

SUSTAINABLE FORESTS MANAGEMENT; ARE DELEGATIONS APPROPRIATE?

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SUMMARY

Sustainable forests management in South Africa is regulated by the National Forests Act, 1998 (Act no 84 of 1998) as amended. This paper is an attempt to present lessons learnt from an executive decision of the Department of Water Affairs of the government of South Africa with regard to the strategic management of environmental compliance and enforcement programs for sustainable forests management. In this case the selected sustainable forests management option contributes to better regulation of forest resources. It is the implementation of a system of regulation that creates a strategic option for better service.

Compliance and enforcement of the Act is done on the basis of delegation of powers and duties. The delegation of powers and duties in terms of the Act is a mix of a centralized and decentralized administrative system. Further review of this administrative system reveals that it effects the provisions of the Constitution of the Republic of South Africa; and enhances the delivery of government services while addressing the geographic dynamics of the country and the nuances of the forest sector. Lessons learnt from the past years indicated that the administration and implementation of the Act by delegating powers and duties led to better regulation and sustainable forests management in South Africa and has instilled a sense of shared responsibility among the forest officers.

1 INTRODUCTION

South Africa's framework for sustainable forests development, co-operative governance and participation is provided by the White Paper on Sustainable Forest Development (1996), the National Forestry Action Programme (1997) and the resultant National Forests Act (1998). The Department of Water Affairs and Forestry's main responsibility is to provide policy and a regulatory framework within which appropriate institutions can manage forest resources.

Department of Water Affairs and Forestry is legislatively mandated by the National Forests Act (No. 84 of 1998) and the National Veld and Forest Fire Act (No.101 of 1998). The National Veld and Forest Fire Act (No.101 of 1998) prevents and combats veld, forest and mountain fires throughout the country, thereby limiting and reducing the damage and losses caused by fires to life, fixed property, infrastructure, movable property, stock, crops, fauna and flora and veld in South Africa. The provisions of the National Forest Act will be referred to later.

Sustainable forests management in South Africa is informed by these pieces of legislation as well as other nationally appropriate policies and laws. Broadly, the National forest laws have the following elements of promoting the sustainable management and development of forests; providing social measures for protection of certain forests and trees; sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes; community forestry; and greater participation in all aspects of forestry and the forest products industry by persons previously disadvantaged by discrimination.

Elements referred to above are covered by the two Acts referred to above as well as the Forestry Laws Amendment Act no 35 of 2005. In addition to these laws and policy framework, forest management in South Africa is affected and influenced by related legislation, including, for example, water, biodiversity, protected areas, land, heritage, labour, wildlife, environment, tourism, agriculture and mining frameworks. The related legislation is obtainable through the South African government information portal (www.gov.za) or through the specific departments' websites. For purposes of this paper only the National Forests Act (No. 84 of 1998) as amended will be addressed.

2 PROVISIONS OF THE NATIONAL FORESTS ACT, 1998 (ACT NO 84 OF 1998)

The National Forests Act, 1998 (Act no 84 of 1998) promotes and enforces the sustainable management and development of forests for the benefit of all, the promotion of sustainable use of forests as well as the provision of special measures for the protection of forests and trees. The Act balances the protection of forests with sustainable use; it regulates a wide range of uses, and sets out the right of everyone to have a reasonable right of access to State forests for non-consumptive purposes. The rights to use, manage, control and operate State forests and their produce rests with the Minister of Water Affairs and Forestry.

Furthermore, the National Forests Act sets parameters for the administration thereof, offences, penalties and enforcement measures. Noting that this paper is addressing strategic management of environmental compliance and enforcement programmes emphasizing better regulation; the paper will focus on the administration of the Act, offences, penalties and enforcement. In administering the National Forests Act, the responsible Minister has the power to assign and withdraw certain powers and duties; he/she may delegate certain powers and duties; expropriate property for forestry, reserve State land for forestry and make regulations.

The National Forests Act makes provision for the duties and powers to be delegated to a named official in the Department of Water Affairs and Forestry; to the holder of an office in the department (Department of Water Affairs and Forestry); to an organ of state; and a person who or which is not an organ of state. Delegations referred to here are done in writing; are subject to conditions, must

specify the period for which it lasts. The Minister is not prevented from exercising the power of performing the said duties and functions if he/she so deems it necessary. Certain of the duties and powers may not be delegated; there includes the power to assign, making regulations, developing policy and appointing members of the Council (in this case the National Forests Advisory Council). The National Forests Act provides for the Accounting Officer (the Director General) to perform powers and duties as in the Act and as delegated by the Minister. An Accounting Officer may further delegate certain powers and duties following the same prescripts as outlined earlier with regard to the responsible Minister.

