardship agreements. Agreements will be concluded between government and/or civil society and landowners and communities should the conservation value prove sufficient per government's spatial planning and priorities and established through the biodiversity site assessment and review processes.⁴³

Biodiversity Management Agreements are legislated agreements within the *National Environmental Management: Biodiversity Act No.10 of 2004* (the Biodiversity Act).⁴⁴ These agreements require a Biodiversity Management Plan and should have a minimum duration of five years, with renewal periods in five-year increments. Biodiversity management agreements are less restrictive than protected area declarations and are intended to provide for specific management interventions for species and ecosystems of concern. They attract a biodiversity tax incentive which has yet to be appropriated at the time of writing. Additionally, at the time of writing, no biodiversity management agreements had been entered into.⁴⁵

Biodiversity Agreements are simple contractual agreements based in South African contract law and entered into between landowners and communities and government conservation agencies or conservation NGOs. They generally last for five to fifteen years although some may be signed in perpetuity.⁴⁶ These agreements are far more flexible and less legally prescriptive than biodiversity stewardship agreements instilled in legislation and are often used as a stepping stone by landowners and communities before they commit to formally declared protected areas.

Conservation Servitudes are a relatively new area-based conservation mechanism in South Africa which has only recently been tested and implemented. Conservation servitudes offer an alternative mechanism for area-based conservation under South African property law by means of a notarial deed dictating specific conservation commitments and actions between the owner of a property and the holder of a real right, in most cases a third party, such as a conservation NGO.⁴⁷ A servitude agreement must be drafted and notarised by a notary public and registered in the Deeds Registry and include requisite property diagrams. After registration in the Deeds Office, the servitude forms part of the conditions contained in the title deed. Best practice dictates that the conservation servitude must include specific conservation conditions prescribed for a long term duration, such as management responsibilities and unsustainable land use restrictions, applicable to the area in question and in agreement between the property owner and the third party, in order for it to be recognised as a PPA.

Category 3: Biodiversity Partnership Area

A *Biodiversity Partnership Area* is a catch-all category of biodiversity stewardship and generally represents all other area-based conservation mechanisms or initiatives that are not recognised in terms of contract law, property law or legislation. A Biodiversity Partnership Area may contribute to the conservation estate, if there is sufficient effective biodiversity conservation management, but does not contribute to the protected area estate. The purpose of the Biodiversity Partnership Area is to provide an opportunity for landowners and communities to participate in provincial Biodiversity Stewardship Programmes who: 1) have important biodiversity and ecological infrastructure but who are reluctant to enter into a formalised

⁴³ Draft National Biodiversity Stewardship Best Practice Guideline.

⁴⁴ Government of South Africa. National Environmental Management: Biodiversity Act No. 10 of 2004. Department of Environmental Affairs, Pretoria.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

agreement or to commit to a defined period, or 2) want to take collective action to conserve and manage their combined properties and to manage common issues.

This biodiversity stewardship category consists of a range of different historic, existing, and emerging options within which landowners and communities may participate. These options are relevant to a variety of landowners, including private, corporate or communal landowners, across a range of landscapes and sectors and may involve single or multiple landowners or communities. The arrangements and initiatives under this category generally lack legal security, long term intent and duration, and prescribed and audit management responsibilities. There is currently no exhaustive list of initiatives or mechanism that fall within this category.

Two examples include: *Conservancies* and *Buffer Zones and Transition Zones of Biosphere Reserves*.⁴⁸ South African conservancies are voluntary associations of environmentally conscious landowners and land-users who choose to cooperatively manage their natural resources in an environmentally sustainable manner without necessarily changing the land-use of their properties. In order to use the term “conservancy,” such a cooperative will need to register and have a bone fide conservancy. Many provincial conservancy associations have integrated with the provincial biodiversity stewardship programmes, such as in the Western Cape and Gauteng.

Biosphere Reserves are an internationally recognised mechanism for landscape-scale cooperative conservation efforts. The core areas of biospheres are formally declared protected areas (and would fit into Category 1), while the “buffer zone” (used for activities compatible with sound ecological practices that can reinforce scientific research, monitoring, training and education) and “transition area” (part of the reserve where the greatest activity is allowed, fostering economic and human development that is socio-culturally and ecologically sustainable) fit into Category 3.

