

CONSERVATION LEGISLATION IN TRANSKEI

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ABSTRACT

Societies in Transkei, particularly those along the coast, are confronted to varying degrees by the problem and prospects of having to be removed from the areas which they have occupied for decades, sometimes from time immemorial, to make space for government schemes intended for the conservation of the environment and its resources, as determined by various conservation legislation (Chapters 3 and 4).

These people have to be settled in new areas which lack the natural resources which they enjoyed in their old areas and on which they depended for their survival and their traditional style of life. What exacerbates the situation is that these removals are not accompanied by development programmes to compensate the people for their loss. Furthermore, the establishment of these conservation areas does not offer any incentives for them to appreciate and see the benefit of conservation (Chapters 5 and 6).

Furthermore, although some of the conservation legislation anticipates that there should be consultations with, and participation by, the local people before the conservation programmes are implemented in order for them to present their opinions, it does not seem that the government officials charged with the control and administration of the legislation comply with this requirement. The result is that these conservation programmes are met with resistance from the local people, resulting in the government failing to attain the objectives of the legislation.

This study will briefly deal with the history and development of conservation legislation in Transkei from the Colonial era (Chapter 2), and examine the provisions of the applicable conservation legislation during the self-government of Transkei including its independence up to its reincorporation into South Africa during April 1994.

DECLARATION

I declare that the contents of this dissertation are the result of my own original work, except where otherwise stated and acknowledged.

A handwritten signature in black ink, appearing to read 'Mlamli Matyumza', is written over a horizontal line.

MLAMLI MATYUMZA

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TABLE OF CONTENTS

	PAGE
ABSTRACT	i
DECLARATION	ii
ACKNOWLEDGEMENTS	iii
 CHAPTER 1 INTRODUCTION	1
1.1 Aim	1
1.2 Why conserve the environment	1
1.3 Meaning of conservation and development	3
1.4 Relationship between conservation and development	3
1.5 Man's influence and responsibility on the environment	5
1.6 Conclusion	6
 CHAPTER 2 THE HISTORY AND APPLICATION OF CONSERVATION LEGISLATION IN THE REPUBLIC OF TRANSKEI	7
2.1 Brief historical background	7
2.2 Forest conservation prior to the conquest by Whites	7
2.3 The effect of White conquest on forestry conservation	8
2.4 Early legislative and administrative measures to protect forest products	9
2.5 Conservation legislation prior to the independence	11

CHAPTER 3	APPLICABLE CONSERVATION LEGISLATION IN TRANSKEI PRIOR TO DECREE NO. 9 (ENVIRONMENTAL CONSERVATION), 1992	14
3.1	Transkei Agricultural Development Act, 1966	14
3.1.1	Introduction	14
3.1.2	Exposition of the Act	15
3.2	Transkei Forest Act, 1969	24
3.2.1	Introduction	24
3.2.2	Provisions of the Act	25
3.2.3	Conclusion	30
CHAPTER 4	ENVIRONMENT CONSERVATION (DECREE), 1992	32
4.1	Introduction	32
4.2	The application of the Decree	33
4.2.1	Its purpose	33
4.2.2	Administration of the Decree and the powers of the department	34
4.2.3	Determination of environmental policy	36
4.2.4	Special powers of the Director-General	38
4.2.5	Establishment of the Council for the Environment	39
4.2.6	Wild animals and indigenous flora	42
4.2.7	National wildlife reserves, water catchment areas and protected natural environments	43
4.2.8	Environmental conservation measures: litter and waste management control	49
4.2.9	Control over detrimental activities	50
4.2.10	Limited development areas	51
4.2.11	Penal provisions	53
4.3	Conclusion	53

	PAGE
CHAPTER 5	
EVALUATION OF ENVIRONMENTAL CONSERVATION DECREE	55
5.1 Introduction	55
5.2 Education campaigns	56
5.3 Determination of environmental policy	57
5.4 Advisory powers of the Council for the Environment	59
5.5 Administration of the provisions of the Decree	60
5.6 Wildlife reserves, water catchment areas and protected natural environments	61
5.7 Limited development areas and control over detrimental activities	64
5.8 Offenses and penalties	66
5.9 Exclusion of the application of Sea-Shore Act	67
5.10 Conclusion	67
CHAPTER 6	
SUGGESTED SOLUTIONS	69
6.1 Environmental educational campaigns	69
6.2 Public participation in environmental decisions	72
6.3 Control, maintenance, development and management of wildlife resources	75
6.4 Criminal sanctions and incentives	75
6.5 Conclusion	77
REFERENCES	79

CHAPTER 1

INTRODUCTION

"I do not cease to marvel at the multifaceted beauty of the earth and the remarkable achievements of human endeavour. But I am astounded that human beings should allow their vision to be so clouded by greed for profit or other selfish motives or even by false notions of national pride as to be imprisoned by the immediate here and now. What would our earth be like without the forests left uncut and trees planted by those who went before us." (Indira Gandhi).¹

1.1 Aim

Although this work is mainly concerned with the legislation relating to environmental conservation within the area of jurisdiction of then Republic of Transkei (which has since been reincorporated into the Republic of South Africa as from 27 April, 1994), I have considered it necessary in this introductory chapter to briefly deal with environment conservation generally.

1.2 Why conserve the environment

While, admittedly, it is impossible to keep our environment if its pristine nature as a result of the influence of human beings on it, it is, today, widely accepted the world over that there is a dire need to conserve our environment in human beings, both in present and future generations, are to survive in this God-given world of ours. This awareness is due to the realisation that the earth is the only place in the universe known to sustain life in its biodiversity. Notwithstanding this reality,

1. Quoted in 'An introduction to the world conservation strategy: United Nations Environment Programme'.

activities of human beings, however, are progressively reducing the earth's life-supporting capacity at a time when population explosion and consumption of earth's resources are making increasingly heavy demands on it. The combined destructive impacts of the poor majority populations of the Third World countries struggling for subsistence on these resources, coupled with an affluent minority of the First World countries consuming most of the world's resources are undermining the very means by which all people can survive and flourish.²

Although there seems to be a general awareness of the importance of conserving our environment in other parts of the world, unfortunately in Transkei, as in some other rural communities in the Third World countries, there seems to be no or very little awareness about conserving the environment. This is mainly due to the lack of effective educational campaigns oriented towards emphasizing environmental and ecological principles and conservation objectives.³

Probably the most serious conservation problem which surpasses the lack of environmental education campaigns to the rural communities, is the lack of rural development by both the national governments and non-governmental organizations (NGOs) as development cannot be left solely to national governments as they have got other national programmes to look after. In their quest for food and fuel, growing numbers of desperately poor people find themselves with little choice but to strip large areas of vegetation until the soil itself is washed or blown away. Often the rural communities responsible for this destruction do not need to be told it is a mistake as they are made aware of it by increasing lack of these commodities and other necessities for their subsistence. Such communities need to be equipped to

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2. World Conservation Strategy - prepared by the International Union for Conservation of Nature and Natural Resources (1980), 1:1.
 3. Conserving Africa's Natural Heritage: Proceedings of the 17th Meeting of IUCN'S Commission on National Parks and Protected Areas (March 1981), 237.

win their livelihoods in sustainable ways. What is needed therefore, is the conservation of natural resources for sustainable development.⁴

1.3 Meaning of conservation and development

Conservation has been defined⁵ as the management of human use of the biosphere in that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations. In this sense conservation is positive, embracing preservation, maintenance, sustainable utilization, restoration, and enhancement of the natural environment. Development, on the other hand, is defined as the modification of the biosphere and the application of human, financial, living and non-living resources to satisfy human needs and improve the quality of human life. For development to be sustainable, it must take account of social and ecological factors, as well as economic ones; of the living and non-living resource base; and of long-term as well as the short-term advantages and disadvantages of alternative actions.⁶

1.4 Relationship between conservation and development

Although conservation is emphasized, it should be borne in mind that it is not an end in itself but is, like development for people. While development aims to achieve human goals largely through the use of the biosphere, conservation aims to achieve them by ensuring that such use can continue. Conservation is an ethical imperative expressed in the belief that we have not inherited the earth from our parents (as is popularly believed), but rather we have borrowed it from our children and future

4. World Conservation Strategy; *op. cit.*, 14: 1.

5. *Ibid.*, 1: 4.

6. *Ibid.*, 3: 5.

generations.⁷ Conservation in this sense therefore, implies the use of resources that will yield the greatest sustainable present benefit yet not prejudice the interests and aspirations of the future generation.⁸ To achieve this ideal demands the interpretation of conservation and development in harmonious terms because unless patterns of development that also conserve resources are widely adopted, it will be impossible to meet the needs of today without foreclosing the achievements of tomorrow. As conservation is not aimed at total prohibition in the exploitation by man of a given species but is rather aimed at applying some measure of control designed to prevent the over-exploitation of the species in question, which could result in its extinction, it therefore becomes incumbent on man to develop a sustainable way of life by restoring the balance of nature and the state of harmony between man and the environment.

As it is futile to preach to the hungry without first feeding them, so too, people whose very survival is precarious and whose prospects of even temporary prosperity are bleak cannot be expected to respond sympathetically to calls to subordinate their acute short-term needs to the possibility of long-term gains. Conservation, to be meaningful, must therefore be combined with measures to meet the short-term economic needs of the people. The vicious circle by which poverty causes ecological degradation, which in turn leads to more poverty, can be broken only by development. Such development however, if it is not to be self-defeating, must be development that is sustainable, and conservation helps to make it so.⁹ In this way it can be seen, contrary to the wide-held belief, that conservation and development are co-existing rather than mutually destructive.¹⁰

7. *Ibid.*, 8: 11.

8. Huntley, B.J.: *Biotic Diversity in Southern Africa* (1989): 81.

9. 18th Session of the General Assembly of IUN - the World Conservation Union, Austria (December 1990): 118 ff.

10. Huntley, fn. 8, *op. cit.*: 88.

The conditions for development to be sustainable are based on the requirement that the natural capital should not decrease or become depleted over time. By natural capital is understood the stock of all the environmental and natural resource assets from indigenous flora and fauna, fresh water systems, forests, living and non-living marine resources to quality of soil and underground water as well as seed stocks and food security.¹¹ Conservation's concern for maintenance and sustainability is a rational response to the nature of living resources which can either be renewed or destroyed and also an ethical imperative on human beings to guard against the total depletion of these resources for both the present and future generations.

1.5 Man's influence and responsibility on the environment

Human beings in their quest for economic development and enjoyment of the riches of nature, must come to terms with the reality of resource limitation and the carrying capacities of the ecosystems and also take account of the needs of future generations. If the object of development is to provide for social and economic welfare of the people, the object of conservation is to ensure the earth's capacity to sustain development and to support all life.

Although environmental crises, to a limited extent, may be due to natural disasters such as wild fires caused by lightning, volcanic eruptions, long spells of drought, floods, etc., it has been convincingly shown that the present major environmental crisis is due to some fault in the human activities on earth.¹² It is for this reason that man must devise rules of conduct to combat his own shortsightedness, ignorance and greed, as manifested in his attitude towards the environment. One of the means open to man to combat his shortcomings as stated above is to devise

11. Erskine, J.M. 'Creating incentives for sustainable use of natural capital in the less developed rural areas of South Africa' - paper delivered at the Second Meeting of the International Society for Ecological Economics, Stockholm, Sweden (August 1992): 1.

12. Rabie, A: South Africa Environmental Legislation (1976): 1.

suitable laws which will restrain his harmful activities towards the environment. It is precisely for this very realisation that individuals and institutions concerned with the fact of the degradation of the environment have looked upon the legislature, both at national and local levels, to take the lead by enacting appropriate laws in combating this evil. Although this is desirable, the shortcoming of legislation however, is that more often than not it lags behind technological and industrial developments, both of which are mainly responsible for the rapid degradation of the environment.¹³ Such legislation therefore becomes ineffective to address current environmental degradation problems precisely because the legislatures never took such developments into account in enacting the law. This calls for corporate responsibility to devise means simultaneously with their inventions, to combat environmental degradation which may be caused by their new technological development.

