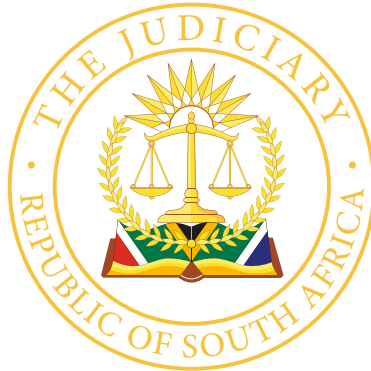




# Environmental Crimes & Wildlife Trafficking

A guide for the Judiciary  
2020





# ENVIRONMENTAL CRIMES & WILDLIFE TRAFFICKING

A Guide  
for the Judiciary  
2020





# Acknowledgements

This Practical Guide is as a result of a proverbial journey initiated by the South African Judicial Education Institute (**SAJEI**) in initial collaboration with United Nations Environment Programme (**UNEP**) at *Regional Symposiums on "Greening the Judiciaries in Africa"*.

Subsequent support and funding from the United States Agency for International Development (**USAID**), WWF South Africa Khetha Programme and the VukaNow Programme have been incremental in taking the journey forward, resulting in the fruition of this guideline.

The **Khetha Programme** is a United States Agency for International Development (**USAID**) Programme implemented by WWF South Africa and WWF Mozambique from 2017 to 2022. The programme is aimed at addressing the impact of the illegal wildlife trade on both people and wildlife, in particular elephants and rhinos, in the Great Limpopo Transfrontier Conservation Area. We are indebted for the leverage granted to us to broaden the scope to include other species affected by wildlife trafficking that will inevitably require adjudication in our Courts.

Similar gratitude is paid to the **USAID VukaNow Programme** that supports the shared commitments of the US Government, the Southern Africa Development Community (**SADC**), member states, private sector partners, and civil society to reduce wildlife crime across Southern Africa. We are grateful for our inclusion in their programme to achieve their vision of promoting capacity building, sharing information and best practices to enhance coordination of activities that address wildlife crime and improve the capacity of the judiciary in Southern Africa.

***"The only way forward, if we are going to improve the quality of the environment, is to get everyone involved."***

In line with these words of Richard Rogers, a Core Environmental Material Development Group was formed to compile this Practical Guide.

Without the dedicated and passionate involvement of each member of the Core Group this Practical Guide would not have seen the light.

## **The Core Group consisted of:**

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# Foreword

Environmental Law is one of the most significant fields of South African Law. The trafficking in our wildlife has reached a state that some species are facing imminent extinction. The Judiciary must recognise and address environmental crimes as a serious threat to peace and sustainable development.

We constantly have to remind ourselves of the words of the late Nelson Mandela:

***“We cannot afford to wait for others to stand up for our environment – as nobody stands to lose more than we do. It is our duty to be proactive in the battle to protect Africa’s natural environment.”***

The concept of defending the environment should resonate in courtrooms and remind Judicial Officers that they are entrusted with the responsibility of protecting and safeguarding the fundamental rights and values enshrined in Section 24 of the Constitution.

The judiciary must be adequately equipped with the knowledge to fulfil their constitutional mandate as was stated in the judgment of **Lemthongthai v S** (849/2013) [2014] ZASCA 131 (25 September 2014):

***“The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.”***

It is in the continued cooperation of all concerned that the strength of Southern Africa, in the eradication of illegal wildlife trafficking lies, and will ultimately guarantee, its success.

This Guide is aimed at providing assistance in the consideration, interpretation and application of relevant environmental law pertaining to wildlife trafficking and to be a practical tool in applying the law. It is trusted that this Guide will assist you as the Presiding Officer in fulfilling your Constitutional duty to conserve and sustain the environment from the Bench.

# Preface

South Africa experiences several environmental challenges ranging from biodiversity degradation, air and water pollution, solid waste, deforestation, etcetera. Therefore, it is imperative for the members of the judiciary to remain abreast of the developments on environmental law. Recognising this dire need, SAJEI approached the United Nations Environment Programme (UNEP) in 2016 to work on a joint programme to build the capacity of the judiciary on the African continent.

Subsequently, several activities were organised, ranging from a judicial dialogue on integrating Environmental Law into judicial curricula to train-the-trainer workshops, which equipped participants with the necessary skills to develop training materials. Furthermore, a network of judicial training institutions called African Judicial Education Network on Environmental Law (AJENEL) was established. In August 2018, UNEP, in collaboration with Judicial Training Institutes in Africa, launched the Regional Curriculum for the Training of Judges and Magistrates in Africa on Environmental Law in Maputo, Mozambique.

Through the additional support from USAID, WWF South Africa's Khetha Programme and the USAID VukaNow Activity, this training manual was developed by a team of experienced Magistrates under the auspices of SAJEI. The team consisted of eight Regional Magistrates and four District Magistrates. The Regional Magistrates provided insights from their practical experience of adjudicating environmental matters. Their commitment and dedication to the project are commendable. The leading role of Mr Tinus Boonzaaier, Regional Magistrate of North West Province, is worth mentioning.

The manual provides an overview of foundations of Environmental Law, Legislative Framework, Categories of Environmental Crimes, Wildlife Trafficking and Procedural aspects in the adjudication of Environmental disputes. SAJEI hopes that the Guide will enrich the required skills of adjudicating environmental matters in South Africa.

**Dr Gomolemo Moshoeu**  
**Chief Executive Officer:**  
**South African Judicial Education Institute**

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## Key to symbols used



**Legislation**



**Case law**



**Articles**

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# **FOUNDATIONS OF ENVIRONMENTAL LAW**



## CHAPTER 1

## Introduction

## 1. Introduction

The Constitution of the Republic of South Africa<sup>1</sup> requires the Government to act reasonably in order to protect the environment by preventing pollution and ecological degradation, by promoting conservation; and by securing ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

**Section 24 of the Constitution:****24. Environment**

**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.**

The National Environmental Management Act, 107 of 1998 ("NEMA") defines "environment" as:



*...the surroundings within which humans exist and that are made up of*

- i) the land, water and atmosphere of the earth;*
- ii) micro-organisms, plant and animal life;*
- iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and*
- iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.*

The inclusion of an environmental right in Section 24 of the Constitution<sup>2</sup> reflects international drive to make the protection of the environment a priority. It also laid the basis for a substantial change in the way in which the environment is managed in South Africa.



In **Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment and Others** 1999 (2) SA 709 (SCA) the following was held:

***"Our Constitution, by including environmental rights as fundamental justiciable human rights, by necessary implication, requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country. Together with the change in the ideological climate, must also come a change in our legal and administrative approach to environmental concerns."***

In adherence to the requirements of environmental rights created by the Constitution, a multitude of new environmental legislation has been promulgated and the Department of Environmental Affairs is steadily increasing its enforcement capacity. As a result, Judicial Officers are likely to adjudicate more prosecutions on the environment on a broader range of violations.

To give effect to the environmental right, Judicial Officers need to have knowledge of both the new environmental jurisprudence as well as the range of enforcement mechanisms and sanctions. The unique features of environmental matters – such as the balance required to achieve sustainable development, preventing environmental harm and the trans-boundary causes and consequences of environmental harm – make this a challenge. Furthermore, the relatively new nature of the environmental legislation means that these requirements may be unfamiliar to many Judicial Officers.

This publication aims to contribute to the knowledge that Judicial Officers require to adjudicate environmental crimes. It is not intended to be an exhaustive guide to all aspects of environmental law but rather focuses on matters that are particularly relevant to environmental crime and wildlife trafficking.

<sup>1</sup> Act 108 of 1996

<sup>2</sup> Constitution of the Republic of South Africa, 108 of 1996

## 2. Definition and nature of environmental crime

Environmental crime is a broad term used to embrace a wide range of crimes related to biodiversity, natural resources, hazardous waste, and environmental quality. These crimes can have detrimental effects at national and international levels such as climate change, ozone depletion, desertification and the depletion and extinction of biological resources.

In contrast to traditional predatory crime, which involves the involuntary redistribution of existing wealth through theft and robbery, etc., environmental crime involves the production and/or distribution of environmental goods and services that are illegal by their classification.

Such enterprise crime is more effectively conceptualised as a market than a form of social deviance: criminal activities are structured around multilateral exchanges involving producers, processors, retailers and final consumers where supply and demand for services interact in a free-market relationship.

The traditional head hunting approach adopted by law enforcement agencies to tackle predatory crime does nothing to address the supply and demand pressures that shape profit-making opportunities which often drive environmental crimes such as wildlife trafficking. Furthermore, although individuals may benefit from a given environmental crime, the associated environmental damage implies that society overall is harmed. However, the society is often unaware of its victimisation, so regulators may not suitably set levels of enforcement effort and restitution.

The challenge with environmental crimes is that the goods and services that are involved have no legal market value and hence it is difficult to determine its commercial value or to set levels of sanctions that are consistent with the crime.

## 3. Motivation for environmental crimes

### 3.1 Lack of environmental concern and anti-social behaviour

Criminal behaviour can stem from individuals or firms engaging in behaviour or actions without regard to how it may negatively affect the environment. Lack of environmental concern is due to ignorance or inadequate information of the consequences of their actions. Anti-social behaviour occurs when decisions of an individual or firm do not take into consideration the needs and wants of others. Lack of cooperation occurs for several reasons ranging from protest behaviour as a result of dissatisfaction to self-interest or profit maximisation.



In the case of **Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance** (69/2014) [2014] ZASCA 184 (26 November 2014) the following was decided;

***“[71] It is clear, therefore, in accordance with international trends, and constitutional values and norms, that our legislature has recognised, in the field of environmental protection, inter alia the importance of consultation and interaction with the public. After all, environmental degradation affects us all.”***

The Court concluded by warning Corporations operating within our borders, whether local or international, that there must be no doubt that in relation to the environment in circumstances such as those referred to in the case, there is no room for secrecy and that constitutional values will be enforced.

### 3.2 Economic benefits, self-interest and greed

The environment provides a multiplicity of benefits to the social, economic and ecological systems if it is managed in a sustainable manner. However, economic benefits may preclude considerations of environmental impact. For example, mining has become an integral part of South Africa's economy but has several unavoidable detrimental effects on the environment exacerbated by poor legislation and or weak law enforcement. Some mines operate without water usage licences and thus pollute water resources.

Mine dumps (tailings) or slurry dams can contribute immensely towards the pollution of groundwater. The dumps also produce airborne radioactive material resulting in health risks to the people and the environment. Mines also attract informal settlements like Marikana in Rustenburg.

Trafficking of wildlife, both plant and animal, can be driven by greed, particularly where the specimens or products are of high value. These resources can be seen as common pool resources where users of these resources compete because the resources exist in limited amounts. This behaviour leads to resource overexploitation that in turn leads to environmental degradation.

### 3.3 Poverty and inequality

Poverty can result in environmental crime. However, the indigent are often both the victims and the perpetrators of environmental crimes. People in poorer areas may use natural resources for fuel, wood, building materials, water and wild-sourced foods to ensure their survival or supplement their livelihoods. Some of these resources may be threatened or harvested illegally from within protected areas. Environment degradation in both peri-urban and rural communities is inter alia caused by poor land management, deforestation, loss of natural habitats, soil erosion, unsustainable use of resources, depletion and pollution of water sources. Poverty is exacerbated further by the population explosion and changing patterns of human settlements through migration.

Researchers now believed that income inequality in rural communities could be one of the main drivers of high value poaching rather than poverty. Theory suggests that there could be more environmental crimes in unequal than in equal communities.

Illegal harvest of high value products, such as rhino horn or abalone, presents an opportunity for people to seek financial gains to improve their lives where they have limited livelihood choices. Members of poor households may collaborate with syndicates to harvest high value wildlife products. Where markets exist for these products, the demand will continue to negatively impact populations of species that are a source for the products. The exclusion of local communities from the economic mainstream associated with environmental extraction is thought to be one of the main reasons of resource overexploitation and degradation since they feel marginalised by the system. This historic exclusion combined with current lack of beneficiation from natural resources may be an underlying driver of environmental crimes from poaching to human-wildlife conflict.

### 3.4 Cultural practices and beliefs

Every social grouping has specific cultural practices and beliefs, some of which are beneficial to all members while others are harmful. Local communities have been harvesting certain species of wildlife, including plants, as part of their cultural practices or tradition. There is huge demand for animal body ranging from small animals such as pangolins to big animals such as elephants and predators such as lions that have customarily been used for ritual purposes by traditional healers in Mozambique, South Africa and Zimbabwe. Although illegal, this behaviour has been happening in the background with park authorities in some countries taking a blind eye because either less valuable species are normal targeted or they believe that this type of behaviour is less threatening to conservation than commercial poaching.

International organisations such as World Health Organization (WHO), World Trade Organization (WTO), World Intellectual Property Organization (WIPO), African Union (AU), SADC in Southern Africa, civil societies and some governments have started recognising the role played by traditional herbalists in primary health systems. Incidentally, very few countries have legal framework for control and access to indigenous knowledge and biological resources, or ensuring benefits arising from their use are shared fairly.

The privatisation of medical facilities and lack of medical aid covers leads to the rapidly growing number of traditional healers, the porous borders and lack of proper controls at ports of entries put pressure on biodiversity as certain plants some of which are protected and or endangered are recklessly harvested and sold for medicinal use.

There should be a policy around regulation of plants used by the traditional healers which should also ensure that medicinal plants are replanted at such a rate that they will not be extinct. Of greater importance is the educational need for members of our society to appreciate the importance of nature conservation.

While some extractive activities are allowed by law with a permit, such as hunting, fishing, harvesting firewood etc., most forms of harvesting by local communities, particularly from protected areas, is not allowed by law. Ultimately, the reality is that we will always have to strike a balance between competing rights.



## 4. Relationship between Environmental Crimes and Other Crimes

Environmental crimes can overlap with many other criminal offences. One of the most significant links is with commercial crimes. In some instances, these links, such as corruption, fraud and tax evasion, may involve highly organised criminal activities. In the Southern African region, there is research that shows that the presence of organised criminal syndicates, such as those involved in abalone or rhino poaching, increases levels of violence, drug abuse and prostitution in local communities adjacent to protected areas.

### 4.1 International Agreements



Certain environmental crimes are not only offences in terms of South African legislation, but are also contraventions of Multinational Environmental Agreements (“MEAs”): Examples of activities which violate MEAs ratified by South Africa include—

- illegal trade in wildlife in contravention of the Convention on International Trade in Endangered Species of Fauna and Flora, 1973 (also known as the CITES Convention);
- illegal trade in ozone-depleting substances in contravention of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987;
- unauthorised transportation and disposal of hazardous waste in contravention of the Basel Convention on the Control and Trans-boundary Movement of Hazardous Wastes and their Disposal, 1989;
- illegal dumping of oil and other wastes in oceans contrary to the provisions of the International Convention on the Prevention of Pollution from Ships, 1973 (also known as the MARPOL Convention) and the London Convention on Dumping, 1972;
- trade in certain chemicals and pesticides in contravention of restrictions adopted in terms of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998; and
- illegal trade in chemicals in contravention of the Stockholm Convention on Persistent Organic Pollutants, 2001.

### 4.2 Prevention of Organised Crime

Where there are allegations that organised crime is involved in the commission of an offence, prosecutions for environmental crime will often also include charges under the Prevention of Organised Crime Act, 121 of 1998 (“POCA”).



The **primary objectives** of **POCA** are to introduce measures to

- combat organised crime;
- prohibit certain activities relating to racketeering activities – Section 2;
- provide for the prohibition of money laundering – Section 4;
- preventing assistance to another to benefit from proceeds of unlawful activities – Section 5;
- acquisition, possession or use of proceeds of unlawful activities – Section 6; and
- criminalise certain activities associated with gangs – Section 9



**POCA** applies to Biodiversity related offences by virtue of **Item 25 of Schedule 1** which lists the **“dealing in, being in possession of or conveying endangered, scarce and protected game or plants or parts or remains thereof in contravention of a statute or provincial ordinance.”**

Most other environmental offences will be included under **Item 33 Schedule 1**, which lists **“any offence the punishment whereof may be a period of imprisonment exceeding one year without the option of a fine.”**



## CHAPTER 2

# Legislative Framework

## 1. The Development of International Environmental Law

The role of international law and its application within South Africa is contained in Section 39 and Chapter 14 of the Constitution.

There exist interdependence between domestic environmental laws and International Environmental Laws.

Within the international community, there has been increased awareness regarding peoples' impact on the environment and the fact that issues such as loss of natural resources and biodiversity, climate change, desertification, air and marine pollution and toxic and other waste threaten our planet. There is also an increasing realisation that environmental problems such as these transcend national boundaries. This has led to the emergence of a new field in international law known as International Environmental Law.

There is a recognised need to address environmental problems which fall outside of state jurisdiction or overlap with other states' jurisdiction so that the unilateral acts of one state does not prejudice the conservation of resources which should be enjoyed by all. International Environmental Law is a combination of scientific opinion of what needs to be done, the public's perception of what should be done and the political interpretation of what can be done.

The 1972 United Nations Conference on the Human Environment, also referred to as the Stockholm Conference, was pivotal in the development of International Environmental Law as it set out a coherent strategy for the development of international policy and law.

The conference adopted three non-binding instruments, namely:

- A declaration of 26 Guiding Principles,
- An Action Plan that contained 109 recommendations for Specific Action; and
- The Resolution on Institutional and Financial Arrangements.

The above culminated in the formation of the United Nations Conference on Environment and Development (UNCED)

Agenda 21, the internationally accepted Action Plan for addressing environmental concerns, was adopted in the period after 1992 and

many Conventions were drafted such as the Framework Convention on climate change and the Convention on Biological Diversity.

