

# TOWARDS A SUSTAINABLE WILDLIFE TRADE

AN ANALYSIS OF NATURE CONSERVATION  
LEGISLATION IN SOUTH AFRICA WITH PARTICULAR  
REFERENCE TO THE WILDLIFE TRADE

Markus Bürgener  
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&  
Maria Hauck

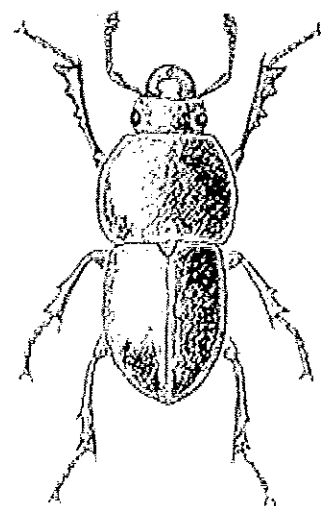
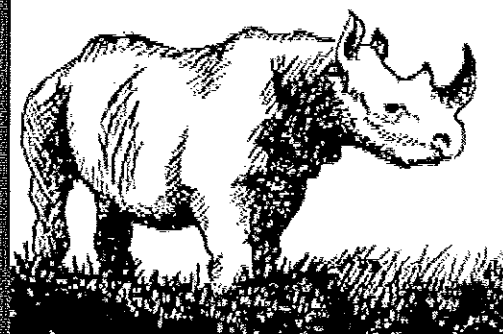
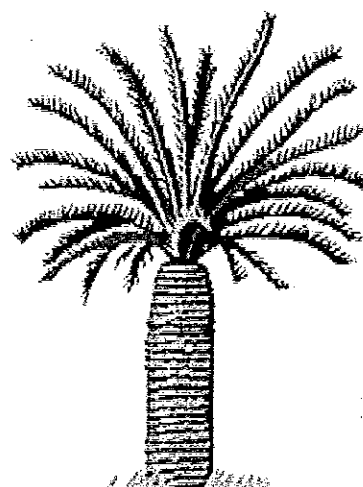
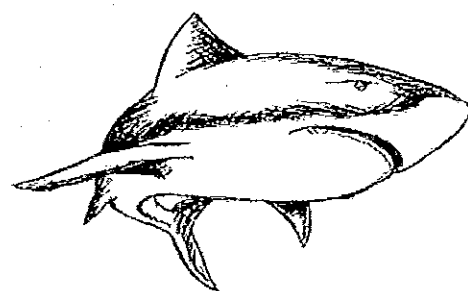


Institute of Criminology  
UNIVERSITY OF CAPE TOWN

in association with

**TRAFFIC**  
— EAST/SOUTHERN AFRICA —

2001



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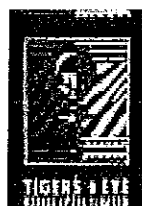
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## FOREWORD

The White Paper on Conservation, 1997, stressed that

"The fragmented, polarised, and inefficient administrative and legislative structures created by apartheid resulted in no fewer than seventeen government departments having primary responsibility for nature conservation prior to the April 1994 election. This situation did not improve with the establishment of new provinces and government structures. Divided responsibilities, together with a duplication of effort, a profusion of laws, and most importantly, a lack of co-ordination, have been major factors hampering the effective conservation of biodiversity."

With this unenviable heritage any attempt to place environmental matters on an efficient legislative and regulatory footing is a daunting, yet urgent, task. Laying the foundation for doing so in the vital area of nature conservation, with particular reference to wildlife trade and utilisation, has been the achievement of this Report. As the "ACKNOWLEDGEMENTS" indicate, it is the product of team work on the part of those having a concern for the preservation of our magnificent, and in many respects unique, natural resources. To mention every contributor by name would detract from the gratitude owed to each. Special thanks is, however, due to the United Nations Foundation for funding this project and to the Department of Environmental Affairs and Tourism for the co-operation of its members. Last, but not least, the three authors of this report are to be commended for a job well done!



M E Kumleben

## GLOSSARY OF ACRONYMS

BWG	Biodiversity Working Group
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DANCED	Danish Co-operation for Environment and Development
DEAT	Department of Environmental Affairs and Tourism
DLRP	DEAT Law Reform Programme
DWAF	Department of Water Affairs and Forestry
ECA	Environment Conservation Act 73 of 1989
ESPU	Endangered Species Protection Unit of the South African Police Services
GNC	Gauteng Directorate of Nature Conservation
IATA	International Air Transport Association
KZNNCS	KwaZulu-Natal Nature Conservation Services
MINMEC	Forum consisting of the Minister and Deputy Minister of the Department of Environmental Affairs and Tourism, as well as the provincial members of the Executive Council
MINTEC	The Technical Committee of MINMEC
MPB	Mpumalanga Parks Board
MCM	Directorate of Marine and Coastal Management
NEMA	National Environmental Management Act 107 of 1998
NPDNC	Northern Province Department of Nature Conservation
SABS	South African Bureau of Standards
SACIP	South African CITES Implementation Project
SADC	Southern African Development Community
SANDEF	South African National Defence Force
SANParks	South African National Parks
WCNCB	Western Cape Nature Conservation Board
ZAR	South African Rand

## DEFINITIONS

For the purposes of this report the following words have their described meaning:

'provincial authority'	The provincial organ of state, whether it is a department, board or directorate, responsible for regulating wildlife trade within a province.
'trade'	To collect, harvest, possess, process, acquire or transport wildlife for the purpose of purchase, import, export, sale, barter or exchange.
'wildlife'	Any wild plant or animal, whether indigenous or exotic, and any derivative thereof.

## Executive Summary

The research results and recommendations outlined in this report focus specifically on issues related to the wildlife trade in South Africa. The sustainable *legal* wildlife trade is supported as a fundamental tenet of biodiversity conservation, which supports sustainable use as a movement away from the old paradigm of a solely hands-off (total prohibition) policy. The *illegal* wildlife trade, on the other hand, should be minimised. After drugs and weapons, this is the third most significant illegal trade in the world.

Effective regulation of the wildlife trade is largely dependent on sound legislation which facilitates the work of conservation authorities in promoting a sustainable legal trade and addressing the illegal trade. Wildlife trade in South Africa is currently regulated in terms of a highly fragmented potpourri of provincial Ordinances, Acts, Decrees and Proclamations which are, in numerous aspects, inconsistent, incomplete, outdated and overly complex. There are, for example, a number of inconsistencies in permitting procedures, sanction provisions, legal definitions, and the conservation status of many indigenous species. This confusing legislative structure makes it extremely difficult for conservation authorities already facing budgetary and capacity constraints, to carry out their work effectively and efficiently. Provincial restructuring in 1994, combined with a failure to repeal nature conservation legislation of the former Independent States and Self-governing Territories, has served to exacerbate an already fragmented legal environment.

Problems are not only created through inconsistencies between various Ordinances and Acts. The existing legislation is for the most part outdated and there are, for instance, no provisions dealing with the use of incentives to encourage persons involved in the trade to utilise natural resources sustainably. Finally, the existing system does not allow for national monitoring and oversight of the extent, and nature, of wildlife trade.

This unmanageable situation is currently being addressed by two separate initiatives, both managed by the Department of Environmental Affairs and Tourism (DEAT). These initiatives, the South African CITES Implementation Project (SACIP) and the Law Reform Programme of DEAT (DLRP) will result in the development of national biodiversity conservation legislation. This legislation will include provisions specific to CITES as well as general trade provisions for all species. It is intended that this report will serve as a tool for those involved in the development and drafting of this legislation as well as those involved in the relevant public participation processes.

The report begins with an overview of the objectives and methodology of the research project and the limitations and obstacles that were encountered. A detailed description is provided on the existing legislative, policy and institutional environment related to South Africa's wildlife trade. Specific themes are then outlined and discussed that are either being inadequately addressed by legislation or are not being addressed at all. Finally, a series of recommendations and alignment options are provided for the purpose of assisting provincial and national authorities in amending, developing and drafting nature conservation and biodiversity legislation.

## KEY RECOMMENDATIONS EMANATING FROM THIS REPORT ARE:

- Biodiversity utilisation, including wildlife trade, can be most effectively and holistically addressed through **national legislation**. Alignment with both national and provincial laws should take place within national legislation, particularly with respect to definitions, alien organisms, permitting procedures, sanctions, schedule amendment procedures and the inclusion of wildlife welfare provisions.

It will, however, be necessary to take cognisance of the fact that DEAT does not currently play an implementation role and lacks the capacity to do so. The Department is best placed to monitor biodiversity utilisation throughout the country, facilitate inter-provincial co-operation and co-ordination, and drive policy development. Implementation should continue to take place almost entirely at a provincial and local level. It will also be necessary for the provinces to retain the power to regulate for certain aspects of biodiversity conservation. This is particularly important in light of the different institutional structures in place for the various conservation agencies, as well as the varying geographic and biodiversity conditions within different provinces.

- A **national biodiversity conservation institute** should be created to ensure national oversight of wildlife trade dynamics, particularly the impact of trade on wild species.
- National nature conservation legislation should incorporate **creative tools and strategies** in achieving **sustainable legal wildlife trade** (for instance, through the use of incentives and the involvement of communities in biodiversity management).
- Options need to be urgently pursued by DEAT for ensuring that **CITES implementing provisions** can be passed without having to wait for the enactment of the *National Environmental Management Act 107 of 1998* (NEMA) amendment, including biodiversity conservation provisions.
- Legislation of the former homelands should be repealed as these Acts and Ordinances are outdated and create unnecessary implementation problems for conservation authorities.
- A **Law Enforcement Forum**, comprising DEAT, members of provincial conservation agencies, the Endangered Species Protection Unit of the South African Police Services (ESPU), Customs and Excise, the Chief Directorate: Marine and Coastal Management of DEAT, Postal Services and the Border Police, should be established.



## Chapter One

## INTRODUCTION

The research results and recommendations outlined in this report focus specifically on issues related to the wildlife trade in South Africa. There are two components to the wildlife trade. First is the *legal* trade, which is created through the formulation of guidelines and parameters that aim to ensure that trade is conducted sustainably. The sustainable legal trade is supported as a fundamental tenet of biodiversity conservation, which supports sustainable use as a movement away from the old paradigm of a solely hands-off (total prohibition) policy. Second is the *illegal* trade, which includes an activity that is not sanctioned by the necessary license or permit and contravenes any applicable law or regulation. The global illegal wildlife trade, which includes both animals and plants, was estimated to be worth \$1.5 billion worldwide in 1989 (Fitzgerald, 1989) with a more recent estimate reaching \$5 billion in 1997 (Hughes, 1997). After drugs and weapons, this is the third most significant illegal trade in the world (Hughes, 1997).

The ongoing over-exploitation of wildlife impacts greatly on the economy of South Africa. The legal trade, for example, is highly underdeveloped in this country, but has the potential to generate significant income not only for local people, but also for the State<sup>1</sup>. If over-exploitation continues, these opportunities will disappear. Thus, intervention is urgently required. Effective regulation of the wildlife trade is largely dependent on sound legislation which facilitates the work of conservation authorities in promoting a sustainable legal trade and addressing the illegal trade.

*'Many of the contemporary measures in place to protect South Africa's fauna and flora and regulation of the wildlife trade reflect this country's former history; responsibility for wildlife conservation, including trade, was largely accorded to the provinces. Although regional boundaries have recently been revised, the legal framework and administrative structure for controlling the wildlife trade has remained largely unchanged.'*

The above statement from *South Africa's Wildlife Trade at the Crossroads*, by Bodasing and Mulliken (1996), still applies as wildlife trade in South Africa continues to be regulated in terms of a fragmented potpourri of provincial nature conservation laws. There are currently over twenty different pieces of nature conservation legislation in force throughout the Republic (see Appendix I). Certain of them, such as the *Eastern Transvaal Parks Board Act 6 of 1995* deal primarily with the administrative structure of the conservation authority. The majority of them, however, contain provisions directly relevant to the conservation of fauna and flora. In provinces such as the Northern Province and the Eastern Cape, there are five different pieces of nature conservation legislation that must be enforced within each province.

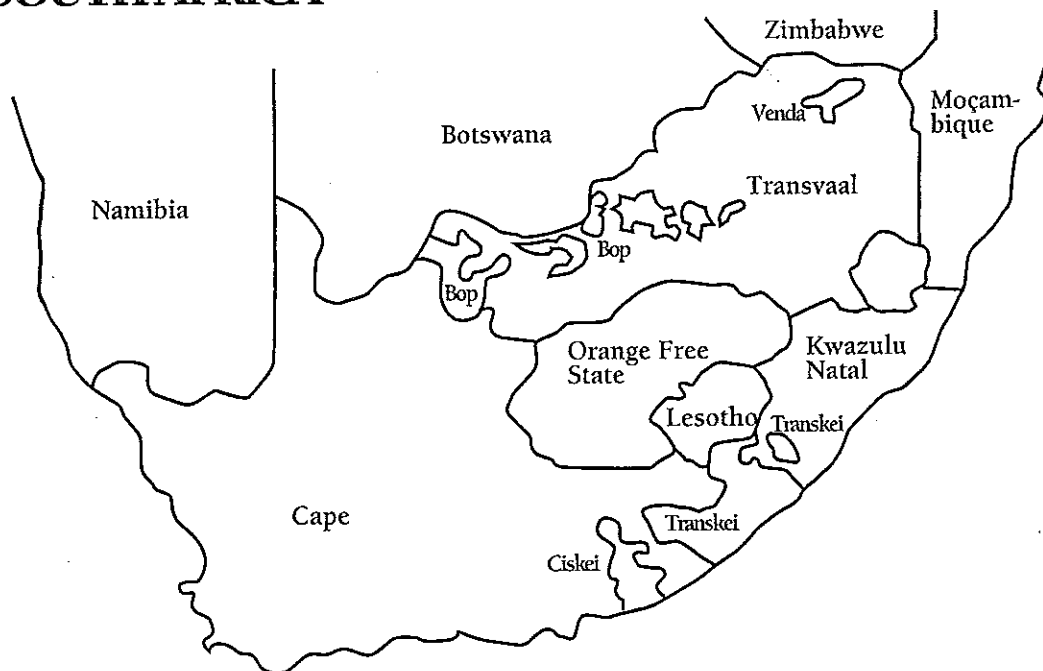
Provincial restructuring in 1994 (refer to Figure 1) has exacerbated the situation and a major problem encountered in most provinces is that the provincial conservation authorities are required not only to enforce and regulate in terms of one or more of the provincial nature conservation Ordinances, but also in terms of legislation of the former Independent States and Self-governing Territories. Many of these former homeland Acts are incomplete and outdated and for a number, regulations were never drafted.

1. Fitzgerald (1989) estimates the world market for wildlife (both legal and illegal) to be worth at least \$5 billion, while Hughes (1997) predicts that approximately 350 million wild animals and plants are traded globally each year (both legal and illegal), with an estimated value of \$20 billion.

Conservation officials are required to regulate biodiversity conservation and carry out enforcement measures in terms of the correct Act or Ordinance and must ensure that persons contravening the legislation are charged and prosecuted in terms of the correct piece of legislation. This unnecessarily complex legislative structure has been described as 'legal pluralism or even legal chaos' (Du Plessis 1995), making it far harder for conservation authorities, already facing budgetary and capacity constraints, to carry out their work effectively and efficiently.

This unmanageable situation is currently being addressed by two separate initiatives, both managed by the DEAT. These initiatives, the SACIP Project and the DLRP, which are discussed in Chapter Five of the report, will result in the development of national biodiversity conservation legislation. This legislation will include provisions specific to CITES as well as general trade provisions for all species. It is intended that this report will serve as a valuable tool for all involved in the development and drafting of this legislation as well as those involved in the relevant public participation processes.

## OLD SOUTH AFRICA



## NEW SOUTH AFRICA

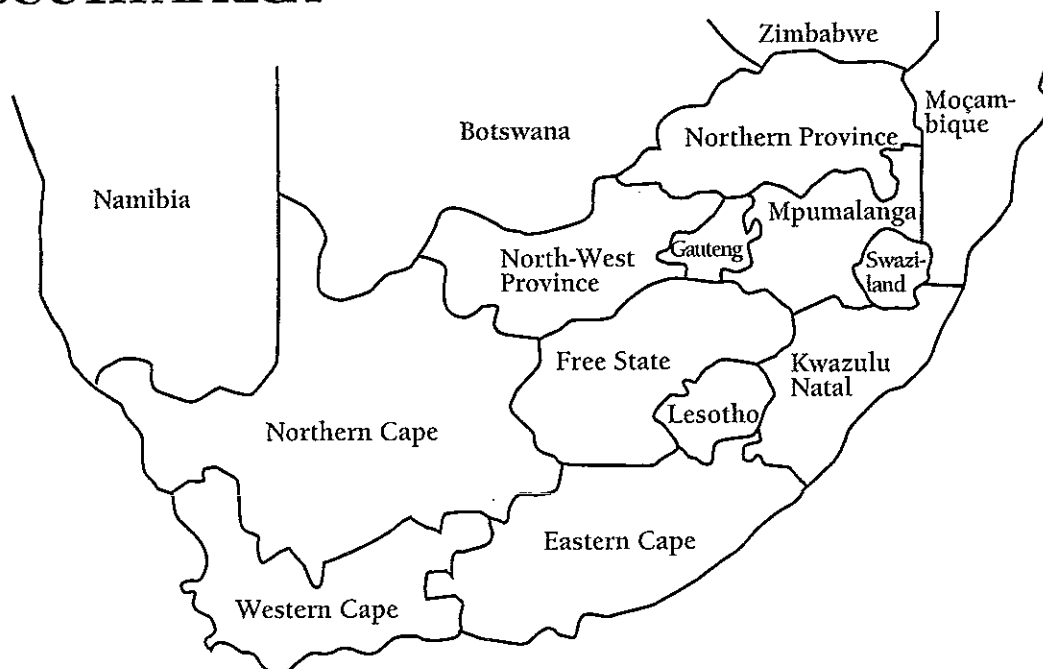


FIGURE 1: MAPS DEPICTING THE FORMER AND CURRENT PROVINCIAL GEOGRAPHY OF SOUTH AFRICA  
(BODASING AND MULLIKEN, 1996)

## Chapter Two

# PROJECT OBJECTIVES

The ultimate goal of this project is the regulation of the wildlife trade in South Africa through the development of effective legislation. This goal is sought through the production of this report, which contains an analysis of national and provincial laws relevant to the regulation of the wildlife trade. The problems caused by the current fragmented structure will be highlighted and recommendations will be made to effectively address the weaknesses in the legislative structure. This report is therefore intended to be used as a tool and guide to those responsible for amending, developing and drafting nature conservation and biodiversity legislation as well as those involved in relevant public participation processes.

