

# **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 co-operative governance model of the Republic of South Africa, the national and the provincial environmental legislative framework and 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 or enact 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 way back that the South African perspective of conservation was 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 hence 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 her citizens with regard to the environment (see annex). 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 include 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 Departments 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 resources use and conservation, protected areas and community based conservation, biodiversity and genetically modified organisms, marine and coastal management, environmental assessment as well as 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 and resource depletion as well as 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 the policies mentioned in Table 1 (See Annex) 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 (LEMA) 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 LEMA 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 LEMA in accordance with the National Environmental Management Act principles thereby adhering to the principles of co-operative governance. The chapters of LEMA 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 LEMA. 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. Table 2 (see Annex) gives the number of permits issued by Limpopo Province for other activities from October to December 2004. Table 3 (see Annex) gives the number of plans of study, scoping reports, records of decisions assessed and issued by Limpopo including exemptions and directives from October to December 2004 with regard to environmental impact assessment. 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 LEMA gives the powers assigned to Environmental Compliance Officers (ECOs). ECOs are empowered to do the following among others, at any time, 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 reveal 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 LEMA 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 judiciary'. 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 those 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 ask 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) contends 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 BIBLIOGRAPHY

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## **Annex I**

The Constitution of the Republic of South Africa, Section 24 states that:

*Everyone has the right to:*

- *An environment which is not harmful to their health or well-being*
- *Have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that:*
  - *Prevent pollution and ecological degradation*
  - *Promote conservation*
  - *Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development*

## Annex II

**Table 1: South Africa's national environmental regulatory framework**

| The policy  | Main aim of the policy   |
|---|--|
| National Environmental Management (NEMA), Act 107 Of 1998   | To prevent and minimize damage to the environment, and to rehabilitate already degraded environments   |
| Strategic Environmental Assessments, Environmental Impact Assessments, Environmental Management Plans<br><br>(R 1182 and R1183 of the Environmental Conservation Act 73 of 1989 as amended) | To ensure impacts development or practices are understood, that environmental damage is minimized, and that already damaged environments are rehabilitated                           |
| Spatial Development Initiatives   | To co-ordinate and centralize development, minimizing fragmentation of habitats  |
| Broad Based Black Economic Empowerment Act 53 of 2003   | To establish a legislative framework for the promotion of black economic empowerment, to empower the Minister to issue codes of good practice and to publish transformation charters |
| NEMA: Biodiversity Act, 2004  | To provide for the management and conservation of South Africa's biodiversity within the framework of the NEMA   |
| NEMA: Protected Areas Act, 2003   | To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes           |

**Annex III:**

**Table 2: Permits issued by Limpopo Province for other activities from October – December 2004**

| <b>Permit category</b>  | <b>Total</b> |
|---|--------------|
| Act as a professional hunter or a hunting outfitter   | 113          |
| Catch, hunt a wild animal   | 9            |
| Research related permits with regard to aquatic biota, mammals, reptiles and plants for scientific purposes | 8            |
| Convey a live wild animal   | 1            |
| Do aquaculture  | 1            |
| Export a wild animal, trophies  | 1 742        |
| Falconry keeping permit   | 2            |
| Import a live wild animal and animal trophies   | 24           |
| Possess elephant ivory, rhino horn  | 2            |
| Ring Birds  | 11           |

**Table 3: Environmental Impact Assessments reporting, October to December 2004, Limpopo Province**

| <b>Activity</b>                        | <b>Number of applications received</b> | <b>Number of applications assessed</b> |
|--|--|--|
| Plans of Study                         | 92                                     | 82                                     |
| Scoping Reports                        | 106                                    | 102                                    |
| Exemptions                             | 52                                     | 36                                     |
| Records of Decisions or Authorizations | 58                                     | 53                                     |

**Table 4: Examples of non-compliance and enforcement measures taken**

| <b>CONTRAVENTIONS</b>  | <b>Fine issued by the Court</b>              | <b>Admission of guilt</b> | <b>Case status</b>  |
|--|--|---------------------------|---|
| Sec. 32(1) Ordinance. 12 of 1983 Sale of a leopard without permit and hunting of leopard without permit.   | R 1000 for each charge                       | Yes                       | Finalized   |
| Sec. 39(1) Ordinance 12 of 1983 Keeping of a cheetah without permit.   | R 1000                                       | Yes                       | Finalized   |
| Section 32(1) Ordinance 12 of 1983 Selling of a leopard without permit   | R 15000                                      | Yes                       | Finalized   |
| Sec. 19(1) Ordinance 12 of 1893 Hunting of 2 buffaloes in a nature reserve   |  |                           | pending   |
| Sec. 96(1) Ordinance 12 of 1983 Possession and conveyance of cycads without permits  |  |                           | pending   |
| Sec. 96(1) Ordinance 12 of 1983 Possession and conveyance of cycads without permits  |  |                           | Pending   |
| Environmental Conservation Act Regulations   |  | no                        | Finalized. No offense committed.  |
| Environmental Conservation Act Regulations   |  |                           | Pending   |
| Sec 16(1) of Ordinance 12 of 1983 Hunting of Hippo without permit.   | R 1000                                       | yes                       | Finalized   |
| Sec. 18(1) of Ordinance 12 of 1983 Hunting of buffalo without permit by foreign client.  |  |                           | Under investigation   |
| Sec. 41(1) of LEMA Act No 7 of 2003 Keeping of wild animals in captivity without permits. (157 animals of 5 species kept in 30 ha. Camps. Intensive breeding project not approved) |  |                           | Referred to district of Waterberg for investigation and finalization  |
| Selling of a leopard without permit  | R75 000 and vehicle worth R120 000 forfeited |                           | Initial investigation done by officials of our section and handed over to Organized Crime Unit of South African Police Services |
| Sec. 39(1) of Ordinance 12 of 1983 Keeping of lion in captivity without permits.   |  |                           | Pending   |
| Sec. 39(1) of Ordinance 12 of 1983 Keeping of lion in captivity without permits.   |  |                           | Pending   |
| Sec. 39(1) of Ordinance 12 of 1983 Keeping of lion in captivity without permits.   |  |                           | Case taken over from Stock Theft Unit<br>Pending  |
| Possession of Ivory  | R1500/6 months                               | yes                       | finalized   |
| Possession of Rhino Horn   |  |                           | Pending   |