1.6 Conclusion

It is therefore the aim of this work to examine how far has legislation in the Republic of Transkei attempted to protect the environment. I have consciously used 'attempt' for the realisation that no matter how stringent legislation may be towards the ideal of environmental conservation, experience has shown that man, being what he is, will always, either surreptitiously or unwittingly, in a quest to satisfy his needs, transgress the law for law is not a custodian of itself.¹⁴

13. *Ibid.*

14. *Ibid.*

CHAPTER 2

THE HISTORY AND APPLICATION OF CONSERVATION LEGISLATION IN THE REPUBLIC OF TRANSKEI

2.1 Brief historical background

Conservation in Transkei has mainly been in the field of forestry which invariably led to the conservation of other biodiversities. Although the history of forestry is said to have begun when early men, in their quest to satisfy their hunger, picked fruit, hunted animals and exploited the forest for their daily requirements, from a conservation point of view however, the history of forestry began when man made the first known attempt to manage trees.¹

2.2 Forest conservation prior to the conquest by Whites

Contrary to popular belief that conservation in Africa generally and Transkei in particular, was brought by a White man, it is recorded that, in Transkei, forest conservation began prior to the Colonial era. Prior to the colonisation of the Transkei region by the Whites in about the mid-nineteenth century, King Sarili (after colonisation the status of Black kings was reduced to Paramount Chiefs) of the Gcalekas, started forestry conservation by protecting the Manubi and Dwesa forests by prohibiting hunting and collection of forest products from these forests which were reserved as his.² Although the main purpose of King Sarili in conserving the natural resources of these forests is not known; it has been suggested that his motives for conserving the forests were utilitarian, the forests either being used as

1. Shone, A.K.: *Forestry in Transkei* (1985): 4.

2. *Ibid.*

a refuge during conflicts with the Whites or as his private hunting domain.³ The better view which accords with logic and is supported by some writers is that the forests were protected for aesthetic reasons.⁴

2.3 The effect of White conquest on forestry conservation

As we have seen above, forestry conservation was practised by King Sarili and probably by other chiefs under his jurisdiction. However, after King Sarili's defeat in 1878 he was expelled from his area by the Whites and was banished to the district of St. Marks, Transkei, where he died and was buried. As a result the forests suffered severely as, without the control and protection of the traditional leaders whose power was broken by the Whites, no-one was left behind to look after them. These forests were soon overrun by woodcutters who despoiled them.

Magistrates were then appointed to administer the areas which hitherto had been under the control of the chiefs. Because there were very few magistrates placed in control over wide rural areas in which they even never resided, they could not effectively protect these forests from exploitation by local inhabitants and this was exacerbated by the lack of interest of some of the magistrates in forestry. Those few who took personal interest in forestry attempted to revive the old custom of chiefs and discouraged the chopping down of trees, but because of lack of manpower and legal means to enforce these prohibitions, they could not effectively protect these forests.⁵

The exploitation of forests in Transkei was further aggravated by a number of woodcutters who immigrated to Transkei from the Cape Colony because of their

3. Cooper and Swart: *Transkei Forestry Survey* (1992): 7.

4. *Ibid.*

5. Shone, *op. cit.* fn. 1.

resentment of the Cape regulations which protected the forests in Kaffraria, and thought they would have greater liberty of cutting down trees in the Transkei. Indeed, as there was no control legislation in Transkei against the exploitation of the forests, all that they required was to obtain a monthly licence from the magistrate which cost a meagre fee of five shillings (about 50c) and they were then free to cut down trees where they liked, and as much as they liked. These sawyers were responsible for the opening up of timber trade with Eastern Cape border towns of Kingwilliamstown, Queenstown, East London and others.⁶

2.4 Early legislative and administrative measures to protect forest products

This large-scale exploitation of forests was saved by the annexation of Transkei territory by the Cape government. The Department of Forestry of the Cape Government extended its forestry regulations promulgated in terms of the Forest Act, 1888,⁷ to the Transkei. Although these regulations were effective in curbing the uncontrolled exploitation of forests, it was however soon realised that they were too stringent for Transkei conditions as indigenous people depended on forest products for building their homes, firewood and other domestic requirements. Accordingly a special set of regulations was drawn up for Transkei which enabled indigenous people to still get their forestry requirements on a permit system, which was free of charge. This permit system, despite its unpopularity with the local people, at least proved successful in as much as it allowed people to exploit only unreserved species of the forest. Later on it was decided that small and inferior forests could be handed over by the Forestry Department to the magistrates for use by the indigenous population.⁸ Such forests are presently under the control of local Tribal Authorities and are designated as 'Headman's' forest as opposed to the

6. *Ibid.*

7. Act 28 of 1888, Shone, *ibid.*

8. Cooper and Swart, fn. 3, *op. cit.*: 8.

'demarcated' and controlled forest by the State, which fall under the Department of Forestry and Division of Nature Conservation within the Department of Agriculture and Forestry.⁹

It can be said that a meaningful and serious campaign for forest conservation started towards the end of the nineteenth century by the appointment of C.C. Henkel (1888-1889)¹⁰ who introduced the idea of demarcation and control of forests as stated above. He also introduced the first serious plantings of exotic species for the purpose of providing indigenous people with wattles and poles for their domestic use, and with a view to save the exploitation of natural forests. This campaign was followed by A.W. Heywood who succeeded Henkel with the result that the establishment of wattle plantations and later pines and cypresses was introduced. Such plantations have played an important role in the supply of wood and timber for the needs of local people of Transkei to date, and have also shaped their social way of life. This saved the indigenous forest from total destruction.¹¹ With the establishment of South African Native Trust during 1936, large areas in Transkei were planted with various species of wattle, pine and eucalyptus (gum) trees which were handed over to the said Trust by the Cape Department of Forestry during 1952, but the officials of the Department continued to manage them on behalf of the Trust until they were handed to the government of Transkei during 1963, when it was granted self-government by the Republic of South Africa¹² which later culminated in full political independence during 1976.

9. Department of Agriculture and Forestry Annual Report (1989/90).

10. Shone, fn. 1, *op. cit.*, 5.

11. Shone, *ibid.*

12. Haines, Tapscott, *et al.*: The silence of poverty - Network of social control in Transkei: Carnegie conference paper No. 48, UCT (1984).

2.5 Conservation legislation prior to the independence of Transkei

Since the territory later known as the Republic of Transkei formed part of the Republic of South Africa until the granting of independence during 1976, all laws of the Union and later the Republic of South Africa were applied in the territory subject, of course, to modification by Proclamations.¹³

On 24 May 1963, and in terms of the Transkei Constitution Act,¹⁴ Transkei was given limited legislative powers¹⁵ in respect of specified matters (e.g. forestry). The power included the power to amend or repeal any statute in so far as it applied to Transkei, in respect of those areas over which the Transkei Legislative Assembly exercised jurisdiction.¹⁶ Under the Transkei Constitution Act, 1963, Transkei was given limited legislative powers over "Bantu Areas". These areas are defined in the Act¹⁷ and did not include the municipal areas and commonage.¹⁸ Accordingly, the Cape Ordinances, as amended, continued to apply in respect of such areas and they were only frozen in 1976 on attainment of full independence and unless amended or repealed during the existence of such independence,¹⁹ the differential application of provisions as between urban and rural areas of Transkei continues

13. *R vs Roodt* 1912 CPD 606 at 614

14. Act No. 48 of 1953 (RSA).

15. In terms of Section 37 of Transkei Constitution Act, 1963.

16. See section 2 of that Act.

17. Section 37 of that Act.

18. See Schedule to the Bantu Land Act, 1913 (Act 27 of 1913) and the Bantu Land Act, 1936 (Act 18 of 1936).

19. The independence of Transkei ceased to exist on 27 April 1994 when, in terms of the Republic of South Africa Constitution Act No. 200 of 1994, it was deemed to have been incorporated into South Africa.

up to the present.²⁰ Although the Transkei Legislative Assembly was granted limited power to legislate over affairs in which it had jurisdiction, statutes passed by it had to be submitted for assent by the South African State President as provided for in terms of the Act.²¹ However, in the field of Common Law where the provisions of a Transkei Statute differed from the Common Law of South Africa, such provisions by virtue of being statutory had to prevail in Transkei, the territory in which they were enacted.²²

On 26 October 1976, Transkei was given full legislative powers by the Republic of South Africa.²³ It was provided in terms of this Act²⁴ that any rule of law which was in force in Transkei immediately prior to the commencement of the Act should continue in force as a rule of law of Transkei until repealed or amended by competent authority. Accordingly, up to 26 October 1976 on those areas on which the Transkei Legislative Assembly had not legislated on conservation, conservation laws applicable to South Africa applied in Transkei.²⁵

As a result of the takeover of power by the Transkei Defence Force in a bloodless coup on 30 December 1987, under General Holomisa, Parliament was dissolved and a legislative body consisting of the President and the Military Council was formed to enact legislation. This body proceeded to legislate by decree since that date until Transkei was reincorporated into the Republic of South Africa on 27 April

20. Section 2 of the Status of Transkei Act, 1976 (Act 100 of 1976) read with Section 60 of the Republic of Transkei Constitution Act, 1976 (Act 15 of 1976).

21. Section 40 of the Transkei Constitution Act, 1963.

22. *S vs Sikweza* 1974 (4) SA 732 (A) at 736.

23. In terms of the Status of Transkei Act, 1976 (Act 100 of 1976), RSA.

24. See footnote 19 *supra*.

25. *Environmental Management in South Africa* (1992), 14-32.

1974. In the field of conservation, this body issued Conservation Legislation, 1992.²⁶ This Decree, together with the Transkei Agricultural Development Act²⁷ and the Transkei Forest Act²⁸ are the main conservation legislation in Transkei.

26. Decree No. 9 (Conservation Legislation), 1992.

27. Act No. 10 of 1966.

28. Act No. 6 of 1969.

CHAPTER 3

APPLICABLE CONSERVATION LEGISLATION IN TRANSKEI PRIOR TO DECREE NO. 9 (ENVIRONMENTAL CONSERVATION), 1992

As stated above¹ Transkei was given full legislative powers on 26 October 1976 by the Status of Transkei Act 1976 (Act No. 100 of 1976) of the Republic of South Africa in which it was provided that any rule of law which was in force in Transkei prior to the commencement of the Act would continue in force as a rule of law in Transkei until repealed or amended by competent authority. Of significance in the field of conservation, only the following enactments as detailed hereunder, are discussed, though there is other legislation which incidentally contains environmental norms.²

3.1 Transkei Agricultural Development Act, 1966³

3.1.1 Introduction

This is the first conservation legislative enactment since the granting of self-government to the Transkei during 1963. The purpose of the Act is to make provision for the conservation of the soil, the veld and water supplies, the improvement and control of livestock, the eradication of weeds and the development of agriculture generally in the Transkei, and to provide for other incidental matters. As the conservation of soil is the core of this legislation, it can be said that it is one of the important conservation legislative enactments, as indeed, up to the time of

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1. Section 2 of the Status of Transkei Act, 1976 (Act 100 of 1976), read with Section 60 of the Republic of Transkei Constitution Act, 1976 (Act 15 of 1976).
 2. E.g. See Shore, Act 1979 (Act No. 17 of 1979); Territorial Waters Act, 1978 (Act No. 8 of 1978).
 3. Act No. 10 of 1966.

the reincorporation of Transkei into South Africa, this Act remains in force to date. In terms of the Act,⁴ the Minister, being the Minister of Agriculture and Forestry under whose department the Act is being administered and controlled, is empowered to make regulations for soil conservation schemes.⁵ However, as the legislative powers of the Transkei Legislative Assembly to enact this Act is derived from the Transkei Constitution Act, 1963, the provisions of the Act are applicable to the rural "Bantu Areas" and not to the municipal or urban areas. as this body had no jurisdiction to legislate in respect of these latter areas.⁶

3.1.2 Exposition of the Act

The Act empowers the Minister,⁷ after consultation with any regional authority concerned, to require the department to prepare a soil conservation scheme in respect of any land. The Act further provides⁸ that as soon as the department has prepared a soil conservation scheme, the Secretary (later known as the Director General) shall:

"(a) if the land in respect of the scheme has been prepared is Government land in the occupation of any tribe or other ethnic group, cause the scheme to be explained by an officer of the government at a meeting, convened by the magistrate, of the persons residing on such land and at a meeting of the appropriate

4. Section 30.

5. The General Regulations to the Act were issued in Government Notice (GN) 57 of 1970 published under *Government Gazette* No. 7 of 1970, while those relating to the control of grazing on government land were issued in GN 55/70 published under *Government Gazette* 22/70.

6. Section 2 read with section 37 of Transkei Constitution Act, 1963.

7. Section 2(1) of the Act.

8. Section 2(2) of the Act.

tribal authority in order to ascertain whether there is any objection to any provision of such scheme and, if there is any objection, the grounds thereof."

This provision of the Act is very important for any successful conservation scheme as it requires consultation with the local people before such scheme is embarked upon. However, it is doubted if the officers of the Department of Agriculture and Forestry strictly comply with this requirement. The attitude of local people is negative towards such schemes, not because they are against the implementation of the schemes as such, but precisely because they are not consulted by the departmental officials. Where they are consulted, their approval of the scheme is not necessarily sought, and the government implements⁹ its policy irrespective of the cooperation of the local people.

After the Minister has by notice in the *Government Gazette*¹⁰ (a copy being served on the head¹¹ of the appropriate tribal authority administering such land), applied the soil conservation scheme to the land in respect of which it has been prepared, such land becomes a soil conservation area.¹² Every occupier of land declared a soil conservation area by the Minister is, except to the extent to which he may have been exempted therefrom,¹³ bound to carry out or comply with the provisions of the soil conservation scheme.¹⁴ For this purpose, the Act empowers the Minister

9. Hendricks, F.T. *Loose planning and rapid resettlement: The politics of conservation and control in Transkei, South Africa, 1950-1970* (1989), 318 ff.