While the report will form the core of the project, it should be recognised that the project objectives have also been achieved through ongoing liaison with the relevant national and provincial authorities. Input and assistance into law reform, particularly at a national level, has been strategic at stages that coincided with the research, prior to completion of the final report. Thus, research results have been shared throughout the project in order to contribute to legislative developments.

Key project objectives were as follows\*:

1. To provide input into the development of national wildlife trade related legislation through an analysis of provincial and, to a lesser extent, national legislation.
2. To make recommendations on the alignment of provincial legislation and policies and to ensure their compatibility, and where appropriate, uniformity with national legislation concerning the wildlife trade in South Africa. Different options for alignment will be considered with a specific focus on determining which issues could be covered by national framework legislation and which issues could be exclusively legislated for at a provincial level.
3. To provide a tool for the alignment of provincial legislation (between the provinces and with national laws) by exploring the development of a model provision for use by the provinces in amending existing, or drafting new legislation. (It was recognised at the outset, however, that a model provision would only be developed if time and budget constraints allowed. Furthermore, the development of such a model would be largely dependent on the completion of national legislation to provide the necessary parameters for aligning trade regulation).

### \* Important Note: National Legislative Developments

The objectives outlined at the outset of the project were based on existing developments in national legislation. Since this time, however, there have been ongoing and unpredictable legislative and policy developments at a national level. For example, when the project was first initiated in November 1999, CITES legislation was being developed as an independent Act. In the interim, however, the DLRP has been developed and has identified CITES, biodiversity conservation and other environmental legislation to be included in a comprehensive amendment to the current *National Environmental Management Act of 1998*. This has changed the nature of the legislative environment and has changed the timeframes for the project. These changes have affected the project outputs in that national legislation regarding

the wildlife trade is still not resolved and recommendations for alignment can therefore not be finalised. In addition, this uncertainty makes it impossible to develop a model Ordinance. On the other hand, although the recommendations of this report are broad, alignment options are specified for both provincial and national legislation that can then feed into current developments (e.g. the DLRP).

## Chapter Three

# METHODOLOGY

**A**t a workshop held in 1999 by the Institute of Criminology, University of Cape Town (UCT), and attended by a broad group of leading figures in conservation, the alignment of provincial nature conservation legislation in South Africa (between the provinces and with national laws) was identified as an area of critical importance in ensuring effective regulation of the wildlife trade. A project proposal was developed through a workshop that was attended by representatives from provincial and national government authorities, research institutions and the NGO sector. This process resulted in the development of a comprehensive Logical Framework Analysis and detailed proposal.

In a joint research initiative between TRAFFIC East/Southern Africa: South Africa (TESA-ZA) and the Institute of Criminology of UCT, the following methods were employed in order to achieve project objectives:

1. A comprehensive literature review was conducted to identify and assess all relevant national and provincial legislation and policy relating to wildlife trade as well as all relevant draft legislation and policy, international agreements, publications, journal articles and other relevant literature.
2. Interviews were then conducted with selected staff at all of the provincial nature conservation authorities, a number of national departments, non-governmental organisations and with other individuals. The interviews were carried out based on a questionnaire and were centered on a number of themes that had been identified as areas of priority in the project planning stage (see Appendix II). The themes identified were as follows:
  - Community involvement in regulating wildlife trade
  - Co-operation and co-ordination on wildlife trade issues
  - Definitions
  - Law enforcement provisions
  - Trade in alien organisms
  - Incentive provisions
  - Permitting procedures
  - Policies
  - Sanctions
  - Schedules
  - Welfare issues
  - Monitoring of trade in non-listed species \*
  - Effect of trade in certain species on other species/biodiversity \*
  - Utilisation of wildlife - this incorporates harvesting, commercial exploitation, controlled collection and recreational utilisation \*
  - Incorporation of Biodiversity White Paper provisions into legislation and policy development \*\*
  - Institutional arrangements \*\*

\* These themes are not discussed separately in Chapter Six as the issues concerned are covered within other themes.

\*\* These themes are discussed in Chapters Four and Five respectively.

3. The aim of the field research was to identify and collate outstanding literature including policy documents, draft legislation, minutes of relevant meetings and any other relevant literature; to determine whether any authorities were in the process of or intended drafting new legislation; and to assess departments' views on the above themes, on the national legislation development process and the option of national nature conservation legislation.
4. Based on the initial research results a document was produced titled: '*Compilation of Preliminary Research Results of the TRAFFIC/UCT Provincial Legislation Analysis Project*'. This document was distributed to all relevant provincial and national government authorities and other identified stakeholders, regardless of whether they formed part of the field research at this stage.
5. Following the production of this report, further interviews were conducted and research undertaken. A workshop was held prior to this report which was attended by external reviewers as a means of ensuring that the proposed structure and contents of the report would best address the aims of the project. This workshop was also attended by persons involved in the drafting of new biodiversity conservation legislation for South Africa.
6. Based on the primary research conducted and the analysis of documents and materials sourced through the literature search, this report was produced. The final document was peer reviewed and revised prior to publication.
7. Contact has been maintained, throughout the duration of this project, with DEAT as well as with provincial nature conservation authorities to ensure that the project retains its relevance and that stakeholder contribution is maintained.

## Chapter Four

# INTERNATIONAL LAW AND NATIONAL POLICY CONTEXT

## 4.1 INTERNATIONAL LAW

South Africa is a Party to over eighty multilateral environmental agreements (CIESIN, 2000). In terms of many of these agreements the Republic undertakes to follow various principles and processes with respect to the conservation of biodiversity. International law very seldom provides for the specific implementation of its provisions, and international agreements generally serve to provide policies and guidelines on environmental issues. These policies and guidelines form the basis for much national legislative development.

### Box 1: International, Regional and Bilateral Agreements and Institutions

- The Convention on Biological Diversity
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora
- World Trade Organisation and General Agreement on Tariffs and Trade
- Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community
- The Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora

Note: South Africa is a Party to over eighty multi-lateral environmental agreements. The aim of this Box is to list only those Agreements that have direct relevance to the aims and objectives of the project.

### 4.1.1 The United Nations Convention on Biological Diversity

The United Nations Convention on Biological Diversity (the Biodiversity Convention) opened for signature in 1992 and entered into force in December 1993. South Africa became a signatory to the Convention in June 1993. The three main objectives of the Convention are the conservation of biodiversity, the sustainable use of biological resources and the fair and equitable sharing of benefits arising from the use of genetic resources.

As a Party to the Convention, South Africa is obliged to ensure that the agreement is implemented in accordance with its objectives and as a means of doing so, the state is required to *develop national strategies, plans or programmes, or adapt existing ones, to address the provisions of the Convention, and to integrate the conservation and sustainable use of*

*biodiversity into sectoral and cross-sectoral plans, programmes and policies (Article 6).*

DEAT is responsible for ensuring that the provisions of the Biodiversity Convention are implemented in South Africa. The manner in which this is being done is described in Sections 4.2.1 and 5.2.2 of this report.

### 4.1.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora

CITES was established in 1973, with the aim of controlling and monitoring the international trade in plants and animals threatened, or potentially threatened, in the wild by such trade. Each party to the Convention has a Management Authority, which is a government department responsible for CITES policy issues and for administering and issuing CITES permits. Each Party must also designate at least one Scientific Authority. The Scientific Authority is responsible for providing the Management Authority with scientific advice on a



variety of matters, including permit applications and scientific input into policy development. South Africa's accession to the Convention came into force on 13 October 1975 and DEAT was nominated by the South African government to serve as the country's principal Management and Scientific Authority. As discussed below, many of the associated functions of the Management and Scientific Authority have been delegated to the provincial conservation authorities.

There is currently no national CITES implementing legislation in South Africa. CITES is, however, referred to in three of the four provincial Ordinances applicable to the 'old' provinces, namely the Transvaal, Orange Free State and Cape Provinces, as well as in the *Mpumalanga Nature Conservation Act 10 of 1998*. The *Natal Nature Conservation Ordinance 15 of 1974* contains general permitting provisions on the import and export of fauna and flora. The authority for administering and issuing CITES permits was transferred to four new provinces in 1994, namely Gauteng, Free State, Western Cape and KwaZulu-Natal, while the Department of Sea Fisheries (now MCM) retained its authority to issue permits for trade in CITES listed marine species. In addition, in 1997, the Northern Cape Province was delegated Management and Scientific Authority status. DEAT acts as the co-ordinating body for all of the provincial Management and Scientific Authorities but has no permit issuing authority.

Both CITES and the Biodiversity Convention are non self-executing Treaties which means that national implementation of the provisions of both Conventions is required to ensure adequate compliance by parties to these Conventions.

#### 4.1.3 The General Agreement on Tariffs and Trade and the World Trade Organisation

The General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO) have as their aim the reduction, if not the elimination, of barriers to trade which take the form of both tariff and non-tariff barriers on imported products. A key problem with this system is that each contracting party pursues its own economic self-interests, in many cases ignoring ethical concerns or the greater public interest. As a result, there is a potential conflict of interest between the international trade community and the international environmental community (Glazewski, 2000).

CITES aims to control trade in wildlife and this control results in the imposition of barriers or restrictions to free trade on wildlife and wildlife products between States. The potential for conflict between the provisions of CITES and those of the GATT and WTO therefore clearly exists. There are, however, general exceptions to the GATT's requirements. The exception applicable to CITES relates to measures which restrict or prohibit trade but where such measures are '*necessary to protect human, animal, plant life or health*'. The exceptions may not, however, be discriminatory nor disguised restrictions on trade (Glazewski, 2000).

#### 4.1.4 Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community

This Protocol has been signed by the 14 members of the Southern African Development Community (SADC) and entered into force in August 1999. The protocol applies to the conservation and sustainable use of wildlife resources, excluding forestry and fishery resources. While recent policy and legislation initiatives are not in variance with the provisions of this Protocol, it does not appear thus far to have played a significant role in guiding policy or legislative development in South Africa. The following provisions of the agreement are relevant.

The Protocol requires Parties to:

- take such policy, administrative and legal measures as appropriate to ensure the conservation and sustainable use of wildlife (Article 3.3(a));
- facilitate the harmonisation of the legal instruments governing the conservation and sustainable use of wildlife resources (Article 4.2(b));
- take measures governing the trade in wildlife and wildlife products and bringing the penalties for the illegal taking of wildlife and the illegal trade in wildlife and wildlife products to comparable deterrent levels (Article 6.2(c));
- take measures facilitating community-based natural resources management practices in wildlife management and wildlife law enforcement (Article 6.2(f));
- provide economic and social incentives for the conservation and sustainable use of wildlife (Article 6.2(g)); and
- co-ordinate efforts with wildlife law enforcement authorities and Interpol National Central Bureaus to apprehend illegal takers and traders and to recover and dispose of illegal wildlife products (Article 9.3(c)).

#### 4.1.5 The Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora

The aim of this Agreement is to assist with the enforcement of, and compliance with, multilateral agreements concerning the illegal trade in wildlife. In Southern Africa this is particularly relevant to CITES and aspects of the Biodiversity Convention. A fundamental component of the Convention is the creation of a task force for co-operative enforcement operations directed at illegal trade in wild fauna and flora. This task force is to be composed of field officers seconded by each of the member nations. At present South Africa has not ratified the Lusaka Agreement. However, if South Africa was to do so, certain provisions contained in the Agreement may need to be reflected in national legislation. For instance, Article 4(3) states that each party shall provide the task force on a regular basis with relevant information and scientific data relating to illegal trade.

#### Box 2: List of National Policies Relevant to the Wildlife Trade

- White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity
- Operational Agreement: Nature Conservation Law Enforcement
- A strategy for the Conservation and Sustainable Use of Wild Populations of Southern White Rhino *Ceratotherium simum simum* in South Africa
- National Policy on the Conservation of Reptiles and Amphibians
- South African Standard Code of Practice on the Trans-location of Certain Species of Wild Herbivore

## 4.2 NATIONAL POLICY

Many of the policies formulated by the new government since 1994 are either directly or indirectly concerned with natural resource and environmental management issues (see Box 2). Most of these, such as the White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity, have been broad and policies and guidelines dealing specifically with the utilisation of biological resources have been insufficiently developed at a national level. This is primarily because DEAT has lacked the capacity to provide strong leadership, co-ordination or hands-on management (Peart and Wilson, 1998).

In a document produced by DEAT in April 1997 titled, 'Environmental Policy Document

Projects that are currently being undertaken by the Department of Environmental Affairs and Tourism' (DEAT, 1997), the purpose, process and state of development of these policies is described. The following are relevant to wildlife trade:

- National Policy on the Conservation of Migratory Wild Animals: The document states that a national policy for the conservation of migratory wild animals is needed as a guideline for the development of provincial policies and legislation.  
Completion date: The policy was to have been finalised not later than March 1998.
- National Policy on the Utilisation and Status of Non-Human Primates in South Africa: The document states that the aim of this policy is to change the conservation status of certain primates.  
Completion date: The policy was to have been finalised during 1997.
- National Cycad Policy: The emphasis of this document is on producing a national policy for the conservation of cycads to ensure uniform legislation, marking of specimens in the wild as well as for plants to be transported from one province to another.  
Completion date: No completion date is given but a draft policy had been completed by April 1997.
- National Policy on the Translocation of Wildlife: The document states that there is a need to establish a national policy for the import and export of wild animals across national and provincial boundaries. The policy is to include subspecies, endemic species and exotic species of wild animals and birds.  
Completion date: No final date was provided.
- National Policy on the Conservation of Reptiles and Amphibians: The document states that a national policy is needed in order to put guidelines forward regarding the sustainable utilisation and conservation of reptiles and amphibians.  
Completion date: No completion date was provided.
- The Convention on Biological Diversity: The White Paper on the Conservation and Sustainable Use of Biological Diversity contains the South African policy for the implementation of the Biodiversity Convention.  
Completion date: A Draft White Paper had been completed by April 1997.

Of these six policy initiatives only two, the White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity and the National Policy on the Conservation of Reptiles and Amphibians have been fully developed. Two other policies, not reflected in the document discussed above, have also been recently developed by DEAT:

- Operational Agreement: Nature Conservation Law Enforcement (approved April 2000); and
- A Strategy for the Conservation and Sustainable Use of Wild Populations of Southern White Rhino *Ceratotherium simum simum* in South Africa (approved April 2000).

The following four policies are still being discussed within the Biodiversity Working Group (BWG) (T. Carroll, in litt, 2001):

- Problem animal control strategy.
- Strategy on the hunting, keeping and trade in large predators in South Africa.
- Strategy for the trade of fauna in South Africa.
- Cycads, their conservation and sustainable utilisation in Southern Africa.

Although there is a nationally driven policy development process, many policies remain incomplete and those that are fully developed are often ineffective because of inadequate or delayed implementation. One of these policies, A strategy for the Conservation and Sustainable Use of Wild Populations of Southern White Rhino *Ceratotherium simum simum* in South Africa, has direct trade implications in that one of the main action points of the policy requires the development of a uniform registration system for the possession of rhino-horn. A uniform registration system is one of a number of requirements for resumption in trade in rhino horn in terms of CITES Res. Conf. 9.24.

MINMEC and MINTECH (see Box 3) approved this policy in April 2000, but further progress, particularly on the means of implementation, is still being debated by DEAT's legal advisors (P. Botha, *pers. comm.*, September 2000).

**Box 3: Institutions involved in biodiversity utilisation policy development**

- The BWG is one of three working groups established within MINTECH. The BWG comprises technical staff from the provincial nature conservation authorities, the Chief Director and Director: Biodiversity Management of DEAT and technical staff from the National Botanical Institute (NBI) and the South African National Parks Board (SANParks). The BWG discusses biodiversity policy issues and clarifies technical aspects of these issues before they are discussed at a MINTECH level.
- MINTECH comprises the Heads of the Provincial Departments within which the provincial conservation authorities are situated, the Director General of DEAT, and representatives from NBI and SANParks. The aim of MINTECH meetings is to further resolve the debates on technical aspects of issues before they are raised within MINMEC.
- MINMEC comprises the Provincial Ministers of Executive Councils for environment affairs and the Director General and Minister of DEAT. Frequently Chief Directors and Directors within DEAT attend these meetings. MINMEC formally endorses policies related to biodiversity conservation and environmental management.

