

# **The Jigsaw: Legal Instruments for Biodiversity Planning in South Africa**

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**Dr. Marie Parramon-Gurney**  
**Head of Programmes: Sustainability and Development**  
**Endangered Wildlife Trust**

**Vice-chair of the ELA**



## BACKGROUND: BIODIVERSITY PLANNING

- NEM:BA “**biological diversity**” or “**biodiversity**” means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems.
- **Components**, in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes.
- **Ecosystem** means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit.



## BACKGROUND: BIODIVERSITY PLANNING

- This rich biodiversity underpins the diverse ecosystems that deliver **ecosystem infrastructures and services** that are of benefit to people, including the provision of basic services and goods such as clean air, water, food, medicine and fibre, as well as more complex services that regulate and mitigate our climate, protect us from natural disaster and provide us with a rich heritage of nature-based cultural traditions.
- Directly linked to social and economic development
- New concept of Natural Capital



## BACKGROUND: BIODIVERSITY PLANNING

- What is biodiversity planning?
- There is a SA National Biodiversity Planning Forum (Annual Planning)
- Planning / Management and conservation of biological diversity
- Is it planning for effective biodiversity management and conservation?
- Or is it traditional planning which incorporate biodiversity consideration?
- Or both?
- Does biodiversity planning exist *per se*? and should it?



## BACKGROUND: BIODIVERSITY PLANNING

Chapter 3 of NEM:BA

Biodiversity planning

Art 37. The purpose of this Chapter is to:

(a) provide for integrated and co-ordinated biodiversity planning...

Aim of biodiversity planning NBF:

*“The challenge we face in addressing these pressures on biodiversity is not to conserve OR to develop, but rather how to conserve AND develop. The issue is not whether development takes place but **rather where and how it takes place. The biodiversity sector is developing increasingly effective tools to support and streamline environmental decision-making and ensure that development is appropriate.**”*

As well as

***Integrate biodiversity considerations in land-use planning and decision-making. By developing tools for supporting and streamlining environmental decision-making***



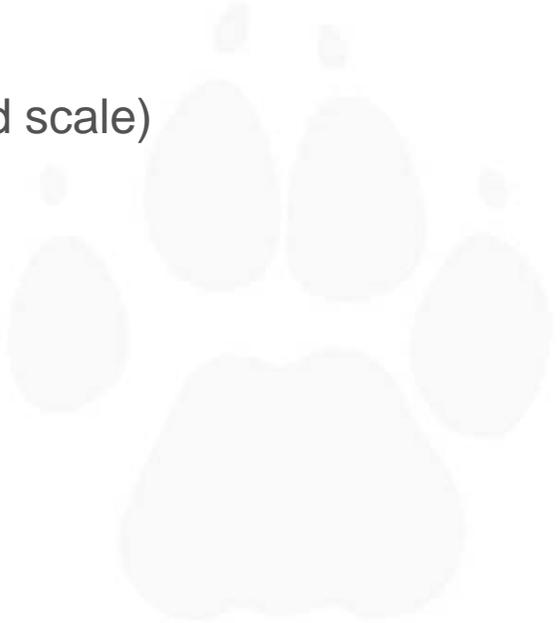
## BACKGROUND: BIODIVERSITY PLANNING

Different approaches

Strategic (different levels and scale)

Project level

Various government levels



## BIODIVERSITY PLANNING: LEGAL FRAMEWORK (overview)

- NEMA
- NEMA:BA and related regulations
- PAA
- Planning and land use legislation (national, provincial and municipal)
- Sectoral acts, i.e. NWA, NEM:ICMA, MPRDA
- Other municipal and provincial legislation
- The National Biodiversity Strategy and Action Plan (NBSAP) (2005)
- The National Biodiversity Framework (NBF) (2008)
- The National Protected Area Expansion Strategy (NPAES) (2008)



## BIODIVERSITY PLANNING: GOVERNANCE FRAMEWORK (overview)

- Functional areas of concurrent national and provincial legislative competence include environmental management, pollution control, soil conservation, nature conservation (excluding national parks, national botanical gardens and marine resources) and regional planning and development.
- The wide range of legislation dealing with various aspects of biodiversity, including various types of protected areas, has resulted in a relatively high number of state departments and agencies being responsible for managing biodiversity within protected areas, and across the landscape and seascape outside the protected area network.
- Cross cutting function
- Co-operative governance is essential



## BIODIVERSITY PLANNING: KEY LEGAL INSTRUMENTS (overview)

- NEM:BA: focused on BP

National Biodiversity Framework

Provincial and municipal conservation plans

Provincial spatial biodiversity plans

Bioregions and bioregional plans

Protected areas

Biodiversity management plan (ecosystems and species) including systematic biodiversity plans