Though the sovereignty of a state is recognised by international instruments, the principle that states may not cause environmental damage to the environment of other states counterbalances the unrestrained sovereignty of a state.

This principle is incorporated into the Stockholm Declaration.



Principle 21 of the Stockholm Declaration states that:

***"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own natural resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."***

More recent International Environmental Law is underpinned by new principles which are *inter alia*:

- Sustainable development. There is four broadly accepted components of sustainable development. These include equitable use, the setting of standards for exploitation, protection of the environment for the benefit of present and future generations, and the integration of environmental concerns into all decision making.
- Good neighbourliness and international cooperation, In , this principle urges states to give effect to international commitments. It may also lead to other specific requirements such as information sharing, notification and consultation.
- Precautionary principle. Where there are threats of serious or irreparable environmental damage, lack of scientific knowledge should not be used as a reason for allowing potential environmental degradation.
- Polluter pays is based on the philosophy that those responsible for pollution should bear the costs in respect thereof. Rehabilitation of mines and depleted vegetation similarly resorts under this principle.
- Common but differentiated responsibility. This principle reflects the broader international concept of equity and recognises the special needs of developing states.

An awareness of these principles and requirements of International Environmental Law is important for adjudicating environmental crime in South Africa as The Constitution provides that Customary International Law forms part of South African law unless it is inconsistent with the Constitution or an Act of Parliament. It also provides that consideration must be given to International Law in interpreting the Bill of Rights, including environmental rights.

South Africa has ratified many of the 100 or so MEAs<sup>1</sup> and incorporated them into national legislation.<sup>2</sup>

Determining the seriousness of a particular offence will, therefore, be influenced by the recognition of the concern that is attached to the activity internationally and by an understanding of the international debates that surround the issue.

right. The right accordingly requires a new substantive approach to the management of the environment.



The Constitutional Court has stated in **The President of the RSA v Hugo** 1997 (4) SA 1(CC) at paragraph 74 that

***“The South African Constitution is primarily and emphatically an egalitarian Constitution. The supreme laws of comparable constitutional states may underscore other principles and rights. But in the light of our own particular history, and our vision for the future, a Constitution was written with equality at its centre. Equality is our Constitution’s focus and its organising principle.”***

## 2. South African Approach to Environmental Law and Crime

### 2.1 The Constitution and its impact on environmental law and crime in South Africa

The inclusion of the environmental right in Section 24 of the Constitution constitutes both a source of environmental law as well as the ultimate authority in terms of which environmental law must be developed. Magistrates must be mindful of the fact that the environmental rights contained in Section 24 are on a par to all the other rights contained in Chapter 3 of The Constitution and should be given the same consideration in their different components.

- i) Section 24(a) – a substantive component in terms of which every person is entitled to an environment which does not impact negatively on their health and well-being; and
- ii) Section 24(b) – a directive component which imposes a positive obligation on government to pass legislation, or implement other measures, to give effect to the right.

The internationally accepted principle of “sustainable development” has become part of South African law because of the constitutional recognition of the principle in Section 24(b) of the environmental

The Constitution of the Republic of South Africa, 1996 provides guidance on how certain environmental principles or concepts should be interpreted and applied.



Loretta Ferris stated the following:

***“The Constitution of South Africa provides for one of the most comprehensive environmental rights, yet, we have little understanding on the nature of the right and how it operates vis-à-vis other rights. Whilst some South African cases have referred to the environmental right and some cases have even attempted some analysis of the right, very few have endeavoured to conceptualise the right in an in-depth manner.”***

As previously mentioned, environmental rights have equal status with all the other rights contained in Chapter 3 of The Constitution, and thus should be given the same consideration as all of those rights. It is important for the Judiciary to embrace the notion that any infringement of an environmental right is an infringement into our basic human existence.

The scope of environmental matters that are covered by the Constitutional – environmental right has been expanded by the requirement that intergenerational interest be protected.

<sup>1</sup> Multilateral Environmental Treaty

<sup>2</sup> See Appendix B



In **Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others** 2007 (10) BCLR 1059 (CC) – At paragraph 102 Ngcobo J remarked that:

***“The importance of the protection of the environment cannot be gainsaid. Its protection is vital to the enjoyment of the other rights contained in the Bill of Rights; indeed, it is vital to life itself. It must therefore be protected for the benefit of the present and future generations.”***

The Constitution does not only require the rights it entrenches to be respected but also to be protected, promoted and fulfilled. Courts are thus also required to safeguard and facilitate these “active” duties assigned to the State. This duty may bring about tension between the State and the Judiciary in that the State must manage environmental resources, and the Judiciary must protect it against unreasonable infringement.

The creation of a constitutionally guaranteed environmental right incorporates a holistic approach to environmental problems. It acknowledges the far-reaching effect that environmental degradation may have on humans.

The fact that the environmental right applies horizontally implies that juristic and natural persons have to exercise a duty of care if liability on the basis of this right is to be avoided. The approach to liability is supported by the implications for enforcement. In this regard, the right creates an imperative to rigorously enforce environmental legislation since the failure to do so constitute an infringement of the right.

In a constitutional democracy, the judiciary plays a vital role in enforcing constitutional rights. The judiciary may use its powers of review to consider the act and conduct of the legislature and executive for consistency with the Constitution. It is through judicial review that courts can interpret the content of legislation to overcome vagueness and lack of clarity.



With regard to the role of the courts in judicial review the Constitutional Court in **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others**<sup>3</sup> held:

***“In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the Executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government.”***

Section 232 of The Constitution confirms the common law position that Customary International Law is recognised as law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

Section 231(5) of The Constitution further endorses that all international agreements which were binding on the Republic prior to the enactment of the Constitution continue to be in force.



In **Glenister v President of the Republic of South Africa**<sup>4</sup> the court stated:

***“...any obligation binding upon the Republic under international law must not conflict with express provisions of the Constitution, including those in the Bill of Rights.”***

Recognition that South Africa’s environmental responsibilities must be executed within the ambit of its international responsibilities is given in Section 2(4)(n) of the National Environmental Management Act 107 of 1998 that provides that

***“global and international responsibilities relating to the environment must be discharged in the national interest”.***

<sup>3</sup> 2004 (4) SA 490 (CC)

<sup>4</sup> 2011 (3) SA 347 (CC) Paragraph 205





The judiciary's responsibility in the enforcement of Section 24 of The Constitution was dealt with in the ***Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others***<sup>5</sup> where Ngcobo J remarked as follows:

***"The role of the courts is especially important in the context of the protection of the environment and giving effect to the principle of sustainable development."***



In 1999, the Supreme Court of Appeal in the case of ***Director: Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others***<sup>6</sup> stated that:

***"Our Constitution, by including environmental rights as fundamental justiciable human rights, by necessary implication, requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country. Together with the change in the ideological climate must also come a change in our legal and administrative approach to environmental concerns."***

It is important for the judiciary and the Constitutional Court to be constantly mindful of their important role in the establishment and management of sustainable development in society through its constitutional interpretation responsibilities.

## 2.2 The National Environmental Management Act 107 of 1998 (NEMA)

The National Environmental Management Act 107 of 1998 (hereinafter referred to as NEMA) is South Africa's overarching legislation in respect of environmental law in acknowledgement of the responsibility towards the environment as set out in Section 24 of The Constitution. The objective of NEMA is to provide a general approach to environmental protection and enforcement that must be followed in other environmental legislation and administrative practices.

<sup>5</sup> 2007 (10) BCLR 1059 (CC) at paragraph 102

<sup>6</sup> [1999] ZASCA 9 (12 March 1999)

NEMA contains important substantive provisions, the majority of which are frequently located in new sectoral legislation regulating waste, air, biodiversity and coastal management.

NEMA also contains important provisions that are relevant to the adjudication of environmental crimes contained in Chapter 7 of NEMA under:

- Principles; and
- Provisions on compliance and enforcement

### 2.2.1 Principles of NEMA

Section 2 of NEMA contains a set of principles to redress the poor environmental practices of the past to ensure that environmental issues will not be managed in a business-as-usual manner. The NEMA – principles apply to enforcement activities and the interpretation of NEMA itself as well as any other law concerned with the protection of the environment. The principles provide the basis for a uniform approach to the adjudication of environmental crimes and include international principles.

### 2.2.2 NEMA approaches to compliance and enforcement

In addition to the principles, NEMA reflects a new and expanded approach to environmental liability and compliance and enforcement comprising of three parts, namely:

- the creation of general obligations,
- the introduction of several administrative enforcement mechanisms and
- novel approaches to criminal enforcement.

The compliance and enforcement provisions contained in Chapter 7 apply to:

- NEMA;
- any Act identified as a SEMA ; and
- to legislation listed in Schedule 3 of NEMA.

### 2.2.3 General Obligations

NEMA has introduced two general obligations to facilitate compliance with environmental obligations, namely:

- a duty of care; and
- a duty to report emergency incidents.



These mechanisms are potentially useful because they establish a benchmark of required performance which is not linked to specific legislative provisions or standards. The provisions accordingly narrow the divide between what was traditionally left to the realm of civil liability and statutory requirements.



In terms of **Section 28(1)** of NEMA the duty of care is imposed on every person

***“who causes, has caused or may cause significant pollution or degradation of the environment” to—  
“take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.”***

The duty of care is contained in Section 28 and is titled **“Duty of care and remediation of environmental damage”**. (Similar provisions have been incorporated in the National Environmental Management: Waste Act, 2008 (“Waste Act”), and in the National Water Act, 1998 (“NWA”).

This wording makes it clear that the duty imposes an obligation to prevent pollution or environmental degradation, to stop or minimise the pollution or degradation and to remediate the environment where effects of those activities have manifested.

The duty is triggered where pollution or degradation is “significant”. Although the term is not defined in NEMA, some direction on the meaning has been provided by the courts.



In this regard, the Eastern Cape High Court in ***Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products & Others*** had to consider the meaning of **“significance”** in Section 28 and indicated that **because of the environmental right, “the threshold level of significance will not be particularly high.”**

Once significance has been established, the duty provides a proactive environmental management mechanism because that it requires measures to be taken before pollution or environmental degradation occurs. In other words, the existence or threat of a risk of pollution or environmental degradation is sufficient to trigger the imposition of the duty – even if that risk emanates from the undertaking of a reasonable activity.

It is also clear that the duty applies to current and future pollution or degradation (or potential pollution or degradation) as well as to pollution or degradation which has already occurred.



**Section 28** of NEMA has recently been amended by Section 12(a) of the National Environmental Law Amendment Act, 2009 (Act 14 of 2009) to make it clear that it has retrospective application.

Section 28(2) deals with the range of people on whom the duty is imposed and provides that the duty applies to owners or people in control of land or premises and people who have the right to use the land or premises on which or in which an activity or process is, or was, performed or undertaken or any other situation exists which causes, has caused, or is likely to cause, significant pollution or degradation of the environment.

However, the duty is not confined to these three categories since Section 28(2) is qualified by the statement that the identification does not limit the generality of the duty in subsection (1) and because subsection (1) uses the wording “every person”. In view of this, arguments that the scope of the duty does not apply to certain activities, such as the illegal dumping of waste where it is disposed of on land to which the person disposing of the waste has no right because there is no link between the person and the land will not succeed. It should also be noted that Section 58 (2) of the National Environmental Management: Integrated Coastal Management Act, 2008 (“Coastal Management Act”) expressly expands the category of people to whom the duty applies.

Furthermore, the range of people to which the duty applies means there need not necessarily be a connection between the duty to take steps and the undertaking of an activity. For example, if a lessee were to conduct an industrial process, the owner of the land, who may not have undertaken the activity himself or herself, will be subject to the duty. This intent is made clearer when the provisions for costs apportionments contained in subsection (8) are considered because in that provision successors-in-title and people who negligently fail to stop the pollution may be liable for costs. Section 28, therefore, imposes a form of strict liability on these categories of people because the state does not have to prove fault.

The measures that must be taken to discharge the duty are not prescribed, but an indicative range of measures is provided for in Section 28(3).

In terms of Section 28(3), the measures which must be taken can include measures to:

- investigate, assess and evaluate the impact of the environment;
- inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
- cease, modify or control any act, activity or process causing the pollution or degradation;
- contain or prevent the movement of pollutants or consequent degradation;
- eliminate any source of pollution or degradation; and
- remedy the effects of pollution or degradation.

The list is not exhaustive, and the state is entitled to expect that other appropriate measures are adopted if necessary to discharge the duty. However, because Section 28(1) requires that “reasonable” measures be taken, without providing any guidance on what would constitute reasonableness, the appropriateness of the measures that must actually be taken in a situation must be evaluated against the test of reasonableness on a case by case basis.

The duty of care may be enforced by government or by private persons. With regards to government enforcement, the Director-General or provincial head of department may issue a directive to a person to investigate, evaluate and assess the impact of activities and to take specific measures within a certain time period. If the directive is not complied with, government may take the measures itself and recover the costs, either before or after it has taken those measures, from a range of people, including the person responsible for the activity or situation, the owner of the land or their successor-in-title, the person in control of the land at the time and any person who negligently failed to prevent the activity or process being performed or the situation from coming about.

The failure to comply with the duty has recently been criminalised in an amendment to Section 28(1).

The second general obligation, referred to at the start of this section, is contained in Section 30 of NEMA, which is an obligation for the “responsible person” to report emergency incidents and to take the appropriate actions to mitigate the eventuating harm.



An incident is defined as—

***“An unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed.”***

The relevant authority may issue a directive indicating the steps that are required to address the impacts of the incident. Like the duty of care, the failure to comply with duties in respect of emergency incidents has also been criminalised in recent amendments.

#### 2.2.4 Criminal Proceedings

NEMA provides a relatively uniform framework for environmental criminal law across different pieces of legislation. In general, the expansion of criminal liability in NEMA arises from the nature of the liability that is imposed and the nature of options and sanctions that may follow a transgression. Section 34 reflects international trends by imposing vicarious liability on a range of people as follows—

- employers are vicariously liable in terms of Section 34(5) where the act or omission of a manager, agent or employee constitutes an offence and occurred because the employer failed to take all reasonable steps to prevent that act or omission;
- employees are vicariously liable in terms of Section 36(6) where they do or omit to do an act which was his or her task to do or to refrain from doing, and that act or omission is an offence; and
- directors are vicariously liable in terms of Section 34(7) if a “firm” commits an offence and that offence was due to the failure of the director to take all reasonable steps that were necessary in the circumstances to prevent the commission of the offence.

Section 34, therefore, varies the requirements for prosecuting directors and firms set out in Section 332 of the Criminal Procedure Act, 1997 (“CPA”) in respect of offences committed under NEMA or Acts listed in Schedule 3 to NEMA. Of importance is that although Section 34 contains similar requirements to Section 332(5) of the CPA, under Section 34 liability flows from the director’s failure to take all reasonable steps that were necessary to prevent the commission of the offence. In other words, the NEMA provision contains an element of *mens rea*. It is likely that this distinction saves the NEMA provision from the difficulties which the courts found in respect of Section 332(5) of the CPA.

In addition, the failure to comply with the duty of care discussed above creates a form of strict liability in respect of a wide range of



people. The benefits of strict liability are that it:

- promotes the public interest goal inherent in environmental legislation;
- acts as a deterrent which improves the quality of environmental risk prevention measures;
- increases the ease of prosecution which increases the deterrent effect;
- accords with the “polluter pays” – principle.

The expanded nature of liability is complemented by the introduction of a range of novel supplementary penalties that may be imposed on conviction of an offence which is aimed at ensuring that the sanction accompanying an offence presents a realistic deterrent factor. These penalties can be summarised as follows:

- **Loss or damage.** Section 34(1) provides that on conviction of an offence in terms of NEMA, a SEMA or legislation listed under Schedule 3 of the Act as a result of which loss or damage was caused to any person or organ of state, the court may inquire summarily and without proceedings into the amount of that loss or damage and may assess the monetary value of any advantage gained by the offence and then impose punishment in addition to any other punishment imposed in respect of the offence.
- **Monetary benefits.** The court may also, in terms of Section 34(3), summarily enquire into and assess the monetary value of an advantage gained or likely to be gained in consequence of the offence and order the award of damages, compensation or a fine equal to the amount assessed and in addition to any the penalty.
- **Authorisations.** In terms of Section 34C, the court is empowered to withdraw a permit or authorisation and to disqualify the relevant person from obtaining such a permit for a period of up to five years. Such an award will ensure that the offender is unable to repeat the offence for a period of up to five years.

NEMA's criminal enforcement framework is given added weight by the creation offences which are aimed at facilitating the efficacy of enforcement measures.

In addition to facilitating enforcement by the state, it should be noted that Section 33 of NEMA also facilitates the potential for private prosecutions of environmental transgressions by providing that any person may, in the public interest or the interest of the environment, institute and conduct a prosecution in respect of the breach or threatened breach of any duty, other than a public duty

resting on an organ of state, in any national or provincial legislation or municipal bylaw, or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence.

The wording of the section expands the opportunities for private prosecution because the private party need not demonstrate a “substantial and peculiar interest” arising out of harm which he or she personally suffered as is required by the CPA. Furthermore, there is no requirement to obtain a *nolle prosequi*, and the costs of the prosecution may be recovered.

## 2.3 South African Legislative Framework

The Government in South Africa, as in most modern states, is divided broadly into three branches:

- the Legislature;
- the Executive; and
- the Judiciary.

The Constitution sets the framework for these three branches. All three levels of government have a key role to play in environmental governance and, accordingly, environmental compliance and enforcement. Co-operative governance is regarded as “a necessary precursor” for the development of an effective environmental compliance and enforcement effort in South Africa

The South African Legislative Framework can be divided into four categories, namely:

- National Legislation
- Provincial Legislation
- Legislation through Ordinance
- Legislation through By-Laws

### 2.3.1 National Legislation

The national government has exercised its legislative authority to prescribe an extensive array of environmental laws which apply across the entire territory of South Africa and are generally administered by several national departments.