#### 4.2.1 White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity

The White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (the Biodiversity White Paper) was developed primarily in response to South Africa's signing and ratification of the Biodiversity Convention. Up until the point where the public became involved in the policy development process, issues pertaining to the Convention had been considered by a sub-committee of the Committee for Environmental Coordination of DEAT.

A number of the provisions of the Biodiversity White Paper will be discussed throughout this document. There are, however, a number of overarching principles and provisions relevant to wildlife trade and the alignment of legislation that need to be highlighted at this stage.

The Biodiversity White Paper states that government is required to:

- *Conserve ecosystems and habitats, species and communities and described genomes and genes through a variety of mechanisms such as legislation, planing controls, guidelines, and protected area designations, giving priority to components of biodiversity requiring urgent protective measures; (Objective 1.2.1(a));*

- Consolidate, co-ordinate and improve existing legislation and regulations wherever possible and appropriate in order to eliminate duplication, and to avoid conflicting interpretations and implementation (Objective 1.2.1(b));
- Introduce legal measures and incentives to conserve important ecosystems, habitats, and landscapes outside of protected areas, including rangelands and their associated vegetation and indigenous wildlife resources (Objective 1.2.1(c));
- Facilitate the development of appropriate legislation to achieve uniform legal coverage for the protection of threatened species and the regulation of trade of all CITES-listed species in addition to threatened species nationally and provincially (Objective 1.2.1(c));
- Strengthen and streamline existing regulations, introduce new policies, legislation, incentives and disincentives to avoid or minimize the adverse effects of human activities on the biodiversity of terrestrial, aquatic and coastal and marine areas (Policy Objective 2.2.1(c));
- Require the adoption and effective implementation and enforcement of appropriate regulations concerning the control of activities which may have a detrimental effect on the environment. (Policy Objective 2.2.1(c)); and
- Establish a national mechanism, representative of key sectors, to oversee, coordinate, and better integrate government policies which directly or indirectly affect biodiversity (Policy Objective 2.1.3).

## Chapter Five

LEGISLATIVE AND  
INSTITUTIONAL ENVIRONMENT

There is a plethora of national and provincial legislation in South Africa which has relevance to nature conservation and wildlife trade. The aim of this Chapter is to describe the legislative and institutional environment within which any legal development must take place. An overview is given of applicable national legislation currently in force, as well as developments taking place at a national level. This is followed by an explanation of provincial nature conservation legislation including recent legislative developments.

### 5.1 NATIONAL LEGISLATION (see Figure 2 – page 21)

A number of national Acts are discussed below. Box 4 (page 16) lists all national legislation which is directly or indirectly relevant to regulation of the wildlife trade. The Acts listed in Box 4 are not all discussed in this Chapter as focus is directed on those Acts having the most direct relevance to wildlife trade.

#### 5.1.1 The Constitution of South Africa Act 108 of 1996

This section is intended to give oversight of the relevant constitutional provisions as an indication of the rights of national government to regulate the manner in which the management of biological resources is carried out in the Republic. Underpinning the development of any new legislation is the *Constitution of South Africa Act 108 of 1996* (the Constitution) which provides in section 24, within the Bill of Rights, that:

*Everyone has the right*

- (a) to an environment that is not harmful to their health or well-being; and*
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -*
  - (i) prevent pollution and ecological degradation;*
  - (ii) promote conservation; and*
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

#### Concurrent Competency

Schedule 4 to the Constitution establishes Functional Areas of Concurrent National and Provincial Legislative Competence and includes:

- *environment; and,*
- *nature conservation, excluding national parks, national botanical gardens and marine resources.*

Therefore, with respect to both environmental and nature conservation issues, both the national and provincial governments can promulgate legislation dealing with nature conservation. However, section 146 of the Constitution, which deals with conflicts between national and provincial legislation, reads as follows:

- 146 (1) *This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4.*

- (2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
- (a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
  - (b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing –
    - (i) norms and standards;
    - (ii) frameworks; or
    - (iii) national policies.
  - (c) The national legislation is necessary for –
    - (i) The maintenance of economic unity;
    - (v) The protection of the environment.

It is clear from this section that national government has overriding powers as regards matters that cannot be effectively regulated by legislation enacted by the respective provinces individually, the setting of uniform standards, and where it is necessary to protect the environment. This would include nature conservation provisions if it can be demonstrated that nature conservation, including wildlife trade is a matter that cannot be regulated effectively by legislation enacted by the provinces individually, or that it is not possible to ensure uniform standards and provisions on the regulation of wildlife trade through the current system, or that uniform legislation is necessary to protect the environment.

#### Implementation of National Legislation

Normally, the power to legislate implies the duty to administer such legislation. However, as South Africa is not a unitary state in that provincial and local governments also enjoy legislative competence, it is possible for one sphere to legislate and impose a duty to implement or administer such a law on a different sphere of government (Glazewski, 2000).

Regarding the implementation of national legislation, section 125 of the Constitution which deals with the executive authority of provinces promulgated in terms of Schedule 4, provides as follows:

- 125 (1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier exercises the executive authority, together with the other members of the executive council by –
- (a) implementing provincial legislation in the province;
  - (b) implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
  - (c) Administering in the province national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament.
- (3) A province has executive authority in terms of subsection (2)(b) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2).

The Constitution is clear that executive authority, at a provincial level, is exercised by implementing all national legislation within the functional areas listed in Schedule 4 unless the Constitution or an Act of Parliament states otherwise. Therefore, unless national legislation specifically provides for the contrary, the implementation of national legislation is to be carried out by the provincial authority but only where the province concerned has the administrative capacity to assume effective responsibility. Further, the Constitution imposes a duty on national government to assist provinces in developing the administrative capacity necessary to implement the relevant national legislation.

Note should be taken of section 100 of the Constitution, which provides for national supervision of provincial administration and provides as follows:

- 100 (1) *When a province cannot or does not fulfill an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfillment of that obligation including –*
- (a) assuming responsibility for the relevant obligation in that province to the extent necessary to –*
  - (i) maintain essential national standards or meet established minimum standards for the rendering of a service.*

#### International Law

In terms of section 231 of the Constitution, it is also the role of central government to administer international treaties. Thus, it is the responsibility of DEAT to formulate general policy and,

where necessary, draft legislation concerning the conservation and use of biodiversity, the implementation of which will be undertaken by different government institutions within the central, provincial and local spheres. This section has relevance to the implementation of both CITES and the Biodiversity Convention.

#### **Box 4: National Legislation Having Relevance to the Wildlife Trade**

- Constitution of the Republic of South Africa Act 108 of 1996
- Game Theft Act 105 of 1991
- Police Services Act 68 of 1995
- Criminal Procedure Act 51 of 1977
- Genetically Modified Organisms Act 15 of 1997
- National Forests Act 84 of 1998
- National Parks Act 57 of 1976
- Sea Shore Act 21 of 1935
- National Environmental Management Act 107 of 1998
- Environment Conservation Act 73 of 1989
- Customs and Excise Act 91 of 1964
- Agricultural Pests Act 36 of 1983
- Animals Protection Act 71 of 1962
- Marine Living Resources Act 18 of 1998
- Sea Birds and Seals Protection Act 46 of 1973

#### **5.1.2 The National Environmental Management Act 107 of 1998**

NEMA is the most important piece of framework environmental legislation to be enacted in South Africa in the last decade. NEMA seeks to realise the environmental rights that are enshrined in the Constitution. It is not, however, intended to cover in any detail specific environmental issues, and regulation of the wildlife trade is accordingly not dealt with specifically in the Act. The scope and content of NEMA is set to change comprehensively, as described in Section 5.2.2 of this report.

In the preamble to NEMA, recognition is given to the fact that the environment is a



functional area of concurrent national and provincial legislative competence and that in order to materialise the rights of the Constitution, all spheres of government and all organs of state must co-operate, consult and support one another.

Chapter 1 of NEMA sets out principles that apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. The principles are to serve as a general framework by reference to which all decisions taken in terms of NEMA are to be exercised.

The principles state that sustainable development requires, amongst other factors:

- that all necessary steps be taken to avoid the disturbance of ecosystems and the loss of biological diversity;
- responsible use and exploitation of non-renewable natural resources;
- that the use of renewable resources does not exceed the level beyond which their integrity is jeopardised;
- the prevention of negative impacts on the environment by the early anticipation of such impacts;
- participation of all interested and affected parties in governance is encouraged as well as community wellbeing and empowerment.

NEMA further requires that the environment is held in public trust for the people, that the beneficial use of environmental resources must serve the public interest and that the environment must be protected as the people's common heritage.

### 5.1.3 The Game Theft Act 105 of 1991

Wild Animals in South Africa are classified in terms of the common law as *res nullius*: objects which are not owned by anybody but which are capable of being owned. Ownership of wild animals is established by taking control of the animal with the intention of being the owner. This used to be difficult to establish and the *Game Theft Act 105 of 1991* protects the rights of ownership of game where the game escapes or is lured away from the owner's land. However, the Act has a limited application as 'game' is defined as wild animals used for hunting or commercial purposes, but not all wild animals fall into this category.

The Act is relevant to wildlife trade insofar as it was established to provide greater incentives to the game farming industry, an industry which depends heavily on international and national trade in live animals and their products. The Act provides some guidance on the type of legal tools that can be used as incentives to encourage sustainable trade practices.

### 5.1.4 The National Forests Act 84 of 1998

Prior to 1998, the exploitation of indigenous forests was regulated in terms of the *Forest Act 122 of 1984*. Regulations promulgated under section 5 of the Act list 58 species as being Protected Trees. These trees are declared protected on all land not being a State forest. The Act provides that no person may 'cut, damage, destroy, disturb or remove any protected tree from the land in question, or collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any part or produce thereof'. Geographically the Act covers State forest land and with respect to protected trees, private land. It does not, however, cover indigenous forests or trees in provincial or national reserves. While the 1984 Act was almost entirely repealed by the *National Forests Act 84 of 1998*, the majority of regulations

promulgated in terms of the old Act, including those in terms of section 5, remain in force.

The purpose of the *National Forests Act 84 of 1998* is to promote the sustainable management and development of forests and woodlands, create the conditions necessary to restructure forestry in State Forests, provide special measures for the protection of certain forests, trees and protected areas and promote sustainable use of forests (including woodlands), community forestry and greater participation in all aspects of forestry. There are certain provisions in the Act which deal with the regulation of trade in timber, however no provisions exist which relate to the regulation of CITES listed species as this is regarded as the responsibility of DEAT. It is unclear as to whether the Department of Water Affairs and Forestry (DWAF) or the provincial nature conservation authorities are responsible for the protection, including trade, of certain forests, trees and protected areas which fall within provincial nature reserves. While a few regulations have been promulgated in terms of the new Act, regulations in terms of the 1984 Act are still applied.

With respect to management of forests and implementation of the 1998 Act, DWAF is in a state of transition and the Department is currently carrying out an extensive audit in order to assess the effectiveness of the current system whereby the management of the majority of non-state forests and woodlands has been delegated to the provincial nature conservation authorities (Newton and Bürgener, 2000). It is only in the Eastern Cape Province where DWAF manages all state and non-state forests and woodlands. In all the other provinces management of state and non-state forests and woodlands, including the issuing of permits for harvesting and trade, is undertaken by provincial nature conservation authorities. Currently neither DWAF nor provincial nature conservation authorities have the capacity to manage non-state forests and woodlands effectively (Newton and Bürgener, 2000).

### 5.1.5 The Marine Living Resources Act

The *Marine Living Resources Act 18 of 1998* came into operation on 1 September 1998 and replaced, almost in its entirety, the *Sea Fishery Act 12 of 1988*. Essentially the Act has three main thrusts: protection of the marine environment, sustainable utilisation of the country's marine living resources and the restructuring of the fishing industry through assisting historically disadvantaged communities to have effective and equal access to these resources.

Protection of the marine environment is recognised through a number of fundamental principles which introduce the Act. Principles such as 'the need to conserve the marine environment for both present and future generations,' 'the need to preserve marine biodiversity' and 'the need to protect the marine ecosystem as a whole, including species which are not targeted for exploitation' reflect an ecosystem approach to conservation. Administration of the Act is carried out by MCM. The Minister of DEAT is responsible for the determination of Total Allowable Catch for commercial fish species and the allocation of quotas. Exploitation of any marine resource is subject to the provisions of the Marine Living Resources Act and requires a permit that is, in practice, generally issued by MCM. KwaZulu-Natal issues permits for the utilisation of marine species within the coastal area of the KwaZulu-Natal coastline. This is in accordance with a formal agreement with MCM.

MCM issues CITES permits for most of the CITES listed marine species but some CITES permits are issued by the Western Cape Nature Conservation Board and KwaZulu-Natal Nature Conservation Services (KZNNCS). There are no guidelines as to which authority should

issue CITES permits for the various CITES listed marine species. While this ad hoc method does not appear to cause any problems, a more structured system should be followed.

#### 5.1.6 Customs and Excise Act 91 of 1964

Customs and Excise (Customs) forms a component of the South African Revenue Services and falls within the National Department of Finance. The preamble to the *Customs and Excise Act 91 of 1964* states that the Act is to '*provide for the levying of customs and excise duties and a surcharge; for a fuel levy, the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.*' While the Act provides for the control of the importation and export of certain goods, Customs officials are primarily concerned with ensuring that correct duties and taxes are paid on goods being imported into South Africa. In addition to enforcing their own Act, Customs plays a regulatory role on behalf of over 40 external bodies, both governmental and non-governmental. The fact that Customs does not consider the enforcement of wildlife trade provisions a priority is exacerbated through Customs officials being severely under-capacitated with regard to species identification and knowledge of applicable national and international wildlife trade related legislation (G. Lourens, *pers. comm.*, 1999).

Section 113 of the Act deals with prohibitions and restrictions on the import of goods which are listed in an index to the Act, known as the Prohibited Goods Index. The index requires Customs officials to check for CITES documentation for the import of certain goods, but not for permits required in terms of provincial legislation.

Section 113(2) states that: '*Goods which purport to have been imported under a permit, certificate or any other law shall be deemed to have been imported in contravention of such provision unless the permit, certificate or other authority in question is produced to the controller.*' This provision is problematic in that it only covers the import of goods listed. It appears that the export of listed goods is not included in this provision due to the focus of Customs on securing tariffs on imported goods. Inspections on exports will increase in the future due to fiscal reasons in that traders will be able, in certain circumstances, to reduce their tariffs on imported goods where they previously exported certain other goods. It will therefore be necessary for Customs officials to monitor exported goods far more closely (G. Lourens, *pers. comm.*, 2000).

Section 113(8) states that '*An officer may, for the purposes of any law other than this Act or at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.*'

Despite these provisions, Customs officials do not always check for the required CITES documentation. The Customs office at Cape Town harbour stated that Customs officials do not check for CITES permits for any species, as they are unaware of this requirement. Customs officials at the harbour lack the necessary expertise to monitor wildlife trade effectively (D. Duguid, *pers. comm.*, 1999).

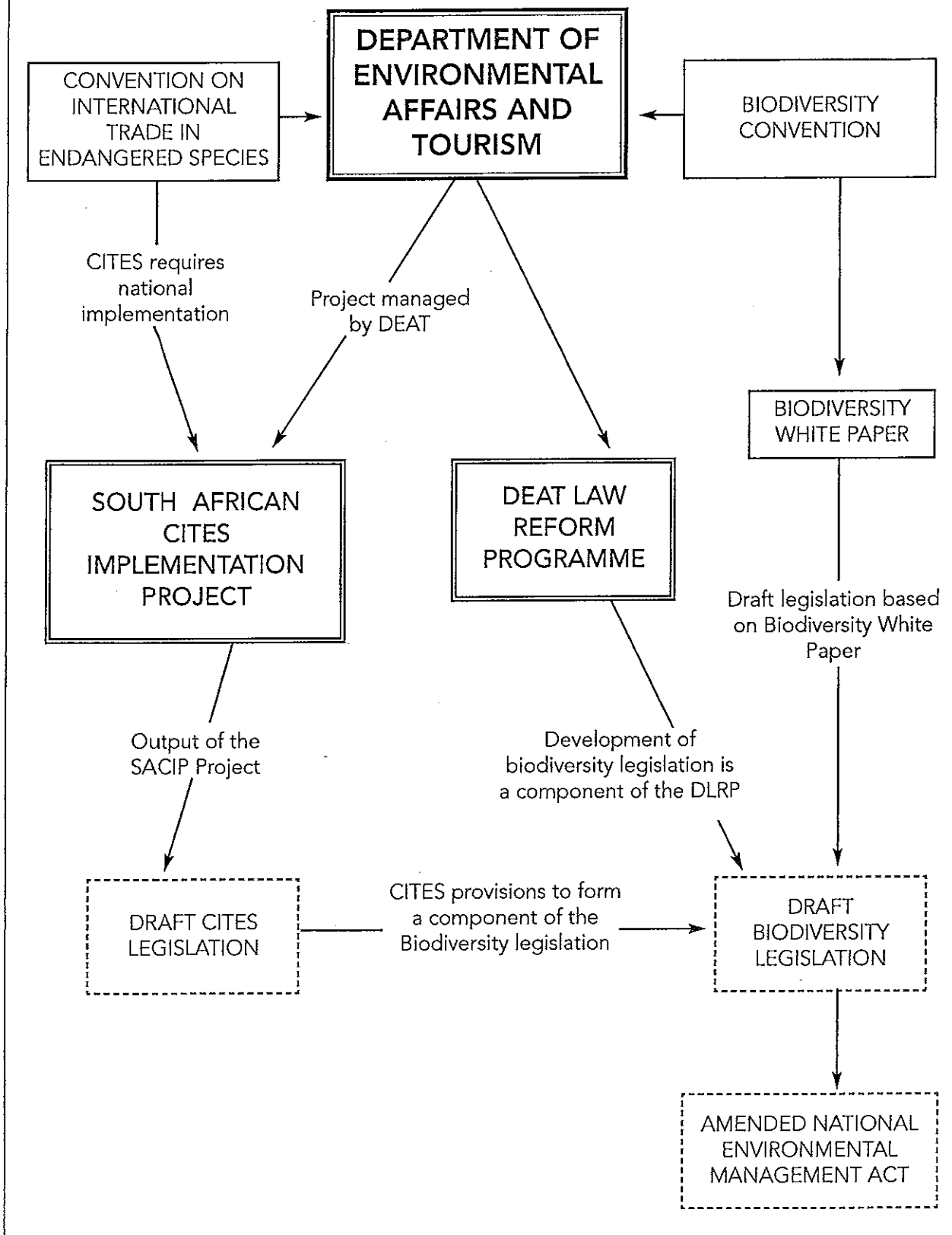
The enforcement of provincial nature conservation legislation is problematic for Customs officials as permits are needed for the trade in certain species from one province but not from others. As the provincial legislation is not listed in the prohibited goods index of the Customs Act, the provisions of these Ordinances and Acts are not enforced at points of entry and exit,

unless a specific request is made by a provincial authority. The onus therefore lies on the organ of state to ensure that the requirements are listed in the index (G. Lourens, pers. comm., 1999).

