

EXPERIENCES IN ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN LIMPOPO PROVINCE, SOUTH AFRICA

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SUMMARY

This paper seeks to share experiences of the Environmental Management Authority of the Department of Economic Development, Environment and Tourism in Limpopo Province, South Africa, in regard to compliance and enforcement strategies. The paper will highlight the national environmental cooperative governance model of the Republic of South Africa, describe the national and the provincial environmental legislative framework, and provide examples of compliance and enforcement with specific reference to Limpopo Province.

1 INTRODUCTION

It is a challenge to a developing country's government to develop, proclaim, and implement policies regarding environmental legislation that is acceptable to all stakeholders. The challenge at times is compounded by perceptions of the stakeholders regarding conservation priorities. Botha and Huntley (1991) stated that the South African perspective of conservation is seen as synonymous with preservation of the country's natural resources, mainly through rigorous policed nature reserves. Over the years, the public's perceptions are assumed to be gradually changing more so that the Constitution of the Republic of South Africa has given the environment and conservation a more pronounced role. Hence, stakeholders are beginning to realize and appreciate that the healthy condition of the environment underpins economic development and the need for the environmental policy framework.

South Africa has nine provinces with their own administrations. Limpopo is South Africa's fourth largest province. The province borders Mozambique in the East,

Zimbabwe in the North, and Botswana in the West (Limpopo Government, 2005).

2 THE CO-OPERATIVE GOVERNANCE MODEL

Section 24 of the Constitution of the Republic of South Africa states the rights that are guaranteed to the citizens, with regard to the environment. Furthermore, the Constitution stipulates that management of the environment is a concurrent competency between the national Ministry of Environmental Affairs and Tourism and South Africa's nine provincial governments. Such concurrent competency includes joint policy decision making with regard to issues such as pollution and waste regulation, environmental impact assessment, authorizations, compliance monitoring, and enforcement.

There are structures in place such as a Ministerial Technical Committee and Sector Working Group to ensure co-ordination and co-operation between the national ministry and the provinces. The Committee consists of the National Director General and the heads of Environment Depart-

ments in the provinces. Furthermore, the National Minister meets quarterly with the provincial Members of the Executive Councils. Co-operation and collaboration between the National Ministry and the Provinces include assistance and technical support, information sharing, and mandated consultative processes in regard to policy formulation and implementation.

3 THE ENVIRONMENTAL LEGISLATIVE FRAMEWORK

A lot has been achieved in South Africa post 1994 to develop policies and legislation that regulate environmental management (Limpopo Environmental Implementation Plan, 2001). The environmental legislative framework covers issues such as land reform and planning, natural and cultural resource use, conservation, biodiversity, genetically modified organisms, marine and coastal management, environmental assessment, pollution and waste management. Notably progressive and developmental policies approved by the post 1994 African National Congress (ANC) government include White Papers on Environmental Management Policy (1998), Integrated Pollution and Waste Management for South Africa (2000), Conservation and Sustainable Use of South Africa's Biological Diversity (2000) and Spatial Planning and Land Use Management (2001).

The National Regulatory Framework intends to ensure sustainable development through slowing down biodiversity loss, fragmentation of habitats, resource depletion and impaired ecosystem functioning. This ensures that the rights enshrined in South Africa's Constitution are honored (see Annex II). This also gives other national policies and legal framework that have defined the development and biodiversity management agenda post 1994. It is worth noting that the development and enactment of South Africa's environmental policies are through a legitimate process that ensures that public participation. Environmental non-governmental organizations, trade or labour unions, the public,

local government councils are guaranteed environmental management that is fair and transparent. Interested and affected stakeholders can appeal against government rulings, they can appeal complain about identified environmental problems to National or Provincial governments. Communities are guaranteed a right to live or work in an environment that is not harmful to their well-being.

In addition to the national regulatory framework, South Africa has ratified a number of international conventions. The conventions ratified are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Convention on Biological Diversity, Convention on Wetlands of International importance, Framework Convention on Climate Change, Protocol for the Protection of the Ozone Layer, Montreal Protocol Convention on the Prevention of Pollution by Dumping of wastes and other Matter, and the Convention on the Prevention of Pollution by Dumping of Wastes and other Matter. The ratification strengthens the compliance of national and provincial environmental legislation.

Having noted the National environmental legislative framework, I will now share some of the practical experiences in our Province. Limpopo has succeeded in enacting the Limpopo Environmental Management Act No. 7 of 2003 through a consultative process. This Act repealed the former Lebowa, Gazankulu, Venda and Northern Province Acts and Ordinances (Schedule 13 of LEMA). Lebowa, Gazankulu and Venda were former homelands demarcated and established by the previous apartheid government in the pre-1994 era to control movement of persons of African origin. The three homelands were part of the geographic area that now forms Limpopo. The Northern Province Act or Ordinances were intended to control areas classified geographically as 'white.'