### 2.3.2 Provincial Legislation and Ordinance

South Africa has nine provinces, each with its own provincial government, which possesses legislative and executive authority.



The legislative authority of a province vests in its provincial legislature whilst Section 104 of The Constitution states may pass legislation not only in respect of the functional areas listed in Schedule 4 and 5, but also in respect of ***“any matter outside those functional areas, and that is expressly assigned to the province by national legislation.”*** Furthermore, ***“provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4.”***

Provincial legislatures must provide for mechanisms to ensure that all provincial executive organs of state are accountable to it and must maintain oversight of the exercise of provincial executive authority in the province, including the implementation of legislation.

The executive power in the principal sphere vests in the premier of the province. The Premier exercises this authority together with the Members of the Executive Council (MECs).

Possible conflicts which arise between national and provincial legislation are regulated in sections 146 to 150 of the Constitution.

The Constitution also enables relevant provincial executive authorities to intervene in local governance, where a municipality refrains from or fails to fulfil an executive obligation in terms of legislation, by taking any appropriate steps to ensure fulfilment of that obligation: A typical example would be where provincial legislation compels all local governments within the province to draft a cultural heritage resources management plan, and a particular municipality fails to do so.

In most instances, MECs are responsible for the various provincial departments, certain of which undertake environmental functions. The manner in which these functions are grouped per department varies between the provinces. For example:

- In Gauteng the Department of Agriculture, Conservation and Environment administers environmental matters.
- In the Western Cape the Department of Environmental Affairs and Development Planning is the provincial environmental authority.

These provincial authorities administer:

- various old provincial conservation and land-use planning ordinances;
- new provincial environmental Acts; and
- environmental functions delegated to them by the national executive.

They have “a key role to play in environmental compliance and enforcement.”

### 2.3.3 Local Governmental By-Laws

Some of the environmentally relevant areas over which local governments exercise legislative competence include:

- building regulations;
- electricity and gas reticulation;
- municipal planning;
- specified water and sanitation services;
- cleansing;
- control of public nuisances;
- municipal roads;
- noise pollution;
- public places;
- refuse removal;
- refuse dumps; and
- solid waste disposal

The Constitution sets out the areas of local authority competence, stipulating that a municipality has executive authority and the right to administer

- local government matters listed in the respective Part B of Schedules 4 and 5, so that “air pollution,” for example, being a Part-B item in Schedule 4, may be administered by local authorities; and
- “any other matter assigned to it by national or provincial legislation.”

In this regard, a further subsection stipulates that national and provincial government must assign, by agreement, the administration of any “Part A” matter listed in Schedules 4 and 5, if the matter would be more effectively administered locally and the municipality has the capacity to administer it.

Although Section 156 of the Constitution refers to municipalities' "executive authority," and the "right to administer" certain matters, it specifically stipulates that "a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer." Therefore, although the section does not refer specifically to a municipality's legislative competence, it may legislate for Part B matters of Schedules 4 and 5.

The Constitution requires provincial government to establish municipalities in a manner consistent with legislation prescribed in the Constitution, and to monitor, support and promote the development of local government capacity. National legislation, in the form of the Local Government: Municipal Structures Act 117 of 1998, which deals with local authority competences, has been passed.

Schedules 4 and 5 of the Constitution include various environmental matters. Schedule 4 includes "Pollution control" under Part A, but "Air Pollution" under Part B, which also includes a further item relevant to pollution: "Municipal Health Services". Schedule 5 includes "control of public nuisances" in Part B as one of its items, which is also relevant to pollution.

Therefore, while "pollution," and specifically "air pollution," generally is a concurrent matter, the inclusion of "air pollution" in Part B of Schedule 4 means that local authorities have specific executive authority and the right of administration in respect of that matter.

Moreover, the national and provincial governments have a duty to see to the effective performance by municipalities of their functions.

As "pollution" and "air pollution" are designated concurrent matters in Schedule 4, either national or provincial government could conceivably promulgate air pollution Acts.

The Constitution is clear, however, that national government has overriding powers as regards the setting of standards. Where uniform standards are warranted, national government could invoke the provisions of the Constitution which deal with conflicting laws."





# **PRINCIPLE AREAS OF ENVIRONMENTAL ADJUDICATION**



## CHAPTER 3

# Categories of Environmental Crimes

### 1. Natural Resources

Ultimately, the objective of all environmental law is to conserve natural resources for the benefit of present and future generations. Access to biodiversity and natural areas enhances people's quality of life and sense of wellbeing.

This was expressed by President Nelson Mandela in his inaugural speech when he said,

***"Each one of us is intimately attached to the soil of this beautiful country. Each time one of us touches the soil of this land, we feel a sense of personal renewal."***

However, apart from the cultural and social benefits of conserving natural resources, there are also more fundamental reasons to do so. All people depend on the natural resource base for survival. Healthy ecosystems provide several indispensable functions. These functions include the purification of water, reduction of greenhouse gasses, pollination of crops, control of crops

pests and the generation of soil and prevention of erosion. In addition, a large proportion of people use and are dependent on, biological resources for subsistence purposes including the harvesting and hunting for food, medicine, shelter and fuel. Access to these resources directly contributes to the survival of the poor. Furthermore, on the global scale, we depend on nature, particularly forests, to absorb the carbon dioxide that we generate, and to regulate the climate and contribute to the mitigation of climate change.

There are also other material benefits which are obtained from natural resources. For example, natural resources provide the basis for substantial economic growth and development and are the basis of several commercial sectors including forestry, fishing, tourism and agriculture based on indigenous species. The adequate functioning of ecosystems is important for these sectors which provide many jobs, particularly the tourism sector where the viability of the sector is often directly dependent on the conservation of natural areas of environmental beauty and biodiversity.



## Offences relating to Natural Resources

### PROTECTED AREAS



#### NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89(1)(a)</b>	A person is guilty of an offence if that person contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2), (3) or (3A), 48(1), 49A(5)(b), 50(5) or 55(2)(fA)	<b>Section 89:</b> <b>A first conviction:</b> A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment  <b>A second or subsequent conviction:</b> A fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
<b>S89(1)(b)</b>	A person is guilty of an offence if that person contravenes a notice issued under section 51	
<b>S79(1)(c)</b>	A person is guilty of an offence if that person hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties	
<b>S79(1)(d)</b>	A person is guilty of an offence if that person falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer	
<b>S79(3)</b>	Contravention of or failure to comply with any provision of a regulation made under section 86 or 87 is an offence.	



#### CASE LAW

• <i>Mkhabela and Others v S</i> (A334/15) [2016] ZAGPPHC 936 (8 November 2016)	<b>Appendix F:32</b>
• <i>Mpumalanga Tourism &amp; Parks Agency v Barberton Mines (Pty) Ltd</i> (216/2016) [2017] ZASCA 9 (14 March 2017)	<b>Appendix F:1</b>

## COASTAL ZONE MANAGEMENT



## NATIONAL ENVIRONMENT MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT, 24 OF 2008

SECTION	OFFENCE	PENALTY
<b>S79(1)</b>	<p>A person is guilty of a category one offence if that person—</p> <ul style="list-style-type: none"> <li>a) Discharges effluent originating from a source on land into coastal waters in contravention of section 69;</li> <li>b) Incinerates at sea any waste or material in contravention of section 70;</li> <li>c) Loads, imports or exports any waste or other material to be dumped or incinerated at sea in contravention of section 70;</li> <li>d) Dumps any waste at sea in contravention of section 70;</li> <li>e) Dumps any waste or other material at sea without a dumping permit in contravention of section 70;</li> <li>f) Alters any authorisation ;</li> <li>g) Fabricates or forges any document for the purpose of passing it off as an authorisation;</li> <li>h) Passes off, uses, alters or has in possession any altered or false document purporting to be a coastal authorisation;</li> <li>i) Makes any false statement or report, for the purpose of obtaining or objecting to an authorisation ;</li> <li>j) Reclaims land from coastal waters without authorisation of the Minister in terms of sections 7B and 7C;</li> <li>k) Utilises reclaimed land in in contravention of section 7B and 7C;</li> <li>l) Charges fees in contravention of section 13 (3) (a) and (b);</li> <li>m) conducts an activity that is prohibited in terms of section 65 (1) (a) (i);</li> <li>n) Fails to comply with a verbal directive by the Minister or MEC in terms of section 92 (1); or</li> <li>o) Fails to comply with section 96(1)</li> </ul>	<p><b>Section 80:</b></p> <p>A person who is convicted of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5 million or to imprisonment for period of up to 10 years, or to both such fine and imprisonment.</p>



## COASTAL ZONE MANAGEMENT



### NATIONAL ENVIRONMENT MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT, 24 OF 2008 *continued*

SECTION	OFFENCE	PENALTY
<b>S79(1)</b>	<p>A person is guilty of a category two offence if that person—</p> <ul style="list-style-type: none"> <li>p) fails to comply with a repair or removal notice issued in terms of section 60;</li> <li>q) hinders or interferes with a duly authorised person exercising a power or performing a duty in terms of this Act.</li> <li>r) knowingly falsely represents that he or she is a person authorised to exercise powers in terms of this Act;</li> <li>s) constructs, or maintains, or extends any structure, or takes other measures on coastal public property to prevent or promote erosion or accretion of the seashore in contravention of section 15(2);</li> <li>t) fails to comply with a coastal protection notice or access notice issued in terms of section 59;</li> <li>u) conducts an activity without a coastal authorisation required in terms of this Act;</li> <li>v) fails to comply with the conditions of a coastal authorisation;</li> <li>w) fails to comply with the conditions of a coastal authorisation;</li> <li>x) allows any person to do, or to omit to do, anything which is an offence in terms of paragraph (a), or (c), to (h);</li> <li>y) prevents access to coastal public property in contravention of section 13(1A);</li> <li>z) contravenes any provisions of this Act which is not referred to in the subsections (1) or (2).</li> </ul>	<p>A person who is convicted of a category two offence referred to in section 79 (2) may be sentenced on a <b>first conviction</b> for that offence to a fine of up to R2 million or to imprisonment or community service for a period of up to five 5 years, or to both such fine and imprisonment or community service.</p> <ul style="list-style-type: none"> <li>1) A person who is convicted of a category two offence may be sentenced on a <b>second or subsequent conviction</b> for that offence as if he or she has committed a category one offence.</li> <li>2) A court that sentences any person— <ul style="list-style-type: none"> <li>a) to community service for an offence in terms of this Act must impose of a form of community service which benefits coastal environment, unless it is not possible to impose such a sentence in the circumstance;</li> <li>b) for any offence in terms of this Act, may suspend, revoke or cancel a coastal authorisation granted to the offender under this Act.</li> </ul> </li> </ul> <p>If a person is found guilty of an offence in the High Court, the penalty limitations in subsection (1), (2) and (4) do not apply a higher penalty may be imposed.</p>

## BIODIVERSITY



### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004

SECTION	OFFENCE	PENALTY
<b>S57(1A)</b>	A person may not import, export, re-export or introduce from the sea, a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora without a permit issued in terms of Chapter 7.	<b>Section 102:</b> In terms of section 69 (2) a competent authority may direct any person who has failed to comply with subsection (1) thereof or has contravened sections 65 (1) or 67 (2), to take steps that are necessary to remedy any harm to biodiversity; and give specific directive.
<b>S65(1)</b>	A person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of Chapter 7.	
<b>S67(2)</b>	A person may not carry out any restricted activity involving a specimen of an alien species published in terms subsection (1)	In terms of section 69 (2) a competent authority may direct any person who has failed to comply with subsection (1) thereof or has contravened sections 65 (1) or 67 (2), to take steps that are necessary to remedy any harm to biodiversity; and give specific directive.
<b>S71(1)</b>	A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.	In terms of S102(1) any person convicted of contravening S101 can be sentenced to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or both.
<b>S81(1)</b>	No person may, without a permit issued in terms of Chapter 7— a) engage in the commercialisation phase of bio-prospecting involving an indigenous biological resources; or b) export from the Republic any indigenous biological resources for the purpose of bio-prospecting or any other kind research.	
<b>S81A (1)</b>	No person may, without first notifying the Minister, engage in the discovery phase of bio-prospecting involving any indigenous biological resources.	
<b>S101(1)</b>	A person is guilty of an offence if that person contravenes or fails to comply with a provision of— a) section 57(10, 57(1A), 65(1), 67(2), 71(1), 81(1) or 81A(1); b) a notice in published in terms of section 57(2); or c) a directive issued in terms of section 69(2) or 73(3).	
<b>S101(2)</b>	A person who is the holder of a permit is guilty of an offence if that person— a) contravenes the or fails to comply with a provision of section 69(1) or 73(3); or b) performs an activity for which the permit was issued otherwise than in accordance with any condition subject to which the permit was issued.	In terms of section 102 (2) where a person is convicted for an offence involving a specimen of a listed invasive species, a fine may be determined in terms of subsection (1) or an amount equal to three times the commercial value of the specimen or activity in respect of which the offence was committed.

## BIODIVERSITY



### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004 *continued*

SECTION	OFFENCE	PENALTY
<b>S101(3)</b>	<p>A person is guilty of an offence if that person—</p> <ul style="list-style-type: none"> <li>a) fraudulently alters any permit;</li> <li>b) fabricates or forges any document for the purpose of passing it as a permit;</li> <li>c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit;</li> <li>d) Knowingly makes a false statement or report for the purpose of obtaining a permit; or</li> <li>e) Permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2).</li> </ul>	In terms of subsection (2A) where a person is convicted for an offence involving a specimen of a listed invasive species, a fine may be determined, either in terms of subsection (1) or equal to the cost associated with the control of the specimen in respect of which the offence was committed or both.



### ALIEN AND INVASIVE SPECIES REGULATIONS, 2014 – GNR 598 OF 1 AUGUST 2014

SECTION	OFFENCE	PENALTY
<b>Reg. 35(1)</b>	Any offence committed in terms of section 101 of the Act shall, upon conviction, carry the penalties referred to in section 102 of the Act.	<b>Regulation 35:</b>
<b>Reg. 35(2)</b>	Any person who contravenes or fails to comply with a provision of these regulations is guilty of an offence and is liable, on conviction, to—	<ul style="list-style-type: none"> <li>a) A fine not exceeding R5 million, in the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million; or</li> <li>b) Imprisonment for a period not exceeding 10 years; or</li> <li>c) To both such fine and imprisonment.</li> </ul>

## BIODIVERSITY


**THREATENED OR PROTECTED SPECIES REGULATIONS 2007**  
**– GNR 152 OF 23 FEBRUARY 2007**

SECTION	OFFENCE	PENALTY
<b>Reg. 73</b>	<p>1) A person is guilty of an offence if that person—</p> <ul style="list-style-type: none"> <li>a) undertakes a restricted activity involving a threatened or protected species without a permit;</li> <li>aA) undertakes an activity that prohibited in terms of the regulations 23, 24, 25, 26, or operates in contravention of sub regulation 27(1)</li> <li>b) fabricates or forges any document for the purpose of passing it as a permit or certificate of registration; or</li> <li>c) knowingly make any false statement or report for the purpose of obtaining a permit or certificate of registration; or</li> <li>d) alters, erases or in any way tampers with the markings made on elephant ivory or rhinoceros horn in terms of regulation 70.</li> <li>e) Permits or allows any other person to undertake any restricted activity, which is an offence, in terms of paragraph (a).</li> </ul> <p>2) A person registered to conduct a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or operates as a wildlife trader is guilty of an offence if that person—</p> <ul style="list-style-type: none"> <li>a) Conducts such captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or operates as a wildlife trader in a manner that is not in accordance with any condition subject of to which registration was granted; or</li> <li>aA) Conducts such captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or operates as a wildlife trader involving specimen of any listed threatened or protected species without being registered with the issuing authority in terms of Chapter 3 of these regulations;</li> <li>b) Fraudulently alters any certificate of registration issued in terms of regulation 32.</li> </ul> <p>3) A person who owns a registered game farm is guilty of an offence if—</p> <ul style="list-style-type: none"> <li>a) that person fraudulently alters any game farm hunting permit issued in terms of regulation 5(3);</li> <li>b) prohibited activities takes place on the registered game farm; or</li> <li>c) any conditions of the registration certificate, standing permit or game farm hunting permits were contravened.</li> </ul>	<p><b>Regulation 74:</b></p> <p>A fine not exceeding R5 million, and in case of a <b>second or subsequent conviction</b> to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment; or both a fine and such imprisonment.</p>

## BIODIVERSITY



### THREATENED OR PROTECTED SPECIES REGULATIONS 2007 – GNR 152 OF 23 FEBRUARY 2007 *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 73</b> <i>continued</i>	<p>4) A person who owns or operates a registered nursery is guilty of an offence if—</p> <ul style="list-style-type: none"> <li>a) That person fraudulently alters any nursery possession permit issued in terms of Regulation 5(4); or</li> <li>b) Any conditions of the registration certificate, standing permit or nursery possession permit were contravened.</li> </ul> <p>5) A person who operates as a registered wildlife trader is guilty of an offence if—</p> <ul style="list-style-type: none"> <li>a) That person fraudulently alters any personal effect permit issued in terms of regulation 5(6); or</li> <li>b) Any conditions of the registration certificate, standing permit or personal effects permits were contravened.</li> </ul>	<p><b>Regulation 74:</b></p> <p>A fine not exceeding R5 million, and in case of a <b>second or subsequent conviction</b> to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment; or both a fine and such imprisonment.</p>



