

Status quo of Compliance Monitoring and Enforcement of Sout Africa's Environmental Governance Framework

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Background and Introduction

- **Compliance monitoring and enforcement** is a government **mandate**
- **Challenging** and **difficult** mandate and NGOs (EWT) can play important **supportive role/ strengthening** existing enforcement structures
- In 2008 with support from Howard G Buffet Foundation EWT established Project: **Strengthening Compliance and Enforcement of SA environmental governance framework**
- Focus on **biodiversity conservation issues**
- To ensure EWT's contribution/supportive role is **effectively targeted** obtain a better understanding of the where we could make a difference = informal scoping exercise



Background and Introduction

- Became increasingly clear how **important the outcomes** of a study of this nature will be, not only for EWT, but for the all stakeholders
- Due to the -
 - **Quantity** of work
 - Level of **expertise** and **experienced** required
 - To ensure **objectivity**
- Financial support from HGBF appointed **external consultants** - Involve
- **Aim:** *Formal investigation into current system of compliance monitoring and enforcement of biodiversity conservation issues - to id successes, challenges and gaps as well as make recommendations for improvement by EWT and other role players*
- **Outcome:** Status quo report



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EWT's current Approach

-WildPro-

- **Elevated the 2008 EWT Project** to a new level
- Developed the **Wildlife Defence Project (WildPro)**
- EWT's **current approach** aimed at supporting/contributing to existing structures
- Partnership between the **EWT** and the **CER**
- Combining **scientific** and **legal** expertise to improve biodiversity conservation
- WildPro will also aim to address the **recommendations** in the **scoping report**
- WildPro will aim to **work with** and **support** government (DEA national and provincial, NPA etc) as much as possible
- If not resolved, then legal action – **as last resort**



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WildPro

-Objectives-

OBJECTIVES:

1. Support improved effectiveness and implementation of biodiversity conservation legislation
2. Support better quality decision-making around wildlife trade-related activities
3. Support improved compliance and enforcement
4. Build awareness and skills and promote information sharing



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The Report

-Methodology-

- Desktop **legislative** review for provisions **potentially hampering enforcement**
 - National Environmental Management Act, Act 107 of 1998
 - National Environmental Management Biodiversity Act, Act 10 of 2004
 - National Environmental Management Protected Areas Act, Act 57 of 2003 (limited to biodiversity and conservation issues)
 - The provincial acts and ordinances [*Due to current amendments only looked at the provisions dealing with enforcement powers*]
- Legal review was **limited in scope** (number of statutes analysed) due to budget and time constraints
- In addition to desktop review, other legislative issues were identified through **interaction** with enforcement officials and prosecutors



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The Report

-Methodology-

- Drafted generic questionnaire for use in interviews with stakeholders
- Questionnaire sent to **key role-players** containing **54 detailed questions**
- Questionnaire was **distributed widely**, only a **small number of responses** were received
- Additional persons were contacted and **key individuals targeted** on particular issues
- Conducted interviews, in person where possible, otherwise telephonically



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The Report

-Methodology-

- An assessment of -
 - **National Environmental Compliance and Enforcement Reports** (2008-9 and 2009-10)
 - **Recent case law** (2001 to 2011)
 - Bulk of case law unreported and often not transcribed, further determined through interviews
 - Recent **developments in initiatives, eg**
 - National Wildlife Crime Reaction Unit (NWCURU)
 - The National Biodiversity Investigators Forum (NBIF)
 - Assessments of **answers to questionnaires** and other data already obtained by the **EWT** through initial informal scoping (2008)
 - Results from **questionnaires** and **interviews** with key stakeholders



The Report

-Findings-

CATEGORIES OF FINDINGS:

Capacity and Training

Lack of training, adequate resources, retention of experienced and committed staff

Legal Framework

Identified provisions potentially hampering effective enforcement

Challenges to Prosecutions

Gaps in, and changes to legislation, challenges with investigations

Data Management

Gap in the accurate accumulation and recording of enforcement of conservation issues, hinders identification and management of problem areas



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The Report

-Recommendations-

RECOMMENDATIONS:

Amendments based on legislative review

Training of all role-players

Appointment of environmental management inspectors

Addressing issues with current system of Admission of guilt fines

Continuation of effective co-operation between different role-players and international cooperation

Recording of enforcement data on a centralised database



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Recommendations

-Legislation-

Recommendations contained in the legislative review

- Legal review - NEMBA, NEMA, NEMPA and provincial acts and ordinances
- **CPA** amended to include **rhino poaching** offences as **schedule 5 or 6 offences**, specifically for the purposes of bail
- Amendments should be considered to **further increase the penalties** for biodiversity and conservation related offences
- Possibly rethink the relevant legislative framework and possibly place all **environmental compliance and enforcement functions** within a **single institution**



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Recommendations

-Training and Capacity Building-

Training of all role-players

- Training - one of the **major issues** highlighted
- Various **forums/working groups** play a critical role part in empowering officials
- Training in **other agencies** and institutions, for example, the SAPS, customs and the border police on biodiversity and conservation enforcement
- Officials require **specialised training**, for example on ToPS
- Various training initiatives have been undertaken in the past few years and much **progress** have been made



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Recommendations

-Human Capacity-

Appointment of environmental management inspectors (EMIs)

- **More EMIs** need to be appointed in institutions that enforce biodiversity and conservation legislation.
- More grade 1 officials - empowered to sign off notices
- Bigger municipalities **have necessary resources** to deal with biodiversity issues and municipal officers are often the first to detect non-compliance
- **Local authorities** must play a more prominent role



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Recommendations

-AG Fines-

Admission of guilt fines

- Fines lists provide a list of the **maximum monetary value** of AG fines, per court district
- Set ito the **CPA** and is binding on all peace officers, which include saps, EMIs and provincial enforcement officials
- In some magistrates' districts the fines list are **outdated**, fines insufficiently low therefore no deterrent
- It is therefore recommended that the fines list should be **regularly updated** and **harmonised** in areas where this is a problem
- **Alternative** = setting of admission of guilt fines in terms of **NEMA**



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Recommendations

-Co-operation-

Continuation of effective co-operation between different role-players and international cooperation

- Critical to **ensure consistency** and **standardisation** in relation to conservation approaches and policies
- **National priorities** be clearly delineated to ensure that sufficient resources are applied to the more pressing issues
- These priorities can then be supported across the country through the **implementation** of a **uniform compliance and enforcement strategy**, including the use of formal operations to target specific types of criminal activity



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Recommendations

-Database-

Recording of enforcement data on a centralised database

- A **single web-based information system** that captures and hosts live statistics should be developed
- Needs to be **user-friendly** and the **loading of information mandatory**, with regular **training** provided
- **Challenges** - huge variation in organisational, procedural and IT systems and resources



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The Report

-Way Forward-

- Started communication with role-players around taking recommendations forward
- WildPro will be utilised to do this
- Any related research/projects/interest lets us know - need collaborative approach
- Thanks to HGBF for financial support



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