10. Section 2(4).

11. Section 2(4)(a).

12. Section 2(5)(a).

13. Section 9.

14. Section 2(5)(b) read with Section 12.

to grant financial assistance¹⁵ in the form of advances, grant rebates or pay subsidies to owners or occupiers of land in respect of any conservation works¹⁶ constructed or soil conservation measures¹⁷ applied by that owner or occupier in accordance with the soil conservation scheme¹⁸ applicable to the land in question. The term 'soil conservation scheme' means:

"A comprehensive plan designed for the reclamation of eroded land or for the prevention of soil erosion, or, generally for the conservation, protection and improvement of soil, veld and water supplies, and includes all the necessary measures for the promotion of sound systems and methods of land use. Such scheme could include provisions relating to the temporary withdrawal from cultivation or grazing of land within a soil conservation district for specified periods, the restriction of the number or kinds of livestock which may for any specified period be grazed on such land and the regulation or prohibition of veld burning".¹⁹

This latter meaning of soil conservation scheme is the more preferred one as it is wide enough to encompass in more concrete terms all the various aspects of soil conservation.

15. Section 7.

16. "Soil conservation works" means any works constructed on land as a soil conservation measure (Section 1 [xxx]).

17. "Soil conservation measure" means any measure applied to land for the purpose of the conservation of the soil or the veld or of water sources and supplies (Section 1 [xxvii]).

18. "Soil conservation scheme" means a soil conservation scheme referred to in Section 3 and includes any amendment of such scheme (Section 1 [xxix]).

19. Rabie, A - South African Environmental Legislation (1976), 28. Section 19 of The Soil Conservation Act 45 of 1946 (RSA) read with Section 3 of the Act.

The Act further empowers²⁰ the Minister to take an initiative in reclamation or conservation of private land out of State funds where the owner failed to comply with the provisions of soil conservation scheme and could, in his discretion, recover²¹ the costs thereof from the owner concerned. Chapter 4 of the Act further empowers the Minister to expropriate land or rights in land for conservation purposes. The Act provides:²²

"Whenever, in the opinion of the Minister, any land -

- (a) is required for the conservation of the soil, the veld or of water supplies, or
- (b) is required for the conservation of flora and fauna or the preservation of fish or game,²³ or
- (c) is being used or occupied by any person for any purpose other than the purpose for which such land has been defined, demarcated or set aside by or under a soil conservation scheme,

the Minister may, out of money appropriated by the Legislative Assembly for the purpose and subject to the provisions of this section, expropriate such land or terminate any right in or over such land."

The provisions of this section are very important as they do not confine the Minister to expropriate solely for the purposes of soil conservation but extend his powers to expropriate land for the conservation of water supplies, preservation of fish and game. The combination of the conservation of soil with veld and water sources and supplies is a logical one in view of the close relationship between soil, water and

20. Section 5.

21. Section 6.

22. Section 13(1).

23. As amended by Part 2, Schedule 16 of Transkei Nature Conservation Act 6 of 1971.

the vegetation of the veld as indeed none of these components could be meaningfully preserved or conserved in the absence of the others.

The provisions of the Act²⁴ make its objects to be easily realised in that the Minister, after the consultation, (as opposed to concurrence), mechanisms with owners or occupiers of the land concerned with soil conservation schemes, may through publication of the notice in the *Government Gazette*²⁵ and written notice to the owner²⁶ or occupier of the land in respect of private land and the head²⁷ of the tribal authority concerned in respect of government land, declare a conservation scheme direction to be applicable in respect of the land declared as the soil conservation area.²⁸ The advantage of such wide powers vested to the Minister is that his conservation directives may relate to a wide variety of activities aimed at soil conservation which, *inter alia*, include²⁹ the soil conservation works, restoration, repair or maintenance of any existing soil conservation works, the labour, equipment or material that shall be provided by the government for such purpose, applicable soil conservation measures and the time for carrying out same for constructing, restoring or repairing any soil conservation works, the withdrawal from cultivation or grazing of any defined portion of land, the occupation and use of land and where necessary the demarcation, setting aside and fencing of

24. Sections 2 read with Sections 5 and 13 of the Act.

25. Section 2(4) of the Act.

26. Section 2(4)(b).

27. Section 2(4)(a).

28. "Soil conservation area" means any government land which, in terms of section 2(5)(a) is, or under the provisions of section 37(2) is deemed to be, a soil conservation area (section 1 [xxvii]). When this section is read with the provisions of section 2 of the Transkei Constitution Act, 1963 (Act 48 of 1963) further read with section 37 of that Act, the government land referred to consisting of the rural areas of Transkei.

29. Section 3 of the Act.

residential and arable areas and of sites and allotments within such area,³⁰ etc., and generally the conservation, protection and improvement of the veld, the soil, the surface of the land, the vegetation and the sources and resources of water supplies on the land.³¹ In addition to these extensive powers, the Minister is given additional powers³² in relation to soil conservation schemes applying to government land in that he may:

"by notice under this Act,³³ in relation to any particular soil conservation area and the scheme which applies therein, make rules, give orders or directions or impose prohibitions or restrictions, or amend or withdraw any rules, orders, directions, prohibitions or restrictions and take such other action as he may deem necessary, in respect of all or any of the matters referred to in paragraph (a) to (t), both inclusive, of section 3, *even though no specific provision has or is deemed to have been made in respect of these matters in the soil conservation scheme.*³⁴

Chapter 6 of the Act³⁵ attempts to combat soil erosion through overgrazing of land by introducing control over importation (i.e. bringing of additional livestock from outside Transkei into the country) or gazing of livestock. Although the prohibition

30. This latter activity has generally been referred to by the government as the "betterment scheme" which usually was accompanied by the culling of livestock which forced males of the affected rural communities to go to labour centres as they no longer could maintain and support their families out of the reduced number of stock and arable land both of which played an important role in subsistence farming to support their families (McAllister, 1989, *Resistance to 'betterment' in Transkei: A case study from Willowvale district*, 346 ff.).

31. Section 3(a)-(t).

32. Section 11.

33. As anticipated in Section 2(4).

34. The italics are mine, which emphasizes the extensive administrative powers given to the Minister for purposes of soil conservation.

35. Section 21.

against introduction of additional stock from outside Transkei is resented by the local people³⁶ who see it as oppressive, this control mechanism is necessary if a meaningful conservation of soil is to be achieved. The Act further empowers³⁷ any officer³⁸ of the government to summarily impound any livestock which, in contravention of the provisions of the Act or of any soil conservation scheme, is trespassing or being grazed on, or has been introduced into, the Transkei or any soil conservation area, or any part thereof, as the case may be. Although these provisions are necessary for the conservation of soil, they however work untold hardships to the local people who are deprived of their rights to the grazing land for their livestock which are terminated³⁹ upon an area being declared a soil conservation area.

Under the provisions of Chapter 8⁴⁰ of the Act, the community is under a duty to assist in the maintaining or repairing soil conservation works⁴¹ and extinguishing fires⁴² whenever called upon to do so by a government officer as well as clearing⁴³ any fire-belt or burning any grass or other growth. The Act further empowers any government officer and any other person duly authorised by the

36. McAllister, fn. 30, *supra*, 346.

37. Section 22.

38. By "any officer of the government" is meant not only an officer of the Department of Agriculture and Forestry responsible for the implementation of the Act, but it also includes chiefs, headmen, police, etc.

39. Section 23.

40. Chapter 8 deals with miscellaneous provisions of the Act which are nonetheless considered important for the attainment of its objectives.

41. Section 27(a).

42. Section 27(b).

43. Section 27(c).

Minister⁴⁴ to enter upon any land for the purpose of ascertaining the desirability⁴⁵ of constructing upon such land any conservation works as well as to inspect⁴⁶ any conservation works which have been constructed on such land. Section 29(1) of the Act provides that no person shall -

"(a) remove or attempt to remove any animal manure, including bat manure, from any administrative area without first having obtained the written permission of the Minister."

While the prohibition against the removal of animal manure is necessary for the growth of vegetation which is necessary to keep the soil intact and thus prevent soil erosion,⁴⁷ this has a great disadvantage to most of the rural population as the animal manure is important as a source of fuel necessary for cooking and keeping their houses warm especially during cold weather. The hardship is further exacerbated by the failure of development of these areas so as not to rely on animal manure as their fuel. Vast areas in Transkei have neither natural forests nor plantations to supply them with fuel which, it is submitted, is a necessity in any community. Maybe with the introduction of the Reconstruction and Development Programme, the government will provide these rural communities with electricity.⁴⁸

44. Section 28(1).

45. Section 28(1)(a)(i).

46. Section 28(1)(a)(ii).

47. Rabie, *op cit.*, fn. 19, p.14.

48. While the seriousness and determination of the present government in providing rural communities with electricity under the RDP is not doubted, it is however not feasible in the near future of ten years that this ideal will be attained, given the lack of infrastructure and poor state of roads leading to most rural areas, some of which are not even accessible by road but can only be reached on foot or by air. This is the opinion which I formed through the experience gained in my involvement with election preparation through the Transkei during April 1994.

Failure to comply with the provisions of the Act, renders the person liable to an offence.⁴⁹ Any person convicted for contravening the provisions of the Act shall be liable to a fine not exceeding two hundred Rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.⁵⁰ In addition to the sentence so imposed, the court convicting a person for grazing livestock in contravention of the provisions of section 23 or who has introduced livestock into the Transkei from outside its borders or introduced or kept such livestock into a soil conservation area in contravention of the provisions of section 21(1), shall order such person to remove such livestock beyond the boundaries of Transkei or soil conservation area or the government land concerned as the case may be".⁵¹

The Chief Minister (later known as the Prime Minister during the parliamentary rule and the Chairman of the Military Council under the Military rule) is empowered to assign⁵² the administration of the provisions of the Act to any Minister or partly to one Minister and partly to another Minister or other Ministers by notice in the *Government Gazette* and may in such notice prescribe the powers and functions which shall be exercised and performed by the several ministers. Although this is the position most administrative powers of the Act are exercised by the Minister of Agriculture and Forestry.⁵³

49. Section 34(1).

50. Section 38(2).

51. Section 34(3)(a).

52. Section 38(i).

53. Mr M. Mbana, ex-Director General, Department of Agriculture and Forestry, Transkei.

3.2 Transkei Forest Act, 1969⁵⁴

3.2.1 Introduction

This Act repealed the Forest Act, 1941⁵⁵ and Forest Amendment Act, 1948⁵⁶ both of which were inherited from the Republic of South Africa on attainment of self-government under the provisions of the Transkei Constitution Act, 1963.⁵⁷ A curious aspect about the Transkei Constitution Act is that it had a suspensive effect on the operation of South African laws in Transkei in those areas of legislative jurisdiction conferred on the Transkei Legislative Assembly.⁵⁸ Accordingly, as forestry fell under the jurisdiction of the Transkei Legislature Assembly, taken to its logical conclusion were it not for the provisions of Section 65 of that Act⁵⁹, it would mean that Transkei had no forestry Act between 24 May, 1963⁶⁰ and 21 October 1969.⁶¹ In practice, therefore, the South African Forest Act, 1941 was, for all intents and purposes, applicable in Transkei.⁶² The Act falls under the Department of Agriculture and Forestry for its administration.⁶³

54. Act 6 of 1969.

55. The Forest and Veld Conservation Act 13 of 1941 (RSA).

56. Forest Amendment Act No. 10 of 1948.

57. Section 2 of Act 48 of 1963.

58. In this regard see the decision in *S vs Zitudeza* 1970 (2) SA 773. South African laws in those areas applied until repealed.

59. Which provides for the continuation of South Africa laws in Transkei until repealed or amended.

60. The date Transkei was given limited legislative powers in terms of section 37 of Transkei Constitution Act, 1963.

61. The date of coming into effect of the Transkei Forest Act, 1969.

62. Mr Mbana, *op cit.*, fn. 53.

63. Section 1(vi) read with sub-section (xv).

3.2.2 Provisions of the Act

The purpose⁶⁴ of the Act is:

"To provide for the reservation of land for forest purposes, the demarcation, protection, management and use of forests and plantations, the protection of trees and other forest produce, the regulation and control of trading in forest produce and for incidental matters".

Although this Act primarily aims at the reservation, demarcation and protection of land for forest purposes, it also plays an important role in the protection of other biomes⁶⁵ and for this reason it can be said that it supplements the provisions of Transkei Agricultural Development Act inasmuch as the purposes of the two Acts overlap. One of the other advantages of this overlap is the fact that both Acts are administered by the same Department of Agriculture and Forestry and this helps the avoidance of conflict in the administration of the Acts which would not be the case if they were administered by two different government departments.⁶⁶ The provisions⁶⁷ of these Acts have enabled the government to set aside certain areas as forest and nature reserves. Furthermore, the Minister may by notice in the *Government Gazette*, declare⁶⁸ any forest reserve or any specified portion thereof,

64. Preamble to the Act.

65. One of the purposes of the Act is "the protection of trees and other forest produce". "Forest produce" is defined to mean "anything which is produced by trees and grows or is grown in a forest or is naturally found in or obtained from a forest, and includes bark, bees, birds ... earth, essential oils, ferns, firewood, fish, flowers, fruit, game, grass ..." (Section 1 [viii]).