### THREATENED OR PROTECTED MARINE SPECIES REGULATIONS R. 477 30 MAY 2017

SECTION	OFFENCE	PENALTY
<b>Reg. 80</b>	<p>1) A person is guilty of an offence if that person—</p> <ul style="list-style-type: none"> <li>a) contravenes any provision of these Regulations; or</li> <li>b) carries out any restricted activity in conflict with information provided in the management plan to which the permit application or registration application was subject.</li> </ul> <p>2) A person is guilty of an offence if such person permits, facilitates or allows any other person to contravene any of the provisions of these Regulations.</p>	<p>Regulation 81:</p> <p>1) A person convicted of an offence in terms of these Regulations is liable upon conviction to—</p> <ul style="list-style-type: none"> <li>a) imprisonment for a period not exceeding 5 years; or</li> <li>b) a fine not exceeding R5 million; or</li> <li>c) both a fine and such imprisonment; and</li> <li>d) in the case of a second or subsequent conviction, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and imprisonment.</li> </ul>

## BIODIVERSITY



### REGULATIONS ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING – GNR 138 OF FEBRUARY 2008

SECTION	OFFENCE	PENALTY
<b>Reg. 20</b>	<p>A person is guilty of an offence if that person—</p> <ul style="list-style-type: none"> <li>a) Without a permit— <ul style="list-style-type: none"> <li>i) Undertakes bio-prospecting involving indigenous biological resources;</li> <li>ii) Exports from the Republic any indigenous biological resources for the purpose of bio-prospecting or any other research;</li> </ul> </li> <li>b) Performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which a permit was issued;</li> <li>c) Permits or allows any other person to do or to omit to do anything which is an offence in terms of these regulations.</li> </ul>	<p><b>Regulation 21:</b></p> <p>Imprisonment for a period not exceeding 5 years; or an appropriate fine; or to both a fine and such imprisonment.</p> <p>A fine in terms of sub-regulation (1) may not exceed an amount prescribed in terms of the Adjustment of Fines Act 1991 (Act 101 of 1991).</p>

## ANIMAL PROTECTION



### PERFORMING ANIMALS PROTECTION ACT, 24 OF 1935

SECTION	OFFENCE	PENALTY
<b>S1</b>	No person shall exhibit or train or cause or permit to be exhibited or trained for exhibition any animal of which he is the owner or has the lawful custody or use any dog for safeguarding unless such person is the holder of a licence.	<p><b>Section 8(1):</b></p> <p>Any person contravening the provisions of this Act or any regulation made thereunder for which a penalty has not been prescribed or any condition of a licence is guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years.</p>
<b>S5</b>	Any person who wilfully obstructs, delays or otherwise interferes with a police officer in the exercise of the powers herein granted, or who conceals any animal with intent to defeat the exercise of such powers, or otherwise hampers or impedes the exercise of such powers is guilty of an offence	A fine of R20 000 or to imprisonment for a period not exceeding 5 years in addition to any other penalty imposed for the contravention of any provision of this Act or any regulation made thereunder

## ANIMAL PROTECTION



### ANIMALS PROTECTION ACT, 71 OF 1962

SECTION	OFFENCE	PENALTY
<b>S2(1)(a)</b>	Any person who overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal	<b>Section 2:</b> A fine or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine.
<b>S2(1)(b)</b>	Any person who confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light protection or shelter from heat, cold or weather	
<b>S2(1)(c)</b>	Any person who unnecessarily starves or under-feeds or denies water or food to any animal	
<b>S2(1)(d)</b>	Any person who lays or exposes any poisoned fluid or edible matter or infectious agents except for the destruction of vermin or marauding domestic animals or without taking reasonable precautions to prevent injury or disease being caused to animals	
<b>S2(1)(e)</b>	Any person who being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infected with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering	
<b>S2(1)(f)</b>	Any person who uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or become diseased or to suffer unnecessarily	
<b>S2(1)(g)</b>	Any person who save for the purpose of training hounds maintained by a duly established and registered vermin club in the destruction of vermin, liberates any animal in such a manner or place as to expose it to immediate attack or danger of attack by other animals or by wild animals, or baits or provokes any animal or incites any animal to attack another animal	
<b>S2(1)(h)</b>	Any person who liberates any bird in such a manner as to expose it to immediate attack or danger of attack by animals, wild animals or wild birds	
<b>S2(1)(i)</b>	Any person who drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work	



## ANIMAL PROTECTION

ANIMALS PROTECTION ACT, 71 OF 1962 *continued*

SECTION	OFFENCE	PENALTY
<b>S2(1)(j)</b>	Any person who lays any trap or other device for the purpose of capturing or destroying any animal, wild animal or wild bird the destruction of which is not proved to be necessary for the protection of property or for the prevention of the spread of disease	<b>Section 2:</b>  A fine or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine.
<b>S2(1)(k)</b>	Any person who having laid any such trap or other device fails either himself or through some competent person to inspect and clear such trap or device at least once each day	
<b>S2(1)(l)</b>	Any person who except under the authority of a permit issued by the magistrate of the district concerned, sells any trap or other device intended for the capture of any animal, including any wild animal (not being a rodent) or wild bird, to any person who is not a bona fide farmer	
<b>S2(1)(m)</b>	Any person who conveys, carries, confines, secures, restrains or tether any animal— i) under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering; or ii) in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust exhaust gases or noxious fumes; or iii) without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary	
<b>S2(1)(n)</b>	Any person who without reasonable cause administers to any animal any poisonous or injurious drug or substance	
<b>S2(1)(p)</b>	Any person who being the owner of any animal, deliberately or without reasonable cause or excuse, abandons it, whether permanently or not in circumstances likely to cause that animal unnecessary suffering	
<b>S2(1)(q)</b>	Any person who causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act	
<b>S2(1)(R)</b>	Any person who by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal	
<b>S2(1)(s)</b>	Any person who kills any animal in contravention of a prohibition in terms of a notice published in the Gazette under subsection (3) of this section shall, subject to the provisions of this Act and any other law, be guilty of an offence	



## ANIMAL PROTECTION

ANIMALS PROTECTION ACT, 71 OF 1962 *continued*

SECTION	OFFENCE	PENALTY
<b>S2A(1)(a)</b>	Any person who possesses, keeps, imports, buys, sells, trains, breeds or has under his control an animal for the purpose of fighting any other animal;	A fine or imprisonment for a period not exceeding 2 years.
<b>S2A(1)(b)</b>	Any person who baits or provokes or incites any animal to attack another animal or to proceed with the fighting of another animal;	
<b>S2A(1)(c)</b>	Any person who for financial gain or as a form of amusement promotes animal fights;	
<b>S2A(1)(d)</b>	Any person who allows any of the acts referred to in paragraphs (a) to (c) to take place on any premises or place in his possession or under his charge or control;	
<b>S2A(1)(e)</b>	Any person who owns, uses or controls any place or premises or place for the purpose or partly for the purpose of presenting animal fights on any such premises or place or who acts or assists in the management of any such premises or place, or who receives any consideration for the admission of any person to any such premises or place	
<b>S2A(1)(f)</b>	Any person who is present as a spectator at any premises or place where any of the acts referred to in paragraphs (a) to (c) is taking place or where preparations are being made for such acts.	
<b>S3(2)</b>	Any person, who is found in possession or in charge of any animal in contravention of a declaration made in terms of paragraph (c) of sub-section (1), shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1) of section two.	A fine or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine
<b>S7(2)</b>	Any person who without satisfactory excuse fails to comply with a summons issued in terms of sub-section (1) shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (1) of section two.	
<b>S8(4)</b>	Any person who wilfully obstructs, hinders or resists an officer authorized under sub-section (1) in the exercise of the power conferred upon him or conceals any animal or thing with an intent to defeat the exercise of such powers, or who upon demand fails to give his name and address to such officer, shall be guilty of an offence and liable on conviction to the penalties set out in sub-section (1) of section two.	

## ANIMAL PROTECTION



### SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS ACT, 169 OF 1993

SECTION	OFFENCE	PENALTY
<b>S15(1)(a)</b>	Any person who contravenes or fails to comply with a provision of section 8(1) or (9)	<b>Section 15(2):</b> A fine, or to imprisonment for a period not exceeding 2 years  In the case of a <b>second or subsequent conviction</b> of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding 4 years
<b>S15(1)(b)</b>	Any person who obstructs or hinders the board or any inspector referred to in section 6(2) (c) or any officer of the board in the exercise of its or his powers or the performance of its or his duties or functions under this Act	A fine, or to imprisonment for a period not exceeding 1 year.
<b>S15(1)(c)</b>	Any person who falsely holds himself out to be an inspector or representative of the board acting under this Act, the Animals Protection Act or an associated Act	
<b>S15(1)(d)</b>	Any person who refuses or fails to comply with a direction of the Minister referred to in section 6(b) or (c)	A fine or to imprisonment for a period not exceeding 6 months

## AGRICULTURAL RESOURCES



### CONSERVATION OF AGRICULTURAL RESOURCES ACT, 43 OF 1983

SECTION	OFFENCE	PENALTY
<b>S5(6)</b>	Any person who contravenes any provision of subsection (1) or (5) or fails to execute any order served on him under sub-section (2) or (3) shall be guilty of an offence.	<b>Section 23:</b> 1) Any person is on— a) a <b>first conviction</b> of an offence under section 5(6), 6(5), 7(6)(b), 9(2)(b), 12(5) or 18(6)(b), liable to a fine not exceeding R5 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment b) a <b>second or subsequent conviction</b> of an offence mentioned in paragraph (a), whether the same or any other offence mentioned in that paragraph, liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 4 years or to both such fine and such imprisonment
<b>S6(5)</b>	Any land user who refuses or fails to comply with any control measure which is binding on him, shall be guilty of an offence.	
<b>S7(6)(b)</b>	Any land user who refuses or fails to comply with a direction binding on him, shall be guilty of an offence.	
<b>S9(2)(b)</b>	Any person who refuses or fails to satisfy the conditions on which assistance has been rendered in terms of a scheme or are in terms of a scheme deemed to have been so rendered, shall be guilty of an offence.	
<b>S12(5)</b>	Any person who contravenes any provision of subsection (1) or refuses or fails to comply with an order contemplated in subsection (3) shall be guilty of an offence.	
<b>S18(6)(b)</b>	Any person who whenever any person demands from him any statement or explanation in terms of this section or a scheme, refuses or fails to furnish that statement or explanation or furnishes a statement or explanation which is false or misleading, knowing that it is false or misleading shall be guilty of an offence.	

## AGRICULTURAL RESOURCES



### CONSERVATION OF AGRICULTURAL RESOURCES ACT, 43 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S7(6)(a)</b>	Any land user who refuses to receive a direction served on him in the prescribed manner shall be guilty of an offence.	Any person is on conviction of an offence under section 7(6)(a), 9(2)(a), 18(6)(a), 18(6)(c), 19(3), 20(5), 21(6) or 22(2), liable to a fine not exceeding R500 or to imprisonment for a period not exceeding 3 months or to both such fine and such imprisonment.
<b>S9(2)(a)</b>	Any person who after his application for participation in a scheme has been approved, refuses or fails to comply with the provisions of the scheme shall be guilty of an offence.	
<b>S18(6)(a)</b>	Any person who—(a) obstructs or hinders any officer, member of a conservation committee or authorized person in the exercise of his powers or the performance of his duties in terms of this section or a scheme; shall be guilty of an offence.	
<b>S18(6)(c)</b>	Any person who—(c) refuses or fails to render to any officer, any member of a conservation committee or any authorized person the reasonable assistance which he demands in the performance of his functions in terms of this section or a scheme, shall be guilty of an offence.	
<b>S19(3)</b>	Any person who contravenes or fails to comply with any provision of subsection (2) shall be guilty of an offence.	
<b>S20(5)</b>	Any person who refuses or fails to comply with the conditions on which any approval, authorization or consent has been granted in terms of this Act or a scheme shall be guilty of an offence.	
<b>S21(6)</b>	Any person who, after being requested thereto in terms of subsection (4), refuses or fails to appear at an inquiry referred to in subsection (3) or, having appeared, to answer fully and in a satisfactory manner every question lawfully put to him, shall be guilty of an offence.	
<b>S22(2)</b>	Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.	

## GAME THEFT



### GAME THEFT ACT, 105 OF 1991

SECTION	OFFENCE	PENALTY
<b>S3(1)(a)</b>	Enters another person's land with intent to steal game thereon or to disperse game from that land	<b>Section 6:</b> <b>District court:</b> A fine or imprisonment for a period not exceeding 3 years <b>Regional court:</b> A fine or imprisonment for a period not exceeding 15 years. Compensation for theft of or damage to game – Section 7
<b>S3(1)(b)</b>	Without entering another person's land, intentionally disperses or lures away game from another person's land	



### CASE LAW

- **Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd t/a Crown River Safari and Another** (1466/2013) 2016(4) SA 457 (ECG) (18 February 2016) **Appendix F: 2**

## MOUNTAIN CATCHMENT AREAS



### MOUNTAIN CATCHMENT AREAS ACT, 63 OF 1970

SECTION	OFFENCE	PENALTY
<b>S14</b>	<p>Any person who—</p> <ul style="list-style-type: none"> <li>a) Contravenes or fails to comply any provision of this Act or any regulation;</li> <li>b) Refuses or fails to comply with any direction;</li> <li>c) Obstructs or hinders any person referred to in section 11 in the execution of his duties or the performance of his functions;</li> <li>d) Damages, or without the permission of the Director-General alters, any fire-belt or any other works constructed under this Act;</li> <li>e) Contravenes or fails to comply with any provision of a fire protection plan;</li> <li>f) Alters, moves, disturbs or wilfully damages or destroys any beacon erected under section 2A (1);</li> </ul>	<p><b>Section 14:</b></p> <p>A fine not exceeding R1 000 or to imprisonment for a period not exceeding 2 years or both such imprisonment.</p>



### CASE LAW

- *Langebaan Ratepayers and Residents Association v Western Cape Provincial Minister for Local Government Environmental Affairs And Developmental Planning and Others* (4917/2013) [2014] ZAWCHC 212 (19 August 2014)

Appendix F: 33

## MARINE LIVING RESOURCES



## MARINE LIVING RESOURCE ACT, 18 OF 1998

SECTION	OFFENCE	PENALTY
<b>S58</b>	1) Any person who, subject to the provisions of subsections (2) or (3)— <ol style="list-style-type: none"> <li>Undertakes fishing or related activities in contravention of—               <ol style="list-style-type: none"> <li>A provision of section 13;</li> <li>The conditions of any right of access, other right, licence or permit granted or issued in terms of Part 1, 2 or 3 of Chapter 3;</li> <li>An authorisation to undertake fishing or related activities in terms of Part 6 or 7 of Chapter 3, but excluding section 39(50); or</li> </ol> </li> <li>Contravenes any other provision of this Act,</li> </ol> shall be guilty of an offence and liable on conviction to a fine not exceeding R2 million, or to imprisonment for a period not exceeding 5 years.	<b>Section 58(1):</b> 5 years imprisonment or a fine not exceeding R2 million.
	2) Any person who contravenes— <ol style="list-style-type: none"> <li>A provision of an international convention and management measure inside or outside South African waters, or otherwise fails to comply with any provision of Part 7 of Chapter 3, by means of a vessel registered in the Republic, or</li> <li>The conditions imposed in high seas fishing vessel licence,</li> </ol> shall be guilty of an offence	<b>Section 58(2):</b> A fine not exceeding R3 million.
	1) Any person who contravenes a provision of section 39 (5), 45, 47, 48 or 49 shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million.  2) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof; shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.	<b>Section 58(3):</b> A fine not exceeding R5 million.
<b>S67</b>	1) Any person who knows or can reasonably be expected to know that a vessel, vehicle, aircraft or other thing is held in the custody of the state in terms of this Act and who removes such vessel, vehicle, aircraft or thing, shall be guilty of an offence.	A fine or imprisonment term not exceeding 2 years.
<b>S76</b>	1) No person shall destroy, damage, render inoperative or otherwise interfere with an observation device or machine aboard a vessel, vehicle, aircraft which automatically feeds or inputs information or data into an observation device.  2) No person shall intentionally feed or capture information or data into an observation device which is not officially required in terms of this Act, or is false or inaccurate.	A fine not exceeding R2 million or to imprisonment for a period not exceeding 5 years



## CASE LAW

• **S v Miller and Others** (SS13/2012) [2017] ZAWCHC 124 (4 September 2017)

Appendix F: 18

## NATIONAL FORESTS



### NATIONAL FORESTS ACT, 84 OF 1998

SECTION	OFFENCE	PENALTY
<b>S62(2)(c)</b>	Any person who contravenes the prohibition on— i) the cutting, disturbance, damage, destruction or removal of protected trees referred to in section 15(1)(a): or ii) the prohibition on the collection, removal, transport, export, purchase or sale of protected trees referred to in section 15(1)(b), is guilty of a first category offence.	<b>Section 58:</b> A person who is guilty of a first category offence referred to in sections 62 and 63 may be sentenced to a fine or imprisonment for a period of up to 3 years or to both a fine and such imprisonment.
<b>S63(2)(a)</b>	Any person who, without a licence or other authority cuts, disturbs, damages, destroys, removes or receives seven-week ferns ( <i>Rumohra adiantiforme</i> ) from any forest, is guilty of a first category offence	A person who is guilty of a second category offence referred to in sections 62, 63 and 64 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to 2 years, or to both a fine and such imprisonment.
<b>S64(2)(a)</b>	A forest officer or employee of the Department who solicits or receives, or agrees to receive, any payment, advantage or reward for doing anything in conflict with his or her duty;	
<b>S64(2)(b)</b>	A forest officer or employee of the Department who solicits or receives or agrees to receive, any payment, advantage or reward, other than his or her normal remuneration, for performing his or her duty	
<b>S64(2)(c)</b>	A forest officer or employee of the Department who trades in forest produce, other than forest produce grown or produced on his or her own land, or acts as an agent for any person trading in forest produce, is guilty of a second category offence.	
<b>S62(1)</b>	Any person who contravenes the prohibition of certain acts in relation to trees in natural forests referred to in section 7(1) is guilty of a second category offence	
<b>S62(2)(a)</b>	Any person who contravenes the prohibition on the cutting, disturbance, damage or destruction of forest produce in or the removal or receipt of forest produce from a protected area referred to in section 10(1) is guilty of a second category offence	
<b>S62(3)</b>	Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a second category offence	
<b>S63(5)(a)</b>	Any person who contravenes a condition in a licence, exemption or other authorisation in terms of this Act in any protected area is guilty of a second category offence	
<b>S62(2)(b)</b>	Any person who contravenes the rules referred to in section 11 (2)(b) is guilty of a third category offence	A person who is guilty of a third category offence referred to in sections 62 and 63 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to 1 year, or to both a fine and such imprisonment.