III. Financial Incentives for Privately Protected Areas

Biodiversity Tax Incentives

The history of South Africa’s biodiversity tax incentives began with the introduction of Section 37C into *South Africa’s Tax Act* in 2008. This first attempt at utilising biodiversity tax incentives was intended to encourage private and communal landowners to engage in biodiversity stewardship agreements. The initial legislation was ineffective; only one (unsuccessful) attempt was ever made at pursuing those benefits.⁴⁹ A successful engagement was undertaken with the National Treasury in 2014, resulting in amendments to section 37C and a new, re-worded tax incentive developed by the Fiscal Benefits Project, a project launched by BirdLife South Africa with the support of the Global Environment Fund, the WWF Nedbank Green Trust, and the South African National Biodiversity Institute (SANBI). This new tax amendment is Section 37D: *Allowance in respect of land conservation in respect of nature reserves or national parks*, contained in the Tax Act, effective as of 1 March 2015.⁵⁰ This new incentive has revitalized the use of biodiversity tax incentives within South Africa’s protected areas network.

Section 37D is geared towards creating financial sustainability for protected areas on private or communal land as well as motivating and rewarding landowner and community commitment. Section 37D allows the value of land of a Nature Reserve or National Park to be deducted from taxable income, reducing the tax owed by the landowner or community entity, thus ensuring greater cash flow for the management of the

⁴⁸ *Ibid.*

⁴⁹ Stevens, Candice. 2016. "Biodiversity Tax Incentives: Section 37C, Fact Sheet 2." Fiscal Benefits Project. BirdLife South Africa.

⁵⁰ Stevens, Candice. 2016. "Biodiversity Tax Incentives: Section 37D, Fact Sheet 1." Fiscal Benefits Project. BirdLife South Africa.

site and bolstering the economic and commercial viability of PPAs in South Africa.⁵¹ This tax incentive is a national first, is globally unique, and its successful inclusion in a PPA landowner's tax return in 2016 created the first fiscal reward for biodiversity conservation in South Africa.⁵² The impacts of section 37D are now being rolled-out across the country to all landowners and communities qualifying for this tax incentive.

The two primary benefits of this specific biodiversity tax incentive include: 1) Support for the creation of robust PPAs, and 2) The creation of an innovative tool for financial sustainability for PPAs. Regarding benefit 1), the requirements of the Tax Act correlate precisely to the requirements of the Protected Areas Act ensuring that PPAs qualifying for this tax deduction are formally declared protected areas that boast legal certainty, permanence, management, and long term intent. Regarding benefit 2), section 37D creates a substantial and tangible financial benefit that aids landowners and communities in meeting management responsibilities, bolsters landowner and community motivation over the medium to long term, and facilitates tax efficiency essential to the sustained success of economic activities compatible with PPAs, as can be seen in the Kaingo Case Study.

The incentive may be accessed by anyone whose land has been identified as a National Park or Nature Reserve. To receive the tax break, the land in question must be officially protected for a minimum of 99 years or in perpetuity and declared precisely according to the Protected Areas Act. The incentive is calculated during the tax year of assessment when the land is declared and receives its mandatory title deed endorsement. The value is then apportioned over the next 25 years. A substantial tax penalty may be triggered should the land's protected area status be withdrawn.

⁵¹ Stevens, Candice. 2017. "South Africa gets its first biodiversity tax incentive." *South African National Biodiversity Institute (SANBI)*, published July 26, 2017. <http://www.sanbi.org/news/south-africa-gets-its-first-biodiversity-tax-incentive>.

⁵² Stevens, Candice. 2018. "Biodiversity Tax Incentives for South Africa's Network of Protected Areas" accessed November 2018. <https://panorama.solutions/en/solution/biodiversity-tax-incentives-south-africas-network-protected-areas>.

Biodiversity Tax Incentive



A NATIONAL 1st

First successful biodiversity tax incentive in South Africa



REWARDS

Offers landowners a financial reward for their conservation commitment when declaring Nature Reserves on privately and communally owned land



TAX BENEFIT

Landowners can deduct the value of the land they declare as a Protected Area from their taxable income



CONSERVATION

This new biodiversity tax incentive protects birds and their habitats by formally protecting key biodiversity areas and providing financial sustainability to do so

South Africa's first biodiversity tax incentive: An Inspiring Story

By Candice Stevens and Kaingo Private Nature Reserve

South Africa is recognised as one of the world's 17 mega-diverse countries. Protected areas, declared on state, private or communal land are key to safeguarding South Africa's incredible biodiversity and the functioning of ecological infrastructure essential to the benefit of its people and its developing economy. Expanding, governing and managing protected areas is a costly undertaking and limited resources and capacity, as well as other socio-economic constraints, hinder these processes. South Africa's privately and communally owned protected areas play a vital role in addressing some of these challenges. However, landowners willing to make the ultimate conservation commitment, in formally recognising and managing protected areas on their land, require assistance either through conservation services and relationships or financial benefits, such as South Africa's first biodiversity tax incentive: Section 37D. In one of South Africa's Key Biodiversity Areas, full of endemic plants, Big Five game, and scenic diversity, one such landowner took the plunge and declared a Nature Reserve in perpetuity.