66. Fuggle and Rabie, fn. 25, *op cit.*, 101.

67. Section 5 and 9 of the Act read with Section 13 of the Transkei Agricultural Development Act, 1966.

68. Section 6(1).

to be a demarcated forest.⁶⁹ The importance of having a forest declared a demarcated forest is that it becomes a nature reserve for the preservation of trees, natural scenery and forest produce, or as a protection forest for the conservation of water sources or water supplies or the prevention of soil erosion or sand drift, and no person is allowed to disturb or remove any forest produce from such area.⁷⁰ For the purposes of carrying out the objects of the Act, the Department of Agriculture and Forestry⁷¹ is vested with functions, powers and authorities, which, *inter alia*, are:

- to protect and conserve water sources and supplies, and to prevent and combat fires, soil erosion and sand drift;⁷²
- to conserve and protect trees, forest produce or forests especially reserved or protected under section 7;⁷³
- to control and manage any nature reserve or protection forest set aside under section 9;⁷⁴
- generally to exercise all such powers and authorities as may be necessary for the attainment of the aims and objects of this Act.⁷⁵

69. "Demarcated forest" means any forest reserve or portion of a forest reserve which in accordance of the provisions of section 6 has, or is deemed to have, been declared a demarcated forest (section 1[v]). "Forest reserve" means any land which, in accordance with the provisions of section 5(2) or (3) has, or is deemed to have, been reserved and set aside for forest purposes (section 1[ix]).

70. Section 6(4) read with section 9(2).

71. Section 2(1).

72. Section 2(1)(f).

73. Section 2(1)(l).

74. Section 2(1)(m).

75. Section 2(1)(p).

Special powers have been given to various officers as a further safeguard for the protection of government forests. Any magistrate, justice of peace, forest officer or police officer is authorised⁷⁶ to demand from any person the production of any authorization⁷⁷ which he is required to have under the Act. For this purpose extensive powers equal to those of police officers have been given to forest officers,⁷⁸ who are officers employed by the department, in respect of any offence, attempted offence or suspected offence under the Act. Such powers include power to arrest without warrant⁷⁹ any person reasonably suspected of having been a party to the contravention of specified provisions of the Act and where such officer has reason to believe that such person will fail⁸⁰ to appear in answer to a summons as well as the power to seize⁸¹ items suspected to be involved in the commission of any offence under the Act. For the purpose of protecting game within a Government Forest, a forest officer is authorised⁸² to destroy any dog found trespassing or attacking, pursuing or hunting any game, except in accordance with any authorization. The Act restricts civil actions for damages sustained by any person as a result of any action⁸³ by any officer in furtherance of the objects of the Act to cases in which negligence on the part of such officer can be proved, otherwise no action for damages lies against the government, the department or officer, as the case may be, for any injury to or loss sustained by any person in

76. Section 20(1).

77. The authorization in question is that contemplated in terms of sections 11, 14, 16 and 18 of the Act.

78. Section 20(2).

79. Section 20(3)(a).

80. Section 20(3)(b) read with 20(6).

81. Section 20(3)(c) and (d).

82. Section 20(3)(e).

83. Section 25.

consequence of anything done in good faith under the Act. The Act further totally denies a person a civil remedy⁸⁴ against the seizure and detention of a forest produce by a forest officer or police officer. The Act provides that:

"Whenever a forest officer or police officer suspects on reasonable grounds that any forest produce found in or obtainable from or in transit from a government forest is about to be or has been wrongfully removed, he may seize and detain such forest produce pending enquiry".

In such a case no action⁸⁵ for damages shall lie respect of such seizure or detention. Although these provisions deprive individuals of their rights of civil actions to sue for damages suffered, it is submitted that the balance of convenience is in favour of such provisions as the protection of the environment is to the benefit of the public at large⁸⁶ as against such individual rights to sue. However, it is doubted whether in view of the provisions of Chapter 3 of our present constitution⁸⁷ which entrenches fundamental rights of the citizens, the provisions of this Act limiting and depriving citizens of their civil actions cannot be said to be unconstitutional and accordingly declared by the Constitutional Court⁸⁸ to be null and void for that very reason. The Minister is authorised⁸⁹ by the Act to make regulations relating to all or any of the matters referred to in the Act⁹⁰ and generally regulations which he

84. Section 20(5)(a).

85. Section 20(5)(b).

86. Michael Botha - *Trends in environmental policy and law*, (1980), 133.

87. Republic of South Africa Constitution Act, 1993 (Act 200 of 1993).

88. Section 101 of Act 200 of 1993.

89. Section 23.

87. Section 2(1).

may deem necessary in order to ensure that the purposes of the Act are achieved.⁹¹ In consequence of these powers certain forests in Transkei have been set aside as Nature Reserves⁹² in keeping with the provisions of the Act;⁹³ Transkei forests have been divided into forest divisions, districts and areas⁹⁴ in accordance with the provisions of the Act;⁹⁵ certain officials of the department have been designated⁹⁶ as forest officers;⁹⁷ camping regulations have been issued;⁹⁸ camping areas have been declared⁹⁹ and regulations for the protection of government forests against fire¹⁰⁰ have been issued.

An interesting feature of the Act is that although there is prohibition against the cutting, felling, removing, injuring, destroying, collecting or the taking of any forest produce without authorization,¹⁰¹ local people residing in Administrative Areas adjacent to government forests are, subject to certain conditions,¹⁰² exempted from these prohibitions¹⁰³ for the purpose of exercising their right to "theza"¹⁰⁴

91. This is in keeping with the provisions of section 2(1)(p).

92. Under GN. 24 of 1972 published in *Government Gazette* 9/72.

93. Section 9(1)(a).

94. GN 22/74 published in *Government Gazette* 8/74.

95. Section 3.

96. Section 4(1).

97. Section GN 1/74 published in *Government Gazette* 2/74.

98. GN 108/85 published in *Government Gazette* 39/85.

99. GN 7/87 published in *Government Gazette* 4/87.

100. GN 42/86 published in *Government Gazette* 19/86.

101. Section 14(1).

102. As provided in section 10(3).

103. Section 14(2)(a).

from such forests. They may also, with the approval of a local headman¹⁰⁵ or chief, take and remove from any¹⁰⁶ government forest trees and forest produce and other species not specified under Schedule 1 of the Act and not otherwise protected under the provisions¹⁰⁷ of the Act. This is highly commendable in view of the dependency of local people on forest products. It is an offence in terms of the Act¹⁰⁸ to contravene its provisions and any person convicted for such breach may be sentenced to two hundred Rand or the imprisonment for a period not exceeding six months or to both such fine and imprisonment.

3.2.3 Conclusion

Despite its unpopularity¹⁰⁹ to the local people who are affected by its provisions, the Act can be said to have been successful with few exceptions¹¹⁰ in preserving and conserving forest produce in Transkei and for this reason the Department of Agriculture and Forestry has been praised as an excellent custodian for these indigenous forests.¹¹¹ However, upon the collapse of the Apartheid regime when Transkei became incorporated into South Africa, there was a misconception on local people that all the laws passed during that era including that of the Homeland

104. "Theza" means to collect, take and remove such dry firewood, thatchgrass and reeds as can be taken without damage to living trees.

105. Local headmen and/or chiefs are authorized in terms of section 14(2)(b) to grant approval to their subjects for the removal of trees and other forest produce and species not protected in terms of Schedule 1 of the Act.

106. Other than a nature reserve, protection forest, demarcated forest or plantation.

107. Under section 7(2) or (3).

108. Section 21(1).

109. McAllister, fn. 30, *op cit.*, 346 ff.

110. Such as the destruction of forest at Mateku and Hluleka (Cooper & Swart, *op. cit.* p.45).

111. Cooper and Swart, Transkei Forestry Survey (1992), 7-8.

system were no longer applicable and binding on them. As a result they plundered and wrecked these forests with their natural resources as was the case in Cwebe and Dwesa Nature Reserves.¹¹² This situation which also appeared on television¹¹³ was so serious such that the Member of the Executive Council (MEC) for the Eastern Cape, for Agriculture and Environmental Affairs, Dr Delport, solicited the assistance of the security forces to take action against the people involved in illegal harvesting seafood and forest produce.¹¹⁴ The situation was so serious such that the nature conservation officers could do nothing as they were threatened with death by the local people who claimed the forests to be their land.¹¹⁵ The situation was made worse by the lack of sufficient manpower to prevent the carnage and further because the conservation officers are not equipped for confrontation situation which existed.

112. *Daily Despatch*, Friday November 11, 1994 (front page).

113. During November 1994.

114. *Daily Dispatch*, Saturday November 5, 1994 (front page).

115. *Ibid.*

CHAPTER 4

ENVIRONMENT CONSERVATION (DECREE), 1992¹

4.1 Introduction

This is the first legislative enactment in Transkei which sought to consolidate in one piece of legislation various aspects² of conservation in Transkei. This Decree repeals certain Acts which also had a bearing on the conservation in Transkei, namely the Mountain Catchment Areas Act,³ Transkei Nature Conservation Act, 1971,⁴ Sea Birds and Seals Protection Act, 1973,⁵ Sea Fisheries Act, 1973⁶ Sea Fisheries Amendment Act, 1976,⁷ Mountain Catchment Areas Amendment Act, 1976,⁸ and Decree No. 18⁹ (Amendment of Transkeian Nature Conservation Act, 1971) of 1990. The repealed legislation was basically calculated to promote an environmental objective and thus incorporated environmental norms. Although the

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1. Decree No. 9 (Environmental Conservation) of 1992. Upon the taking over of government in a bloodless coup by the Military Council during December, 1987, parliament was dissolved and the Military Council legislated by Decree.
 2. This Decree (Act) is supplemented by the Transkei Agricultural Development Act, 1966, and the Transkei Forest Act, 1969, since these Acts have not been repealed by this Decree although in some areas there are overlaps between the provisions of these Acts and this Decree.
 3. Act 63 of 1970.
 4. Act 6 of 1971.
 5. Act 46 of 1973.
 6. Act 58 of 1973.
 7. Act 22 of 1976.
 8. Act 41 of 1976.
 9. Decree 18 of 1976.

present Decree attempts to consolidate the environmental norms contained in the repealed legislation,¹⁰ it in no way purports to be a single statutory instrument which comprehensively codifies¹¹ environmental law as other legislation predominantly concerned with environmental conservation is not repealed by this Decree.¹²

4.2 The application of the Decree

4.2.1 Its purpose

The purpose of the Act is:

"To consolidate and amend the laws relating to the conservation, management, protection and commercial utilization of indigenous fauna and flora and their habitats on land, in fresh water and in the sea excluding national parks; to provide for the establishment and management of national wildlife reserves, protected natural environments, limited development areas, camping areas, hiking trails, water catchment areas and a coastal conservation area; to provide for the establishment of an environmental conservation fund; to provide for matters relating the sea and the seashore; and to provide for incidental matters."¹³

10. Some of which was inherited from the Republic of South Africa and incorporated into Transkei upon attainment of the independence in terms of the provisions of Act 100 of 1976 (RSA). fn. 1-9

11. Fuggle & Rabie - *Environmental Management in South Africa*, (1992), 99.

12. See fn. 2, *supra*.

13. The preamble to the Act.

It can be seen at once that the purpose of the Decree is defined in comprehensive terms encompassing almost all the aspects of conservation but what is surprising is that nowhere in the Decree is "conservation" attempted to be defined despite the title of the Act. In fact, even in the repealed Nature Conservation Act¹⁴ no attempt is made to define what is meant by the concept "conservation". It is submitted in the circumstances that the ordinary meaning of this concept is to be inferred.

4.2.2 Administration of the Decree and the powers of the department

The administration of the provisions of the Decree is conferred¹⁵ upon the Department of Agriculture and Forestry which powers are to be exercised by the Director-General of that department. This is commendable as a potential conflict with other State departments' objectives which may not necessarily be environmental-oriented is avoided since other related legislation to conservation norms¹⁶ is also administered by the same department. This enables the department to coordinate the implementation of these enactments effectively thereby cutting down costs which otherwise would be incurred if they were administered by different departments. One of the primary functions of the department in implementing the Decree is the issuance, amendment and withdrawal of authorizations as contemplated in its provisions.¹⁷

14. Act 6 of 1971.

15. Section 2.

16. e.g. The Agricultural Development Act 10 of 1966 and the Forest Act 6 of 1969.

17. Section 2(2) and 2(3).

The department is granted powers and allocated funds which it may exercise, and for the purpose¹⁸ of the Decree:

- "(a) Carry out investigations and projects, make surveys and conduct experiments or cause such to be carried out, made or conducted on its behalf in connection with any fauna or flora or their habitats and may for such purpose acquire such property, whether movable or immovable, as may be necessary or desirable for the purpose;
- (b) by educational means promote understanding and awareness of environmental conservation amongst the people of Transkei;
- (c) publish or in any other manner disseminate information relating to the matters dealt with in this Decree which it acquires in the course of its activities and which may serve to further the achievements of the aims and objects of this Decree;
- (d)
- (e)
- (f) generally, do all such other things as are necessary for the achievement of the aims and objects of this Decree, the generality of the powers conferred by this paragraph

18. Section 3.

not being limited in any way by the provisions of the preceding paragraphs".