#### CONCLUSIONS ON NATIONAL LEGISLATION:

- Section 113 of the *Customs and Excise Act 91 of 1964*, which deals with prohibitions on the import of goods listed in the Prohibited Goods Index, only covers the import and not the export of goods.
- The Prohibited Goods index does not include references to permits required in terms of provincial nature conservation legislation.
- Customs officials lack the necessary expertise to monitor wildlife trade effectively.
- There is a lack of clarity as to whether DWAF or the provincial conservation authorities should regulate the trade in products obtained from state and non-state forests and woodlands.
- There are currently no guidelines as to which authority, MCM or the provincial conservation authorities, should issue CITES permits for the various CITES listed marine species.

FIGURE 2: CURRENT NATIONAL DEVELOPMENTS IN WILDLIFE TRADE AND CONSERVATION LEGISLATION



## 5.2 NATIONAL LEGISLATIVE DEVELOPMENTS (see Figure 3 – page 35)

### 5.2.1 The South African CITES Implementation Project

The SACIP Project, funded by Danish Co-operation for Environment and Development (DANCED) is managed by DEAT with the specific task of rectifying inadequacies in CITES administration and implementation in South Africa. The major project outputs, as outlined in the Project Inception Report (SACIP, 1999) are:

- To establish a national legal framework for the implementation of CITES;
- To facilitate the alignment of provincial legislation as it relates to CITES;
- To facilitate the establishment of a national Scientific Authority;
- To plan for the re-organisation of the administration of trade in endangered species and ensure that there are well functioning central and delegated Management Authorities;
- To develop a networked computerized trade permit system;
- To facilitate stakeholder liaison;
- To improve the co-ordination between enforcement agencies and the CITES administration.

The project outputs have currently reached a stage where they require implementation and almost all of the outputs are dependant on the enactment of CITES legislation before implementation can take place. A draft CITES Bill has been developed but has not been gazetted for comment and further progress of this draft Bill has been suspended due to the initiation of the DLRP (see below). Suspension of the draft CITES Bill has had a severe impact on the implementation of the SACIP project outputs.

### 5.2.2 The DEAT Law Reform Programme

DEAT has produced policies on pollution control, waste management, biodiversity conservation and marine resource and coastal zone management since 1994. These policy developments have given rise to a process of law reform and DEAT has chosen to incorporate the different law reform projects within the Department into a single programme that covers the entire spectrum of legislation that falls under DEAT's jurisdiction. The DLRP attempts to address the Constitutional and policy imperatives in respect of environment, tourism and marine resource management in terms of concrete deliverables.

It is intended that the various legal components of the DLRP will be incorporated as an amendment to NEMA. While the final format of the amended NEMA is not yet clear, the various components are likely to be included as individual chapters within NEMA. There will, for instance, be separate Chapters on biodiversity conservation, and pollution control and waste management.

DEAT has proceeded with the drafting of legislation on Biodiversity Conservation, based largely on the provisions of the Biodiversity White Paper. This draft legislation addresses a number of issues relevant to biodiversity utilisation and the wildlife trade, and specifically includes provisions on the implementation of CITES. While this is a positive step to ensure integration, the drawback is that it may take two to three years before biodiversity conservation legislation is in place. This delay will have a negative impact on effective regulation of CITES in the Republic.

## CONCLUSION:

- While the intention to achieve an integrated legislative structure for environmental management is desirable, the DLRP is having the undesired side effect of holding up CITES implementation in South Africa.

## 5.3 PROVINCIAL LEGISLATIVE AND INSTITUTIONAL STRUCTURES

## 5.3.1 History of the Development of Wildlife Trade Legislation

The earliest conservation legislation was enacted in the Cape shortly after the arrival of Dutch settlers in 1652 (Fuggle and Rabie, 1992). These measures, in general, had little conservation impact and were in certain instances counterproductive, such as a declaration classifying lions *Panthera leo* and leopards *Panthera pardus* as problem animals (Bodasing and Mulliken, 1996). Towards the end of the nineteenth century and the early part of the twentieth century, numerous pieces of legislation were promulgated by the newly-established provincial legislatures in the Cape, Natal, Transvaal and Orange Free State, largely in response to increased and uncontrolled hunting (Fuggle and Rabie, 1992). Legislative developments within the four former provinces culminated in the *Natal Nature Conservation Ordinance 15 of 1974*, the *Free State Nature Conservation Ordinance 8 of 1969*, the *Cape Nature and Environmental Conservation Ordinance 19 of 1974* and the *Transvaal Nature Conservation Ordinance 12 of 1983*. These Ordinances formed the core of nature conservation legislation outside of national parks, although their jurisdiction was periodically impacted on through the promulgation of legislation in the former homelands.

The former South African Independent States (Transkei, Bophutatswana, Venda and Ciskei) were free to legislate on any matter (with technical committees being established to discuss subjects of common interest between South Africa and the Independent States), whereas the self-governing Territories (Lebowa, Gazankulu, KwaZulu, Qwaqwa and KaNgwane) had the competence to promulgate their own legislation or amend existing South African legislation only on certain matters. Ultimately each of the former homelands issued their own legislation with regard to nature conservation (see Appendix I). While these pieces of legislation are generally based on the provisions of the most geographically relevant Ordinance of one of the former four provinces, they contain sufficient differences to create problems for consistent conservation management (du Plessis, 1995).

The former homeland legislation was not repealed after provincial restructuring in 1994. However, in terms of section 104 of the *Mpumalanga Nature Conservation Act 10 of 1998*, the *Bophutatswana Nature Conservation Act 3 of 1973*, the *Lebowa Nature Conservation Act 10 of 1973*, the *Nature Conservation in Black Areas Proclamation No.R6 of 1978* and the *Transvaal Nature Conservation Ordinance 12 of 1983*, are declared to no longer be of any force and effect in any part of the *Mpumalanga Province* and the *KaNgwane Nature Conservation Act 3 of 1981* is repealed.

While there are differences between the provincial Acts, Ordinances and Decrees governing nature conservation, they all approach the conservation of species in the same manner. The general approach is to distinguish between conservation inside and outside of reserves, with the focus outside of reserves lying on the protection of individual species rather than ecosystems (Glazewski, 2000). Almost all forms of biodiversity utilisation (hunting, possessing,

importing, exporting, transporting, processing, collecting, harvesting) are controlled through the requirement of a permit to carry out these activities. The Ordinances all provide for different classes of wild animals, plants, freshwater fish, birds, amphibians, reptiles, and in some cases invertebrates. The measure of protection that is given to a species depends on how it has been classified (Fuggle and Rabie, 1992).

Appendix I lists provincial legislation currently in force in South Africa. Seventeen of the various Acts, Ordinances, Proclamations or Decrees listed deal directly with biodiversity conservation while four Acts provide for the establishment of Statutory Boards. Appendix III gives a breakdown of the Chapter headings of the four provincial nature conservation Ordinances as well as the *Mpumalanga Nature Conservation Act 10 of 1998*. Appendix III illustrates that the Ordinances and Act are broadly similar in content and approach.

### 5.3.2 Institutional Structure of Provincial Conservation Authorities

The administration of nature conservation within each province lacks uniformity. In the majority of provinces the relevant nature conservation authority deals only with nature conservation and not general environmental management issues. In the North West and Northern Provinces, however, the provincial conservation authorities are now required to play a more general environmental management role, dealing with issues such as the monitoring of environmental impact assessments and the regulation of pollution control and waste management. Further, in the North West, protected areas are managed by the North West Parks Board and all nature conservation outside protected areas are managed by the Environment Inspectorate of the North West Department of Agriculture, Conservation and Environment.

A lack of institutional uniformity is also reflected in the positioning of conservation authorities within provincial departments which differ from one province to the other. For instance, in Gauteng the Directorate of Nature Conservation falls within the Provincial Department of Agriculture, Conservation, Environment and Land Affairs; in the Eastern Cape the relevant Provincial Department is the Eastern Cape Department of Economic Affairs, Environment and Tourism; and in the Western Cape the Western Cape Nature Conservation Board is situated within the Provincial Department of Environment, Culture and Sport.

The manner in which the various Provincial Authorities are structured is frequently problematic. For instance, agricultural and conservation objectives are in many cases diametrically opposed yet the two may be situated within the same provincial department.

### 5.3.3 EASTERN CAPE

#### Nature Conservation Legislation in Force

*Cape Nature and Environmental Conservation Ordinance 19 of 1974*

*Ciskei Nature Conservation Act 10 of 1987*

*Transkei Sea-shore Act 17 of 1979*

*Transkei Environmental Conservation Decree 9 of 1992*

*Problem Animal Control Ordinance 26 of 1957*

#### Legislative Developments

A document titled 'Eastern Cape Environmental Conservation Bill' has been developed. It is intended that this legislation will be completed and enacted within 2001.



#### **Institutional Structure**

The nature conservation authority falls within the Provincial Department of Economic Affairs, Environment and Tourism.

### **5.3.4 FREE STATE**

#### **Nature Conservation Legislation in Force**

*Free State Nature Conservation Ordinance 8 of 1969*

*Owaqwa Nature Conservation Act 5 of 1976*

*Bophutatswana Nature Conservation Act 3 of 1973*

#### **Legislative Developments**

A document titled 'Free State Environment Conservation Bill' was published in 1996. The Bill contains both nature conservation and environmental management provisions. It is not foreseen that this draft legislation will be further developed as it has been rejected by the Free State provincial parliament (H. Blom, pers. comm. 2000).

#### **Institutional Structure**

The nature conservation authority falls within the Provincial Department of Environmental Affairs and Tourism.

The Department has CITES Management and Scientific Authority Status.

### **5.3.5 GAUTENG**

#### **Nature Conservation Legislation in Force**

*Transvaal Nature Conservation Ordinance 12 of 1983*

#### **Legislative Developments**

A document titled 'Draft Gauteng Nature Conservation Act, 1999' has been developed. The Provincial Department originally intended to enact this legislation in 2000 but have provisionally halted further development and enactment until such time as there is sufficient clarity on the contents of the national biodiversity legislation currently being developed.

#### **Institutional Structure**

The nature conservation directorate falls within the Provincial Department of Agriculture, Conservation, Land and Environmental Affairs.

The Department has CITES Management and Scientific Authority Status.

### **5.3.6 KWAZULU-NATAL**

#### **Nature Conservation Legislation in Force**

*Natal Nature Conservation Ordinance 15 of 1974*

*KwaZulu Nature Conservation Act 29 of 1992*

*KwaZulu-Natal Nature Conservation Management Act 9 of 1997*

#### **Legislative Developments**

The *KwaZulu-Natal Nature Conservation Management Amendment Bill, 1999* has been developed and has been passed by the KwaZulu-Natal Provincial Parliament. Regulations to the Act which are necessary for its enactment, are being drafted. The Act, once in force, will repeal the *Natal Nature Conservation Ordinance 15 of 1974* and the *KwaZulu Nature Conservation Act 29 of 1992*.

#### **Institutional Structure**

The KwaZulu Natal Nature Conservation Board (KZNNCB) is a semi-autonomous organisation answerable to the Provincial Minister of Agriculture and Environmental Affairs. It is a separate legal entity and all contractual arrangements are conducted through the Board. The implementing authority is KZNNCB, which is known for marketing purposes as KZN Wildlife.

The KZNNCB has CITES Management and Scientific Authority Status.

### **5.3.7 MPUMALANGA**

#### **Nature Conservation Legislation in Force**

*Mpumalanga Nature Conservation Act 10 of 1998*

*Eastern Transvaal Parks Board Act 6 of 1995*

#### **Legislative Developments**

Due to the recent development and enactment of the *Mpumalanga Nature Conservation Act 10 of 1998*, the Mpumalanga Parks Board (MPB) does not plan to develop any new nature conservation legislation.

#### **Institutional Structure**

The MPB, a parastatal, falls within the Provincial Department of Environmental Affairs and Tourism.

### **5.3.8 NORTH WEST PROVINCE**

#### **Nature Conservation Legislation in Force**

*Transvaal Nature Conservation Ordinance 12 of 1983*

*Cape Nature and Environmental Conservation Ordinance 19 of 1974*

*Boputhatswana Nature Conservation Act 3 of 1973*

*North West Parks and Tourism Board Act 3 of 1997*

#### **Legislative Developments**

A document titled 'North West Province Draft Environmental Management and Nature Conservation Act' has been developed. It is intended that this Act will enter into force in 2001.

#### **Institutional Structure**

The Environment Inspectorate is part of the Provincial Department of Agriculture, Conservation and Environment.

### **5.3.9 NORTHERN CAPE**

#### **Nature Conservation Legislation in Force**

*Cape Nature and Environmental Conservation Ordinance 19 of 1974*

*Problem Animal Control Ordinance 26 of 1957*

#### **Legislative Developments**

This Department would like to revise their existing legislation or alternatively develop entirely new legislation but are not in a position to do so as they lack the necessary drafting capacity and budget.

#### **Institutional Structure**

The conservation authority falls within the Provincial Department of Agriculture, Nature Conservation and Land Reform.

The Department has CITES Management and Scientific Authority status.

### 5.3.10 NORTHERN PROVINCE

#### Nature Conservation Legislation in Force

*Transvaal Nature Conservation Ordinance 12 of 1983*

*Lebowa Nature Conservation Act 10 of 1973*

*Gazankulu Nature Conservation Act 5 of 1975*

*Venda Nature Conservation and National Parks Act 20 of 1986*

*Proclamation R6 of 1978 on Nature Conservation in Bantu Areas*

#### Legislative Developments

A document titled the 'Draft Environment Conservation Bill' has been developed and it is intended that the legislation be enacted in 2001.

#### Institutional Structure

The conservation authority falls within the Provincial Department of Agriculture, Land and Environment.

### 5.3.11 WESTERN CAPE

#### Nature Conservation Legislation in Force

*Cape Nature and Environmental Conservation Ordinance 19 of 1974*

*Problem Animal Control Ordinance 26 of 1957*

*Western Cape Nature Conservation Board Act 15 of 1998*

#### Legislative Developments

The Department is not planning to draft any new legislation.