Compliance and enforcement of the National Forests Act is further strengthened and consolidated by the provisions of the Act that sets out the relevant offences and applicable penalties as well forest officers who the enforcers; they police the provisions of the Act effectively. Relevant Forest Law Enforcers are deemed to be peace officers intern of section 1 of the Criminal Procedure Act, 1977 (Act no 51 of 1977). Offences are classified into categories.

There are five categories of offence; the categories are based on the severity of the offence and its potential impact on the sustainable management of forests. A fourth category offence is of lesser impact as compared to first category offence. The table below gives examples of an offence and the relevant penalty.

Table 1: Offences and penalties, the National Forests Act, 1998 (Act no 84 of 1998)

Sections of the Act	category	offence	penalty
Section 58 (1) and sections 62 and 63	first	Any person who, without a license or other authority cuts, disturbs, damages, destroys, removes or receives seven-week ferns (<i>Rumohra adiantiforme</i>) from any forest	Maybe sentenced to a fine or imprisonment for a period of up to three years or both fine and such and imprisonment
Section 58 (2) and sections 62, 63 and 64	second	Any person who cuts, disturbs, damages, or destroys any indigenous, living tree in , or remove or receive any such tree from, a natural forest except in terms of a license issued	Maybe sentenced on first conviction for that offence to fine or imprisonment for a period of up to two years, or both a fine and such imprisonment
Sections of the Act	category	offence	penalty
Section 58 (3) and sections 62 and 63	third	Any person who contravenes the prohibition on the cutting, disturbance, damage or destruction of forest produce in or the removal or receipt of forest produce from a protected area	Maybe sentenced on a first conviction for that offence to fine or imprisonment for a period of up to one year, or both a fine and such imprisonment
Section 58 (4) and sections 63 and 64	fourth	Any person who without authority, enters an area of a forest which is not designated for access for recreation, education, culture or spiritual fulfilment	Maybe sentenced on a first conviction for that offence to fine or community service for a period of up to six months or to both a fine and such a service
Section 58 (6) and section 61	fifth	A forest officer who fails to inform an owner who is in breach of a standard by written notice	May not be sentenced to imprisonment, but may be sentenced to a fine up to 50 000 (ZAR)

A person who is guilty of a second, third or fourth category offence may be sentenced on a second conviction of that offence as if he or she has committed a first, second or third category offence respectively. The Minister responsible may amend the Section 58 (6) penalty by a notice in a government gazette to counteract inflation. A court which convicts a person of offence in terms of this Act may suspend or revoke a licence granted to the offender under section 7 or 23 of the Act.

3 THE DELEGATION OF POWERS AND DUTIES IN TERMS OF THE NATIONAL FORESTS ACT, 1998 (ACT NO 84 OF 1998)

Section 48 and 56 of the National Forests Act gives the responsible Minister and the Accounting Officer to respectively delegate powers and duties. Delegations are first by the Minister to the Accounting Officer. The Accounting Officer then delegates to the incumbents and future incumbents of posts in the Department of Water Affairs and Forestry program managing forests. A reference to the incumbent in a particular post includes the incumbent of a post senior to the holder of the post in the functional line. This is in line with section 48 (1) (b) and section 56 (2) (b). In the event that the incumbent of a senior post exercises the powers and performs the delegated duties; it shall be so with a good reason and be held accountable and much as such must be recorded in writing. The right to withdraw or amend or replace any delegation is reserved at all times.

Delegations range from duties and functions performed by designated senior government officials based in Pretoria, the national office of the Ministry of Water Affairs and Forestry to forest officers based in provincial and local offices in the entire. The figure below shows the location of the offices referred to. In some instances the delegations include a first and a second delegation. The incumbent of a post indicated under first delegation in schedule may further delegate to the incumbent of a post under the second delegation. In this instance accountability remains with the incumbent of the first delegation.