These powers are wide enough for the achievement of the stated objects of the Decree.

4.2.3 Determination of environmental policy

The Minister of the department is granted powers to determine¹⁹ general policy, by notice in the *Government Gazette* after consultation with every Minister whose department is directly concerned with the environment, the Minister of Finance and the Council for the Environment, in respect of:

- "(a) the protection of ecological processes, natural systems and areas of exceptional natural beauty as well as the preservation of biotic diversity;
- (b) the promotion of sustainable usage of species and ecosystems and the proper use and re-use of other natural resources;
- (c) any results of man-made structures, installations, processes or products;
- (d) the establishment, maintenance and improvement of environments which contribute to a generally acceptable quality of life for the inhabitants of Transkei".

19. Section 4(1).

It is not clear from the provisions of the Decree whether such policy would be binding upon the other ministries whose departments are directly concerned with the environment and whom the Minister is required to consult before determining such policy. It is submitted that the intention of the legislature is that such policy should be binding, firstly because of its intended "generality" and secondly because there would be no need for consultation if the aim was not to have such general policy binding upon those other departments. However, unlike the South African Conservation Act²⁰ in which the Minister of the Department of Environmental Affairs²¹ is required to obtain the concurrence²² of the other ministers charged with the administration of any law which relates to a matter affecting the environment, the Decree does not anticipate such concurrence but merely consultation. In the premise irrespective of the consent of those other Ministers, the Minister of Agriculture and Forestry may determine such policy. Fuggle and Rabie²³ would doubt the enforceability of such policy on the other ministries, especially where they refuse to give their consent in view of the principle of departmental autonomy since if enforceable, it would mean that the Department of Agriculture and Forestry would have overriding powers over those other departments. The learned authors express the importance and shortcomings of consultation or concurrence with other affected departments in the formulation of environmental policy thus:

"Where consultation of concerned bodies is required, it may slow down the decision-making process, but holds the potential for improved decision-making as well as for improved cooperation

20. The Environment Conservation Act 73 of 1989.

21. A counterpart of the Minister of Agriculture and Forestry under this Decree.

22. Section 2(2) of that Act (Act 73 of 1989).

23. *Environmental management in South Africa*, 102.

between the bodies concerned. In the final analysis, however, it would still amount to one administrative body exercising overriding powers over others. Where concurrence is required, a potentially similar situation prevails, except for the important difference that, since the principle of departmental autonomy is recognized, the refusal of but one Minister to agree may entirely frustrate the intentions of the body seeking to achieve conservation objectives."²⁴

However, notwithstanding these powers conferred upon the Minister to determine environmental policy, no such policy had as yet been determined at the date of reincorporation of Transkei into South Africa.

4.2.4 Special powers of the Director-General

The Decree confers²⁵ powers on the Director-General to take special measures to ensure the survival of any species of protected wild animal, protected game, ordinary game, endangered flora or protected flora and may also order the destruction of any aquatic growth found to be injurious in any waters. For the purpose of the carrying out of the provisions of the Decree, the Director-General may appoint²⁶ nature conservation officers. Extensive powers of such officers are detailed²⁷ and are almost the same or more as those of forest officers²⁸ under the Forest Act.

24. *Ibid.*

25. Section 5.

26. Section 6.

27. Section 7.

28. Section 20(3)(a) and (b), read with 20(6).

4.2.5 Establishment of the Council for the Environment

For the first time the Decree establishes a Council for the Environment²⁹ (the Council) whose function is to advise the Minister on any matter -

- (a) which he refers to it;
- (b) which it deems necessary for the attainment of the objects of this Decree;
- (c) relating to the issue of permits or other forms of authority; and
- (d) concerning the research contemplated in Section 59.

this statutory body is in essence an advisory body which advises the Minister on matters which the Minister refers to it. It is conceivable that when the Minister exercises his power to determine policy as contemplated in the Decree, he may require the advice of this body. The Council is empowered to advise the Minister on matters which it deems necessary for the attainment of this object.³⁰ This provision is applauded since from its composition the Council consists of experts representing various interests and thus in a better position to advise the Minister meaningfully in relation to environmental matters. The Council is composed³¹ of nine members made up as follows:

29. Section 9.

30. Section 9(2)(b).

31. Section 10(1).

- "(a) four persons representing the sciences of botany, geography or zoology, by reason of professional qualification and experience therein;
- (b) one person representing the agricultural industry;
- (c) one person representing the forest industry;
- (d) one person representing the tourism industry;
- (e) one person representing an organization concerned with the conservation of nature in Southern Africa,³² by reason of holding an office or executive appointment therein;
- (f) one other person.³³

What is commendable about the composition of this Council is that its members are drawn outside the employ³⁴ of the State or para-statal organization and therefore is expected to concentrate solely in environmental related matters without regard to other governmental priorities and financial constraints which might conflict with its objective. Another interesting feature about the functioning of the Council is that the Minister -

32. Such as an official from the Natal Parks Board since by virtue of its geographic situation, Transkei can easily be influenced by conservation policies applied by the Board.

33. It is advisable that such other person be legally qualified so as to advise the Council on the legal implications of its advice to the Minister.

34. Section 10(1).

"... shall inform the Council of any decision made or action taken in consequence of any advice given by the Council under subsection (2) and in the event that such decision or action is not in accordance with such advice, he shall inform the Council of the reasons therefor."³⁵

Although the Decree does not oblige the Minister to take the advice given to him by the Council, it at least makes him accountable to the Council in that in the event the Minister does not take the advice of the Council he is obliged³⁶ to inform it of the reasons therefor. It is submitted in the premise that should the Minister ignore the advice of the Council without giving reasons therefor, the Council may apply to Court for a *mandamus* compelling the Minister to furnish such reasons and if such reasons are unsubstantiated, that would be a basis of having same set aside on review as unreasonable.³⁷ To rule out any possibility of potential bias on a member of the Council on matters which affect him, the Decree prohibits any member from being present at any meeting or take part in the proceedings of the Council while any matter in which such member has directly or indirectly any interest is being dealt with.³⁸ The Council is empowered to co-opt such number of persons it deems necessary who are not its members to assist it in respect of any function or duty of the Council.³⁹

35. Section 9(3).

36. The section is couched in peremptory terms by the use of "shall".

37. Fuggle & Rabie, *op. cit.*; n.24, p.105.

38. Section 10(8).

39. This is a necessary power as it enables the Council or Committee of Council to co-opt, as its member, any specialist in the field in which the Council is not represented. This ensures that the Council will always make sound advices to the Minister on any aspect which may affect the environment.

4.2.6 Wild animals and indigenous flora

The Decree classifies⁴⁰ wild animals for the purposes of its provisions so as to enable individuals to know under which category a given animal falls. The Decree ensures an effective protection of protected animals in that it prohibits their killing, hunting, catching, etc. without the authorization of the Minister. What is more is that before the Minister gives such authorization he has to seek the advice⁴¹ of the Council for the Environment without which, it is submitted, such authorization cannot lawfully be granted. The conservation, protection and/or control of the various classifications of wild animals including their hunting are dealt with fully⁴² in the Decree.

The Decree classifies indigenous plants into "endangered flora"⁴³ and "protected flora".⁴⁴ Picking or otherwise possession of protected endangered flora is prohibited⁴⁵ and the Decree buttresses the contravention of the provision with a criminal penalty of a fine of R25 000 or to imprisonment for a period not exceeding two years⁴⁶ or to both such fine and imprisonment in respect of each⁴⁷ plant

40. These are mentioned in Schedules 1 to 4 inclusively as follows: (Section 12):

- (a) Schedule 1 for protected wild animals;
- (b) Schedule 2 for protected game;
- (c) Schedule 3 for ordinary game;
- (d) Schedule 4 for problem wild animals.

41. Section 13.

42. Sections 13-22.

43. Section 23 read with Schedule 5.

44. Section 23 read with Schedule 6.

45. Section 24(1).

46. Section 24(2).

47. Underlining is my emphasis.

associated with the offence and the Court upon convicting an offender may in addition declare all the endangered flora in his possession, whether or not associated with the offence, forfeited to the State. It is submitted with respect that these penal provisions are too severe and out of proportion to the offence committed and are therefore oppressive, more so if regard is had to the fact that the majority of likely violators of these provisions are indigenous people who, from time immemorial, have been dependent on indigenous medicinal plants and herbs for their health.⁴⁸ Exploitation of protected and other flora found in certain areas is prohibited unless a person is authorised by permit.⁴⁹

4.2.7 National wildlife reserves, water catchment areas and protected natural environments

The Decree empowers⁵⁰ the State President, by Proclamation in the *Government Gazette*, to:

- "(a) declare any portion of government land, the territorial waters, the sea-shore, a tidal river and a tidal lagoon to be a national wildlife reserve⁵¹ for the purpose of:
 - (i) the protection, preservation, reproduction or propagation in their natural state of protected wild animals, protected game and ordinary

48. Cunningham A.B., *African Medicinal Plants* (1990).

49. Sections 25 and 26.

50. Section 27(1).

51. "National wildlife reserve" means a national wildlife reserve established in terms of section 27 and includes any nature reserve established on State land in terms of a law repealed by this Decree (section 1 definitions).

game, including any which are exotic wild animals and indigenous flora including, where appropriate, marine and aquatic animals, plants and growth;

- (ii) the protection and preservation of any object of geological, archaeological, historical, oceanological, educational or other scientific interest;
- (iii) the creation of opportunities for study and research in any of the above fields;
- (iv) the provision of facilities for recreation in a rural or natural environment; and
- (v) the preservation or enhancement of the natural beauty of the area concerned".

The control, maintenance, development and management of national wildlife reserves are vested⁵² in the Director-General who has been given extensive powers for the objects stated in section 27(1). These powers are so extensive⁵³ such that the Director-General may perform any conceivable act to attain the objectives of the Decree.

If regard is given to the fact that a Director-General is a public servant who is liable to be transferred at any time from one government department to another, the

52. Section 28(1)

53. Section 28(2) and (3).

powers conferred on him by the Decree are such that they can only be meaningfully exercised by a specially established body which has a vested interest and expertise in the conservation and preservation of wildlife reserves such as the Natal Parks Board. It is further undesirable to leave such important issues in the absolute control and management of a civil servant who may lack knowledge in such affairs and may not even have personal interest in conservation matters at all. Unfortunately, in Transkei no such bodies exist and all conservation issues are left solely to the control by the Department of Agriculture and Forestry under the administration of the Director-General. However, notwithstanding such extensive powers vested in the Director-General, the Decree specifically provides that no prospecting or mining shall be undertaken on any land included in a national wildlife reserve except with the approval by resolution of the Military Council.⁵⁴ This provision is welcome since mining has a detrimental effect on the preservation of wildlife and on the ecology generally as demonstrated by the resistance of the public at large against the mining of St. Lucia. For the effective conservation and protection of national wildlife reserves, there are restrictions and prohibitions against entry and other activities in such areas.⁵⁵

For the conservation of water, the Decree empowers⁵⁶ the Minister, by notice in the *Government Gazette*, to declare any area to be a water catchment area; give directions in relation to such land relating to its conservation, use, management and control; the prevention of soil erosion, the protection and preservation of the natural vegetation and the destruction of exotic flora detrimental to the natural vegetation. If such direction prejudices an owner in the free use of his land, he may be

54. Section 28(4).

55. Section 29.

56. Section 30.

compensated in respect of actual patrimonial loss suffered by him in accordance with the provisions of Transkei Agricultural Development Act.⁵⁷

The Minister may, also by notice in the *Government Gazette*, declare any area to be a protected natural environment for the promotion of the preservation of particular ecological processes, natural systems, natural beauty, species of indigenous fauna or flora or the preservation of biotic diversity in general.⁵⁸ There is no definition of protected natural environment save in a fashion which begs the question to mean any area so declared in terms of section 34.⁵⁹ The Minister is empowered with the concurrence of the Chairman of the Military Council to issue directions⁶⁰ in respect of any land or waters in a protected natural environment and may for the purpose of having such directions carried out render financial assistance,⁶¹ with the concurrence of the Minister of Finance, by way of grants or otherwise, to an owner or occupier of such land in respect of expenses he incurred in complying with such directions. The Minister is also empowered to assign⁶² the control and management of a protected natural environment to any authority or another government institution which power he can only execute with the concurrence of such body. The Decree further establishes⁶³ on the landward side

57. Section 31 read with Section 13 of Act 10 of 1966.

58. Section 34(1).

59. Section 1 definitions.

60. Section 34(2).

61. Section 34(3).

62. Section 34(4).

63. Section 39(1).

of the entire length⁶⁴ of the sea-shore, a coastal conservation area 1000 metres wide⁶⁵ measured from the high-water mark in relation to the sea and from the highest water level reached during ordinary storms in relation to a tidal river or tidal lagoon. To ensure the ideal of protecting and conserving this area in its pristine nature the Act prohibits⁶⁶ any person (including any department of State) without a permit issued by the Department in accordance with the plan for the control of coastal development approved by resolution of the military Council, from:

- (a) clearing any land or remove any sand, soil, stone or vegetation.⁶⁷
- (b) developing any picnic area, caravan park or like amenity;
- (c) erecting any building;
- (d) construct any railway, landing strip ...;
- (e) building any dam, canal, reservoir, water purification plant, septic tank or sewerage works;
- (f) laying any pipeline or erect any power-line or fencing;

64. This excludes any national park, national wildlife reserve, municipal land, sea-side resort, site occupied in terms of Proclamation No. 174 of 1921 or Proclamation No. 26 of 1963, privately-owned land and leasehold land.