## NATIONAL FORESTS



### NATIONAL FORESTS ACT, 84 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S63(1)(c)</b>	Any person who invades the privacy of, or causes damage to the property of, a registered owner in contravention of the prohibition referred to in section 21 (5), is guilty of a third category offence	4) A person who is guilty of a fourth category offence referred to in sections 63 and 64 may be sentenced on a first conviction for that offence to a fine or community service for a period of up to 6 months or to both a fine and such service.
<b>S63(1)(e)</b>	Any person who without authority makes a mark or sign on a rock, building, tree or other vegetation in a forest. is guilty of a third category offence	
<b>S63(2)(b)</b>	Any person who, without a licence or other authority kills any animal, bird, insect or fish. is guilty of a second category offence if it is in a protected area and a third category offence if it is in any other area	
<b>S63(3)</b>	Any person who, without the permission of the registered owner, removes any forest produce other than trees referred to in section 62(1), from a forest other than a State forest, is guilty of a third category offence	
<b>S63(4)(a)</b>	Any person who carries on an activity in a State forest for which a licence is required without such a license is guilty of— (a) a third category offence, if the State forest is a protected area	
<b>S63(5)(b)</b>	5) Any person who contravenes a condition in a licence, exemption or other authorisation in terms of this Act— b) in any other forest is guilty of a third category offence.	
<b>S63(1)(a)</b>	Any person who without authority, enters or is in an area of a forest which is not designated for access for recreation, education, culture or spiritual fulfilment, is guilty of a fourth category offence;	
<b>S63(1)(b)</b>	Any person who contravenes a rule made by an owner in terms of section 20(3) or a registered owner in terms of section 21(2), is guilty of a fourth category offence;	
<b>S63(1)(d)</b>	Any person who damages, removes or interferes with any beacon, boundary, fence, notice board or other structure in a forest without authority, is guilty of a fourth category offence;	
<b>S63(1)(f)</b>	Any person who dumps or scatters litter in a forest, is guilty of a fourth category offence.	
<b>S63(4)(b)</b>	4) Any person who carries on an activity in a State forest for which a licence is required without such a licence is guilty of— b) a fourth category offence. if the State forest is not a protected area	
<b>S64(1)</b>	Any person who a) refuses or fails to produce a licence in terms of section 24(8) to a forest officer or a police officer; or b) prevents a forest officer or police officer from, or hinders a forest officer or police officer, acting under section 67, 68 or 69, is guilty of a fourth category offence.	





## NATIONAL FORESTS



### NATIONAL FORESTS ACT, 84 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S58(5)</b>		A person who is guilty of a second, third or fourth category offence may be sentenced on a second conviction for that offence as if he or she has committed a first, second or third category offence respectively.
<b>S61</b>	Any person who fails to take the steps which he or she has been instructed to take in terms of section 4(8) within the period or the extended period laid down, is guilty of a fifth category offence.	A person who is guilty of a fifth category offence referred to in section 61 may not be sentenced to imprisonment, but may be sentenced to a fine up to R50 000.



### CASE LAW

- **Long Beach Home Owners Association v Department of Agriculture, Forestry and Fisheries (South Africa) & Another**  
(865/2016) [2017] ZASCA 122 (22 September 2017)

**Appendix F:3**

## NATIONAL HERITAGE RESOURCES



### NATIONAL HERITAGE RESOURCES ACT, 25 OF 1999

SECTION	OFFENCE	PENALTY
<b>S51(1)(a)</b>	Contravention of sections 27(18), 29(10), 32(13) or 32(19) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 1 of the Schedule;	<b>Section 51:</b> A fine or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.
<b>S51(1)(b)</b>	Contravention of sections 33(2), 35(4) or 36(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 2 of the Schedule;	A fine or imprisonment for a period not exceeding 3 years or to both such fine and imprisonment.
<b>S51(1)(c)</b>	Contravention of sections 28(3) or 34(1) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 3 of the Schedule;	A fine or imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.
<b>S51(1)(d)</b>	Contravention of sections 27(22), 32(15), 33(1), 35(6) or 44(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 4 of the Schedule;	A fine or imprisonment for a period not exceeding 1 year or to both such fine and imprisonment.
<b>S51(1)(e)</b>	Contravention of sections 27(23)(b), 32(17), 35(3), 36(3) or 51(8) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 5 of the Schedule;	A fine or imprisonment for a period not exceeding 6 months or to both such fine and imprisonment.
<b>S51(1)(f)</b>	Contravention of sections 32(13), 32(16), 32(20), 35(7)(a), 44(2), 50(5) or 50(12) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 6 of the Schedule.	A fine or imprisonment for a period not exceeding 3 months or to both such fine and imprisonment.

## NATIONAL HERITAGE RESOURCES



### NATIONAL HERITAGE RESOURCES ACT, 25 OF 1999 *continued*

SECTION	OFFENCE	PENALTY
<b>S51(5)</b>	<p>Any person who—</p> <ol style="list-style-type: none"> <li>fails to provide any information that is required to be given, whether or not on the request of a heritage resources authority, in terms of this Act;</li> <li>for the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;</li> <li>fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her in terms of this Act;</li> <li>obstructs the holder of a permit in terms of this Act in exercising a right granted to him or her by means of such a permit;</li> <li>damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of this Act any badge or sign erected by a heritage authority or a local authority under section 25(2)(j) or section 27(17), any interpretive display or any other property or thing;</li> <li>receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected in terms of this Act; and</li> <li>within the terms of this Act, commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who counsels, procures, solicits or employs any other person to do so, shall be guilty of an offence and upon conviction shall be liable to such maximum penalties, in the form of a fine or imprisonment or both such fine and such imprisonment, as shall be specified in the regulations under subsection (3).</li> </ol>	<p>The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district concerned may—</p> <ol style="list-style-type: none"> <li>levy admission of guilt fines up to a maximum amount of R10 000 for infringement of the terms of this Act for which such heritage resources authority is responsible; and</li> <li>serve a notice upon a person who is contravening a specified provision of this Act or has not complied with the terms of a permit issued by such authority, imposing a daily fine of R50 for the duration of the contravention, subject to a maximum period of 365 days.</li> </ol>



### CASE LAW

- **Corrans v MEC for the Department of Sport, Recreation, Arts and Culture, Eastern Cape Government and Others** (1890/08) [2009] ZAECHC 17; 2009 (5) SA 512 (ECG) (23 March 2009)

Appendix F:4

## VELD AND FOREST FIRE



## NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

SECTION	OFFENCE	PENALTY
<b>S25(1)</b>	Any person who lights, uses or maintains a fire in the open air in contravention of section 10(2) is guilty of a first category offence.	<b>Section 24:</b> A fine or imprisonment for a period of up to 2 years, or both a fine and such imprisonment.
<b>S25(5)</b>	Any owner, occupier or person in control of land on which a fire occurs who fails to take reasonable steps to extinguish the fire or to confine it to that land or to prevent it from causing damage to property on adjoining land, is guilty of a first category offence.	
<b>S25(2)</b>	Any person who, in the open air— a) leaves unattended a fire which he or she lit, used or maintained before that fire is extinguished; b) lights, uses or maintains a fire, whether with or without permission of the owner, which spreads and causes injury or damage; c) throws, puts down or drops a burning match or other burning material or any material capable of spontaneous combustion or self-ignition and, by doing so, makes a fire which spreads and causes injury or damage; d) lights, uses or maintains a fire in a road reserve— i) other than in a fireplace which has been designated by a competent authority; or ii) for a purpose other than the burning of a firebreak in terms of sections 12 to 16; or e) smokes where smoking is by notice prohibited, is guilty of a second category offence	A fine or imprisonment for a period of up to 1 year, or to both a fine and such imprisonment
<b>S25(3)</b>	(3) Any person who— (a) fails to prepare a firebreak when obliged to do so in terms of section 12(1) or 14; (b) fails to give notice of intention to burn a firebreak in terms of section 12(2)(b); (c) burns a firebreak when a fire protection association has objected in terms of section 12(4)(a); or (d) fails to inform adjoining owners of the matters referred to in section 12(5), is guilty of a second category offence.	
<b>S25(4)</b>	Any person who— (a) fails to meet the standards of readiness for fire fighting referred to in section 17(1); (b) fails to notify the persons referred to in section 18(1)(a); (c) refuses to assist a fire protection officer or a forest officer in terms of section 18(3)(b) or 18(4)(b); or (d) hinders or obstructs any person referred to in section 18(2) or any fire protection officer referred to in section 18(3) or any forest officer referred to in section 18(4), is guilty of a second category offence.	

## VELD AND FOREST FIRE

NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S25(6)</b>	Any person who— (a) prevents a fire protection officer, forest officer, a police officer or an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 (Act 99 of 1987), from acting in terms of section 27, 28 or 29; or (b) in any way interferes with him or her in the performance of his or her duties in terms of section 27, 28 or 29, is guilty of a third category offence.	A fine or community service for a period of up to 6 months, or to both a fine and such service.
		A person who is guilty of a second or third category offence may be sentenced on a second conviction for that offence as if he or she has committed a first or second category offence, respectively.



## CASE LAW

- **Ivaura Estates (Pty) Ltd v MEC, Council, Department of Roads & Transport, Mpumalanga** (240/10) [2011] ZASCA 9 (10 March 2011)
- **Lubbe v Louw** (531/03) [2004] ZASCA 130; [2006] 4 All SA 341 (SCA) (25 November 2004)
- **Heine v Prescor 183 CC and Others** (25232/2012) [2014] ZAGPJHC 341 (8 July 2014)
- **Bon Accord Safaris (Edms) Bpk and Others v Masilonyana Municipality** (4138/2009) [2014] ZAFSHC 65 (27 March 2014)
- **Prinsloo v Van der Linde and Another** (CCT4/96) [1997] ZACC 5; 1997 (6) BCLR 759; 1997 (3) SA 1012 (18 April 1997)

Appendix F:5

## NATIONAL WATER



### NATIONAL WATER ACT, 36 OF 1998

SECTION	OFFENCE	PENALTY
<b>S151(1)</b>	<p>No person may—</p> <ol style="list-style-type: none"> <li>use water otherwise than as permitted under this Act;</li> <li>fail to provide access to any books, accounts, documents or assets when required to do so under this Act;</li> <li>fail to comply with any condition attached to a permitted water use under this Act;</li> <li>fail to comply with a directive issued under section 19, 20, 53 or 118;</li> <li>unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;</li> <li>fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;</li> <li>fail to register an existing lawful water use when required by a responsible authority to do so;</li> <li>intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;</li> <li>unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;</li> <li>unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;</li> <li>fail to register a dam with a safety risk;</li> <li>fail to comply with a temporary restriction on the use of water in terms of item 6 of Schedule 3;</li> <li>commit contempt of the Water Tribunal</li> </ol>	<p><b>Section 151(2):</b></p> <p>A fine or imprisonment for a period not exceeding 5 years or to both a fine and such imprisonment.</p> <p>In the case of a <b>second or subsequent conviction</b>, to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.</p>



### CASE LAW

- **Water pollution, failure to prevent pollution by a municipality:**  
**AgriTrans CC and Another v Mafube Municipality and Another** (OFS) Case No: 1360/2008 7 August 2008, unreported
- **Trustees of the Time Being of the Lucas Scheepers Trust, IT 633/96 and Others v MEC for the Department of Water Affairs, Gauteng and Others** (40514/2013) [2015] ZAGPPHC 211 (17 April 2015)
- **Water pollution, scope of section 19(1) directives:**  
**Harmony Gold Mining Co Ltd v Regional Director: Free State Department of Water Affairs and Forestry and Another** (SCA) Case No: 269/05, 29 May 2006.

Appendix F:6

## SEA BIRDS AND SEALS PROTECTION



### SEA BIRDS AND SEALS PROTECTION ACT, 46 OF 1973

SECTION	OFFENCE	PENALTY
<b>S12(a)</b>	Any person who contravenes or fails to comply with the provisions of this Act	<b>Section 12:</b> A fine not exceeding R200 or to imprisonment for a period not exceeding 3 months or to both such fine and such imprisonment.
<b>S12(b)</b>	Any person who contravenes or fails to comply with any direction in a permit issued or lawfully transferred to him;	
<b>S12(c)</b>	Any person who without lawful reason refuses or fails to comply with any requirement under section 10 (1) of any officer, police officer, person in charge of an island or commander referred to in that section; or	
<b>S12(d)</b>	Any person who resists or wilfully obstructs any person referred to in paragraph (c) in the performance of his duties or the exercise of his powers under this Act	

## NATIONAL ENVIRONMENTAL MANAGEMENT



### NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

SECTION	OFFENCE	PENALTY
<b>S49A(1)(a)</b>	A person is guilty of an offence if that person commences with an activity in contravention of section 24F(1)	<b>Section 49B:</b> A person convicted of an offence in terms of section 49A(1)(a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.
<b>S49A(1)(b)</b>	A person is guilty of an offence if that person fails to comply with any applicable norm or standard contemplated in section 24(2)(d)	
<b>S49A(1)(c)</b>	A person is guilty of an offence if that person fails to comply with or contravenes a condition of an environmental authorisation granted for a listed activity or specified activity or an approved environmental management programme;	
<b>S49A(1)(d)</b>	A person is guilty of an offence if that person commences or continues with an activity in terms of section 24(2)(c), (d) or (e) unless he or she complies with the procedures, criteria or conditions specified by the Minister or MEC in any regulation made under section 24(5)(bB);	
<b>S49A(1)(e)</b>	A person is guilty of an offence if that person unlawfully and intentionally or negligently commits any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment;	
<b>S49A(1)(f)</b>	A person is guilty of an offence if that person unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the environment;	
<b>S49A(1)(g)</b>	A person is guilty of an offence if that person fails to comply with a directive issued in terms of this Act;	

## NATIONAL ENVIRONMENTAL MANAGEMENT



### NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S49A(1)(h)</b>	A person is guilty of an offence if that person fails to comply with section 30(3), (4), (5) or (6);	A person convicted of an offence in terms of section 49A(1)(i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years.  <b>Second or subsequent conviction</b> to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
<b>S49A(1)(j)</b>	A person is guilty of an offence if that person contravenes section 31(7) or (8);	
<b>S49A(1)(k)</b>	A person is guilty of an offence if that person fails to comply with or contravenes a compliance notice issued in terms of section 31L;	
<b>S49A(1)(h)</b>	A person is guilty of an offence if that person fails to comply with or contravenes any condition applicable to an exemption granted in terms of section 24M;	A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine or to imprisonment for a period not exceeding 1 year, or to both a fine and such imprisonment.
<b>S49A(1)(l)</b>	A person is guilty of an offence if that person discloses information about any other person if that information was acquired while exercising or performing any power or duty in terms of section 31Q(1);	
<b>S49A(1)(m)</b>	A person is guilty of an offence if that person hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;	
<b>S49A(1)(n)</b>	A person is guilty of an offence if that person pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;	
<b>S49A(1)(o)</b>	A person is guilty of an offence if that person furnishes false or misleading information when complying with a request of an environmental management inspector;	
<b>S49A(1)(p)</b>	A person is guilty of an offence if that person fails to comply with a request of an environmental management inspector	



### CASE LAW

- **Maccsand (Pty) Ltd v City of Cape Town and Others** (CCT103/11) (CC) [2012] ZACC 7; 2012 (4) SA 181 (CC); 2012 (7) BCLR 690 (CC) (12 April 2012)
- **Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance** (69/2014) [2014] ZASCA 184 (26 November 2014).
- **Mineral Sands Resources (Pty) Ltd v Magistrate for the District of Vredendal, Kroutz NO and Others** (18701/16)[2017] 2 All SA 599 (WCC) (20 March 2017)

**Appendix F:7**

**Appendix F:8**



## CITES



### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS – GOVERNMENT NOTICE R173 OF 5 MARCH 2010

SECTION	OFFENCE	PENALTY
<b>S16</b>	<b>1) No person may—</b>	<b>Regulation 16(2):</b>
	a) import, export, re-export, or introduce from the sea, or attempt to import, export, re-export or introduce from the sea, any specimen of a species listed in the Schedules without a valid permit or certificate issued in terms of these regulations or in violation of any condition of that permit or certificate except in the case of personal effects exempted in terms of regulation 14;	A person contravening sub-regulation (1) or (1A) is guilty of the offence and shall be liable on conviction to—
	b) have in his or her possession or under his or her control, or to offer or expose for sale or display to the public, any specimen of a species listed in the Appendices which was not legally acquired;	a) A fine not exceeding R5 million or imprisonment for period not exceeding 5 years, and in the case of a <b>second or subsequent conviction</b> , to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years; or
	c) make or attempt to make either oral or written false or misleading statements in, or in connection with, an application for a permit or certificate or registration;	b) In both instances referred to in paragraph (a), both such fine and imprisonment; or
	d) alter, deface or erase a mark used by the Management Authority to individually and permanently identify specimens;	c) In case of repeated offenders, a fine or imprisonment or both a fine and imprisonment as referred to in (a) above and being banned from ever applying for a permit to trade in CITES-listed species again.
	e) obstruct or otherwise hinder an Enforcement Officer in the performance of his or her duties; or	
	f) withhold information that is relevant to a case where these Regulations have been contravened.	
	g) fraudulently alters any permit or certificate;	
	h) fabricates or forges any document for the purpose of passing it as a permit or certificate;	
	i) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit or certificate; or	
	j) knowingly makes any false statement or report for the purpose of obtaining a permit or certificate.	
	<b>1A) Failure by the permit holder—</b>	
	a) to have a CITES import permit cancelled in terms of Regulation 10 (7); or	
	b) to have a CITES export or re-export permit endorsed in terms of Regulation 10(8) before the export or re-export takes place, is an offence in terms of these Regulations	

## 2. Waste Management

### 2.1 Pollution and Waste

The current legislative position in respect of waste, air pollution and water pollution is summarised below. Much of the law is in a state of transition and, where relevant, the existing and future position is described. Although these Acts are discussed separately, it should be noted that the inclusion of section 24L of NEMA in 2008 signals government's intention to create an integrated pollution and waste management regime. Where an integrated environmental authorisation is issued, the provisions of the different Acts will still be applicable, but the permitting conditions will be reflected in one document. It should also be noted that the complete range of legislation regulating pollution which is relevant to environmental prosecutions is vast and cannot be accommodated within the summary.