#### Institutional Structure

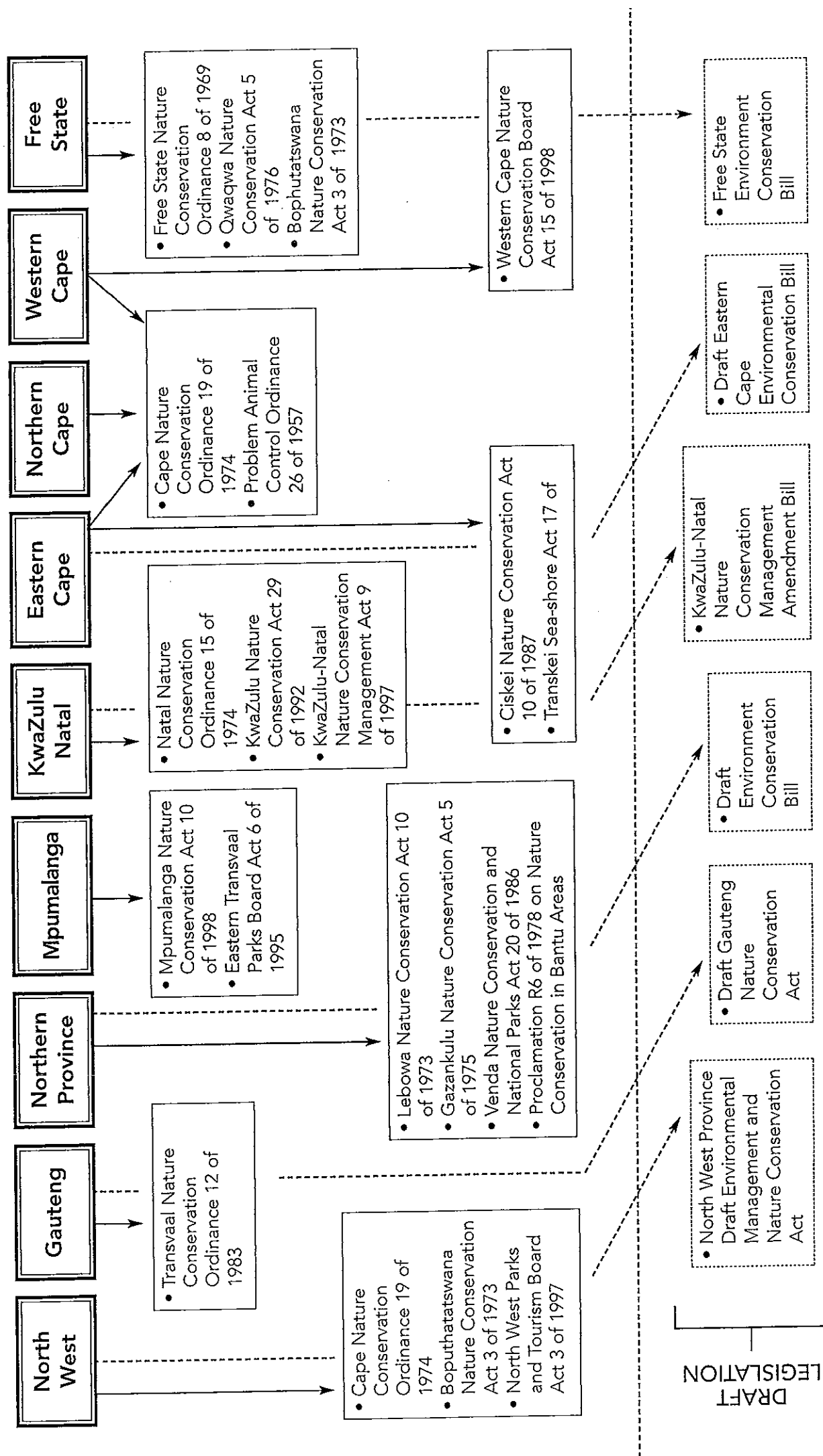
The Western Cape Nature Conservation Board (WCNCB) falls within the Provincial Department of Environment, Culture and Sport.

The Department has CITES Management and Scientific Authority status.

### CONCLUSIONS ON PROVINCIAL LEGISLATIVE AND INSTITUTIONAL STRUCTURES:

- There are generally insufficient budgetary allowances to enable departments to outsource the drafting of new legislation. *The Mpumalanga Nature Conservation Act 10 of 1998* as well as the other draft Acts currently under development and referred to above have all been developed by departmental staff. While this method is sound in that those required to enforce and work under the legislation are actively involved in its inception and development, further funding and capacity are needed.
- The provincial conservation authorities are not co-ordinating the drafting of new provincial nature conservation legislation.
- The failure by provincial governments to repeal legislation of the former Independent States and Self-governing Territories has resulted in an unnecessarily complex legislative environment within which under-resourced conservation authorities are required to regulate wildlife trade.
- A lack of institutional uniformity is reflected in the positioning of conservation authorities within provincial departments, which differ from one province to the other.

FIGURE 3: CURRENT AND DRAFT PROVINCIAL CONSERVATION LEGISLATION



## Chapter Six — THEMES

The following themes were identified during the project development process as being areas of concern, which are either being inadequately addressed by legislation or are not being addressed at all. The themes covered are not necessarily exhaustive of all the problems related to the current legislative environment, but are rather intended to focus the analysis.

Due to the vast array of Acts, Ordinances and Decrees, and for the sake of simplicity, any detailed examinations, comparative analyses and examples used within this Chapter have focussed only on the Ordinances of the four former South African provinces as well as the *Mpumalanga Nature Conservation Act 10 of 1998*.

### 6.1 COMMUNITY INVOLVEMENT

At an international level it has been recognised that natural resources cannot be managed effectively without the co-operation and participation of resource users to make laws and regulations work (Baland & Platteau, 1996). This is not only necessary for managing common property regimes and developing Community-Based Natural Resource Management (CBNRM), but also in the establishment of partnerships between the public and private sectors and communities. The development of partnerships between local resource users and other stakeholders has been a significant trend in natural resource management in South Africa and is supported in section 35 of NEMA.

Although there are provisions in legislation such as the Constitution (sections 24 and 25) and NEMA that are supportive of user participation in management, there are a number of gaps between the policy statements, the very broad legal provisions and practical implementation guidelines (Njobe et al, 1999). There has, in fact, been very little concrete and specific formalisation of the role that resource users and communities can play in conservation management and regulation of the wildlife trade. In addition, the role of government needs to be clarified and a legal framework should be developed at a national level to outline the principles and ideologies of CBNRM and partnership development. At a provincial level, the various conservation authorities all have different policies on the inclusion of resource users in management and this creates problems for inter-provincial co-operation and projects (K. Chitepo, *pers. comm.*, 2000).

While the majority of the provincial conservation authorities are supportive of the involvement of communities in regulating wildlife trade, it was emphasised by all consulted that successful community projects require continuous and dedicated investment of time and other resources and these are currently not available to most nature conservation authorities. As a result, in order to encourage the necessary political will and support from government, a policy and legal framework needs to be established that outlines appropriate institutional structures for implementing partnership arrangements. Although a discussion document on cooperation agreements was produced by DEAT in June 2000, it focuses on partnerships with industry rather than with communities.

#### CONCLUSION:

- While examples exist, there has been very little concrete and specific formalisation of the roles and institutional structures for effective implementation of community participation in conservation management and regulation of the wildlife trade.

### BOX 5: Examples of Community Involvement in Regulation of the Wildlife Trade

Although implementation stages and processes are varied, and obstacles have been encountered, important examples of community involvement in regulation of the wildlife trade in South Africa have been identified:

- In Mpumalanga, nurseries have been developed purely for the cultivation of medicinal plants. The long-term plan is for these nurseries to be taken over and managed by traditional healers. The nurseries are currently managed jointly by traditional healers and the provincial nature conservation authority (J. Muller, *pers. comm.*, 1999).
- With respect to National Parks in South Africa, the involvement of communities in conservation management and utilisation of biological resources is being developed within so-called contractual parks. In the Richtersveld National Park for instance, a contractual agreement was reached in 1991 between the Richtersveld communities and the government authority. A number of conditions for the management of the Park were agreed in the contract, such as the establishment of a joint management committee and the improvement of infrastructure in the area (Isaacs & Mohamed, 2000). In addition, it is informally recognised that medicinal plants are harvested by the local community living in the park and rangers are often employed from within the local community (P. Novelli, *pers. comm.*, 2000).
- Recent developments in KwaZulu-Natal are the most advanced within the country with regard to the formalising of community involvement in wildlife management. KZN Wildlife, in October 2000, inaugurated members of four local boards appointed to facilitate an integrated management approach between KZN Wildlife protected areas and their surrounding communities. This initiative has been implemented in accordance with the *KwaZulu-Natal Nature Conservation Management Act 9 of 1997*. (The four pilot local boards have been appointed for the Tembe/Ndumo area, the central section of the uKhahlamba-Drakensburg Park, the Coastal Forest Reserve (Tembe and Mbila areas) and the Hluhluwe-Umfolozi Park.)

The local boards are independent but are required to work within the policy set by the KwaZulu-Natal Nature Conservation Board and supported by KZN Wildlife. Members of the local boards can be drawn from tribal authorities (representing local communities), but also from other sectors such as formal agriculture, the business sector of each region, local authorities, environmental and special interest groups and the appropriate KZN Wildlife protected area management team.

- Management strategies have also been shifting in the past decade with respect to fisheries resources. Partnership arrangements are increasingly being developed between fishers and government authorities in order to incorporate the resource users in decision making and management. A number of case studies along the coast of South Africa have recently been reviewed in order to identify the strengths and weaknesses of such an approach to fisheries management (Hauck & Sowman, *in press*).

## 6.2 CO-OPERATION AND CO-ORDINATION ON WILDLIFE TRADE ISSUES

Chapter Three of the Constitution deals with co-operative government and establishes a number of principles aimed at ensuring sound and consistent intergovernmental relations. Of particular relevance, the Constitution states that *'all spheres of government and all organs of state within each sphere must: (section 41.1) co-operate with each other in mutual trust and good faith by: (section 41.1h)*

- (ii) assisting and supporting each other;
- (iii) informing each other and consulting on matters of common interest; and
- (iv) co-ordinating their actions and legislation with each other (emphasis added).

It appears that while inter-provincial co-operation on wildlife trade issues is not entirely lacking, there is insufficient co-operation between authorities, and the situation has deteriorated since provincial restructuring in 1994. Some nature conservation authorities noted that the situation is so bad that once an issue crosses a provincial border, it is essentially 'lost'. This is extremely frustrating for various authorities who are carrying out enforcement activities that move beyond their provincial jurisdiction and depend on inter-departmental co-operation for their successful conclusion.

Evidence of the lack of co-operation between nature conservation authorities, particularly the sharing of information and experiences, is demonstrated through the manner in which provincial legislation is currently being developed. Four provincial conservation authorities are currently developing new nature conservation legislation yet there is little or no collaboration on this issue between these departments.

A moratorium on all meetings (committee meetings, sub-committee meetings, task team meetings, working group meetings etc) between DEAT and provincial departments of environmental affairs, including nature conservation, was put into place in October 1998. This moratorium, partially attributed to the misinterpretation of functional components of the moratorium, has caused the situation to deteriorate even further.

There is support for a mechanism to ensure that provincial priorities are balanced with the need to ensure effective co-operation in the conservation of resources which may not occur in all provinces but which are a national asset. The majority of conservation officials consulted indicated that these concerns are not being adequately addressed at meetings of the BWG.

### CONCLUSION:

- There is clearly insufficient co-operation between the provincial nature conservation authorities and these agencies cannot be said to be complying with the Constitutional provisions on co-operative government.

## 6.3 DEFINITIONS

One of the problems associated with the extensive number of pieces of legislation is that the definitions for terms used within each Act or Ordinance are not always uniform or compatible. Although the differences are numerous, and many pieces of legislation could be referred to, the severity of the problem is highlighted below by comparisons between the definitions section of the *Transvaal Nature Conservation Ordinance 12 of 1983* (The Transvaal Ordinance)

and the Cape Nature and Environmental Conservation Ordinance 19 of 1974 (The Cape Ordinance):

- (a) A definition is given in the Transvaal Ordinance for exotic animals, but not for exotic plants. The Cape Ordinance makes no reference to either exotic plants or animals.
- (b) CITES listed species are dealt with in both Ordinances, but in different ways. The Transvaal Ordinance refers to CITES in the body of the Ordinance, whereas the Cape Ordinance uses the terms endangered flora and endangered wild animal within the definitions section to refer to CITES Appendix I species, and protected fauna and protected wild animals to refer to CITES Appendix II species.
- (c) The term 'sell' in the Transvaal Ordinance is defined as '*to sell, to barter, to offer for sale, to display or to give or to offer at a valuable consideration and 'buy' shall be construed accordingly*'; whereas the Cape Ordinance states that 'sell' '*includes hawk, peddle, barter or exchange for offer advertise, expose or have in possession for the purpose of sale, hawking, peddling, bartering or exchanging*'. Clearly there are substantive differences between these two definitions.
- (d) In a number of instances the Ordinances provide for special measures which apply to the utilisation of biological resources by owners of private property and their relatives. In this respect, the definitions of both 'owner' and 'relative' are not consistent. For instance 'owner' in the Cape Ordinance makes specific reference to local authorities and State Departments, whereas no such reference is made in the Transvaal Ordinance.
- (e) Certain terms used in definitions are outdated. For instance, the Transvaal Ordinance in the definitions of 'exotic animal' and 'indigenous plant' refers to the geographical areas '*of South West Africa or a territory which was formerly part of the Republic.*'

While all consulted agreed that having different definitions is not desirable, provincial conservation officials do not feel that the current definitions and the differences between them cause many problems with respect to enforcement activities and in securing convictions for wildlife trade related crimes. There is, however, agreement that the differences are confusing to members of the public.

#### CONCLUSION:

- Inconsistent definitions do not appear to cause problems within a province, but can result in inconsistent management practices between one province and another. Conservation authorities, working almost exclusively within the confines of a particular province are not exposed to the legislation of other provinces and are therefore not aware of the extent of these inconsistencies.

## 6.4 LAW ENFORCEMENT

Effective law enforcement is paramount in ensuring successful regulation of the wildlife trade, yet the existing legislative and policy environment within which enforcement officials are required to operate is problematic.

Each of the provincial conservation authorities has specific law enforcement personnel and four provinces, Mpumalanga, Free State, KwaZulu-Natal and the Eastern Cape, have what are known as Special Investigation Units. The primary function of these units is to develop a capacity for gathering information related to illegal activities. These units are mobile and their



activities cover the whole of the province concerned as opposed to being restricted to districts within the province. The units also perform tasks and operations in conjunction with other national and provincial law enforcement agencies and target illegal trade networks and operations that extend beyond provincial boundaries. The relevant officials are permitted to operate in civilian clothing and use unmarked vehicles that cannot be linked to the nature conservation organisation directly.

Further, the South African Police Service (SAPS) has a special unit, the ESPU, founded in June 1989, which falls under the Head: Specialised Investigations, Detective Service, Head Office, Pretoria. While the ESPU works primarily on syndicate crime related to endangered species, the precise mandate of the ESPU is not clear and is currently being revised. This lack of clarity has not facilitated co-operation between the ESPU and a number of the provincial conservation authorities. Some authorities consulted indicated that they receive adequate support from the ESPU while others are critical of the approach taken by the ESPU with regard to sharing of information, co-ordination of activities and provision of support.

The majority of provincial authorities believe that it would be beneficial to have members of the ESPU permanently housed within their department and that de-centralisation of the ESPU would ensure better co-ordination of law enforcement activities in the country. It is recognised, however, that there are certain structural and logistical problems associated with such an initiative, which need to be resolved.

A policy recently developed by DEAT, titled 'Operational Agreement: Nature Conservation Law Enforcement' (known as the 'Denyala Agreement'), attempts to clarify the role which the various law enforcement bodies should play in combating the illegal wildlife trade. While all of the role-players except for South African SANParks were present during its development, there is general consensus that the provisions of the policy are generally not being followed (Snyman, 2000).

All consulted felt that inter-departmental co-operation with respect to law enforcement has deteriorated since provincial re-structuring in 1994. This problem stems partially from different policies being applied in the different provinces as well as the problem of provincial law enforcement officials being restricted to operate within their provincial boundaries. A number of law enforcement personnel indicated that they still have positive working relationships with individuals in other provinces, which involves sharing of information and co-ordination on law enforcement activities. The sound working relationships, however, do not have their basis in any dedicated structure or co-ordination forum but are rather attributed to the fact that a number of law enforcement officials have worked in nature conservation for many years, know each other well, and have established informal mechanisms for ensuring co-operation and co-ordination.

Liaison between the provincial law enforcement officials and national agencies, such as the Department of Customs and Excise and the South African Border Police, appears to vary considerably. Similar to problems with inter-provincial cooperation, this is largely due to an absence of established reporting and coordinating structures.

All of the provincial conservation authorities, as well as the ESPU, support the concept of the establishment of a national law enforcement liaison and co-ordination forum. Such a forum

existed a number of years ago but has recently collapsed. It is felt that the termination of this forum has contributed to the lack of inter-departmental co-ordination.

## CONCLUSIONS:

- Wildlife trade related law enforcement activities are generally not carried out in a holistic and integrated manner. While certain deficiencies stem from a lack of capacity and budgetary constraints, many problems are attributed to inadequate co-ordination and co-operation.
- There is support from all of those consulted who are involved in wildlife trade related law enforcement activities for the establishment of a national law enforcement liaison and co-ordination forum.

## 6.5 ALIEN ORGANISMS

*Alien organisms can be divided into (a) those that are problematic; and harmful, in that they negatively impact on biodiversity; and (b) those that are benign and in many instances serve useful purposes. Alien organisms can provide important social and economic benefits, but many have become invasive, causing serious ecosystem degradation, disrupting ecological processes, and resulting in species extinctions and possible reductions in genetic diversity through hybridisation (Biodiversity White Paper, Goal 1.6).*

Regarding national policy on the management of alien organisms, the Biodiversity White Paper requires the state to develop control and eradication programmes, enhance capacity amongst implementing agencies and improve public education and awareness. From a legislative point of view, the following provisions are directly relevant:

*The State shall:*

- *Provide incentives to landowners to control or eradicate alien organisms identified as threatening biodiversity (Policy and Strategy 7);*
- *Review, streamline, and if necessary strengthen existing legislation to control the introduction and spread of potentially harmful alien organisms. Actions will be taken to improve the effectiveness of legislation and ensure consistency (Policy and Strategy 1(a)); and*
- *Develop a regulatory procedure for the introduction of alien organism into South Africa, whereby the potential risks of introduction are comprehensively assessed against intended benefits prior to introduction. This assessment will be followed by the adoption of appropriate mitigatory or preventative measures (Policy and Strategy 2).*

Although there is no current policy within DEAT on alien invasives, plans are in place to develop the necessary policy in the near future (Botha, P. pers. comm., 2000). At present, the regulation of alien plants is covered by a number of pieces of national legislation, primarily the *Agricultural Pests Act 36 of 1983* and the *Conservation of Agricultural Resources Act 43 of 1983*, as well as the numerous provincial Ordinances.