The delegation of duties and functions is guided by the nature of the provision of the Act as well as the strategic nature of the functions and its potential impact on the sustainable management of forests. Table 2 gives an example of delegated and non-delegated duties and functions

Table 2: Delegations under the National Forests Act, 1998

section	power	first delegation	second delegation
4 (2)	Determination of criteria, indicators and standards	Not delegated	
4 (3) (b)	Identification of punishable breaches of standards	Director general	
6 (1)	Monitoring of forests	Head of Forestry: Region	Deputy Director: Forestry
16 (1)	Request to the Registrar of Deeds to record the protection against title deed	Director: Forestry Regulation	
23 (1) (d)	Licensing of the removal or receipt of any other forest produce	Forester	
28 (1)	Entering into contracts to sell timber or other forest produce from a state forest	Director General	
32 (2) (c)	Provision of material or financial assistance for community forestry	Deputy Director General: Forestry	

4 IMPLEMENTATION OF THE DELEGATIONS

Implementation of delegated duties and powers require administrative guidelines to ensure consistency. The Department of Water Affairs and Forestry had to develop and implement policies, regulations, licensing business processes, criteria and indicators to guide officials. For example the implementation of provision of material or financial assistance for community forestry (Section 32 (2) (c) of the National Forests Act) is guided by the Policy for the Provision of Financial Support. The policy was approved by the Forestry Functional Management Committee of the Department of Water Affairs and Forestry. The department initiated a process to investigate and develop national minimum standards for the Sustainable Forest Management against Criteria, Indicators and Standards. Other measures taken include holding Compliance and Enforcement workshops and developing a Compliance and Enforcement Handbook and a Transgressions Recording System. Department of Water Affairs and Forestry works with the National Prosecuting Authority, the Justice College and the Department of Environmental Affairs and Tourism among other state institutions as well as the private sector to ensure coherent and sustainable compliance and enforcement efforts.

Enforcement of the National Forests Act by the department has yielded positive results. For example Department of Water Affairs and Forestry the Western Cape region received 136 Section 7 applications (license to cut, damage or destroy any indigenous, living tree in, or remove or receive any such tree from a natural forest) and issued 129 licenses in time following 130 site inspections. For the rest of the country 680 Section 15 applications were received, 505 site inspections were conducted followed by the issuing of 435 licenses. Licenses are issued with conditions; 19 incidences of non-compliance with acts were recorded. The table below shows other achievements of the regional offices in the past reporting period (Department of Water Affairs and Forestry, Annual Report 2007/2008) with regard to enforcement of the National Forests Act

Table 3: Results of the implementation of the National Forests Act

region	Number of cases
Eastern Cape	47
Western Cape	4
Gauteng	3
Northern Cape	4
Limpopo	36
Free State	19
North West	14
Mpumalanga	21

The implementation of the National Forests Act on a mix of a centralized and a decentralized administrative decision-making system ensures that the users of forests have access services. It appears that the implementation is working because it is aided by proper monitoring and program accountability that provides information to the decision makers at all levels (Markowitz. et. al., 2005). Other measures observed are that the Department of Water Affairs and Forestry has provided resources for the delegations to implement and provides a support system to the forestry officers as the accountability for all enforcement actions lies with the responsible Minister. The implementation system gives a clear differentiation of responsibility between the forestry officials and is supported by the Intergovernmental Relations Framework that formalizes the working relationship of state institutions.

A mix of a centralized and a decentralized decision making system is not always favored by all officials as it puts limits to their actions; ideally most officers would prefer a total decentralization. Kishor and Rosenbaum (2005) refer to illegal

practices as capable of leading to a leakage of resources, such as tax revenue, the same can be said for South Africa. The South African forestry industry contributes an estimate of 12, 274 billion ZAR to the South African economy on an annual basis and generates 170,000 jobs (this range from permanent, contract and informal workers). The majority of the jobs created are low skilled based and concentrated in rural areas where there is high unemployment. In comparison the forest sector contributes about 1,1% to the total Gross Domestic Product of the Republic of South Africa and 1,4% to the total formal employment; this is comparable to other large sectors of the economy. It is therefore critical that Department of Water Affairs and Forestry continues to implement and find other innovative ways of protecting the forest resources.

5 CONCLUSION

South Africa is maintaining a sustainable forests management framework. The government's effort has been successful because of proper monitoring, program accountability, capacity building, making information available and allocating resources to the Forestry program. Officials given the responsibility do appreciate the integral contribution of forests to the state of the environment. Their efforts to implement the National Forests Act, 1998 (Act no 84 of 1998) are broader in intent and recognize the contribution of forests to ecological services.

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