Kaingo Private Game Reserve is an effectively managed protected area and a successful tourism operation, creating jobs and stimulating the rural economy of the area. The creation and management of this beautiful reserve and its eco-tourism operations is no small feat. As a result of this landowner's commitment to conservation, Kaingo has received the Section 37D tax break. Due to the extensive investment in the tourism venture and the management of a big game area, the tangible financial benefit of this innovative tax incentive is bolstering the reserve's cash flow, ensuring the continued success of this protected area. By paying less tax, additional resources can be mobilized so that Kaingo can be better managed and governed and continue to grow, benefiting both South Africa's biodiversity and its economy. Without effective management protected areas fail to achieve what they were created for, and without viable and sustainable business operations to support management costs, such as Kaingo, effective management is no longer feasible. It is a priority to provide valuable and alternative sources for financing biodiversity conservation and rewarding individuals and organisations willing to undertake the safeguarding of our natural heritage, if we are to see the continued persistence of wildlife and beautiful landscapes in South Africa.

Processes are now underway to amend the Tax Act again with the creation of another dedicated biodiversity tax incentive geared towards reducing the costs to landowners and communities that arise as a result of their protected area management responsibilities.

Municipal Property Rebates⁵³

Section 17 of the Property Rates Act states that no property rates may be levied against land declared as a Special Nature Reserve, National Park, or Nature Reserve. The rating exclusion excludes areas within these listed protected areas that are developed for commercial, business, agricultural or residential purposes. Effectively, this means that the property rating exclusion only applies to undeveloped areas of a Special Nature Reserve, National Park or Nature Reserve. This legislation has created areas of misinterpretation and the fiscal benefit envisioned by the Property Rates Act is not uniformly applied across the country.

Essentially, section 17 of the Property Rates Act has the potential to significantly impact land use decisions and habitat loss that may occur as a result of prohibitively high rates for areas without agricultural rate rebates. Property rates provide an opportunity to incentivise sustainable land use, sound land use behavior and to encourage landowners and communities to formally declare protected areas and

⁵³ Stevens, Candice. Chapter 9.3 of the National Biodiversity Stewardship Guidelines *in prep.*

conserve biodiversity. At the time of writing, no development has been made at a national policy level to resolve the interpretative and implementation issues associated with this fiscal benefit.

IV. Organization

Government

- DEA is the central government department charged with managing the nation's ecological resources and coordinating other stakeholders in the country to achieve environmental health.⁵⁴ DEA maintains a registry of all official protected areas in South Africa, including PPAs that are declared according to the provisions of the Protected Areas Act.⁵⁵
- SANBI provides leadership and backing for research, science and policy-based support, and conservation practice that supports the country's biodiversity.⁵⁶
- SANParks is the body responsible for the management of the country's national parks. SANParks is also the main partner and manager regarding National Parks declared on private or communally owned land, and in technical support to the management of other areas.⁵⁷
- The National Biodiversity Stewardship Technical Working Group (convened by SANBI) functions as the core for a collaborative and cohesive biodiversity stewardship community of practice. It has representation by DEA, the nine provinces, SANParks and key NGOs working in this field.⁵⁸
- There are provincial departments as well as provincial conservation agencies represented in each of South Africa's nine provinces with the mission of supporting biodiversity conservation and having protected area and biodiversity stewardship programmes. Unfortunately, provincial biodiversity stewardship programmes are generally under-resourced.

Non-governmental

There are a number of well-established conservation NGOs and registered PBOs in South Africa that support and bolster national and provisional biodiversity stewardship efforts across the country. They have been instrumental in declaring protected areas in partnership with government, building relationships with landowners and communities, applying incentives both fiscal and other support mechanisms, providing technical and policy advice, and contributing additional resources to biodiversity stewardship. A number of NGOs have formal partnerships with provincial departments or other NGOs in advancing biodiversity stewardship projects in biodiversity priority areas. The primary conservation NGOs are also represented on the Biodiversity Stewardship National Technical Working Group, which facilitates the community of practice's formal engagement.⁵⁹ NGOs include: BirdLife South Africa, World Wide Fund-South Africa, Conservation Outcomes, Kruger2Canyons, Endangered Wildlife Trust, Wilderness Foundation, *et al.*

V. Best Practices/Case Studies

See case study blocks above.

⁵⁴ See the DEA website at <https://www.environment.gov.za>.

⁵⁵ Cumming, Tracey and Faheima Daniels. 2014. "Country Review: South Africa". In *The Futures of Privately Protected Areas*. P. 88.

⁵⁶ See the SANBI website at <https://www.sanbi.org/>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*