The *Conservation of Agricultural Resources Act* contains provisions on invasive aliens including provisions concerning the control of invader plants, with reference to invasive alien species. The Act also applies to private landowners. The Minister can issue directions and establish subsidies and grant schemes for combating weeds or invader plants, including

supplying weed killers and providing advisory services. Land users and owners have to comply with the specifications of the scheme to qualify for subsidies. At present there are no subsidies for alien invasives.

With respect to alien or exotic animals the *Agricultural Pests Act* regulates the importation of controlled goods into South Africa. Certain exotic animals are included in the list of controlled goods.

Free State Nature Conservation noted that the import and export of alien organisms to and from the Free State is a problem, especially in reptiles and birds. Permits are required in this province for the import but not for the export of exotics, and no permits are required for the possession of exotics.

The MPB has an extensive and participative process in place for determining whether alien organisms should be imported or not. For example, SANParks and The World Conservation Union (IUCN) are approached for comment. While this type of decision making process is laudable, unless similar processes are followed by all the provincial conservation authorities a trader who is refused an import permit in one province can apply to the other provinces, which may not follow similar procedures.

In general, permits are not needed for the possession of exotic plants and animals but permits are required, in terms of provincial conservation legislation, for the transportation or movement of exotic plants and animals into and, in certain cases, out of the provinces.

#### CONCLUSION:

- The relevant legislation is greatly fragmented and does not offer a comprehensive or holistic approach to dealing with invasive species. As the law is spread over a multitude of Acts and is regulated by numerous authorities, the problem becomes further aggravated in that alien organisms are dealt with separately at a national and provincial level.

## 6.6 INCENTIVES

Incentives for encouraging the sustainable utilisation of biological resources are recognised as a valuable tool at both a national and international level.

A programme of work was established at the Fifth Conference of the Parties to the Biodiversity Convention that promotes the development and implementation of social, economic and legal incentive measures for the conservation and sustainable use of biological diversity, in order to support parties, governments and organisations in developing practical policies and projects (Decision 15).

At a national level, Policy Objective 5.2 of the Biodiversity White Paper requires the State 'to create and implement incentives that support the conservation and sustainable use of biological diversity.'

Incentives can be geared at both those enforcing the provisions of biodiversity conservation legislation or at those whom nature conservation legislation is primarily directed such as

private landowners, communities and persons generating an income from the wildlife trade.

Discussions with provincial authorities focussed primarily on incentives to departmental staff. Limited discussion took place on the potential for including incentives in legislation that would target members of the public and encourage sustainable utilisation within a wildlife trade context. No such incentives are included in existing legislation.

With respect to incentives for conservation authorities, MPB indicated that they obtain a great deal of revenue through fines, the sale of forfeited goods, permit and licence fees and the proceeds from game sales. All of this revenue is channeled back to the provincial authority concerned. The provisions that provide for this have not been drafted as incentive provisions but they do, to some extent, have this effect. For instance, conservation authorities know that their enforcement activities will help generate funds for the department (J. Muller, *pers. comm.*, 1999).

Further, MPB has created changes in the legislation in terms of the payment of informers for information. Such payments used to be dependent on conviction of the accused. This is no longer the case as the Department has the discretion to pay informers even where there is not a successful prosecution. This change was needed to ensure the loyalty of informers, as extremely useful information is often provided by informers but despite the strength and accuracy of the information received, a conviction may not be secured (J. Muller, *pers. comm.*, 1999). Similar provisions are found in the *Free State Nature Conservation Ordinance 8 of 1969*. The *Transvaal Nature Conservation Ordinance 12 of 1983*, however, states that a conviction is required before an informer can be paid and the informer may only be paid a quarter of the amount of the fine paid by the person convicted of the offence.

Another opinion expressed was that monetary incentives through processes such as fines, proceeds obtained from the sale of goods forfeited to the State and the payment of informers may be a successful way of raising funds and obtaining information, but it does not create the appropriate conservation ethic.

Opportunities for using incentives to encourage biodiversity conservation, particularly by private landowners, have been discussed by Botha (2001). Incentives, for example, could potentially be introduced through the *Municipal Systems and Property Rates Bill, 2000*. With the advent of taxes on supposedly 'unproductive land', areas which currently contribute to biodiversity conservation could be converted to agricultural land to avoid such taxes (Botha, 2001). However, if provision was made within such legislation for exemption from land tax for properties of significant conservation value, and where the land owner can demonstrate that he or she has managed the land according to a specified conservation plan and has engaged in sustainable wildlife trade practices with respect to wild species found on his or her land, these areas could be properly conserved. It may, however, be necessary for aspects of such an exemption scheme to be included within nature conservation legislation, with the fiscal legislation making reference to the relevant provisions of the conservation legislation.

## CONCLUSION:

- Opportunities exist for including incentive provisions in conservation and other legislation which could have the potential to facilitate the regulation of the wildlife trade and sustainable use of biological resources.

## 6.7 PERMITS

Provincial nature conservation authorities issue both permits and licences. There is, strictly speaking, no difference between a licence and a permit. The term licence appears to have been used in the past for an administrative procedure that had an associated fee attached, whereas permits were a mere administrative procedure where no fee was charged. This is no longer the case as fees are currently charged on both permits and licences.

Permits for the utilisation of biological resources are issued by the nine provincial nature conservation authorities in terms of the nature conservation Acts and Ordinances, including those of the former Independent States and Self-governing Territories.

Permits are issued by provincial nature conservation authorities for the following uses of biological resources:

- Hunting
- Possession
- Import/export/sale/donation/purchasing/receiving
- Transporting
- Processing
- Angling (with respect to fresh-water fish. In KwaZulu-Natal, KZNNCS issue angling permits for marine species as well)
- Collecting/harvesting
- Registration as a flora grower (Western, Eastern and Northern Cape Provinces)
- Acting as a professional hunter/hunting contractor
- Delegation of utilisation rights to landowners

### Marine Species

KwaZulu-Natal issues permits for the utilisation of marine species within the coastal area of the KwaZulu-Natal coastline. This is in accordance with a formal agreement with MCM. This is not the case for the Cape provinces. Apart from a small number of CITES permits, marine permits in the Cape provinces are issued by MCM.

### CITES Permits

The Free State, KwaZulu-Natal, Gauteng, Northern Cape and Western Cape provincial conservation authorities issue CITES permits on behalf of DEAT. The Gauteng Department of Nature Conservation (GNC) issues CITES permits for Gauteng, North West Province, Northern Province and Mpumalanga; the WCNCB issues CITES permits for the Western Cape and Eastern Cape. CITES permits for marine species are primarily issued by MCM, but are in certain cases issued by WCNCB and KZNNCS.

The Mpumalanga and Northern Province conservation agencies, which do not currently have CITES management authority status, would like to obtain this status in the future. These provinces feel that they have the necessary capacity, but they would need assistance at the onset from the capacity building component of the South African CITES Implementation Project. The North West Province noted that, while they are not happy with the current arrangement, they lack the capacity to issue CITES permits themselves.

The majority of concerns outlined by the provinces with regard to permitting were expressed by those departments that do not have CITES management authority status and are dependent on other

departments for the issuance of CITES permits. The primary problem is the undue delays that occur as a result of this arrangement. These delays lead to dissatisfaction amongst permit applicants who attribute the delays, and associated difficulties, to staff in the province of application. In addition, these departments are often not informed as to whether the department issuing the CITES permit has made a decision whether to grant or refuse the permit and further, if granted, the date on which it was granted. No copy of the issued permit is forwarded to the department where the application was made. It is essential that the provincial authority where the application was made is aware of all decisions relevant to the permit. As a result of this situation, the Environment Inspectorate of the North West Department of Agriculture, Conservation and Environment has instituted a procedure whereby all CITES applications are taken by courier to the GNC. Once a decision has been made by GNC, the permits are transported by courier back to the Environment Inspectorate. The Environment Inspectorate then ensures that they are handed over to the applicants. Although this is effective, it is an expensive process, especially considering that applicants are not currently charged for the administration of CITES permits by any of the provincial authorities.

As a result of lack of clarity or guidance in provincial legislation, permit issuance and storage procedures are inconsistent. In four provinces (Gauteng, KwaZulu-Natal, Free State and North West) permits of any nature are only issued by the departmental Head Office. In the other five provinces, permits can be issued by regional or district nature conservation offices as well as by the departmental Head Office. In three of these five provinces (Western Cape, Northern Cape and Mpumalanga), copies of all permits issued by district and regional offices are sent through to the Head Office. The Head office accordingly has copies of all permits issued within that Province. However, in the Eastern Cape and Northern Province, the Head Office does not receive copies of permits issued by the district or regional offices.

DEAT maintains a degree of oversight with respect to the trade in CITES listed species through the compilation of annual reports which must, in terms of the Convention, be submitted to the CITES Secretariat. There is, however, no oversight by the DEAT of the trade in non-CITES listed species.

## CONCLUSIONS:

- The current situation, whereby GNC issues CITES permits for Gauteng, North West Province, Northern Province and Mpumalanga, and WCNCB issues CITES permits for the Western Cape and Eastern Cape is not ideal. There appears to be insufficient co-ordination between the provinces not having CITES issuing authority and in which applications for CITES permits are made, and the provincial authorities on which they depend for the issuance of the permit.
- Permit issuance and storage procedures are not aligned, making national oversight of the utilisation of biological resources impossible to achieve.
- DEAT does not receive copies of, or monitor, permits issued by the provincial conservation authorities for trade in non-CITES listed species.

## 6.8 POLICIES

While the legislative environment for nature conservation is fragmented, provincial policies on wildlife trade demonstrate even greater fragmentation and inconsistency.

A vast number of policies on wildlife trade and other conservation issues had been developed by the previous four nature conservation authorities prior to provincial restructuring.

Developments in the nine 'new' provinces reflect differing approaches to policy formulation and rationalisation. Some provincial authorities have simply continued to use the policies developed within the previous structures and very little or no policy development has accordingly taken place since 1994. The North West Department of Nature Conservation, for instance, mostly follows the written policies developed by the former Transvaal Department of Nature Conservation. They do, however, also have a number of new, unwritten policies that are followed.

Other provincial authorities such as GNC, the MPB and KZN Wildlife have embarked on a process of continual development, re-evaluation and rationalisation of wildlife trade related and other conservation policies. MPB, for instance, has a specific policy development and amendment unit.

Regardless of the path followed, the policy development process in all provinces is characterised by a lack of inter-provincial consultation.

The fragmented and inconsistent policy environment is largely attributed to a lack of leadership on behalf of DEAT in the arena of policy development. Provincial conservation authorities are concerned as to what has happened to the development of several policies that were driven by DEAT. Most provinces indicated that they had participated in the development of these policies, that the policy development processes had been comprehensive and positive, and that it is extremely disappointing that nothing has yet materialised from this work. As described in Chapter Four, even where national policy is fully developed, the formal process for securing the legitimacy of such policy remains unclear. An example of the problems caused by the inadequate policy process is provided in Box 6.

From a law enforcement perspective, ESPU members experience difficulties on account of the different policies that are applied in the various provinces. Members of the ESPU find that these differences prevent a cohesive approach by law enforcement personnel throughout South Africa to effectively combat illegal activity related to trade in endangered species (P. Lategan, *pers. comm.*, 2000).

A number of the provincial authorities noted that while alignment of policy should be co-ordinated by DEAT, the national department lacks the necessary practical experience for sound policy development and all the provincial authorities should accordingly be consulted in any policy development process. Adequate provincial consultation is essential as implementation of policies is currently carried out entirely by the provincial conservation authorities.

## CONCLUSION:

- There is often an absence of direction from DEAT with respect to the development of national policy and guidelines on wildlife trade issues. As a result, the provincial conservation authorities have developed their own, non-aligned policies causing significant problems for the effective and consistent regulation of the wildlife trade.

### Box 6: South African Legislation and Policy on Rhino-Horn Registration

Capitalising on its conservation successes in the field, South Africa has attempted on a number of occasions to secure the approval, through CITES, of the trade in rhino parts and derivatives from South African rhino populations. The most recent such proposal, submitted at the tenth conference of the Parties to CITES, in 1997, was defeated based on the fact that South Africa did not have comprehensive national wildlife trade legislation, that it lacks legal provisions governing private possession of rhino horn and that there is no national rhino horn registration system in place in the country.

The registration of rhino horn is formally regulated through a complex and uncoordinated combination of provincial legislative provisions, regulations and policies. While the requirements in all provinces are broadly similar, the differences are sufficient to be problematic and allow for inconsistent regulation. For instance:

In all provinces, the personal details of the owner are required and the horn must be weighed before a permit is issued. However, further details required for permit issuance vary from province to province, and these details are variously found in primary legislation, regulations and written and unwritten policy:

- In KZNNCS an applicant in possession of a rhinoceros horn is required to submit an affidavit to KZNNCS further stating where, when and how they acquired the horn, the outer curve length of the horn and basal circumference. Once the application has been approved, KZNNCS sends the owner a disk, which must be affixed to the horn.
- In the Free State, an applicant is required to submit a statement to the effect that he/she obtained the horn legally. Owners of rhino must notify the Free State nature conservation department if a rhino dies and the horn must then be registered. Each horn is measured and since 1999, microchipped.
- In Gauteng, North West and Northern Provinces, a person in possession of rhino horn, a person causing the death of a rhino and/or the possessor of a rhino horn who cuts the horn up, must notify the relevant provincial nature conservation authority. In each case, the rhino horn, or piece thereof, must be marked and registered.
- In Mpumalanga, the provisions are similar to those of Gauteng, North West and Northern Province except that there is no requirement to notify the Board on causing the death of a rhino. Further, a person wishing to cut up, or in any manner process rhino horn, must obtain written permission from the Board before doing so.

Recognition of the inconsistent and fragmented situation was finally taken by DEAT and in April 2000 MINMEC approved the document 'A Strategy for the Conservation and Sustainable Use of Wild Populations of southern White Rhino *Ceratotherium simum simum* in South Africa'. This policy encourages the pursuit of a legal trade in rhino products in accordance with international agreements and conventions, including CITES.

While the policy is clearly a strong step in the right direction, a lack of clarity on the formal process for implementing the policy has rendered it, thus far, useless. Further, the policy environment for rhino horn registration is only improved with regard to White Rhino and a similar policy for Black Rhino needs to be developed to ensure comprehensive regulation.



## 6.9 SANCTIONS

Provincial conservation authorities are of the opinion that the current sanction provisions within the four provincial Ordinances and the *Mpumalanga Nature Conservation Act 10 of 1998* are adequate. However, the same cannot be said of sanction provisions within the Acts promulgated in terms of the former Independent States and Self-governing Territories. These pieces of legislation have not been updated or amended and the sanction provisions do not serve as a sufficient deterrent.

With respect to provinces that have either recently enacted new legislation or are developing new legislation, one makes reference to both fines and imprisonment, while the other two only mention terms of imprisonment but do not mention fine amounts. In the latter cases fines are determined in terms of the *Adjustment of Fines Act 101 of 1996* which contains a structured scale of fines relative to imprisonment terms.

Penalty provisions within the Free State and Cape Ordinances are very similar with offences related to CITES Appendix I species being ZAR100,000 or ten years imprisonment or both, but the Cape Ordinance also allows a further fine of three times the commercial value of the animal or plant concerned. The amounts for offences related to CITES Appendix II species are slightly different. On the other hand, the Transvaal Ordinance penalty provisions for a similar offence (where the species concerned is not covered as well under a separate category such as 'specially protected') are far lower at ZAR1,500 or 18 months imprisonment for a first offence and ZAR2,000 or 2 years imprisonment for a second offence. The Transvaal Ordinance is confusing in this respect with certain species overlapping different categories. A rhinoceros, for instance, is both a rare and endangered (CITES listed) species as well as a specially protected animal.

A notable problem with regard to sanctions is that there is a lack of knowledge within the conservation authorities of the provisions within section 34 of NEMA and no known cases exist of South African courts having made use of this section. Section 34 permits a judicial officer to impose additional fines for certain wildlife trade related offences committed in terms of certain provisions within the provincial nature conservation Ordinances. The relevant pieces of legislation and the specific provisions are found in a Schedule to NEMA. This Schedule contains the provincial Ordinances of the four former provinces as well as the *KwaZulu Nature Conservation Act 29 of 1992* and makes reference to a number of specific trade related provisions within each Act or Ordinance. NEMA provides wide powers to courts imposing penalties on offenders convicted of offences listed in this Schedule. These powers enable the court to impose fines that reflect both the costs to the state and society of the environmental degradation, including the costs of rehabilitation, as well as the costs to the state to prosecute the matter. A related problem is that apart from the *KwaZulu Nature Conservation Act 29 of 1992*, conservation legislation of the former homelands as well the *Mpumalanga Nature Conservation Act 10 of 1998* are not included in this Schedule.

### Forfeiture

All of the Ordinances contain provisions that provide the magistrate with the discretion to order that vessels, vehicles, aircraft etc used in the commission of an offence should be forfeited to the state. The *Mpumalanga Nature Conservation Act 10 of 1998* as well as the *Natal Nature Conservation Ordinance 15 of 1974* provide that this is mandatory on a second offence.

## CONCLUSIONS:

- While the majority of Ordinances have adequate penal provisions, the provisions within certain provincial Ordinances are inadequate and inconsistencies need to be remedied.
- There is a lack of knowledge within the conservation authorities and within the South African courts about the provisions in section 34 of NEMA which provides for additional fines to be imposed for certain wildlife trade related offences.
- Capacity building initiatives geared at nature conservators as well as magistrates, judges and prosecutors dealing with the provisions of NEMA, have not been initiated.
- At present, the *Mpumalanga Nature Conservation Act 10 of 1998* as well as legislation of the former homelands is not included in Schedule III of NEMA.