### 2.2 Waste Management

Waste has historically been regulated by more than 40 Acts as well as provincial legislation and municipal bylaws. More recently efforts have been made to reform and consolidate the legislation, although some fragmentation is inevitable because of the constitutional allocation of functions. The primary environmental Act governing waste was the ECA. The provisions regarding waste in ECA were repealed by the Waste Act with effect from 1 July 2009. The ECA provisions are however still relevant to certain prosecutions in respect of transgressions which took place before the commencement of the Waste Act.

This is because in terms of section 80(5) of the Waste Act, the provisions of ECA apply to criminal proceedings which have been instituted in terms of ECA prior to the commencement of the Waste Act. However, in terms of section 81(5) of the Waste Act, the provisions of the Waste Act apply to criminal proceedings instituted after the commencement of the Waste Act.

Section 1 of ECA provided for the formulation of a definition of waste by regulation. A regulation setting out such a definition was passed in 1990. The definition excluded certain types of waste (i.e. industrial water and effluent, wastes discharged to septic tanks or French drains, radio-active substances, mining wastes and ash produced from electricity generation) because they are controlled in terms of other legislation. The substantive provisions of ECA related to the use and operation of disposal sites and littering. Section 20(1) prohibited any person from establishing, providing or operating a disposal site without a permit issued by the Minister.<sup>79</sup>

Some years ago the Department of Water Affairs and Forestry, which was responsible for administering section 20 previously, published a document titled "Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste" which was meant to guide permit applications in terms of section 20(1). The document states that a permit is only required where waste is stored for a period exceeding 90 days. The provision has inadvertently given rise to attempts to circumvent the permitting obligation. Several people, confronted with allegations of non-compliance, have argued that because waste is brought to the site and immediately used in a treatment process, it is not stored on the site for more than 90 days.

In view of the provisions of the Minimum Requirements, they contend that the operations are lawful because they do not constitute a disposal site as defined in ECA and therefore do not require a permit in terms of section 20(1).

Nevertheless, it should be noted that ECA defines "disposal site" as meaning "a site used for the accumulation of waste with the purpose of disposing or treatment of such waste."<sup>80</sup> The definition contains no provision regarding a maximum or minimum period for storage. In addition, the Minimum Requirements is only a guideline document and cannot override the Act. Where there is continuous storage of waste on the site (even if this waste is regularly being used and replaced by other waste) then waste is accumulated as contemplated in the definition of a disposal site.<sup>81</sup>

In addition to the requirement that disposal facilities be permitted, obligations were also incurred regarding the actual disposal of waste. Section 20 prohibited any person from disposing of waste unless it was at a permitted disposal site or in a manner or by means prescribed by the Minister. It should be noted that for a period of time there was a lacuna regarding this offence. From 9 June 1989, when ECA commenced, until 3 January 2006, the prohibition was stipulated in section 20(6) and the offence created in section 29(4). On 3 January 2006 the Environment Conservation Amendment Act, 2003 commenced and amended section 20 to provide for the transfer of administrative responsibilities from the Department of Water Affairs to the Department of Environmental Affairs.<sup>1</sup> As a result of that amendment, the prohibition was renumbered as being section 20(9). Section 29, however, was inadvertently not amended at the same time, and the old reference to section 20(6) remained in place. The error was corrected on 11 September 2009.<sup>2</sup>

<sup>1</sup> Act No.50 of 2003. The Notice of commencement can be found in GG 28346

<sup>2</sup> National Environment Laws Amendment Act, 2008 (Act of 2008). The Waste Act, which repeals certain sections of ECA and which was promulgated after Act No.44 of 2008, came into effect before Act No.44 of 2008. However, the schedule 2 of The Waste Act reflects the wording of section 29 as amended by Act No.44 of 2008.

Sections 19 and 19A of ECA dealt with littering specifically.

Section 19 of the Act provided that no person may litter and section 19A imposed an obligation regarding the removal of litter.

The new Waste Act provides a far more comprehensive basis for the regulatory control of waste management practices than ECA, particularly in that it emphasises the need to avoid the generation and unnecessary disposal of waste. That requirement is aligned with current approaches to environmental legislation which aims to prevent harm from occurring.

The Act contains a list of definitions in section 1, all of which must be considered when assessing the application of the Act. A key definition is that of “waste.” The definition is expansive and includes all types of waste, whether or not that waste has economic value. The definition is, however, qualified by an “end-of-waste” provision so that the Act does not apply unnecessarily to by-products or waste that has been re-used, recycled or recovered.

It is anticipated that the definition of waste may result in defences that a substance is a by-product rather than waste. Such defences should be treated with circumspection as they have been used to justify practices contravening international conventions that have extremely significant environmental impacts.<sup>3</sup>

Notwithstanding the broad definition, section 4 identifies four waste categories which fall outside the ambit of the Act where they are regulated by other legislation. These are radioactive waste, residue deposits and residue stockpiles resulting from mining activities, the disposal of explosives and the disposal of animal carcasses.

The constitutional allocation of functions in respect of waste means that it is not possible to completely avoid a fragmented approach to the administration of waste. Coordination of the waste management function will be achieved primarily through the national waste management strategy which will set out the detailed approach to the management of waste which is binding on all organs of state. Significantly, the strategy is also binding on private individuals, to the extent applicable.<sup>4</sup>

The Waste Act contains a wide range of substantive regulatory mechanisms or waste management measures which can be used to manage waste, most of which are set out in Chapter 4 of the Act. The purpose of these mechanisms is to create a flexible “toolkit” of regulatory options which can be drawn on to regulate different aspects of waste management in the most optimal manner. The key

regulatory mechanisms, which are underpinned by related offences and enforcement provisions, are summarized below.

- A duty of care, discussed in Chapter 2, which provides a benchmark of required behaviour by all actors in the waste management cycle and places an onus on actors in the waste management cycle to ensure that their activities are conducted in accordance with sound environmental practises.
- Specific life cycle-based provisions are created in terms of which—
  - there is an obligation to ensure that waste minimisation practices use less natural resources than the disposal of that waste and, to the extent possible, that it is less harmful to the environment than disposal;<sup>5</sup>
  - requirements regarding the storage of waste are specified;<sup>6</sup>
  - prohibitions against the unauthorized collection of waste are created;<sup>7</sup>
  - obligations regarding transportation of waste are imposed; and<sup>8</sup>
  - a prohibition against unauthorized disposal is specified;<sup>9</sup>
- A waste may be declared as a priority wastes by the Minister where it poses a threat to the environment because of the quantity or composition of the waste.<sup>10</sup>(The waste may be hazardous or general waste). Once a waste is declared to be a priority waste, the specified measures must be complied with in respect of that waste. These measures may include the preparation of industrial waste management plans, prohibitions on generation, management measures, requirements regarding minimisation, storage, treatment and disposal and registration and monitoring. Although no priority wastes have been declared to date, the national Department has indicated its intention to declare packaging and paper, tyres, pesticides and CFLs to be priority wastes in the near future.
- Extended producer responsibility measures may be imposed to extend the producer’s responsibility for a product to the post-consumer stage of a product’s life cycle.<sup>11</sup>These measures may relate to minimization, recovery, treatment and disposal requirements as well as financial requirements.

<sup>5</sup> Section 17

<sup>6</sup> Section 21 and 22

<sup>7</sup> Section 24

<sup>8</sup> Section 25

<sup>9</sup> Section 26 and 27

<sup>10</sup> Section 14

<sup>11</sup> Section 18

<sup>3</sup> The national department is currently developing a guideline on this issue

<sup>4</sup> Section 6

- The Minister or MEC, with the concurrence of the Minister, is empowered to list waste management activities. Once an activity has been identified, no person may undertake that activity unless a waste management licence has been obtained or it is in accordance with standards that have been prescribed for that activity.<sup>12</sup>
- The Minister or MEC may require any person, or category of persons, to prepare an industry waste management plan where he or she believes that the plan will contribute to the avoidance of waste generation, the reduction of negative impacts on health and the environment and the conserving of natural resources.<sup>13</sup>
- The management of contaminated land is a new feature of waste management legislation and has far-reaching implications because the provisions expressly apply retrospectively.<sup>14</sup> Owners of land which is significantly contaminated or people who have undertaken activities which cause contamination must notify the Minister of that contamination. The Minister or MEC may also identify investigation areas. Once land has been identified as an investigation area, the Minister of MEC may require that a site assessment report be compiled. If the land is found to be contaminated, the Minister or MEC may issue an order to remediate land.

In addition to the specific measures, Chapter 6 of the Waste Act empowers the Minister and MECs to establish waste information systems ("WIS"). Information is a key part of a waste management system because it is required for planning, administration and compliance and enforcement purposes. Information was specifically included in the Act because government cannot compel the submission of information unless it is included in legislation, the public may require access to information and the conditions under which it can be accessed should be specified and information may need to be disclosed to protect people and the environment.

Notwithstanding the intention to provide for the comprehensive regulation of waste through the Waste Act, certain other Acts will remain relevant to crimes involving waste management practices.

For example—

- In terms of the Hazardous Chemical Substances ("HCS") Regulations passed in terms of the Occupational Health and Safety Act, 1993 an employer must, as far as reasonably practical, recycle all HCS waste, ensure that all collected HCS waste is placed into containers that will prevent the likelihood of exposure during handling, ensure that all vehicles, reusable containers and covers which have been in contact with HCS waste are cleaned and decontaminated after use in such a way that the vehicles, containers and covers do not cause a hazard inside or outside the premises, ensure that all HCS waste which can cause exposure, is disposed of only on sites specifically designated for this purpose in terms of the Environment Conservation Act, in such a manner that it does not cause a hazard inside or outside the operation concerned and ensure that if the services of a waste disposal contractor are used, a provision is incorporated into the contract stating that the contractor shall also comply with the provisions of the regulations.<sup>15</sup>
- Regulations passed in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 prohibit the acquisition, disposal, sale or use of agricultural remedies or stock remedies for a purpose or in a manner other than that specified in the label of a container thereof or such container<sup>16</sup> as well as the acquisition, disposal, sale or use of certain specified chemicals.<sup>17</sup>
- Regulations were passed in terms of the Hazardous Substances Act, 1973 regarding the disposal of empty containers used for Category B Group I hazardous substances.<sup>18</sup> These regulations stipulate that where containers must be returned to a supplier, the containers must be securely closed to prevent leakage before being returned. Where a container does not have a label stating that it must be returned to the supplier, it must be perforated, flattened and buried in the ground or disposed of in any other safe manner. In addition, waste which is disposed of to, or in the sea is now regulated by the Coastal Management Act. The Act covers a broad range of issues and replaces the Seashore Act, 1935 (to the extent that it has not been assigned to the provinces) and the Dumping at Sea Control Act, 1980.<sup>19</sup> Two of the regulatory mechanisms set out in the Coastal Management Act are of particular relevance to this section—

<sup>12</sup> Section 19. Note that until recently the Department of Water Affairs and the Department of Environmental Affairs were separate departments and both had responsibilities for waste management. Because of this, section 65 of the Waste Act provides that certain provisions of the Act in respect of waste management licenses may be enforced through the National Water Act, 1998

<sup>13</sup> Chapter 4, Part 7.

<sup>14</sup> Chapter 4, Part 8

<sup>15</sup> Act No 85 of 1993; GNR 1179, 25 August 1995

<sup>16</sup> Act No 36 OF 1947; GNR 1716, 26 July 1991

<sup>17</sup> See for example GNR 1061, 15 May 1987 and GNR 348 25 February 1983

<sup>18</sup> Act No 15 of 1973; GNR 453, 25 March 1977

<sup>19</sup> Act No 21 of 1935 and Act No 73 of 1980 respectively



- In terms of section 69, effluent may only be discharged from a source on land into coastal waters in accordance with a general authorisation of coastal waters discharge permit. Note that a person who is discharging effluent at the commencement of the Act and who must obtain a permit may carry on with that discharge pending a decision on the application unless directed otherwise by an official acting in terms of the Act or the NWA.<sup>20</sup> Two defences are created to these obligations contained in section 70. Firstly, it is a defence to show that adverse weather conditions necessitated the dumping or incineration. Secondly, it is a defence to show that there was danger to human life or a real threat to the vessel, aircraft, and platform or structure in question and that there were no reasonable alternatives to the dumping incineration and that the adverse impacts of the dumping or incineration were less

than would otherwise have occurred. In both defences, it must also be shown that the dumping or incineration was conducted in a manner that minimised any actual or potential adverse effects and that incident was reported to the department without delay.<sup>21</sup>

<sup>20</sup> Note that a person who is discharging effluent at the commencement of the Act and who must obtain permit may carry on with that discharge unless directed otherwise by an official acting in terms of the Act or the NWA

<sup>21</sup> Section 70(2)



## Offences relating to Waste Management

### WASTE MANAGEMENT



#### NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 59 OF 2008

SECTION	OFFENCE	PENALTY
<b>S15 read with S67(1)(a)</b>	Manufacturing, processing, selling or exporting a priority waste or a product that will result in the generation of a priority waste in contravention with specified measures, an industrial waste management plan or the Act	<b>Section 68:</b> Maximum fine of R10 million and/ or imprisonment not exceeding 10 years, in addition to any penalty or award imposed in terms of NEMA
<b>S16 read with S67(1)(a)</b>	Failure to comply with paragraphs (c), (d), (e) or (f) of the duty of care	
<b>S17(2) read with S67(1)(a)</b>	Failure to comply with a directive to recycle in terms of section 17(2)	
<b>S18(2) read with S67(1)(a)</b>	Failure to comply with a directive to take extended procure responsibility measures in terms of section 18(2)	
<b>S20 read with S67(1)(a)</b>	Conducting a waste management activity without a waste management licence, if a licence is required, or without complying with specified standards	
<b>S26(1) read with S67(1)(a)</b>	Disposal of waste at an unauthorised place or in a manner that is likely to cause pollution or harm to health and well-being	
<b>S37(1) read with S67(1)(g)</b>	Failure to conduct a site assessment or to submit a site assessment report in terms of section 37(1)	
<b>S38(2) or (3) read with S67(1)(a)</b>	Failure to comply with a remediation order or order to undertake measures in respect of contaminated land	
<b>S44 read with S67(1)(h)</b>	Contravention of a condition or requirement of a waste management licence or integrated licence contemplated in section 44	Maximum fine of R5 million and/ or imprisonment not exceeding 5 years, in addition to any penalty or award imposed in terms of NEMA
<b>S21 read with S67(1)(b)</b>	Storing waste in contravention of the requirements of section 21	
<b>S22(1) read with S67(1)(b)</b>	Storing waste for municipal collection contrary to the requirements of the municipality	
<b>S24 read with S67(1)(b)</b>	Collection of waste by a person not authorised to do so	
<b>S27(2) read with S67(1)(b)</b>	Littering	
<b>S28 read with S67(1)(c)</b>	Failure to prepare or submit an industry waste management plan	
<b>S36(5) read with S67(1)(b)</b>	Failure to notify the Minister of significantly contaminated land in terms of section 36(5)	
<b>S40(1) read with S67(1)(b)</b>	Transfer of contaminated land without notifying the Minister and/ or complying with any conditions stipulated by the Minister as required by section 40(1)	
<b>S67(1)(d)</b>	Failure to comply with an industry waste management plan	

## WASTE MANAGEMENT



### NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 59 OF 2008 *continued*

SECTION	OFFENCE	PENALTY
<b>S67(1)(e)</b>	Contravenes a waste management measure in respect of section 14(4) or section (33)(1)	Maximum fine of R5 million and/ or imprisonment not exceeding 5 years, in addition to any penalty or award imposed in terms of NEMA
<b>S67(1)(f)</b>	Contravenes a norm or standard established in terms of the Act	
<b>S66(1) or (2) read with S67(1)(i)</b>	Failure to submit a waste impact report required in terms of section 66(1) or (2)	
<b>S67(1)(j)</b>	Contravention of a condition of exemption granted in terms of section 76(3)(c)	
<b>S67(1)(k)</b>	Providing false or misleading information in any application made in terms of the Act	
<b>S67(1)(l)</b>	Knowingly supply false or misleading information to a waste management officer or EMI	Unspecified fine and/ or imprisonment not exceeding 6 months
<b>S67(2)</b>	A person who is in control of a vehicle, or in a position to control the use of a vehicle, that is used to transport waste for the purpose of offloading that waste, is guilty of an offence if that person— a) fails to take all reasonable steps to prevent spillage of waste or littering from the vehicle; b) intentionally or negligently causes spillage or littering from the vehicle; c) disposes of waste at a facility which is not authorised to accept such waste; fails to ensure that waste is disposed of at a facility that is authorised to accept such waste; or (d) fails to comply with the duty of care.	
<b>S67(1)(m)</b>	It is an offence to fail to provide information requested by an organ of state for the purposes of preparing an industry waste management plan in terms of section 29(5) or to a municipality for the purposes of a WIS in terms of section 64(4)	
<b>S68(4)</b>	Section 68 provides for a continuing offence	R1 0000 and/or imprisonment for a period not exceeding 20 days in respect of each day that the offence continues



