



Legal and practical regulation of the welfare of wild animals in South Africa:

Policy brief:

Principles for law reform and measures for improved implementation, 2019

In June 2018, the Centre for Environmental Rights, in conjunction with the Endangered Wildlife Trust, released a report, prepared with funding from the Lewis Foundation, assessing the legal and practical regulation of the welfare of wild animals in South Africa.

The report made a number of key findings and recommendations in relation to the improvement of the laws and practices in

relation to the well-being of wild animals. Following on the report, consultation and research were conducted to test the feasibility of and improve the recommendations made in the 2018 report.

Below are updated recommendations for minimum measures to be taken in order to begin to give effect to the key, reconfirmed, findings of the 2018 report, in order to improve the welfare protection of wild animals.

Copies of this report and the executive summary are available at:

<https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report-25-June-2018.pdf>.



Centre for
Environmental Rights
Advancing Environmental Rights in South Africa

Principles for law reform

National standardisation, uniformity and consistency of conservation and welfare laws and practices:

- For legal certainty, just administration and ease of implementation, the provincial conservation legislation across the 9 provinces should be **aligned** with the National Environmental Management Biodiversity Act, 2004 (NEMBA) and the Threatened or Protected Species Regulations, 2007 (TOPS).
 - All pieces of related legislation should use the same terms, definitions and principles consistently.
 - Conflicts between different pieces of legislation should be addressed and corrected as far as possible.
 - The application of the legislation for each type of permit for the various restricted activities must be the same in every instance.
- An electronic integrated, real-time national permit **database** is required for both TOPS

and the Convention for the International Trade in Endangered Species of Fauna and Flora Regulations, 2010 (CITES) permits.

- Conflicting **practices and manner of implementation** of national and provincial legislation across different provinces must be identified and corrected **in line** with the national legislation and be **applied consistently** across the country.
 - Standard operating procedures should be developed, documented and consistently implemented across the country.
 - Standard and special permit conditions should consistently be implemented and enforced throughout the country.
- For legal certainty, just administration and ease of implementation, all national welfare laws should be consistently applied in each province in relation to all wild animals, indigenous or exotic, without exclusion of certain types or groups of animals. **Alignment, updating and consolidation** of welfare laws are imperative.
- **Co-operation** between the Departments of Environment, Forestry and Fisheries (DEFF) and Agriculture, and between



DEFF and each provincial conservation authority, is necessary in the alignment and updating of the laws.

Clarification of welfare mandate for wild animals

It is critical that legal certainty on the full welfare mandate in respect of all different animals be provided. This means that either DEFF should be fully mandated as the responsible authority for wild animal welfare, with the Department of Agriculture being responsible for domestic animal welfare - and subject to clear definitions and delimitations of the mandate - or a clear joint mandate should be given to both Departments.

Measures for improved implementation

The above law reform principles must be adequately applied in order to be effective. In addition to clarification of the welfare mandate and standardisation of the conservation and welfare laws, the following measures in relation to standard templates, training and capacity, and compliance monitoring and enforcement, will assist effectively implementing the laws. As described below, two separate law reform measures are already underway, and it is crucial that these initiatives are not only aligned, but jointly result in a better outcome for the welfare of wild animals.

Welfare mandate and standardised legislation

- The lack of a welfare mandate by DEFF may soon be partially solved by the upcoming National Environmental Management Biodiversity Bill (not yet

published), which aims to introduce a new objective of NEMBA: *"the use of indigenous biological resources in a manner that is ecologically sustainable, including taking into account the well-being of any faunal biological resource involved"*; with well-being being defined as *"a state where the living conditions of a faunal biological resource are conducive for its health."* The Bill gives the Minister the power to make regulations in relation to any measures necessary for the management or well-being of any species, ecosystem, or other biological resource, managed in terms of NEMBA. Without the passing of such regulations, the new objective in NEMBA will be difficult to enforce. With the courts repeatedly confirming that welfare is a pillar of conservation,¹ this is a legal imperative. It is recommended that regulations relating to well-being are passed together with or

urgently after the Bill is enacted, clarifying enforcement mechanisms and using the practical recommendations in our report as a basis (taking into account the five freedoms² and covering the basic welfare requirements such as food, shelter, safety, medical care and ability to perform natural behaviours), and drawing on the informal practical codes as a start. It is essential that permit conditions relating to the well-being of wild animals are consistently applied and monitored.

- Agriculture is currently working on a long-overdue draft Animal Welfare Bill. As enactment of this new piece of legislation will take time, it is essential that the implementation of the current Animals Protection Act 71 of 1962, be strengthened by way of regulations, particularly in relation to the welfare of captive wild animals.

Standard templates

- It is imperative that all applications for and permits granted or refused are subject to the same, measurable considerations. Standard templates, that fully comply with national and provincial conservation legislation, for applications and permits are urgently required.
- Documented, best practice standard operating procedures to be used in the decision-making process in the granting or refusal of permits in terms of the national and provincial legislation are required.³
- Standard and special permit conditions must cater for the welfare of the animals and restricted activities listed on the permit and incorporate the relevant South African Bureau of Standards (SABS) SANS (South African National Standards) codes, provincial policies and codes of practice.