## 6.10 SCHEDULES

None of the provincial authorities consulted have a sound mechanism in place for ensuring that the schedules formally reflect known changes in the status of species. As a result, all agreed that it would be useful to have an annual review of the schedules.

In the Free State, for example, the schedules have not been amended for many years. This needs to be addressed, as the schedules no longer reflect the conservation status of a number of plants and animals in that province. However the procedure for amendment of the schedule is difficult because the schedules form part of the Ordinance and they cannot be amended as easily as regulations. This problem is experienced in all of the provinces and the Eastern Cape for example, noted that in terms of their existing legislation, the premier of the Eastern Cape has difficulty amending the schedule and it has therefore remained the same since 1994. At present, the Department is finalising the drafting of new legislation that proposes a different schedule from the one in terms of which it currently operates. Amendments to the new schedule will still, however, have to go through the provincial parliamentary process.

Evidence of the fragmented nature of provincial schedules is found in the Consolidated List for Freshwater Fish of the Provincial Department of Agriculture: Directorate of Plant and Quality Control. This list determines which species may or may not be imported into the Free State. The basis for this list is to prevent the introduction of exotic freshwater fish species into South African waters where these fish may be invasive and have a detrimental effect on indigenous fish species and other indigenous organisms. Similar lists are used by the other conservation authorities but there is no co-operation or co-ordination between the agencies in ensuring that these lists contain the same species and that they are all simultaneously updated and revised.

A recent development by the DWAF working group on the Protection of Protected Trees in South Africa provides a well-considered, comprehensive model that bears consideration for the future drafting of schedules for all species of indigenous wild fauna and flora (see Box 7).

### Box 7: Developing Criteria and a Framework for Listing Protected Trees

The DWAF working group provides a potential model for developing both the criteria and framework for future schedules in biodiversity conservation legislation.

The model *inter alia* identifies the following objectives:

To examine mechanisms for reconciling a system of national-level protected trees with a system to give legal support to local-level rules and customs;

To develop criteria for the inclusion or exclusion of tree species into or from such a list;

The establishment of a consultative framework to guide the process of drawing up the protected species list.

The model is extensive in its exploration of the criteria to be applied and the factors that ought to be considered in the development of the schedules. Four sets of criteria and measurable indicators are summarised below:

1. Biodiversity

*Measurable indicators:* Species/habitat fragmentation, Isolation, Endemism (example Cycads), Peripheral range, Provincial distribution, Population size and density, Trends (distribution and population), Extent of existing conservation of the species

2. Keystone species in sensitive habitats

*Measurable indicators:* Function of species, Indirect value of keystone species (links to utilisation of species dependant on the keystone species)

3. Sustainability of use

*Measurable indicators:* Livelihoods value (used by whom, used for what, economic value, already protected by communities, type of use, level of use), Resilience to use (reproductive potential and constraints)

4. Cultural/Spiritual aspects

*Measurable indicators:* Is a species central to cultural and spiritual values?, Is a species protected by communities for its cultural and spiritual values ?

(DWAF, 2000)

### CONCLUSIONS:

- The existing schedules are outdated and do not accurately reflect the conservation status of many species.
- The amendment of schedules is currently an ad hoc process, and is not a scheduled activity forming part of a broad biodiversity management plan.
- Developments in DWAF may provide a potential model for developing both the criteria and framework for future schedules in biodiversity conservation legislation.

## 6.11 WELFARE

While existing provincial nature conservation legislation contains certain provisions relevant to animal welfare (for instance the regulation of hunting methods), welfare legislation is primarily found within the *Animals Protection Act 71 of 1962*, the enforcement of which falls to the Department of Agriculture. From a wildlife trade perspective, animal welfare provisions of relevance relate to the transportation of live animals and the keeping of these animals at any stage during the trade process. The reason for animal welfare falling under the Department of Agriculture lies in the traditional focus, in respect of animal welfare on domestic animals. However, the recent growth of the wildlife industry and the resultant increase in the transport and holding of wild animals prior and subsequent to sale or purchase has not been accompanied by changes in legislation or relevant capacity building within the Department of Agriculture. The current situation is characterised by neither the Department of Agriculture nor DEAT taking ownership of welfare issues related to the trade in wild animals. It is likely, however, that DEAT will assume future responsibility for wildlife welfare issues (P. Botha, *pers. comm.*, 2000).

A number of provincial conservation authorities participated in the development of the recently published set of guidelines titled 'South African Standard Code of Practice on the Trans-location of Certain Species of Wild Herbivore' (SABS, 2000). Opinions as to how these and similar welfare guidelines should be implemented by the conservation authorities vary. Certain authorities felt that welfare provisions, apart from broad basic requirements, should be included in policy and not legislation, as welfare standards are continually changing and it is far easier to keep pace with these changes by changing policy than it is to change legislative provisions. Other authorities, however, felt that welfare provisions should be published in the form of regulations, as policies do not carry any legal weight.

The North West Province noted that in terms of legislation that they are currently developing, permit conditions will contain a management plan and this management plan will contain a welfare component. The Department intends recalling all possession permits that it has issued in the past in order for these permits to be re-issued with an attached management plan.

A forum has recently been initiated by the National Society for the Prevention of Cruelty to Animals. The forum is represented by members involved in wildlife capture, game ranching and professional hunting as well as representatives from animal welfare organisations and is a forum for dispute resolution.

It is necessary for those involved in the enforcement of welfare provisions to have national legislation or nationally aligned policies on welfare relevant to the trade in wild animals. As a minimum standard it would be useful if a provision requiring that animals be transported in accordance with the latest International Air Transport Association guidelines could be incorporated into the proposed biodiversity legislation (Snyman, 2001b).

### CONCLUSIONS:

- Animal welfare legislation and regulation has traditionally focussed on domestic animals. The growth of the wildlife industry, particularly game farming and its associated activities, has not been accompanied by changes in legislation and regulation of the industry.
- There is general recognition by conservation authorities that there is a need for a systematic process to be put in place which results in the effective regulation of wildlife related welfare issues.
- Wildlife welfare issues are not being adequately addressed by the Department of Agriculture or DEAT.

## 6.12 PRESUMPTIONS

All of the Ordinances as well as the *Mpumalanga Nature Conservation Act 10 of 1998* have sections dealing with presumptions. These presumptions were included in the legislation to assist the State in securing convictions. Since the enactment of the interim and final Constitutions in 1993 and 1996, many of the presumptions within the criminal law have been held to be unconstitutional. The presumption provisions within provincial conservation legislation should accordingly be reviewed to determine which of them are unlikely to stand up to legal challenges.

In a similar vein, the *Cape Nature and Environmental Conservation Ordinance 19 of 1974* has a provision which states that those granting and refusing permits are not required to give reasons for decisions taken in the exercise of powers under the Ordinance. This does not conform with the Constitutional provisions on access to information and just administrative action.

### Box 8: Nature Conservation Presumption Held to be Unconstitutional

Section 98 of the *Transvaal Nature Conservation Ordinance 12 of 1983* makes it an offence to import a rare species into Gauteng (and other provinces still regulating in terms of the Transvaal Ordinance) unless one is in possession of a permit to do so. The Ordinance also contains a presumption (section (110(1)(m))) which states that, if it is proved that any person is in control of a rare or endangered species, such person shall be deemed to have imported such species into the province until the contrary is proved.

In *S v Mumba* 1997(1) SA 854 (T), the accused was found in possession of ivory and was convicted in terms of section 98 of the Ordinance in the regional court. On appeal to the High Court, it was held that the presumption provisions reversed the burden of proof from the State to the accused, who was required to prove on a balance of probabilities that he was not guilty of illegal importation of the ivory. The provision was held to be in conflict with section 25(3)(c) of the Constitution, which provides for a fair trial including the right to be presumed innocent. The accused was accordingly acquitted. Without the necessity for a possession permit, this decision clearly makes it difficult for conservation authorities to prove the illegal importation of rare and endangered species unless the accused are caught while importing without the necessary permits.

(*ELA Monitor*, 1997)

## CONCLUSIONS:

- Existing presumption provisions in provincial conservation legislation may not all conform with section 25 of the Constitution.
- Certain provisions in the *Cape Nature and Environmental Conservation Ordinance 19 of 1974* do not conform with the Constitutional provisions on access to information and just administrative action.

## Chapter Seven

## CONCLUSION

Aspects of the wildlife trade have historically been incorporated in provincial regulation of wildlife conservation. This approach has not been ideal, particularly with respect to ensuring that biodiversity conservation is managed in a holistic and integrated manner, and the exponential growth in wildlife trade has highlighted additional problems associated with the existing legal structure. Provincial restructuring in 1994 combined with a failure to repeal nature conservation legislation of the former Independent States and Self-governing Territories, served to exacerbate an already fragmented legal environment.

This has resulted in a complex and disorganised assortment of Ordinances, Acts, Decrees and Proclamations which are, in numerous aspects, outdated, inconsistent, incomplete and overly complex or confusing. This has serious implications for regulation of the wildlife trade as the array of gaps and inconsistencies results in regulation of wildlife trade only being as strong as the weakest provincial provisions – a situation open to exploitation. Problems are not only created through inconsistencies between various Ordinances and Acts. The existing legislation is for the most part outdated and there are, for instance, no provisions dealing with the use of incentives to encourage persons involved in the trade to utilise natural resources sustainably. Finally, the existing system does not allow for national monitoring and oversight of the extent and nature of wildlife trade and issues can, accordingly, not be addressed, as they should, in an integrated and holistic manner.

While the Constitution identifies nature conservation as an area of concurrent competency, and while the provincial authorities are keen to retain their existing role in regulating nature conservation and biodiversity management, there is support from all provincial conservation agencies for integrated, compatible and comprehensive legislation. Further, there is recognition that this can be best achieved through national biodiversity conservation legislation.

In the absence of such national legislation, a number of provinces have pursued the development of 'new' provincial legislation in order to rationalise, update and improve legislation within a provincial context. While these initiatives are laudable, they are characterised by a lack of adequate drafting capacity as well as a lack of co-operation and co-ordination between the provinces in their drafting processes. Further, while such legislation may improve regulation within particular provinces it is not a solution to securing inter-provincial alignment.

The South African CITES Implementation Project (SACIP) and the DEAT Law Reform Programme (DLRP) are two current initiatives being managed by DEAT which both directly and indirectly address regulation of the wildlife trade. Draft CITES legislation, a major output of the SACIP project, has been incorporated into the DLRP. This is a positive step from the perspective of ensuring integration, but has a negative side-effect in that the DLRP process is expected to take two to three years before biodiversity conservation legislation is in place and this will retard the effective regulation of CITES in the Republic.

While national legislation will certainly improve the regulation of wildlife trade and will result in greater alignment between provinces in such regulation, it will be necessary for those

developing national biodiversity conservation legislation to take cognisance of the fact that DEAT does not currently play an implementation role and lacks the capacity to do so. DEAT is best placed to monitor biodiversity utilisation throughout the country, facilitate inter-provincial co-operation and co-ordination, and drive policy development. On the other hand, implementation should continue to take place almost entirely at a provincial and local level. It will also be necessary for the provinces to retain the power to regulate for certain aspects of biodiversity conservation. This is particularly important in light of the different institutional structures in place for the various conservation authorities, as well as the varying geographic and biodiversity conditions within different provinces.

## Chapter Eight

# ALIGNMENT OPTIONS & RECOMMENDATIONS

The primary objective of this project is to ensure that a uniform wildlife trade legislative environment is in place. Research results have indicated that alignment will be most effectively achieved through the development of national nature conservation legislation, incorporating wildlife trade provisions. This would not mean that all provincial conservation legislation would have to be repealed. As is explained in more detail below, national legislation would cover the majority of aspects of wildlife trade and would set national norms and standards. While provincial legislation would have to be amended to conform with national provisions, provincial legislation could contain stricter or more detailed and comprehensive measures than those outlined in the national Act.

## 8.1 ALIGNMENT OPTIONS

The following recommendations on the alignment of nature conservation legislation, particularly with respect to wildlife trade provisions, must be considered in light of the recommendations outlined above. Further, it must be recognised that these recommendations are based on the following legislative developments:

- It is intended that the various components of the DLRP will be enacted through amending NEMA to include the new components, of which biodiversity conservation will be one. Although the enactment of the amended NEMA is expected to take between one and three years, it is possible that the biodiversity component will be fast-tracked and enacted before other components of the DLRP. Nevertheless the period for enactment of the biodiversity component, combined with the development and promulgation of enabling regulations is unlikely to take less than 18 months.
- The draft biodiversity conservation legislation of the DLRP currently contains provisions on biodiversity utilisation and the regulation of wildlife trade, including the regulation of trade in CITES listed species.
- The CITES provisions referred to above are sourced from the draft CITES Bill, which was developed through the SACIP. Further development and implementation of this draft Bill has been halted due to its inclusion in the scope of the DLRP.
- At a provincial level, five provinces are in various stages of developing 'new' provincial nature conservation legislation.

As discussed in Section 5.3 of this report, the current fragmented legislative environment has not resulted in holistic regulation of wildlife trade. While nature conservation is reflected within the Constitution as an issue of concurrent national and provincial competency, it is submitted that certain aspects of nature conservation can be more effectively regulated on a national basis (see Section 5.1.1) and it is accordingly recommended that the regulation of biodiversity utilisation, including wildlife trade, is best regulated through national legislation. This has been recognised by DEAT and the current draft biodiversity conservation legislation of the DLRP reflects this. It is therefore recommended that DEAT pursue this initiative but that the following interim and final alignment issues and options be recognised and considered.

### 8.1.1 Wildlife Trade Issues That Should Be Regulated By National Legislation

Essentially all wildlife trade issues can be regulated through national legislation. However, in



light of the capacity limitations on DEAT to implement such legislation, it is essential that provision is made for the majority of implementation to be delegated to provincial conservation authorities. Possibly the only issue which would have to be excluded from national legislation would be provisions on the structure, powers and duties of the provincial conservation authorities.

National biodiversity conservation legislation should incorporate provisions which address all aspects of biodiversity utilisation and should set minimum standards and procedures for ensuring the sustainable utilisation of wildlife. National legislation should not preclude provinces from drafting new conservation legislation or amending existing conservation legislation on wildlife trade or other biodiversity utilisation issues where such legislation does not conflict with the national legislation.

### 8.1.2 Wildlife Trade Issues That Should Be Regulated By Provincial Legislation

While it is recommended that the majority of biodiversity utilisation issues are regulated through national legislation, there are a number of issues that will need to be regulated specifically at a provincial level. There are also issues which may be covered by national biodiversity legislation, where the provinces should be permitted to legislate for independently, provided such provisions are in accordance with similar provisions in the national biodiversity legislation.

As discussed above, provided the provinces do not draft legislation which is in conflict with national biodiversity legislation, provincial legislation should be able to provide for more stringent standards on biodiversity utilisation issues and cover issues which are not addressed in national legislation. The issues discussed below are accordingly intended to serve as a guide and are not a limited list of issues that should be covered by provincial legislation.

- **Institutional arrangements:** Nature conservation authorities are currently structured in a number of different ways. The provisions within the existing Ordinances as well as those within Acts such as the *Eastern Transvaal Parks Board Act 6 of 1995* and the *KwaZulu-Natal Nature Conservation Management Act 9 of 1997*, which determine the powers and duties of the each authority, will have to be retained in order for these authorities to function.
- **Schedules:** It is recommended that a schedule, or schedules, listing species with different conservation status forms part of national biodiversity legislation. There is however a need for a mechanism that permits an applicant to be exempt from the provisions relevant to a particular species where the provincial conservation authorities endorse such an exemption. Such a procedure should only take place where certain provisions are met and should require approval by an independent national scientific institution. The details of such a mechanism and process should be reflected in both national and provincial conservation legislation.
- **Community involvement in regulation of wildlife trade:** Provincial legislation should contain provisions that allow for community initiatives which are not addressed by national biodiversity legislation. For instance, provisions within the *KwaZulu-Natal Nature Conservation Management Act 9 of 1997* are essential for the creation of local conservation management boards in KwaZulu-Natal (see Section 6.1 of this report).

- **Policies:** While it is recommended that the majority of biodiversity utilisation policies be developed nationally by DEAT, there are many issues which are specific to particular provinces and which require the development of applicable policies. For instance, only four conservation authorities are required to regulate for the impact of human activities on South African beaches. National biodiversity legislation may not address all aspects of such activities and it may therefore be necessary for provincial authorities to draft the relevant policies.

### 8.1.3 A National Biodiversity Conservation Institution

The following points illustrate that a number of vital functions for ensuring that wildlife trade is regulated as efficiently and effectively as possible, are not being carried out at a national level. This is followed by a recommendation for the establishment of a national biodiversity conservation institution.

- The provincial conservation authorities having Management Authority status and issuing CITES permits provide all the relevant CITES trade information to DEAT. This is done to enable DEAT to produce an annual report reflecting the import and export of CITES listed fauna and flora to and from South Africa. The production of annual reports is a requirement in terms of the Convention. The data contained in the annual report appears to be collated by DEAT purely for the purposes of satisfying the Convention's annual report requirement and there is no evidence to suggest that the data is further analysed for the purposes of determining trade trends or for conservation purposes in general.
- DEAT receives no information at all from the provincial conservation authorities on the trade in non-CITES listed species and DEAT is accordingly unable to, and does not play a role in determining from a national perspective, the trade dynamics of non-CITES listed species.
- DEAT has not played a significant role in national policy development on wildlife trade issues. A number of national policies have only been partially developed and those that have been fully developed lack an implementation strategy. The majority of provincial conservation authorities have accordingly each developed their own suite of policies where national policy does not exist. Provincial conservation authorities lack the capacity, staff-time or funding to ensure that provincial conservation management techniques, and wildlife trade measures in particular, are uniform. As a result the provincial policies frequently lack uniformity.