### CASE LAW

<ul style="list-style-type: none"> <li><b>Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others</b> (CCT67/06) 2007 (6) SA 4 (CC) (7 June 2007)</li> </ul>	<b>Appendix F:9</b>
<ul style="list-style-type: none"> <li><b>Joint Owners of Remainder ERF 5216 Hartenbos v MEC of Local Government, Environmental Affairs and Development Planning, Western Cape Province and Another</b> (23635/2009) 2011(1) SA 128 (WCC) (2 September 2010)</li> </ul>	<b>Appendix F:10</b>
<ul style="list-style-type: none"> <li><b>Interwaste (Pty) Ltd and Others v Coetzee and Others</b> (23921/2012) [2013] ZAGPJHC 89 (22 April 2013)</li> </ul>	
<ul style="list-style-type: none"> <li><b>Minister for Environmental Affairs and Another v Aquarius Platinum (SA) (Pty) Ltd and Others</b> [2016] ZACC 4</li> </ul>	



## AIR POLLUTION



### NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 39 OF 2004

SECTION	OFFENCE	PENALTY
<b>S22 read with S51(1)(a)</b>	Conducting a listed activity resulting in air emissions without an atmospheric emission licence or provisional atmospheric emission licence	<b>Section 52:</b> Maximum fine of R5 million and/ or imprisonment not exceeding 5 years or, in the case of a second or subsequent conviction, a maximum fine of R10 million and/ or imprisonment not exceeding 10 years
<b>S25 read with S51(1)(a)</b>	Manufacturing, selling or using an appliance or conducting an activity in contravention of standards established in terms of section 24 for that appliance or activity	
<b>S29(1)(b) or (2) read with S51(1)(b)</b>	Failure to submit or implement a pollution prevention plan	
<b>S30 read with S51(1)(c)</b>	Failure to submit an atmospheric impact report	
<b>S33 read with S51(1)(d)</b>	Failure to notify Minister that a mining operation is likely to cease within 5 years	
<b>S35(2) read with S51(1)(a)</b>	Failure to take reasonable measures to prevent the emission of odour caused by an activity on the premises	
<b>S51(1)(e)</b>	Contravenes a condition or requirement of an atmospheric emission licence	
<b>S51(1)(f)</b>	Providing false or misleading information in any application made in terms of the Act	
<b>S51(1)(g)</b>	Providing false or misleading information to an air quality officer	
<b>S51(1)(h)</b>	Contravention of a condition of exemption granted in terms of section 59	



### CASE LAW

<ul style="list-style-type: none"> <li>• <b>Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products and Others</b> 2004 (2) SA 393 (E)</li> </ul>	<b>Appendix F:12</b>
<ul style="list-style-type: none"> <li>• <b>Nature's Choice v Ekurhuleni Municipality</b> (487/08) [2009] ZASCA 90 (11 September 2009)</li> </ul>	<b>Appendix F:11</b>
<ul style="list-style-type: none"> <li>• <b>Chief Pule Shadrack VII Bareki NO and Another v Gencor Limited and Others</b> (19895/03) [2005] ZAGPHC 109; [2006] 2 All SA 392 (T) (19 October 2005)</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Tergniet and Toekoms Action Group v Outeniqua Pale (Pty) Ltd</b> (CPD) Case No: 10083/200823 January 2009, unreported</li> </ul>	

## NOISE POLLUTION



### ENVIRONMENT CONSERVATION ACT, 73 OF 1989 NOISE CONTROL REGULATIONS IN TERMS OF SECTION 25 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989)

SECTION	OFFENCE	PENALTY
<b>Reg. 3</b>	<p><b>General prohibition</b></p> <p>No person shall—</p> <ol style="list-style-type: none"> <li>establish a new township</li> <li>erect educational, residential, flat, hospital, church or office buildings in an existing township within a controlled area, unless acoustic screening measures have been provided in</li> <li>make changes to existing facilities or existing uses of land or buildings or erect new buildings</li> <li>build a road or change an existing road, or alter the speed limit on a road, if it shall in the opinion of the local authority concerned cause an increase in noise in or near residential areas, or office, church, hospital or educational buildings, unless noise control measures have been taken</li> <li>situate educational, residential, hospital or church erven within a controlled area in a new township or an area which has been rezoned</li> <li>notwithstanding the provisions of paragraph (h), stage an organised open-air music festival or similar gathering without the prior consent in writing of a local authority;</li> <li>subject to the provisions of regulations 4 and 5(a), operate or play a radio, television set, gramophone, recording device, drum, musical instrument, sound amplifier or similar device producing, reproducing or amplifying sound, or allow it to be operated or played, in a public place, if the noise level, measured at any point which may be occupied by a member of the public, exceeds 95 dBA</li> <li>use any power tool or power equipment for construction, earth drilling or demolition works, or allow it to be used, in a residential area during the following periods of time: <ol style="list-style-type: none"> <li>Before 06:00 and after 18:00 from Monday to Saturday;</li> <li>at any time on any Sunday, Good Friday, Ascension Day, Day of the Covenant and Christmas Day, or any other day as may be determined by a local authority;</li> </ol> </li> <li>drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point...</li> <li>if required by a local authority, install, replace or modify a plant with a total input power exceeding 10 kilowatts on any premises, unless the local authority has been notified by the owner of the plant in writing at least 14 days before such installation, replacement or modification of— <ol style="list-style-type: none"> <li>the particulars of the plant;</li> <li>the number, street address and title deed description of the premises concerned; and</li> <li>the nature of and the date on which the installation, replacement or modification shall commence:</li> </ol> </li> </ol>	<p><b>Regulation 9:</b></p> <p>A fine not exceeding R20 000, or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment</p> <p><b>Continuing contravention:</b> to a fine not exceeding R250, or to imprisonment for a period not exceeding 20 days, or to both such fine and such imprisonment, for each day on which such contravention continues.</p>

## NOISE POLLUTION



**ENVIRONMENT CONSERVATION ACT, 73 OF 1989**  
**NOISE CONTROL REGULATIONS IN TERMS OF SECTION 25 OF THE ENVIRONMENT**  
**CONSERVATION ACT, 1989 (ACT 73 OF 1989) *continued***

SECTION	OFFENCE	PENALTY
<b>Reg. 3</b> <i>continued</i>	l) tamper with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice, placed in a position by or on behalf of a local authority; m) for the purposes of these Regulations in respect of a duly authorised employee of a local authority- i) fail or refuse to grant admission to such employee to enter and to inspect a premises; ii) fail to refuse to give information which may lawfully be required of him to such employee; iii) hinder or obstruct such employee in the execution of his duties; or iv) give false or misleading information to such employee knowing that it is false or misleading.	<b>Regulation 9:</b> A fine not exceeding R20 000, or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment <b>Continuing contravention:</b> to a fine not exceeding R250, or to imprisonment for a period not exceeding 20 days, or to both such fine and such imprisonment, for each day on which such contravention continues.
<b>Reg. 4</b>	Prohibition of disturbing noise	
<b>Reg. 5</b>	<b>Prohibition of noise nuisance</b> No person shall- a) cause a noise nuisance, or allow it to be caused, by operating or playing any radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound; b) offer any article for sale by shouting or ringing a bell, or by allowing shouting or the ringing of a bell, in a manner which may cause a noise nuisance; c) allow an animal owned or controlled by him to cause a noise nuisance; d) build, repair, rebuild, modify, operate or test a vehicle, vessel or aircraft on residential premises, or allow it to be built, repaired, rebuilt, modified, operated or tested, if it may cause a noise nuisance; e) use or discharge any explosive, firearm or similar device which emits impulsive sound, or allow it to be used or discharged, if it may cause a noise nuisance, except with the prior consent in writing of the local authority concerned and subject to such conditions as the local authority may deem necessary; f) on a piece of land designated by a local authority by means of a notice on that piece of land and in the press in both official languages, or in the air-space above that piece of land— i) move about on or in recreational vehicle; ii) exercise control over a recreational vehicle; or iii) as owner or person in control of the piece of land concerned, allow that on that piece of land, or in the airspace above that piece of land— aa) is being moved about on or in a recreational vehicle; or bb) control is being exercised over a recreational vehicle, if it may cause a noise nuisance;	

## NOISE POLLUTION



### ENVIRONMENT CONSERVATION ACT, 73 OF 1989 NOISE CONTROL REGULATIONS IN TERMS OF SECTION 25 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989) *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 5</b> <i>continued</i>	g) except in an emergency, emit a sound, or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device, if it may cause a noise nuisance; h) operate any machinery, saw, sander, drill, grinder, lawnmower, power garden implement or similar device in a residential area, or allow it to be operated, if it may cause a noise nuisance; i) load, unload, open, shut or in any other way handle a crate, box, container, building material, rubbish container or similar article, or allow it to be loaded, unloaded, opened, shut or handled, if it may cause a noise nuisance; j) drive a vehicle on a public road in such a manner that it may cause a noise nuisance.	<b>Regulation 9:</b> A fine not exceeding R20 000, or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment <b>Continuing contravention:</b> to a fine not exceeding R250, or to imprisonment for a period not exceeding 20 days, or to both such fine and such imprisonment, for each day on which such contravention continues.



### CASE LAW

<ul style="list-style-type: none"> <li>• <b>Laskey and Another v Showzone CC and Others</b> (5988/06) [2006] ZAWCHC 50; [2007] 4 All SA 1162 (C) (30 October 2006)</li> </ul>	<b>Appendix F:13</b>
<ul style="list-style-type: none"> <li>• <b>Waterhouse Properties CC and Others v Hyperception Properties 572 CC and Others</b> (2198/2004) [2004] ZAFSHC 97 (28 October 2004)</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Prinsloo v Shaw</b> 1938 AD 570 (p 575)</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Stern NO and Others v Minister of Mineral Resources</b> (5762/2015) [2017] ZAECHC 109 (17 October 2017)</li> </ul>	





## CHAPTER 4

# Capita Selecta: Wildlife Trafficking

## 1. Cycads

**Encephalartos**<sup>22</sup> is a genus of **cycad** native to Africa. Several species of *Encephalartos* are commonly referred to as **bread trees**, bread **palms**, since a bread-like starchy food can be prepared from the centre of the stem.

The genus name is derived from The Greek words “en” (within) “kephali” (head) and artos (bread), referring to the use of the pith

<sup>22</sup> Wikipedia, The Free Encyclopedia: Cycads: August 2019

to make food. They are, in evolutionary terms, some of the most primitive living gymnosperms.

All the species are endangered, some critically, due to their exploitation by collectors and traditional medicine gatherers. The whole genus is listed under **CITES Appendix I/EU Annex A**. CITES prohibits international trade in specimens of these species except for certain non-commercial motives, such as scientific research.

### CYCADS

#### NATIONAL



#### THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004

SECTION	OFFENCE	PENALTY
<b>S57(1) read with 101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provide that no person may carry out a restricted activity involving encephalartos cycads without a permit issued in terms of chapter 7 of NEMBA.	<b>Section 102:</b> A fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years, or both.
<b>S101(1)(b)</b>	Failing to comply with the prohibition notice published in Government Notice 371 in <i>Government Gazette</i> 35344.	



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restrictive activity involving “encephalartos” cycads without a permit	<b>Regulation 74:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or both.
	<b>Restricted activities include:</b> <ul style="list-style-type: none"> <li>• Possession of encephalartos cycads without a permit;</li> <li>• Gathering, collecting or plucking of encephalartos cycads;</li> <li>• Picking parts of, cutting, chopping off, uprooting, damaging or destroying of encephalartos cycads;</li> <li>• Exporting encephalartos cycads without a permit,</li> <li>• Conveying or moving encephalartos cycads;</li> <li>• Selling or otherwise trading encephalartos cycads without a permit.</li> </ul>	

## CYCADS

### NATIONAL



#### NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special nature reserve in contravention of section 45(1) or a National Park, Nature Reserve or World Heritage Site in contravention of section 46(1) such person has committed an offence.	<p><b>Section 89:</b></p> <p>A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or both</p>



#### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(a)</b>	No person may import, export, re-export, or attempt to import, export, re-export encephalartos cycads without a valid permit.	<p><b>Regulation 16(2):</b></p> <p>A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or both</p>
<b>Reg 16(1)(b)</b>	<p>No person may have in his or her possession or under his or her control, or to offer, or expose for sale, or display to the public encephalartos cycads which were not legally acquired.</p> <p>Regulation 1(4) provides that the burden of proof of legal possession of a species lies with the possessor of that specimen</p>	<p>A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or both</p>



## CYCADS

## PROVINCIAL

**NOTE:** Please take note that all provinces also have local/provincial legislation dealing with the possession/dealing/removal and transport of indigenous plants without always directly referring to Cycads by name. Please refer to your local legislation.



**EASTERN CAPE:  
TRANSKEI ENVIRONMENTAL CONSERVATION DECREE, 9 OF 1992**

**NOTE:** The EASTERN CAPE ENVIRONMENTAL MANAGEMENT BILL was published for comment in PROVINCIAL GAZETTE No. 4273 of 22 JULY 2019. The Bill proposes a number of Acts and ordinances to be repealed.

SECTION	OFFENCE	PENALTY
<b>S24(1)</b>	No person shall pick or otherwise possess or be in possession of any endangered flora unless duly authorized by the Minister acting on advice of the Council	Payment of a fine of not more than R25 000 or imprisonment not exceeding 2 years or both such fine and such imprisonment.
<b>S25(1)</b>	a) No person shall pick, possess or be in possession of any protected flora unless authorised thereto by a permit issued by the Director-General, unless in terms of Section 26(3) such flora has been lawfully cultivated or propagated on the premises of an authorized seller thereof, the transaction takes place on the premises of the authorized seller, and the buyer has written proof of the transaction b) Sell any protected flora unless he is so authorized in terms of Section 26(3)	On a <b>first conviction</b> to a fine not exceeding R25 000 or to a period of imprisonment not exceeding 2 years or to both such fine and imprisonment On a <b>second or subsequent conviction</b> to a fine not exceeding R50 000 or a period of imprisonment of 6 years or to both such fine and imprisonment



**CISKEI NATURE CONSERVATION ACT, 10 OF 1987**

SECTION	OFFENCE	PENALTY
<b>S20 (1)</b>	Except for the owner of private land of specially protected flora growing in a natural state on such land, no person shall without a permit a) Be in possession of any specially protected flora b) Sell, buy, donate or receive as donation c) (a) any specially protected flora d) Pick any specially protected flora e) Introduce into, remove from, or transport in or through the Ciskei any specially protected flora	On a <b>first conviction</b> to a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months On a <b>second conviction</b> to a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months or to both such fine and imprisonment This shall not apply to a convicted person below the age of 18 years



**CAPE NATURE AND ENVIRONMENTAL DECREE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S14(b)</b>	No person shall pick any flora in a provincial or local unless he is in possession of a permit authorising him to do so by the Director or the Local Authority concerned	A fine not exceeding R100 000 or imprisonment of a period not exceeding 10 years, or to both such fine and such imprisonment, and to a fine not exceeding three times the value of any endangered flora in respect of which the offence was committed.

## CYCADS

CAPE NATURE AND ENVIRONMENTAL DECREE, 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S62(1)</b>	No person shall, without a permit, be in possession of, sell, buy, donate or receive as donation, pick or import into, export from, or transport in or through the Province, any endangered flora	A fine not exceeding R100 000, or a period of imprisonment not exceeding 10 years, or to both such fine and imprisonment, and to a fine not exceeding three times the value of any endangered flora in respect of which the offence was committed.
<b>S63(1)</b>	a) No person shall uproot the plant in the process of picking the flower of any flora b) No person shall without a permit <ol style="list-style-type: none"> <li>1) Pick any endangered or protected flora</li> <li>2) Pick any flora on a public road or on the land of either side of that road within a distance of 90 meters from the centre of that road</li> <li>3) Or pick any protected flora on land of which he is not the owner, without the permission of the owner of such land or of any person authorised by such owner to grant such permission</li> </ol>	<ol style="list-style-type: none"> <li>1) A fine not exceeding R10 000 or imprisonment not exceeding 2 years, or to both such fine and imprisonment, and to a fine not exceeding three times the commercial value of the endangered flora in respect of which the offence was committed.</li> <li>2) A fine not exceeding R5 000 or a period of imprisonment not exceeding 1 year or to both such fine and imprisonment, and to a fine not exceeding three times the commercial value in respect of which the offence was committed</li> <li>3) A fine not exceeding R5 000 or a period of imprisonment not exceeding 1 year or to both such fine and imprisonment, and a fine not exceeding three times the commercial value of the protected flora in respect of which the offence was committed.</li> </ol>
<b>S64</b>	a) No person shall sell or buy any protected flora at any place other than the premises of a registered flora grower or registered flora seller, and b) Sell any protected flora without a licence issued under section 65(2)	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed
<b>S66</b>	No person shall sell any protected flora on the premises of— A) A registered flora grower unless such flora was propagated or cultivated or occurred in a natural state on such premises B) A registered flora seller unless such flora has been obtained from any other registered flora grower or seller, or C) A registered flora seller if such flora was cultivated or propagated or occurred in a natural state on any premises of such registered flora seller who is not registered as a flora grower in respect of such premises.	