Training and capacity (permitting, and compliance monitoring and enforcement)

Education and training

- Due to the number and complexity of the conservation and welfare laws, all national and provincial conservation officers must be fully trained and tested in the correct implementation of the relevant legislation, standard operating procedures and guidelines.
- Environmental Management Inspectors (EMIs) undergo training in respect of compliance and enforcement with the national conservation legislation, but not on any welfare issues, due to the lack of legislative mandate. It is unclear how many of these EMIs are designated to monitor and enforce green (biodiversity) issues. The extent of training of biodiversity conservation officials in respect of compliance and enforcement in the provincial conservation departments is also unclear. With the necessary amendments to the enabling legislation as discussed above, capacity for including welfare training for EMIs will be required.

1 *NCSPCA v Minister of Environmental Affairs and 2 others*, Gauteng High Court case number 86515/2017; *NSPCA v Minister of Justice and Constitutional Development and another 2017 (4) BCLR 519 (CC)* and the cases quoted therein, including *Openshaw and Lemthongthai*;

2 The five freedoms are:

- Freedom from hunger and thirst;
- Freedom from discomfort;
- Freedom from pain, injury or disease;
- Freedom from fear and distress; and
- Freedom to express natural behaviour.

3 By 2020/21.

Environmental Management Inspectors per institution

Institution	2015-16FY	2016-17FY	2017-18FY
National Authorities			
DEA (now DEFF)	83	135	166
iSimangaliso	4	6	8
SANParks	802	859	836
DWS	-	17	28
SANBI	4	4	8
Provincial Environmental Authorities			
Eastern Cape DEDEA	50	44	46
Free State DESTEA	41	40	40
Gauteng GDARD	49	50	53
KwaZulu-Natal DEDTEA	34	68	68
Limpopo LEDET	269	256	256
Mpumalanga DARDLEA	11	9	9
Northern Cape DENC	30	28	27
North West READ	46	46	39
Western Cape DEADP	77	66	73
Provincial Parks / Conservation Authorities			
CapeNature	39	43	50
Eastern Cape Parks	158	137	158
Ezemvelo KZN Wildlife	605	661	667
Mpumalanga Parks (MTPA)	19	19	26
North West Parks Board	90	89	82
Total	2411	2577	2640

Environmental Management Inspectors per local authority

Province	2015-16FY	2016-17FY	2017-18FY
Gauteng	43	51	48
Limpopo	22	29	30
North West	13	24	26
Western Cape	30	50	61
Free State	-	22	22
Eastern Cape	4	7	7
Mpumalanga	18	14	18
KwaZulu-Natal	102	102	116
Northern Cape	4	4	5
Total	236	303	333



Resources and capacity

Budget allocation to a full staff complement, regular training and access to resources, nationally and provincially, is critical.

National environmental expenditure estimates as budgeted by DEFF are as follows:⁴

Line item	2019/20	2020/21	2021/22
Total expenditure	R7 529.7m	R7 961.3m	R8 243.6m
Biodiversity and conservation	R797.3m (2018 est. R706.1m)	R852.9m	R907.8m
Legal, authorisations and compliance enforcement (including of biodiversity laws)	R207.5m (2018 est R189.3m)	R219.9m	R233.5m

Budget allocation to wildlife conservation in DEFF continues to be focused on combating wildlife crime, and generating money from the wildlife industry. DEFF *“plans to contribute to conservation while driving government’s agenda of radical socioeconomic transformation through the enablement of green economy initiatives. Through the donation or loaning of wildlife and the provision of technical expertise, the parks will provide opportunities for communities and emerging game farmers to participate in the wildlife industry value chain.”*⁵

A more balanced allocation of budget is required.

Prioritised budget allocation and rapid progress on the long-awaited national electronic CITES and TOPS permits databases are essential for transparency, certainty and standardisation.

⁴ 2019 National Budget Vote 27 (Environment), page 1.

⁵ 2019 National Budget Vote 27, page 27.

Urgent attention must be given to capacitating **provincial conservation agencies**, in particular:

- Increased personnel to undertake the volume of work in the departments;
- Updated, adequate and functional electronics and IT systems (from laptops and tablets to GIS mapping and real-time data logging to reduce paperwork); and
- The capacitation of each official with documented standard processes (and training thereon) in order to ensure consistent decision-making in line with legal provisions is crucial.

Without the regular monitoring and consistent enforcement of the conservation and welfare laws, all principles and measures are rendered superfluous. Monitoring and enforcement must therefore be prioritised, with dedicated funding and support, in order to give application to the legal imperatives.

The well-being of wild animals is inextricable from good conservation for current and future generations, as envisaged in the Constitution. With co-operation, assistance and will between the relevant government departments and civil society, significant improvement is achievable.

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