The Chief Directorate: Biodiversity and Heritage of DEAT lacks the capacity to ensure that the problems described above are adequately addressed. Comprehensive monitoring and evaluation, proactive policy development and co-ordinated conservation strategies are vital in ensuring that the legal wildlife trade is sustainable and is supported by an efficient administration; and that the illegal trade is effectively addressed.

It is therefore recommended that a national institution be established to address these issues. The institution should fall within DEAT but should consist of representatives from each of the nine provincial conservation authorities, DEAT, MCM, national institutions such as the SANParks and NBI, as well as representatives from non-governmental organisations and/or research institutions. As the primary functions of the institution would revolve around scientific decision-making, institution members should have the relevant technical expertise. The

institution should be able to draw on the expertise of other individuals when their expertise is required.

Decisions taken by the institute with respect to permit issuance or policy direction, particularly on issues of national importance or where the country is required to carry out its obligations in terms of an international agreement, should be by consensus of all representatives. Where all reasonable efforts to secure consensus have been unsuccessful, the Minister should have the power to make a final decision.

The functions of this institution would extend beyond wildlife trade issues. As regards trade issues, the institute should carry out the following functions:

- The collation, analysis and dissemination of all data on the trade in both CITES and non-CITES listed species from the provincial conservation authorities;
- The institution would form the Scientific Authority with regard to decision making on CITES permit applications. All permit issuance would, however, still be carried out at a provincial level;
- Decision-making on trade issues for non-CITES listed species, where such decisions require national oversight.
- Policy development on wildlife trade issues, and support to DEAT where the policy development process has been driven by DEAT;
- Facilitation of co-operation and co-ordination between the various organs of state playing a role in the regulation of wildlife trade.

#### 8.1.4 Aspects Of Provincial Legislation That Can Be Addressed Prior To The Enactment Of National Legislation

While national biodiversity conservation legislation is likely to resolve the majority of alignment problems which currently exist, the time-period for the enactment of national legislation, including enabling regulations is uncertain but may be as long as two years. There are a number of interim measures which can be taken by the provincial conservation authorities which would result in greater alignment and would allow for the regulation of wildlife trade issues within a less complex legal environment:

- Provincial nature conservation authorities should explore all options in ensuring that legislation of the former Independent States and Self- Governing Territories is repealed;
- Mpumalanga should follow the procedures outlined in NEMA and ensure that the relevant provisions of the *Mpumalanga Nature Conservation Act 10 of 1998* are included in Appendix III of NEMA;
- The presumption provisions and other provisions within provincial and national nature conservation legislation that do not comply with the Constitution, such as those on access to information and just administrative action, should be repealed.

#### 8.1.5 Draft Provincial Nature Conservation Legislation

The five provinces that have developed draft nature conservation legislation (Eastern Cape, Gauteng, KwaZulu-Natal, North West and Northern Province)<sup>2</sup> should consider the option of

2. While the Free State Environment Conservation Bill was published in 1996, it is not foreseen that this draft legislation will be further developed as it has been rejected by the Free State Provincial Parliament.

finalising the development and enactment of draft legislation. However this should only be pursued if legislation can be finalised within a short period of time and where the relevant enabling regulations have also been developed. While components of this draft legislation will in all likelihood be repealed, or require amendment when national biodiversity conservation legislation comes into force, the further development and ultimate enactment of national biodiversity legislation may be a very lengthy process. Thus, provincial authorities will benefit from having updated and improved legislation for the interim period.

### 8.1.6 Provisions On The Regulation Of CITES Listed Species

While the incorporation of CITES provisions into national biodiversity conservation legislation is endorsed, the expected lengthy time period required for the enactment of this legislation will have a serious impact on SACIP project outputs. It is therefore recommended that aspects of the draft CITES Bill be included in national legislation, or that separate CITES implementing legislation be drafted. This could be done either through an amendment to NEMA or through the adoption of regulations in terms of NEMA. Certain aspects of the draft CITES Bill, such as the institutional arrangements, may have to be omitted due to their interdependence with the general biodiversity management options still being explored within the draft national legislation.

## 8.2 RECOMMENDATIONS

The following recommendations are grouped into two sections: (1) general recommendations on the alignment of legislation, and (2) recommendations that refer to the alignment of specific issues or themes. Some of the recommendations deal with issues that cannot be addressed directly, but may be facilitated, through legislative measures.

As the recommendations are brief, reference is made at the end of each recommendation to the sections in the report where the recommendation can be contextualised.

### 8.2.1 General Recommendations

- Biodiversity utilisation, including wildlife trade, can be most effectively and holistically addressed through national legislation. (Sections 5.1.1; 8.1)
- Provinces that have well-developed draft legislation, including enabling regulations, should consider the option of enacting this legislation, despite the fact that national biodiversity legislation is currently being developed. (Section 8.1.4)
- Legislation of the former Independent States and Self Governing Territories should be repealed as soon as possible. (Section 5.3.1)
- Options need to be urgently pursued by DEAT for ensuring that CITES implementing provisions can be passed without having to wait for the enactment of the NEMA amendment, including biodiversity conservation provisions. (Sections 5.2; 8.1.5)
- Clarity needs to be obtained on which biodiversity conservation issues can best be addressed by national legislation and which issues should be legislated for at a provincial level. (Sections 8.1.1; 8.1.2)

- DEAT needs to play a greater role:
  - in the overall monitoring of biodiversity utilisation – particularly for non-CITES listed species (Section 6.7);
  - in the development of biodiversity utilisation policy (Sections 4.2; 6.8); and
  - in facilitating co-operation and co-ordination between the provinces on biodiversity utilisation issues. (Sections 6.2; 6.8)
- DEAT needs to urgently clarify how it can ensure that nationally driven policies on biodiversity utilisation, such as the policy on White Rhino, can be implemented. (Section 4.2; Box 6 – page 33)
- Uniformity in the positioning of conservation authorities within provincial departments should be urgently addressed to ensure that the objectives of conservation authorities are not compromised by the contrary objectives of other organs of state falling within the same provincial department. (Section 5.3.2)
- A national biodiversity conservation institution should be formed which would serve to ensure that wildlife trade is sustainable through:
  - the collation, analysis and dissemination of wildlife trade data;
  - ensuring that scientific decision making processes are uniform;
  - providing support to DEAT and provincial conservation authorities in the development of wildlife trade policy; and,
  - facilitating co-operation and co-ordination between all relevant organs of state on wildlife trade issues. (Section 8.1.3)
- Guidelines on the roles and functions of forums for facilitating co-operation on biodiversity utilisation issues, such as the Biodiversity Working Group, need to be developed to ensure that these forums achieve their objectives. (Section 6.2)

### 8.2.2 Specific Recommendations

- Clarity should be obtained as to whether DWAF or the provincial conservation authorities should regulate the trade in products obtained from state and non-state forests and woodlands. (Section 5.1.4 )
- Clarity should be obtained as to which authority, MCM or the provincial conservation authorities, should issue CITES permits for the various CITES listed marine species. (Section 5.1.5)
- Provisions of the *Customs and Excise Act 91 of 1964* should be amended, once national biodiversity legislation is finalised, to ensure that Customs officials are able to adequately regulate with respect to wildlife trade consignments. (Section 5.1.6)
- Provisions on the involvement of communities in regulating wildlife trade should be included in national biodiversity legislation, as well as in provincial conservation legislation. (Section 6.1)
- Outdated definitions and provisions should be removed from existing provincial nature conservation legislation. (Section 6.3)
- Once national biodiversity legislation is finalised, definitions within provincial conservation legislation should be aligned with the definitions within the national legislation. (Section 6.3)

- A Law Enforcement Forum, comprising DEAT, members of provincial conservation authorities, the ESPU, Customs and Excise, MCM, Postal Services and the Border Police, should be established. (Section 6.4)
- Provisions on the trade in alien organisms should be amended and aligned. (Section 6.5)
- Incentive measures, encouraging private landowners and wildlife traders to utilise natural resources sustainably, should be included in both national and provincial conservation legislation. (Section 6.6)
- Permit issuance and storage procedures should be aligned in order to facilitate national oversight of biodiversity utilisation. (Section 6.7)
- Permitting arrangements for CITES listed species should be addressed to ensure that the province in which the application is made is in a position to ensure that all permit conditions are adhered to. (Section 6.7)
- Relevant provisions of the *Mpumalanga Nature Conservation Act 10 of 1998* should be included in Schedule III of NEMA. (Section 6.9)
- Any new legislative developments at both a national and provincial level should be accompanied by capacity building programmes to ensure that all relevant government officials are aware of the new legislation and understand how it can be most effectively implemented. (Section 6.9)
- Sanction provisions should be updated and aligned. New legislation should refer to the *Adjustment of Fines Act 101 of 1996* and section 34 of NEMA. (Section 6.9)
- Schedules should be updated routinely and schedule amendment procedures standardised to accurately reflect the conservation status of species. (Section 6.10)
- The category types used to indicate the status of species should follow the IUCN Red Data list categories. (Section 6.10)
- Developments in DWAF to identify the criteria and framework for listing protected trees should be comprehensively reviewed for the future drafting of schedules for biodiversity conservation legislation. (Section 6.10)
- DEAT should take responsibility for the regulation of wildlife welfare issues, and welfare provisions should be incorporated into national biodiversity conservation legislation, rather than as policies. (Section 6.11)
- Presumption provisions within existing provincial conservation legislation should be reviewed and where necessary removed. Such provisions should not be included in any new national or provincial legislation. (Section 6.12)
- Provisions in the *Cape Nature and Environmental Conservation Ordinance 19 of 1974* which conflict with the Constitutional provisions on access to information and just administrative action should be removed. (Section 6.12)

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## APPENDICES

## Appendix I: Provincial Nature Conservation Legislation in Force in South Africa

KwaZulu-Natal Province	Natal Nature Conservation Ordinance 15 of 1974 KwaZulu Nature Conservation Act 29 of 1992 KwaZulu-Natal Nature Conservation Management Act 9 of 1997
Free State Province	Free State Nature Conservation Ordinance 8 of 1969 Qwaqwa Nature Conservation Act 5 of 1976 Bophutatswana Nature Conservation Act 3 of 1973
Eastern Cape Province	Cape Nature and Environmental Conservation Ordinance 19 of 1974 Ciskei Nature Conservation Act 10 of 1987 Transkei Sea-shore Act 17 of 1979 Transkei Environmental Conservation Decree 9 of 1992 Problem Animal Control Ordinance 26 of 1957
Northern Cape Province	Cape Nature and Environmental Conservation Ordinance 19 of 1974 Problem Animal Control Ordinance 26 of 1957
Western Cape Province	Cape Nature and Environmental Conservation Ordinance 19 of 1974 Problem Animal Control Ordinance 26 of 1957 Western Cape Nature Conservation Board Act 15 of 1998
Gauteng Province	Transvaal Nature Conservation Ordinance 12 of 1983
Mpumalanga Province	Mpumalanga Nature Conservation Act 10 of 1998 Eastern Transvaal Parks Board Act 6 of 1995
Northern Province	Transvaal Nature Conservation Ordinance 12 of 1983 Lebowa Nature Conservation Act 10 of 1973 Gazankulu Nature Conservation Act 5 of 1975 Venda Nature Conservation and National Parks Act 20 of 1986 Proclamation R6 of 1978 on Nature Conservation in Bantu Areas North-West Province Transvaal Nature Conservation Ordinance 12 of 1983 Cape Nature and Environmental Conservation Ordinance 19 of 1974 Boputhatatswana Nature Conservation Act 3 of 1973 North West Parks and Tourism Board Act 3 of 1997

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Appendix III: Chapter Headings of the Four Provincial Nature Conservation Ordinances and the Mpumalanga Nature Conservation Act 10 of 1998

Cape Nature and Environmental Conservation Ordinance 19 of 1974	Mpumalanga Nature Conservation Act 10 of 1998	Transvaal Nature Conservation Ordinance 12 of 1983	Free State Nature Conservation Ordinance 8 of 1969	KwaZulu-Natal Nature Conservation Ordinance 15 of 1974
Definitions and Establishment of Department of nature and Environmental Conservation and Advisory Committee	Definitions, reference to board and powers of board to appoint nature conservators, honorary nat.cons. and conservation rangers	Definitions, Establishment of Nature Conservation Division, Advisory Committees and Appointment of Officers	Definitions	Definitions
Nature Reserves	Wild Animals	Nature Reserves	Wild Animals	Establishment of board
Miscellaneous Conservation Measures	Professional Hunters and Hunting-Outfitters	Wild Animals	Fish	Game
Protection of Wild Animals other than Fish	Problem Animals	Professional Hunters and Hunting Outfitters	Indigenous Plants	Private Reserves
Protection of Rhinoceroses	Fisheries	Problem Animals	Mammals	Private Reserves
Protection of Fish in Inland Waters	Indigenous Plants	Fisheries	Animals Causing Damage	Professional Hunters and Hunting Outfitters
Protection of Flora	Endangered and Rare Species of Fauna and Flora	Indigenous Plants	Nature Conservation Fund	Amphibians, Invertebrates and Reptiles
Professional Hunters and Hunting Contractors	Cave Formations	Endangered and Rare Species of Fauna and Flora	General	Wild Birds
General and Supplementary	General	Trading in and Preservation of Cave Formations	Sch: Protected Game	Freshwater Fish
*Sch: Endangered Wild Animals	Sch: Specially Protected Game	GeneralSch:	Ordinary Game	Coastal Fishing
Sch: Protected Wild Animals	Sch: Protected Game	Sch: Laws Repealed	Sch: Specified Wild Animals	Indigenous Plants
Sch: Endangered Flora	Sch: Ordinary Game	Sch: Protected Game	Sch: Exotic animals to which the provisions of section 19 apply (prohibited Acts in respect of exotic animals)	General

### Appendix III: Chapter Headings of the Four Provincial Nature Conservation Ordinances and the Mpumalanga Nature Conservation Act 10 of 1998

Sch: Protected Flora	Sch: Protected Wild Animals	Sch: Specially Protected Game	Sch: Aquatic Plants	Sch: ordinary game
Sch: Noxious Aquatic Growths	Sch: Wild animals to which the provisions of section 33 apply (prohibited acts with certain live wild animals)	Sch: Ordinary Game	Sch: Protected Plants	Sch: protected game
Ordinances Repealed	Sch: Exotic animals to which the provisions of section 34 apply (prohibited acts with exotic animals)	Sch: Protected Wild Animals	Sch: Ordinances Repealed	Sch: Specially protected game
	Sch: Invertebrates	Sch: Wild Animals to which the Provisions of section 43 Apply (Prohibited acts with certain wild animals)		Sch: Open Game
	Sch: Problem animals	Sch: Exotic animals to which the provisions of section 44 apply	Sch: Hunting at Night	Sch: Animals excluded form the Definition of Indigenous mammal
	Sch: Fly fishing waters	Sch: Invertebrata		Sch: Endangered mammals
	Sch: Prohibited aquatic growths	Sch: Problem Animals		Sch: Protected Amphibians, Invertebrates and Reptiles
	Sch: Protected plants	Sch: Troutwaters		Sch: Unprotected wild birds
	Sch: Specially protected plants	Sch: Prohibited Aquatic Growths		Sch: Specially protected birds
	Sch: Invader weeds and plants	Sch: Protected Plants		Sch: Unprotected Indigenous plants
	Sch: Unique communities	Sch: Specially Protected Plants		Sch: Protected indigenous plants
	Sch: Repeal of laws	Sch: Specially protected indigenous plants		Sch: Ordinances repealed

\*Sch. = Schedule



**Institute of Criminology  
UNIVERSITY OF CAPE TOWN**

The Institute of Criminology was founded in 1977. It is a research unit linked to the Department of Criminal Justice, Faculty of Law at the University of Cape Town. The Institute's aim is to initiate, co-ordinate and develop research and extension services in the broad field of criminology, and to promote public interest in all aspects of criminology. Current projects include research in policing, sentencing and punishment, youth justice, gender violence, ecological criminology, access to justice, gangs, and crime prevention. Research support to staff, students and the general public is provided by the Social Justice Resource Project. Postgraduate courses in criminology leading to degrees in the Faculties of Law and Humanities are offered under the auspices of the Department of Criminal Justice.

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# TRAFFIC

— EAST/SOUTHERN AFRICA —

The TRAFFIC Network is the world's largest wildlife trade monitoring programme with offices covering most parts of the world. TRAFFIC is a joint programme of WWF (World Wide Fund for Nature) and IUCN (The World Conservation Union) and aims to ensure that trade in wild plants and animals is not a threat to the conservation of nature. The TRAFFIC Network works in close cooperation with the Secretariat of the Convention of International Trade in Endangered Species of Wild Fauna and flora (CITES) and also collaborates with a wide range of other partners, including the IUCN Species Survival Commission, many governments and other organisations. TRAFFIC in South Africa is supported by WWF South Africa, Endangered Wildlife Trust, the Tony and Lisette Lewis Foundation, Tiger's Eye Retail, The Green Trust and the Mazda Wildlife Fund.

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