65. This allowance of a width of 1000 metres from the sea as a coastal conservation area is very welcome as it serves to maintain the beauty of the scenery of the entire coastal region in its pristine and unspoiled nature and this will benefit the tourist industry a lot as the Transkei region relies on tourism as a source of its revenue which may be used in the Reconstruction and Development Programme for the entire region.

66. Section 39(2).

67. This provision may be calculated towards prohibiting any mining project being undertaken in the area.

- (g) establishing any waste disposal site or dump any refuse;
- (h) constructing any public or private road;
- (i) carrying on any activity which disturbs the natural state of the vegetation, the land or waters or which may be prescribed.

Unless authorization has been obtained, the use of motor vehicles is prohibited⁶⁸ on the sea-shore or the coastal conservation area. Chapters 9⁶⁹ and 10⁷⁰ deal with inland and sea fisheries respectively and are concerned mainly with the establishment of fish hatcheries in inland waters and the control and regulation of the exploitation of fish from the region's coastal waters.

The Decree establishes⁷¹ the Environmental Conservation Fund into which shall be paid -

- (a) all monies received from levies imposed in terms of section 60;⁷²
- (b) all moneys appropriated by the Military Council;

68. Section 40.

69. Section 42-50 inclusive.

70. Section 51-58 inclusive.

71. Section 59(1).

72. In terms of Section 60 the Minister may by notice in the *Gazette*, impose on any resource or operation covered by the Decree a levy at such rate as he deems fit.

- (c) all moneys received from any other source with the approval of the Minister in consultation⁷³ with the Minister of Finance.

The Director-General is responsible for the administration of the fund. The establishment of the fund is highly commendable as the moneys in the form of levy on environmental resources may be applied for conservation purposes where it belongs rather than being deposited into the coffers of the State where it could be allocated for other purposes, as the financial exigencies of the State may demand, totally unrelated to conservation and which may even be counter conservation-oriented.

4.2.8 Environmental conservation measures: litter and waste management control

For the control and prevention of pollution, the Decree prohibits⁷⁴ the dumping, discarding or leaving of any litter on land or water surface except in a container provided therefor or at a site set aside for the purpose. The responsibility⁷⁵ for the provision of such containers or setting aside such disposal sites is on the person or institution responsible for the maintenance of any place to which the public has access. The Decree further prohibits⁷⁶ any person, juristic or otherwise from

73. The requirement for the concurrence of the Minister of Finance for the payment of such moneys into the Fund is not necessary as he may have other national financial priorities to which he may direct such funds to be paid thereby defeating the purpose of the Fund as such moneys may have been donated specifically for it.

74. Section 65(1).

75. Section 65(2).

76. Section 66(1). This provision ensures that Transkei will not be made a dumping ground for hazardous substances from outside Transkei as was done by a certain thermo-plant in Cato Ridge outside Durban which contracted to process hazardous waste from overseas which,

disposing of or processing hazardous⁷⁷ waste on any land or in the sea originating from outside Transkei. It also obliges⁷⁸ persons who wish to operate waste disposal sites within Transkei to first obtain a permit from the Department to do so. The Decree further enjoins the Minister with the power to make regulations in relation to the general control and management of sites for the disposal of waste.

4.2.9 Control over detrimental activities

In a further effort to prevent pollution of the environment, the Decree empowers⁷⁹ the Minister by notice in the *Gazette* to designate certain activities, in consultation with each Minister of State responsible for a department which may have a direct or indirect interest on such activity, which he considers detrimental to the environment, whether in general or in respect of certain areas, to be detrimental activities. The effect of an activity being designated as a detrimental activity is that no person shall undertake such activity or cause or allow it to be undertaken⁸⁰ except by virtue of a written authorization by the Minister. The Decree however, does not define what is meant by "detrimental activity". It would have been welcome if the Decree defined such activity like its South African counterpart⁸¹ which lists broad categories, all having environmental significance, as examples to which

as a result of radiation, affected the health of the plant's employees.

77. The section specifically defines "hazardous waste" to include "nuclear hazard material: as defined in Nuclear Energy Act, 1982 (Act 92 of 1982), of the Republic of South Africa and any substance which is or may be harmful to humans animals, plants or the environment generally (section 66[5]).

78. Section 66(2).

79. Section 67(1) and (2).

80. Section 67(3).

81. Section 21(2) of the Republic of South Africa Environment Conservation Act, 1989 (Act 73 of 1989).

designated detrimental activities could be classified though in no way limited to such list. It may however be inferred that the legislature intended that such list as contained in the Republic of South Africa Act be adopted since in the definition of hazardous waste it adopted a definition contained in the Republic of South Africa Nuclear Energy Act, 1982.⁸² What is commendable about the ministerial power to designate an activity as detrimental is that his decision is final albeit he must first consult with the Minister of each of the departments which may have an interest in such activity. As stated before,⁸³ if concurrence of the various interested ministries was required that would defeat the very purpose of having such activities designated detrimental. However, there seems to be no restriction on the type of activity which may be prohibited as anticipated by the Decree.

4.2.10 Limited development areas

The Decree also empowers⁸⁴ the Minister, in consultation with the Chairman of the Military Council, by notice in the *Gazette*, to declare any defined area to be a limited development area. Once more, the Decree fails to define a "limited development area". The effect of having an area declared a limited development area is that no person shall undertake or cause or allow to be undertaken any development⁸⁵ or action prohibited by regulation in such area unless authorized thereto by the Minister. What is curious about this section is that the Minister is required to consult only with the Chairman of the military Council and there is no mention whatsoever about consultation with the persons whose rights are to be affected by such a declaration. In the absence of express provisions depriving such persons a right to

82. See fn. 77, *supra*.

83. Fuggle & Rabie; *op. cit.* n.139.

84. Section 68(1).

85. Section 68(2).

be heard before their areas are declared "limited development areas" it is submitted that the Minister's declaration may be challenged in court and set aside as invalid for failure to afford such affected people a right to be heard in keeping with the common law principle of natural justice of the *audi altrem partem*.⁸⁶ Furthermore, unlike its South Africa counterpart, the Decree does not require the Minister to elicit public comment on any proposed declaration in order to consider representation that may be made. This provision may therefore be said to be authoritarian.⁸⁷

Chapter 13 of the Decree empowers the Minister to make regulations in respect of natural wildlife reserve;⁸⁸ hiking trails;⁸⁹ indigenous fauna, indigenous flora and coastal conservation area;⁹⁰ camping, caravanning and picnicking;⁹¹ inland fisheries;⁹² sea fisheries;⁹³ control over activities considered detrimental to the environment⁹⁴ and is granted⁹⁵ general regulatory powers prescribing the form of authorizations and other documents required for the administration of the Decree.

86. Administrator, Transvaal and Others vs Traub and Others 1989(4) SA 731(A) at 748 G-H. Matanzima vs Holomisa NO and Another 1992(3) SA 876 at 878.

87. Which is reminiscent of Military dictatorship.

88. Section 70.

89. Section 71.

90. Section 72.

91. Section 73.

92. Section 74.

93. Section 75.

94. Section 78.

95. Section 79.

Of these regulations only the regulations relating to the sea fisheries, inland fisheries and seaweed have been issued.⁹⁶

4.2.11 Penal provisions

Lastly, the provisions of the Decree are buttressed with criminal sanctions. The penalty for the breach of any of its provisions⁹⁷ for offences stipulated under section 82(1)(a), is generally, on first conviction, the payment of a fine of R25 000, or imprisonment for a period not exceeding two years or to both, and on second or subsequent convictions, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six years or to both such fine and imprisonment. The penalty for the breach of the provisions of a regulation⁹⁸ made in terms of the Decree, unless otherwise provided therein, is a fine not exceeding R5 000 or imprisonment for a period not exceeding six months or both such fine and imprisonment.

4.3 Conclusion

Although the Decree is far from being democratic as compared with its South African counterpart as it lacks provisions such as, for example, consultation with affected persons before the Minister declares an area a limited development area and other related provisions,⁹⁹ it nonetheless promises that its objectives could be achieved if implemented. Of course, if the Eastern Cape Province were to adopt it,

96. Under GN 129/92 published in *Government Gazette* No. 81 of 1992 (dated 9 December 1992).

97. Section 82.

98. Section 80.

99. For example, there is no provision which requires the submission of an environmental impact assessment report before an activity could be declared detrimental.

it would need drastic amendments to bring it as near as possible into line with the South African Act so as to strike a measure of uniformity in the application of conservation legislation throughout the country.

CHAPTER 5

EVALUATION OF ENVIRONMENTAL CONSERVATION DECREE

5.1 Introduction

"The mere existence of a body of environmental law, though essential in establishing a basis for action, does not in itself provide a solution to environmental problems. In fact, the mere promulgation of environmental legislation may lull the public into a false sense of security that the problems are being addressed, whereas there can be no realistic expectation of success without the adequate implementation of such legislation. To be sure, the establishment of legal provisions which are potentially effective to address environmental problems is indispensable. However, it is their satisfactory application that is decisive for ultimate success."¹

In this chapter an attempt will be made to determine whether the Decree contains sufficient mechanisms built in it to enable its successful implementation. Central to the successful implementation of any legislative enactment is the willingness of the general public to abide by its precepts for however stringent legislative provisions may be, without the willingness of the public to abide by such provisions, the legislation is bound to fail.²

1. Fuggle and Rabie,, *Environmental Management in South Africa* (1992), 120.

2. This has been demonstrated by the failure of the Apartheid security legislation to combat the political uprising for the liberation of the oppressed Black majorities by both Blacks themselves and some Whites, notwithstanding that such legislation was designed primarily to protect the interests of the latter group.

5.2 Education campaigns

One of the effective ways to obtain cooperation of the public towards the implementation of a legislation is to explain the purpose and objectives of such legislation and the advantages it brings to the people. The best way to do this is through education campaigns which should precede the implementation of such legislation so as to demonstrate the *bona fides* of the legislature towards the attainment of its ideals, since to conduct such education campaigns after the implementation of the Act is often too suspect and may be resisted by the very public whom the legislation is meant to benefit. The need for conservation education in Transkei is therefore a *sine qua non* for the success of the Decree; more so, if one considers that efforts spanning five decades have been devoted to educating³ the white farmer of the benefits of soil conservation.

I wholly agree with the views of the learned author, Rabie,⁴ that the greatest problem facing environmental conservation generally in Black areas such as Transkei, is the fact that these conservation measures, such as soil conservation schemes⁵ and setting aside of certain areas for conservation purposes,⁶ encroach upon Blacks' traditional rights to plough land hitherto allocated to them for farming purposes, to keep their cattle there, to build their houses there, and generally to

3. Rabie - South African Environmental Legislation (1976), 46.

4. *Ibid.*

5. Anticipated in terms of section 2 of the Transkei Agricultural Development Act, 1966 (Act 10 of 1966).

6. Such as establishment of nature reserves as anticipated in Chapter 5 (sections 22-25) of the Transkeian Nature Conservation Act, 1971 (Act 6 of 1971) since repealed by the present Decree.

utilize the natural resources provided by that land. The Military Council⁷ seems to have been aware of the necessity for conducting education campaigns for the success of the Decree in that, the Decree provides that the Department may, out of moneys appropriated for the purpose: "... by educational means promote understanding and awareness of environmental conservation amongst the people of Transkei."⁸

This legislative enactment is welcomed and highly commendable for the attainment of the objectives of the Decree. In practice however, it is doubted if the officials of the Department take advantage of these and like provisions,⁹ in that there is acute lack of environmental conservation awareness in the rural population of Transkei, as witnessed by the recent plundering of game and other forest produce at Dwesa and Cwebe forest reserves after the attainment of political independence during 1994.¹⁰ The advantages of environmental education and consultation with the affected people before legislation is implemented are discussed in Chapter 6.

5.3 Determination of environmental policy

The Decree vests the determination of the environmental general policy in the Minister.¹¹ This vesting of power for the determination of environmental policy is however not unique to Transkei as the same principle applies under the South

7. Which is the legislative body responsible for enactment of legislation by Decree under the military rule.

8. Section 3(b) of Decree No. 9 of 1992. Section 3 of Act 10 of 1966 goes further to anticipate consultation with the local people before a conservation scheme is applied.

9. McAllister, 1989, *Resistance to 'betterment' in Transkei: A case study from Willowvale district*, 346 ff.).

10. *Daily Despatch*, 11 November 1994.