The objectives of the Limpopo Environmental Management Act are to: manage and protect the environment in the Province, to secure ecologically sustainable development and responsible use of

natural resources in the Province, to contribute to the progressive realization of the fundamental rights contained in Section 24 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and to give effect to international agreements effecting environmental management which are binding on the Province.

Limpopo Province interprets and applies the Environmental Management Act in accordance with the National Environmental Management Act principles thereby adhering to the principles of co-operative governance. The chapters of the Environmental Management Act has provisions for the management of Environmental Advisory Bodies, Protected Areas, Wild and alien animals, Professional hunting, Aquatic biota and aquatic systems, Invertebrates, Indigenous plants, CITES, Preservation of caves and cave formation, Limited development areas, Mountain catchments areas, Environmental Pollution, Environmental Compliance officers, Permits, permissions, exemptions and exclusions and Offences, evidence, penalties and forfeitures.

4 COMPLIANCE AND ENFORCEMENT MEASURES

Compliance and enforcement measures are in their developmental phase following the promulgation of the Act. The province will succeed in managing biodiversity in as far as resources are set aside to ensure advocacy and compliance with the provisions of the Act. The highlight of compliance and enforcement measures is encapsulated by Section 96 of the Limpopo Environmental Management Act. Before looking at enforcement measures, I will cite incidences of compliance with specific reference to the last three months of the year 2004.

4.1 Compliance

This compliance is with regard to trade in wildlife and environmental impact assessment. Starting with trade in wildlife for the period October to December 2004,

Limpopo Province issued about three hundred (300) permits for the export of CITES listed species. About thirty (30) permits were issued for import and fourteen (14) permits were issued for re-export of CITES listed species.¹ The exemplar figures given for a period of the last three months of 2004 indicates that there is a willingness to comply with the legislative framework by the citizens of the province.

4.2 Enforcement Measures

Section 96 of the Environmental Management Act gives the powers assigned to Environmental Compliance Officers. Environmental Compliance Officers are empowered to do the following, if the officer has reasonable suspicion a provision of the Act has been breached, the officer will: enter upon any land, premises, building tent, camping place, vessel or container; direct the person in charge of a vessel to stop, or use such force as may be reasonable to stop the vessel, seize anything, question a person, demand from any person who performs an act, or suspected of performing an acts that require permits, written permission, exemption to produce such a document, and seize stock or other animal trespassing in a protected or reserved areas.

An assessment of the enforcement measures reveals that Limpopo has a functional system that does apprehend persons who violate the provisions of the legislative framework. Table 4 (see Annex III) gives examples of recorded contraventions of the Environmental Management Act and previous ordinances. It should be noted that finalization of cases remains a challenge for the Department of Economic Development, Environment, and Tourism. Cases may remain pending because their finalizations require resources and co-operation with the Department of Justice and the South African Police Services. It has been observed that in some instances the State Prosecutors regard environmental crime as 'petty' when compared with other serious crimes. The National Government has initiated a process called 'greening the judici-

ary'. The Department of Justice has undertaken to increase the level of awareness and capacity in regard to Environmental Law.

5 CONCLUSION

Our experience in Limpopo is that the dynamic multidisciplinary nature of environmental issues and that implementation mechanisms require interaction, consultation and agreements among interest groups. The existing frameworks that are subject to periodic review to remain relevant to the needs of the people of Limpopo Province and South Africa.

South Africa's overt challenge is the cost of ratifying international conventions vis a vis the imperative to implement. South Africa has to meet the cost to belonging and further translate its own national policy into a proactive, developmental framework that allows its citizens to comply rather than expend resources on enforcement. Considering these challenges one can therefore asks whether the many laws that international organizations, non-governmental, governments and other institutions and environmental lawyers spent a lot of time and energy on are necessary. Cullinan (2002) contents that regulation of human impacts is critical, environmental laws form the backbone of our governance system, Earth has to be defended and that the regulatory function plays a role in constituting and forming society. What is required is maybe a paradigm shift towards the goal of environmental governance, it should be seen a developmental in approach and not restrictive.

6 REFERENCES

¹ Please note that the full version of this paper, along with tables on The Constitution of the Republic of South Africa, South Africa's national environmental regulatory framework, Permits issued by Limpopo Province for other activities from October – December 2004, and Environmental

Impact Assessments reporting, October to December 2004, Limpopo Province is available on the INECE 7th International Conference Web page, at <http://www.inece.org/conference/7/>.

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