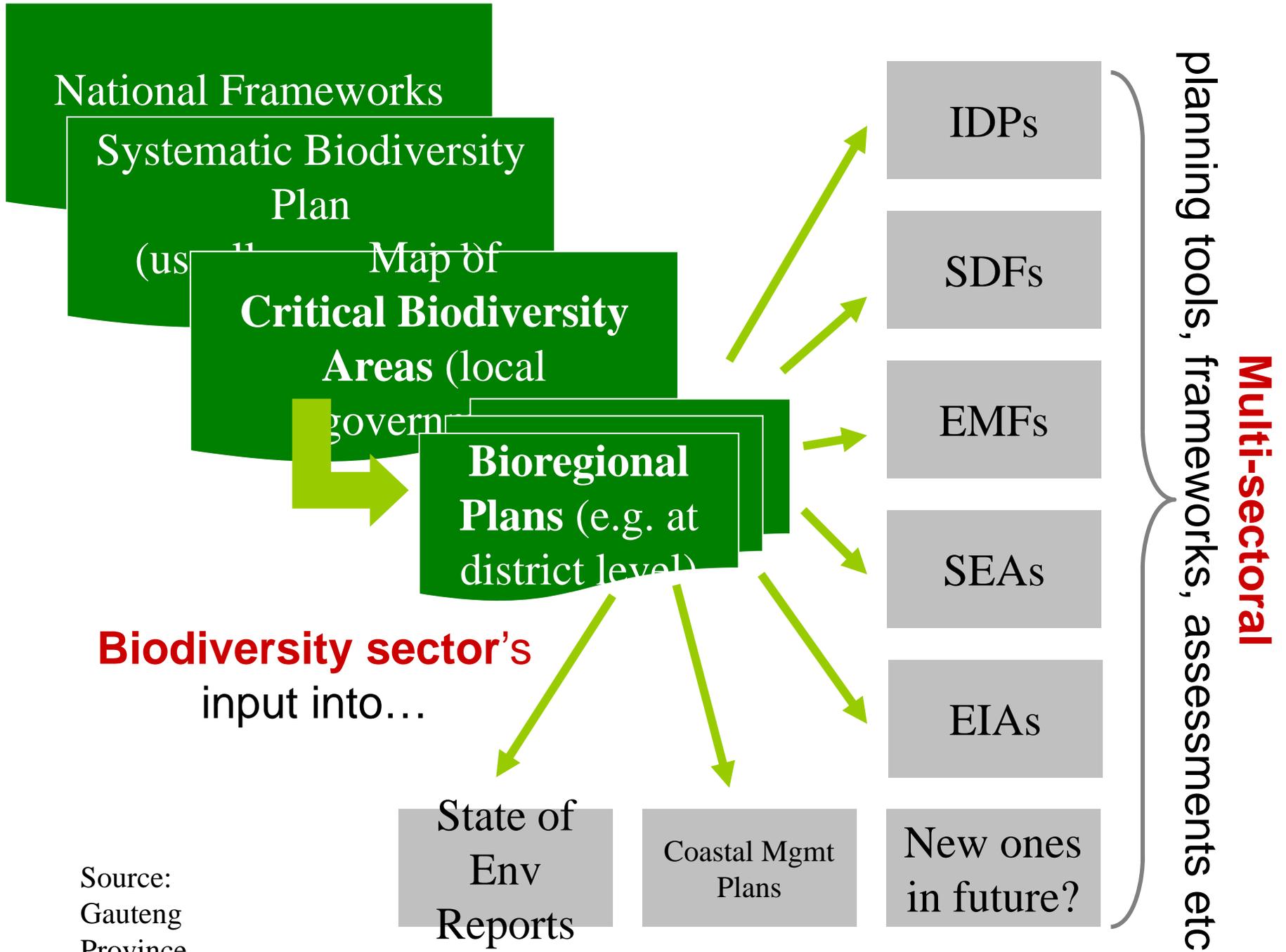
Identification and listing of threatened ecosystems



## BIODIVERSITY PLANNING: KEY LEGAL INSTRUMENTS (overview)

- EMF
- IDP
- SDF
- Other zoning instruments (i.e. development setback line, coastal setback line, coastal zoning schemes)
- SEA
- Catchment management strategy and classification system
- EIA (as a tool and listing notice 3)
- Other supporting tools (sectoral): National Freshwater Ecosystem Priority Areas (FEPAs), coastal management plans





Source:  
Gauteng  
Province

## Legal status: “to be aligned”

- Art 48. (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of NEM:BA may not be in conflict with:
  - (a) any **integrated development plans (IDP)** adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
  - (b) any **spatial development frameworks** in terms of legislation regulating land use management, land development and spatial planning administered by the Cabinet member responsible for land affairs;
  - (c) any **other plans prepared in terms of national or provincial legislation that are affected (?)**



## Legal status: “to be aligned”

- For IDP, municipality must:
  - ( a ) align its plan with the national biodiversity framework and any applicable bioregional plan;
  - ( b ) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it; and
  - (c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan may be implemented by that organ of state or municipality.
- SANBI might assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity anagement plan
  - (a) to comply with subsection (1); and
  - (b) make recommendations to organs of states or municipalities to align their plans with the national biodiversity framework and any applicable bioregional plan.



## Legal Status: “to give effect”

- “To give effect”
- I.e. water catchment strategies
- The Minister and the catchment management agency concerned must **give effect** to any catchment management **strategy when exercising any power or performing any duty in terms of this Act**
- Problem:
  - What is the legal status of such strategies as stand alone
  - Legally binding?
  - What about other ministers/departments, e.i.: mining



## Legal Status: “to take into account”

- Taken into account
- EMF regulation 2010
- EMF must (in adopted in terms of regulation 3) be taken into account in the consideration of application for environmental authorisations in or affecting the area to which the EMA applies
- “Must be implemented”?
- EIA Listing notice 3: Sensitive areas as identified in EMF



## CURRENT SITUATION

- Submitted:
- Fragmented and complex
- Lack of legal effectiveness
- Lack of cost-effectiveness
- Lack of alignment in implementation and interpretation
- Lack of effectiveness
- Lack of effective strategic planning tools: pro-active i.e.: Waterberg
- Lack of co-operative governance



## WHERE FROM HERE

Need consolidation and rationalisation of legal instruments

Assess and improve legal effectiveness

Integration and mainstreaming

Facilitate alignment in implementation and interpretation

Need serious priority areas for strategic high level biodiversity planning

EWT: development of legal toolkit and training



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## THANK YOU

Dr. Marie Parramon-Gurney  
Head of Programmes: Sustainability and Development  
Endangered Wildlife Trust

[mariep@ewt.org.za](mailto:mariep@ewt.org.za)

082 421 6617