11. Section 4 of the Decree.

African Act.¹² However, the Transkei Decree, although it anticipates that consultations by the Minister formulating the policy should be held with each Minister whose department is directly concerned with the environment, the Minister of Finance and the Council for the Environment, with the exception of the Council,¹³ the Decree does not require the Minister to obtain their concurrence. In South Africa however, such concurrence is required. It is submitted that the South African legislation in this regard is to be preferred because even although seeking concurrence of the various other Ministries for the formulation of the environmental policy may be dilatory, once obtained, there is likely to be more cooperation in the attainment of the policy's objectives which otherwise would not be obtainable where mere consultation, as in Transkei, took place without any commitment on the part of the other ministries. This in fact, could frustrate the very objectives of the policy. Furthermore, unlike under the South African legislation,¹⁴ under the Transkeian Decree, no opportunity is afforded in its provisions for public representations in respect of draft policy. The formulation of such policy does not therefore take democratic principles into account and may as a result prove to be unfavourable with the general public it is intended to benefit.

12. Section 2 of Environment Conservation Act 73 of 1989 (RSA). The wisdom of leaving the formulation of a national policy in the hands of an executive instead of the legislature is questioned by Glavovic (1990 SALJ 107 at 108-109).

13. In terms of section 9(3) of the Decree the Minister is required to inform the Council of the reasons for not taking its advice on any decision, which conceivably could include formulation of policy, in which the Council has advised the Minister. It is submitted that this provision anticipates that concurrence of the Council should be obtained in every environmental issue referred to the Council by the Minister or which the Council deems necessary to advise the Minister for the attainment of the objects of the Decree.

14. Fuggle & Rabie, fn. 1, *op. cit.*, 104.

5.4 Advisory powers of the Council for the Environment

What perhaps could enable the Decree to achieve its objectives meaningfully is the existence of the Council for the Environment (the Council) established in terms of section 9. The powers given to the Council are comprehensive in that it may advise the Minister on all matters it deems necessary for the attainment of the objects of the Decree. Of paramount importance in such powers are those in connection with undertaking or aiding research¹⁵ into the matter falling within the terms of the Decree. If it is to be accepted that the Minister is just an executive who may not necessarily be versed with, or sometimes even lacks personal interest in environmental matters, the importance of the Council becomes the more necessary. What is more about the Council is that it is composed of experts¹⁶ from the various fields concerned with environmental matters. Furthermore, the Council or its Committee is empowered to co-opt¹⁷ persons who are not its members, to assist it in respect of any of its functions. In this way the Council may be in a position to advise the Minister on any environmental issue meaningfully.

One of the other advantages of the Council apart from giving expert advice to the Minister in the exercise of his powers¹⁸ under the Decree, is that, unlike the Minister who is a parliamentary elected executive, it is a standing and continuous body unaffected by the change of politicians. Because of its permanent nature it may therefore help in updating the new parliamentary executives (Ministers) charged with the formulation of environmental policies and in the meaningful

15. Section 9 read with section 59.

16. Section 10(1).

17. Section 11(2).

18. Such as the issuance of various authorizations under the Decree for the exploitation of indigenous fauna and indigenous flora as anticipated in chapters 3 and 4.

exercise of ministerial powers and functions under the Decree. It has already been stated that, although the Decree does not provide so in express words, the Minister in the exercise of his powers ought¹⁹ to implement the advice given to him by the Council. It is submitted that the existence of the Council coupled with the ministerial obligation to consider its advice in making or taking environmental decisions are the only checks against the arbitrary exercise of power by the Minister under the Decree. For this reason the establishment of the Council with its function by the Decree is applauded.

5.5 Administration of the provisions of the Decree

The administrative powers for the Decree are conferred on the department and exercised by the Director-General who is the chief executive of the Department. This situation is not different from that which obtains in South Africa. Although under the South African Act, most government departments at all levels as well as other administrative bodies are in some way involved in the administration of environmental matters, the Minister²⁰ and the Department of Education Affairs have nonetheless been specially commissioned to administer²¹ environmental affairs. The Director-General in Transkei has been given comprehensive powers in the exercise of his duties, which include the power to appoint nature conservation officers whose powers are extensive and are the same as those of members of the police force with regard to effective arrest for the violation of conservation provisions.²²

19. fn. 13; *supra*.

20. Of the Department of Environment Affairs is the "Minister" referred to in the South African Conservation Act.

21. Fuggle & Rabie, fn. 1, *op. cit.*, 101.

22. Section 7.

The Minister exercises his powers under the Decree by regulations which are published in the *Government Gazette*. The disadvantage of exercising control over environmental affairs by ministerial regulations is that although they constitute subordinate legislation and thus can readily and easily be promulgated and amended to adapt to new situations, they may be declared void by the courts for vagueness or unreasonableness and sometimes for being *ultra vires*. For this reason regulations are not stable as they are vulnerable. It could be better if matters of principle and basic control provisions could be exposed to debate by the legislative body as a whole, rather than being left to the whim of a single executive member.²³ However, the problem of control over environmental affairs by ministerial regulation is, as stated above, also applied in South Africa and therefore this shortcoming is not unique to the Transkeian Decree.

5.6 Wildlife reserves, water catchment areas and protected natural environments²⁴

The Decree empowers²⁵ the President, by Proclamation in the *Government Gazette*, to declare any portion of government land, the territorial waters, the sea-shore, a tidal river and a tidal lagoon, to be a national wildlife reserve for the protection of indigenous fauna and flora. As such power is vested in the State President, it is assumed that same would be exercised on the advice of the Military Council (Cabinet). If this were so, there would be an objection to the declaration of such areas as it is assumed that full deliberations at Cabinet level would take place before an advice is given to the State President. What is objectionable however, is that the Decree is silent about any consultation with the people occupying the land

23. Fuggle & Rabie, fn. 1, *op. cit.*, 113.

24. Chapter 5 of the Decree.

25. Section 27.

in question who, invariable, would be affected by such declaration. In the premise it is submitted that the Decree has failed to take into account the interests of the affected persons and to balance these with conservation considerations. As the *actio popularis* does not apply under our law, it is not seen how the affected people could approach the courts to apply for an interdict against such declaration of their area as a reserve seeing that he would lack²⁶ the *locus standi* to do so.

The Minister, by notice in the *Government Gazette*, is empowered to declare any area to be a water catchment area²⁷ and may also by like notice, declare any area to be a protected natural environment.²⁸ Although for the declaration of an area to be a catchment area the Decree does not anticipate any consultation with the owners of the affected lands before such declaration, the Decree at least makes provision for the payment of compensation to such persons for actual patrimonial loss suffered.²⁹ For the protection of the natural environment the Decree requires the Minister to issue directions in respect of land in such areas with the concurrence³⁰ of the Chairman of the Military Council. It is not known what the legislature wanted to achieve by requiring the concurrence of the Chairman of the Military Council before the issuance of such directions unless the Chairman is possessed of some specialised knowledge regarding environmental matters. It would be better if the concurrence referred to was that of the Military Council as a whole as one would assume that deliberations would precede the issuance of such directions. What is commendable however, is that the Decree empowers the

26. Bray 1989 CILSA 872-5; Loots 1987 SALJ 131.

27. Section 30.

28. Section 34.

29. Section 31.

30. Section 34(2).

Minister to render financial assistance³¹ by way of grants or otherwise to an owner or occupier of the land affected in respect of expenses incurred by him in complying with such directions. At least this financial aid would serve as an incentive for the persons affected to comply with such directions and this may contribute towards the achievement of the objectives of the Decree.

What is also commendable in the Decree regarding these areas is that the Minister is empowered to assign the control and management of a protected natural environment to an authority or government institution other than the Department. What is objectionable however, is that such control and management that the Minister may assign as aforesaid is limited in respect of protected natural environments and does not extend to include natural wildlife and water conservation as well.

The Decree establishes³² as a coastal conservation area the landward side of the entire length of the sea-shore measuring one kilometre wide from the high-water mark of the sea. This is an outstanding provision in the Decree in that it is the legislature itself which has established this entire area as a coastal conservation area and not a declaration by the Minister as in most conservation areas³³ or the State President. The establishment of such coastal conservation by the legislature itself makes it to be beyond reproach by the courts which may declare such establishment to be invalid for vagueness or unreasonableness since the area has not so been established in terms of a subordinate legislation in the form of proclamations or ministerial regulations but has been established by the legislature

31. Section 34(3).

32. Section 39.

33. Such as under Chapter 5 of the Decree.

itself in terms of the Decree. The Decree also establishes³⁴ an Environmental Conservation Fund and the advantages of this fund have already been discussed above.³⁵ In an attempt to protect the environment from pollution, the Decree enacted conservation measures aimed at litter control³⁶ and the management and control of waste.³⁷ It leaves the rest of pollution control measures to be determined in terms of the Hazardous Substances Act, 1981³⁸ and the Atmospheric Pollution Prevention Act, 1985³⁹ and other related legislation. The idea of leaving pollution control to be determined in terms of specific pollution Acts is also commendable rather than to leave such a vast field under the control of this Decree.

5.7 Limited development areas and control over detrimental activities

The Minister is empowered by notice in the *Government Gazette* to declare any defined area to be a limited development area in which no person is allowed to undertake any development or action prohibited by regulation in such area except under authorization of the Minister or competent authority.⁴⁰ The Minister may by like notice designate certain activities which he considers detrimental to the environment, whether in general or in respect of certain areas, to be detrimental

34. Section 59.

35. Section 59(1).

36. Section 65.

37. Section 66.

38. Act 12 of 1981.

39. Act 14 of 1985. The regulations under this Act were issued in GN 20/91 under *Government Gazette* 13/9 which declare the whole of Transkei as a controlled area for the purposes of the Act.

40. Section 68.

activities.⁴¹ What is objectionable in the exercise of these ministerial powers is that they result in a clear violation of the common law principle of the *audi alterem partem* rule. Before an area is declared as a limited development area or an activity declared detrimental, no consultation with the affected person is anticipated in terms of the Decree other than consultation with various ministries which may be affected by such declaration. Under the South African Environmental Conservation Act, the Minister is required to issue a publication calling for comments from interested persons before he designates an activity as a detrimental one,⁴² or declare an area as a limited development area.⁴³ Furthermore, under the South African Act, before the Minister could issue an authorization regarding the undertaking of a prohibited detrimental activity or a prohibited development or activity in a limited development area, an environmental impact assessment report has to be submitted.⁴⁴

Under the Transkei Decree such authorization is left to the whims of the Minister who may exercise his discretion to issue it to whomsoever he pleases. This is not a satisfactory state of affairs as such unchecked powers on the part of the Minister may open him to corruption. If these impact assessment reports were also required under the Decree, the Minister would be bound to apply his mind on them before issuing the authorization on sufferance of facing a possible interdict from interested persons if he failed to do so.

41. Section 67.

42. Section 32(1)(b) of the Environment Conservation Act, 1989 (Act No. 73 of 1983).

43. Section 23(4)(a)-(c) read with 32(2) of Act 73 of 1989.

44. Section 22(2) in respect of controlled activities and section 23(3) in respect of prohibited development or activity, Act 73 of 1989.

5.8 Offenses and penalties

The Decree relies for compliance with its provisions on criminal penalties providing for the sentencing of offenders to substantial amounts of fines of up to R25 000 or to lengthy periods of imprisonment of up to two years for first offenders and to fines of R50 000 or to imprisonment for six years in respect of subsequent convictions⁴⁵ for the violations of the provisions of the Decree generally. On the other hand, offenders may be sentenced to payments of fines of five thousand Rand or to six months imprisonment for the violation of the provisions of the regulations issued in terms of the Decree. The Magistrate is given jurisdiction to impose such fines and sentences notwithstanding that they ordinarily fall outside the jurisdiction of the Magistrate's Court. This provision is good as most offenders for the violation of the provisions of the Decree appear before a magistrate who is thus empowered to impose effective fines and sentences contemplated in the Decree. No incentives are provided by the Decree to encourage people to abide by its provisions other than a reward which is given to an informant⁴⁶ being not more than fifty per cent of the fine recovered from a person whom he reported in connection with the contravention of the provisions of the Decree and who subsequently was convicted and paid a fine. The Decree provides no civil remedies against the violators or would-be violators of its provisions such as interdicts⁴⁷ or recovery of damages by (probably) the Minister for damages caused on the environment for which the government suffers loss to effect repairs undertaken. Under the South African Act the court, upon conviction, may in addition to any sentence or fine imposed, order that any damage caused to the environment or as a result of the offence, be repaired⁴⁸ by

45. Section 82.

46. Section 83.

47. Fuggle & Rabie, *Environmental Concerns in South Africa*, (1983) 39-40.

48. Section 29(7) Act 73 of 1989.

the offender, failing which, the Minister or local authority concerned, may effect such repairs itself and recover the costs thereof from the offender.

5.9 Exclusion of the application of Sea-Shore Act⁴⁹

Lastly, the Decree excludes the application of the above Act in, or in respect of, any area which forms part of a national wildlife reserve. This provision is also commendable and is necessary for the attainment of the objectives of the Decree. The application of the provisions of the above Act is objectionable as its purpose is, *inter alia*, to provide for the grant of rights in respect of sea-shore and the sea as well as the alienation of the sea-shore and the sea, generally for purposes of development and recreation.⁵⁰ These activities are counter productive towards the attainment of conservation objectives of the Decree. It is however objectionable that the exclusion of the application of the above Act is limited only in respect of national wildlife reserves and does not extend to the establishment of coastal conservation area contemplated⁵¹ in terms of the Decree as well as to protected natural environment.⁵²

5.10 Conclusion

Other than the shortcomings highlighted in this chapter, the other provisions of the Decree to a certain extent seem to be satisfactory on the whole. What is needed however, is a conservation legislation which lays down effective provisions for the conservation of the environment as well as to set a meaningful machinery for its

49. Act No. 17 of 1979.

50. Section 3 of that Act.

51. Section 39.

52. Established in terms of Section 34.

implementation which is geared towards the attainment of its ideals. If the Eastern Cape government were to adopt the Decree for the conservation of the environment for the area, it is submitted that it needs to amend it in accordance with the suggestions which form the subject of discussion of Chapter 6 which now follows.

CHAPTER 6

SUGGESTED SOLUTIONS

An attempt was made in the previous chapter to highlight the shortcomings of Decree No. 9 (Environmental Conservation) of 1992 and in this chapter suggestions are made, which hopefully could help the Decree be implemented more effectively towards the attainment of its objects.

6.1 Environmental educational campaigns

As stated before, the Decree empowers the Department of Agriculture and Forestry under whose auspices the Decree is being administered and controlled, to apply money appropriated to it for the purposes of the Decree, to engage in educational¹ campaigns with a view to promoting understanding and awareness of educational conservation amongst the people of Transkei. It has been noted that one of the problems against conservation is that there is considerable resentment by local people towards the duties of conservation officers such as forest guards and that this problem can best be addressed by education rather than law enforcement, so that people can be won over to conservation for their own survival.² If the local communities who are users of living resources are unaware of the need to conserve the resources on which they depend for their survival, an education campaign should be prepared for them. Such education programmes should be intended to mould the people's ideas about conservation rather than for the production of knowledge *per se*.³ Accordingly, organisers should select the media and techniques

1. Section 3(b).

2. Cooper and Swart, Transkei Forestry Survey (1992), 27.

3. Rabie - *South African Environmental Legislation* (1976), 48.

that are most effective to their target group, the local people. To encourage people towards conservation it would, for example, be necessary to take collections of case histories of successful conservation projects elsewhere to substantiate the campaign.

Fortunately, in Transkei there are existing agricultural services rendered by extension officers to the local communities which could also be used to promote conservation. In addition to this school syllabus should include environmental education as an intrinsic part of other subjects such as animal husbandry, forest management, social studies, agriculture literature, geography, etc. so that conservation attitudes can influence all activities. It goes without saying that today there is more need for the introduction of environmental conservation as a separate subject in the school curricula so that it can be taught more formally and its concepts more readily grasped. With the advent of adult literacy education conducted almost all over Transkei, its programmes should also include conservation material as it is this group which is mainly responsible for the exploitation of environmental resources. Environmental education could be extended to form part of the out-of-school activities of children and environmental education included in the activities of youth groups, a method which has been adopted by the television media, especially by CCV where there are scheduled programmes set aside for environmental awareness. The service rendered by such programmes, viewed objectively and in the long-term, is invaluable as today's children are tomorrow's adults. This is particularly important in view of the realisation that the need for environmental education is a continuous process as each new generation needs to learn for itself the importance of conservation. In concluding this topic, I wish to quote Rabie⁴ who, in relation to soil conservation, has this to say:

4. *Ibid.*, 49.

"The characteristic attitude of the traditional farmer must be changed. He will have to forsake his pioneer mentality and unrealistic limitless optimism. He must realise that he cannot conquer nature and that natural resources are not inexhaustible. He must learn that habitual practices are not necessarily the best. He must understand that it is wrong to believe that an owner may do with his land as he likes and that he is the only one to suffer if he maladministers it. He must be taught to realise that he is merely the custodian of the soil, which is the common heritage of the nation, and which must be preserved for prosperity. A conservation farmer should enjoy a high status, whereas one who is responsible for soil erosion should be stigmatised as a robber of our trust. Black South Africans in particular will have to realise that cattle numbers are not necessarily indicative of one's wealth, but that in fact it is often a sure sign of retrogression⁵ They will also have to understand that the destruction of vegetation and the application of incorrect cultivation methods will lead to nature taking her revenge. The need to conserve in order to provide an adequate heritage for the future generations must be recognized by them."

This quotation is quite apposite, in view of the fact that soil conservation is at the core of the conservation of all other biodiversities. It is strongly recommended that the Department utilises this provision of the Decree intended for public environmental education campaigns.

5. The present writer doesn't necessarily lend his support to the learned author's views underlined in the passage above. If White farmers could have large numbers of stock the present researcher does not see any reason why ownership of such large stock by the Blacks is stigmatized as retrogression. What is needed is the allocation of enough pastoral land so as to avoid soil erosion through over-grazing.

6.2 Public participation in environmental decisions

It has been seen that the Decree grants comprehensive powers to administrative bodies such as the Minister to declare certain areas⁶ as conservation areas to which people are generally prohibited from entering or interfering with indigenous fauna and flora in such areas without authorization. These declarations invariably affect indigenous people by forcing them to change their life-style to which hitherto they have been used. What has been highlighted as the shortcoming of the Decree is that no provision is made for public participation in decisions preceding such declarations, as a result such declarations will have to be imposed on the people irrespective of their consent. This is an unsatisfactory state of affairs.

Public participation in environmental decision-making has many advantages⁷ for the decision-maker in that it generally avoids friction between that body and the public affected by its decision. One of such advantages is that it provides information to the decision-maker so that he may know what is the attitude of the public towards the intended course of action and what their reaction is likely to be. Public participation also accords with the principles of democracy in that during consultations with the affected people, existing proposals will be subjected to scrutiny and sometimes be criticized, resulting in alternatives being drawn up. Furthermore, the knowledge and additional awareness of the problems and consequences raised by an intended action during debates enables the administrator to reconcile the conflicting interests and thus increase the quality of the decision. This in turn may increase the quality of the measures taken by the State to protect the environment and what is more is that those measures are likely

6. See for example, Sections 30, 34 and 68.

7. Gündling, L. - *Trends in Environmental Policy and the Law Conservation Strategy* (1985), 134-6. World Conservation Strategy (1980), 13: 3-4.

to be acceptable to the public since they may feel, through their participation in the decision-making, that they contributed to the formulation of such measures and may thus readily accept them.⁸ This has an added advantage of reducing much of the potential conflict which would otherwise exist in the absence in public participation to such decisions. In this way it could be said that public participation tends to build public confidence of the decision-makers' objectives.

Added to the above advantages may be stated another which is that, to the extent the local people are engaged in the decision-making process they may be readily willing to contribute labour as well as land and material towards the attainment of the objectives of the intended action which will ensure that implementation will be smoother and quicker, as people cooperate more willingly in decisions in which they participate.⁹ This may further entail cutting down costs of maintaining the intended project such as the fencing off of forest reserves, employment of conservation officers, etc. as the public would be custodians of these resources themselves. The Decree should therefore consider making provision for public participation on any intended action by the State which may adversely affect the people.

Coupled to the need for public participation is the need for the Decree to provide the submission of environmental impact assessment reports before the Minister or an official grants an authorization for the undertaking of an activity which is otherwise prohibited. Of particular relevance here would be the authorization regarding the undertaking of an activity which has been designated by the Minister as a detrimental one¹⁰ or the undertaking of a development project in an area

8. Grundling, L. *ibid.*, 134.

9. World Conservation Strategy; fn. 7, *op. cit.*, 13:4.

10. As anticipated in terms of Section 67.

which has been declared to be a limited development area.¹¹ As the position stands at present, there is no legislative criterion which the Minister is required to apply, other than to rely on his discretion, before issuing an authorization for the undertaking of such prohibited activity. With the necessity for the submission of impact assessment report, the Minister at least would be forced to take into account the degree of interference which such activity would cause to the environment and the measures to be taken by the applicant to combat same before he decides to issue such authorization. This is the practice followed under the South African Act and there is no reason why this worthy example should not be copied and adopted in the Decree.

The Decree should also consider bringing the question of public participation to the formulation of general environmental policy¹² by the Minister. It is still fortunate in Transkei that the Minister has not as yet exercised his powers towards the formulation of the said policy. Although the Decree does not compel the Minister to formulate the policy,¹³ however, should he decide to do so he is at liberty to do so as he pleases as there is no requirement for the concurrence of the other Ministries whose departments are concerned with the environment seeing that the Decree only requires consultations.¹⁴ At least, as under the South African Act¹⁵ he should be required to obtain the concurrence of other ministries before a final policy is determined. Even in this regard it is submitted that a draft policy should first be published for public comment.

11. As intended in terms of Section 68.

12. As intended in Section 4.

13. The same situation obtains under the South African Act.

14. Section 4(2).

15. Section 2(2).

6.3 Control, maintenance, development and management of wildlife resources

Chapter 5 of the Decree vests the control, maintenance, development and management of wildlife reserves on the Director-General.¹⁶ This is an unsatisfactory state of affairs as the Director-General, being the chief executive of the Department, is saddled with other administrative duties which may demand most of his time and therefore be not in a position to pay sufficient attention to his duties conferred by this chapter. If it is considered that the control, maintenance, development and management of wildlife reserves requires specialised expertise in this field, it will be accepted that the Director-General, how ever willing he may be, without this required expertise, he cannot effectively exercise his duties for the stated purposes. It is suggested that these activities should be assigned to conservation oriented organizations or bodies, such as the Natal Parks Board, specifically established for wildlife conservation, a practice which is followed in Natal.

6.4 Criminal sanctions and incentives

Mention has been made of the fact that the Decree relies for the compliance with its provisions on criminal sanctions.¹⁷ Although criminal sanctions in the form of fines and penalties are necessary to back-up compliance with legislation, in the field such as conservation of the environment they may not necessarily prove to be the best method of achieving such compliance for the simple reason that they may be viewed as an added oppressive measure over the one already caused by the legislation of depriving the local people of their natural right to life and subsistence.

16. Section 28.

17. See sections 82 and 80.

Once the people's attitudes towards conservation have been changed and moulded through conservation education campaigns, as suggested above, they should be made to see the benefits of conservation rather than to face criminal sanctions. This could be done in the form of incentives¹⁸ such as giving of financial returns to the people who were dispossessed of land for conservation purposes, which are obtainable from gate taking fees, camping fees, licences granted to certain individuals for the exploitation of the conservation area produce, etc. These financial returns could be given in the form of development for the area concerned, and in this way people will see in practical terms, the relationship between conservation and development and realise that these are complimentary rather than self-destructive. Employment opportunities in which the local people are given preference is another incentive which the government could utilize. This could be of untold benefit to the people of Transkei which, at present, has high unemployment rate with no immediate visible means to alleviate the situation. Added to these incentives, local people could be assisted in establishing business enterprises within the conservation areas, such as tuck-shops and stands to display their art and wood-work for tourists. Furthermore, local people could be given a major role, through their own elected representatives, in decision-making over both day-to-day matters and larger policy concerns in the running of the conservation area. If these and other incentives¹⁹ are applied, there would be no need for the criminal sanctions as indeed the people would feel a sense of belonging, of being part and parcel of conservation management and control. Only in respect of those recalcitrant few who contravene the provisions of the Decree would criminal sanctions be necessary and with these stated incentives being in place, local

18. World Conservation Strategy (1980), 187.

19. Fuggle and Rabie (1992), fn. 1, *op. cit.*, 131.

people themselves would police these conservation areas themselves and willingly bring the violaters to book.

In so far as the criminal sanctions are concerned, there seems to be a disparity in the imposition of fines and sentences for the breach of the provisions of the Decree itself on the one hand and these of the regulations on the other. While the researcher would not necessarily express an objection to the amount of fines and sentences imposed for the violations of these provisions, though obviously these are excessive for local people offenders, there seems to be no compelling reason or logic for the existence of the disparity. On the contrary, it is submitted that there should be uniformity in the application of these criminal sanctions more particularly that most violations are likely to be in respect of the provisions of the regulations as most conservation measures are taken by the Minister in the form of regulations and yet it is in respect of the contravention of these regulations provisions that criminal sanctions are less severe.

6.5 Conclusion

It is hoped that with the implementation of these proposals to the Decree by the Eastern Cape Government, the Decree could better serve its objectives in a less costly manner to the State while, at the same time, it will bring benefits in the form of the stated incentives to the people who otherwise would be prejudiced by it for the loss of their land and their livelihood for conservation purposes. Indeed, once people are won over and development projects are undertaken in their areas, from the revenues received from the conservation areas to compensate, there would be no reason to set aside large sums of State funds for the protection of these areas since through the cooperation of the people this need will automatically fall away. Indeed, successful environmental legislation requires widespread public support

which necessitates changes in attitudes as it is "only when the conservation of our environment has been accorded sufficient societal priority can legal remedies have their maximum effect."²⁰

20. Rabie, fn. 3, *op. cit.*, 193.

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- (a) See Fisheries
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