## CYCADS

CAPE NATURE AND ENVIRONMENTAL DECREE, 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S70</b>	<p>No person shall without a permit—</p> <p>A) Export any flora from the province, provided that the provision shall not apply to the export by any person of any flora, except endangered flora and protected flora referred to in Appendix 11 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973, which he legally obtained from any registered flora seller or grower who is the holder of a permit to export such flora contemplated by this paragraph, provided further that such person, while he is exporting such flora, shall be in possession of a document in which the number and date of such export permit of such flora grower and seller are reflected; or</p> <p>B) Import into the province any protected flora specified in Appendix 11 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington 1973</p>	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed.

FREE STATE:  
FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969

<b>S1</b>	<p><b>Definitions:</b></p> <p><b>"endangered species"</b>, in relation to an animal or plant, [means] a species specified in Appendix 1 to the Convention on International Trade in Endangered species of Wild Fauna and Flora (Washington, 1973) and includes any reasonably identifiable part or derivative of such species;</p> <p><b>"indigenous plant"</b> means any species of plant which is indigenous to the Republic or the territory of South-West Africa (whether it is or has been cultivated and whether it is no longer growing in the wild state or has for some time not been growing in the wild state) and includes the flower, seed, fruit, bulb, tuber, stem, root or any other part of such plant but not a plant declared under any law to be a weed;</p>	
<p><b>Schedule 6 – Protected Plants</b></p> <p><b>ALL SPECIES OF CYCADS – GENUS ENCEPHALARTOS</b></p>		

SECTION	OFFENCE	PENALTY
<b>S30</b>	<p>1) The species of indigenous plants specified in Schedule 6 to this Ordinance are hereby declared protected plants.</p> <p>2) ...</p> <p>3) Except under authority of a permit which may be issued by the Administrator, no person shall pick any protected plant: Provided that—</p> <p>a) the unavoidable damaging or destruction of a protected plant in the course of any agricultural or development activity which is being lawfully carried out on land shall not be prohibited; and</p> <p>b) an owner of land or a relative of such owner or a full-time employee of such owner acting on the instructions of such owner shall not be prohibited from picking—</p> <p>i) the flower of a protected plant on such land;</p> <p>ii) a protected plant specially cultivated on such land; or</p> <p>iii) a protected plant on any portion of such land which is on the point of being taken into use for an activity referred to in paragraph (a).</p>	<p><b>Section 40:</b></p> <p>i) in the case of an offence referred to in paragraph (a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and</p> <p>ii) in the case of any other such offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.</p>

## CYCADS



## FREE STATE:

FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969 *continued*

SECTION	OFFENCE	PENALTY
<b>S31</b>	<p>Written permission of owner of land to pick indigenous plant</p> <ol style="list-style-type: none"> <li>1) Subject to the provisions of subsection (2), no person shall pick any indigenous plant on land of which he is not the owner— <ol style="list-style-type: none"> <li>a) except with the written permission of such owner; and</li> <li>b) Unless he has such permission with him while picking such plant.</li> </ol> </li> <li>2) Subsection (1) shall not apply to a relative of the owner of the land on which the plant is picked or a 54 full-time employee of such owner while he is acting on the instructions of such owner of such land.</li> </ol>	<ol style="list-style-type: none"> <li>i) in the case of an offence referred to in paragraph (a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and</li> <li>ii) in the case of any other such offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.</li> </ol>
<b>S32</b>	<p><b>Picking of indigenous plant on or near public road</b></p> <p>Except under authority of a permit which may be issued by the Administrator, no person shall pick any indigenous plant on land within 55 100 metres on either side of the roadway of a public road: Provided that a person referred to in the proviso to section 30 (3) shall not be prohibited from picking any indigenous plant on such land in the circumstances contemplated in the said proviso.</p>	<ol style="list-style-type: none"> <li>i) in the case of an offence referred to in paragraph (a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and</li> <li>ii) in the case of any other such offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.</li> </ol>
<b>S33</b>	<p>Prohibited acts in respect of certain plants:</p> <ol style="list-style-type: none"> <li>1) No person shall sell, donate, import into or export from the Province any protected plant or a plant of an endangered or scarce species, except under authority of a permit which may be issued by the Administrator: Provided that a person shall not be prohibited from— <ol style="list-style-type: none"> <li>a) donating any such plant picked by him in the circumstances contemplated in paragraph (b) of the proviso to section 30 (3) to any person; or</li> <li>b) importing into or exporting from the Province any such plant which was lawfully donated to him in the Republic or the territory of South-West Africa or which he has purchased from a business which is registered or exempt from registration in terms of the Plant Improvement Act, 53 of 1976.</li> </ol> </li> <li>2) No person shall— <ol style="list-style-type: none"> <li>a) purchase or take in receipt of as a gift any protected plant or a plant of an endangered or scarce species except from a person who sells or donates it lawfully in accordance with the provisions of this Ordinance;</li> <li>b) sell or donate any such plant unless he, when he delivers such plant, hands to the recipient thereof a document containing the prescribed particulars; or</li> <li>c) be in possession of any such plant purchased by or donated to him unless he is the holder of a document containing the particulars referred to in paragraph (b).</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>i) in the case of an offence referred to in paragraph (a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and</li> <li>ii) in the case of any other such offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.</li> </ol>

## CYCADS

**FREE STATE:  
FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969** *continued*

SECTION	OFFENCE	PENALTY
<b>S34</b>	<p><b>Conveyance of plants</b></p> <p>No person shall convey any protected plant or a plant of an endangered or scarce species unless he has with him at the time of such conveyance—</p> <ol style="list-style-type: none"> <li>in the case where the plant was purchased by him or donated to him, a document containing the particulars referred to in section 33 (2) (b);</li> <li>in the case where the plant is imported into or exported from the Province under a permit issued in terms of section 33 (1), such permit;</li> <li>in the case where the plant is being conveyed through the Province, authoritative documents indicating that the exportation thereof from the area of origin and the importation thereof into the area of destination are lawful; or</li> <li>in any other case, a permit which may be issued by the Administrator and which authorizes the conveyance of the plant.</li> </ol>	<ol style="list-style-type: none"> <li>in the case of an offence referred to in paragraph (a), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and</li> <li>in the case of any other such offence, to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.</li> </ol>

**GAUTENG:  
TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983  
(THIS ORDINANCE DOES NOT REFER TO CYCADS)****SCHEDULE II: PROTECTED PLANTS (SECTION 86 (1) (a))**

In this schedule—

the plants referred to shall not include plants which have been improved by selection or crossbreeding;

"seedling" means a cultivated plant of which the diameter of the trunk or bulb, either above or below the ground, does not exceed 150 mm.

**"all plants of cycads not occurring in Transvaal all plants of the genus *Encephalartos* not occurring and the seedlings of the species of cycads in Transvaal and the seedlings of the species"**

SECTION	OFFENCE	PENALTY
<b>S1</b>	<p><b>Definitions:</b></p> <p><b>endangered species:</b> means a species of fauna and flora contemplated in section 97;</p> <p><b>indigenous plant</b> means any plant, herb, shrub or tree, whether alive or dead, indigenous to the Republic, the territory of South West Africa or a territory which was formerly part of the Republic, whether it is or has been cultivated or whether or not it is growing in the wild state, or has for some time not been growing in the wild state, and includes the flower, seed, cone, fruit, bulb, tuber, stem or root or other part of such a plant, herb, shrub or tree, but excluding a plant, herb, shrub or tree declared to be a weed in terms of any law;</p> <p><b>protected plant</b> means a plant contemplated in section 86(1)(a);</p> <p><b>specially protected plant</b> means a plant contemplated in section 86(1)(b);</p>	
<b>S86</b>	<p><b>Protected plants and specially protected plants</b></p> <p>86.(1) The plants referred to—</p> <ol style="list-style-type: none"> <li>in Schedule 11 to this Ordinance shall be protected plants;</li> </ol>	

## CYCADS



**GAUTENG:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983**  
**(THIS ORDINANCE DOES NOT REFER TO CYCADS) *continued***

SECTION	OFFENCE	PENALTY
<b>S87</b>	<p>1) Subject to the provisions of this Ordinance, no person shall:</p> <ul style="list-style-type: none"> <li>pick a protected plant. unless he is the holder of a permit which authorises him to do so;</li> <li>Provided that the owner of land or a relative of his may, on the land of such owner, or the occupier of land or a relative of his may, on the land of such occupier, pick— <ul style="list-style-type: none"> <li>a) the flower of a protected plant;</li> <li>b) a protected plant— <ul style="list-style-type: none"> <li>i) as far as it is necessary for grazing, the making of hay or for any other bona fide farming purpose or by burning the veld;</li> <li>ii) on the portion of such land— <ul style="list-style-type: none"> <li>aa) required for the cultivation, the erection of a building, the construction of a road, dam or airfield, or other development necessitating the destruction of vegetation;</li> <li>bb) set apart solely for the cultivation of such plant.</li> </ul> </li> </ul> </li> </ul> </li> </ul> <p>2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.</p>	<p><b>Section 111:</b></p> <p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>
<b>S88</b>	<p><b>Picking of indigenous plants in nature reserves</b></p> <p>1) No person shall pick an indigenous plant in a nature reserve, unless he is the holder of a permit which authorises him to do so: Provided that the owner of land in a nature reserve or a relative of his may pick on such land or the occupier of land in a nature reserve or a relative of his may pick on such land—</p> <ul style="list-style-type: none"> <li>(a) an indigenous plant which is got a protected plant or specially protected plant;</li> <li>(b) a protected plant as contemplated in the proviso to section 87 (1)</li> </ul> <p>2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.</p>	<p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>
<b>Section 89</b>	<p><b>Picking of indigenous plants on or near public roads</b></p> <p>1) Subject to the provisions of this Ordinance, no person shall pick an indigenous plant—</p> <ul style="list-style-type: none"> <li>a) on a public road;</li> <li>b) on land next to a public road within a distance of 100 m measured from the centre of the road, unless he is the holder of a permit which authorises him to do so: Provided that the owner of land contemplated in paragraph (b) or a relative of his may pick on such land or the occupier of land contemplated in paragraph (b) or a relative of his may pick on such land an indigenous plant as contemplated in the proviso to section 87 (1).</li> </ul> <p>2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.</p>	<p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>

## CYCADS



**GAUTENG:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983**  
**(THIS ORDINANCE DOES NOT REFER TO CYCADS)** *continued*

SECTION	OFFENCE	PENALTY
<b>S90</b>	<p><b>Picking of indigenous plants by any person other than owner or occupier</b></p> <p>1) Subject to the provisions of this Ordinance, no person shall pick an indigenous plant which is not a protected plant or specially protected plant on land of which he is not the owner or occupier:</p> <p>Provided that</p> <ol style="list-style-type: none"> <li>a relative of the owner of land may pick on the land of such owner;</li> <li>a relative of the occupier of land may pick on the land of such occupier;</li> <li>any person who has obtained the written permission of the owner or occupier of land beforehand and who carries it with him, may pick on the land of such owner or occupier, such a plant.</li> </ol> <p>2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence</p>	<p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>
<b>S91</b>	<p><b>Donation, sale, export or removal from Province of protected plants</b></p> <p>1) Subject to the provisions of this Ordinance, no person shall donate, sell or export or remove from the Province a protected plant, unless he is the holder of a permit which authorises him to do so:</p> <p>Provided that—</p> <ol style="list-style-type: none"> <li>any person— <ol style="list-style-type: none"> <li>who is authorised in terms of the proviso to subsection 87 (1), 88 (1) or 89 (1) to pick a protected plant may donate the flower thereof;</li> <li>may donate a protected plant planted on land set apart solely for the cultivation thereof;</li> </ol> </li> <li>a protected plant may be donated or sold by— <ol style="list-style-type: none"> <li>any person who is licensed in terms of the Licences Ordinance, 1974, to sell plants and who acquired the protected plant from any person who sold it lawfully;</li> <li>a botanical garden which is subject to the provisions of the Cultural Institutions Act, 1969;</li> </ol> </li> <li>a protected plant donated or sold in terms of this subsection may be exported or removed from the Province by the donee or purchaser thereof, if he has documentary proof of the donation or purchase and carries it with him when he conveys the plant.</li> </ol> <p>4) Any person who contravenes or fails to comply with subsection (1), shall be guilty of an offence.</p>	<p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>



## CYCADS



## GAUTENG:

## TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983

(THIS ORDINANCE DOES NOT REFER TO CYCADS) *continued*

SECTION	OFFENCE	PENALTY
<b>S92</b>	<b>Purchase or receipt of protected plants</b> <ol style="list-style-type: none"> <li>1) No person shall purchase or receive as a donation a protected plant except from a person who sells or donates it lawfully.</li> <li>2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.</li> </ol>	Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.
<b>S93</b>	<b>Importing into and conveyance within Province of protected plants</b> <ol style="list-style-type: none"> <li>1) Subject to the provisions of this Ordinance, no person shall import into or convey within the province a protected plant, unless he is the holder of a permit which authorises him to do so: Provided that— <ol style="list-style-type: none"> <li>a) any person may import into or convey within the Province a protected plant which he bought or received as a donation from any other person in any other province, the territory of South West Africa or a territory which was formerly part of the Republic, if he has documentary proof of the purchase or donation and carries it with him when he conveys the plant.</li> <li>b) any person may convey a protected plant within the Province where— <ol style="list-style-type: none"> <li>i) he is authorised in terms of the proviso to section 87(1), 88(1) or 89(1) to pick it;</li> <li>ii) the protected plant— <ol style="list-style-type: none"> <li>aa) has been donated or sold to him in terms of subsection (1) of section 91 and he complies with the provisions of paragraph (c) of the proviso to that section;</li> <li>bb) has been donated or sold to him by any person exempted in terms of subsection (1) of section 94 and he complies with the provisions of subsection (4) of that section, when he conveys the plant.</li> </ol> </li> </ol> </li> </ol> </li> <li>2) Any person who contravenes or fails to comply with subsection (1), shall be guilty of an offence</li> </ol>	Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.

## CYCADS



**GAUTENG:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983**  
**(THIS ORDINANCE DOES NOT REFER TO CYCADS)** *continued*

SECTION	OFFENCE	PENALTY
<b>S95</b>	<p><b>Receipt, possession, acquisition or handling of protected plants</b></p> <p>1) Any person who—</p> <ol style="list-style-type: none"> <li>receives a protected plant knowing that it was not picked lawfully;</li> <li>is found in possession of a protected plant in respect of which there is a reasonable suspicion that it was not picked lawfully and is unable to give a satisfactory account of such possession;</li> <li>in any manner acquires or receives into his possession or handles a protected plant without having reasonable cause, proof of which shall be on him, for believing at the time of such acquisition, receipt or handling that such plant was picked lawfully, shall be guilty of an offence.</li> </ol>	Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.
<b>S96(1)</b>	<p><b>Prohibited acts with specially protected plants</b></p> <p>1) Subject to the provisions of this Ordinance, no person shall possess, pick, sell, purchase, donate or receive as a donation, import into or convey within the Province, export or remove from the Province a specially protected plant, unless he is the holder of a permit which authorises him to do so: Provided that any person may possess a specially protected plant which grows in its natural habitat but which was not planted.</p> <p>The holder of a permit contemplated in subsection (1) who sells or donates a specially protected plant, shall deliver to the purchaser or donee, as the case may be, together with the plant, a document containing—</p> <ol style="list-style-type: none"> <li>the name and address of the seller or donor;</li> <li>the number of the permit;</li> <li>the name and address of the purchaser or donee;</li> <li>particulars of the species and quantity of plants sold or donated;</li> <li>the date of delivery of the plant; and;</li> <li>the signature of the seller or donor.</li> </ol> <p>3) A document contemplated in subsection (2) authorises the holder thereof to convey the specially protected plant sold or donated to him to his address and to possess it there for a period not exceeding 60 days.</p> <p>4) Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.</p>	Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence as committed.

## CYCADS



## KWAZULU-NATAL:

## KWAZULU-NATAL NATURE CONSERVATION ORDINANCE, 15 OF 1974

## SCHEDULE 12 CYCADS SPECIALLY PROTECTED INDIGENOUS PLANTS

SECTION	OFFENCE	PENALTY
<b>S15</b>	It shall not be lawful for any person other than a Member of the Board (g) to cut, injure, uproot or destroy any tree or plant in a park or remove any tree or plant or any part thereof from a park	<b>Section 23(4):</b> A fine not exceeding R500 or in default of payment of such fine to imprisonment for a period not exceeding 6 months
<b>S194</b>	<ol style="list-style-type: none"> <li>1) No person shall purchase any specially protected indigenous plant except from a person lawfully entitled to sell it under the provisions of this Chapter</li> <li>2) Any purchaser of a specially protected plant shall obtain from the seller a document where the name and residential address of seller and purchaser, the date of the sale, the species of plant and the diameter or length of its stem, the number of the license and the signature of the seller are contained.</li> </ol>	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment.
<b>S196</b>	A specially protected indigenous plant may only be sold under the authority of and in accordance with a license	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment
<b>S199</b>	No person shall import into the province any specially protected indigenous plant, save under the authority of and in accordance with a permit issued to him.	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment
<b>S200</b>	Subject to the provisions of S 196, 198, and 201 no person shall gather any specially protected indigenous plant save under the authority of and in accordance with a permit	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment
<b>S203</b>	Any person who is in possession of any specially protected indigenous plant and is unable to give satisfactory account of such possession shall be guilty of an offence: [provided that a specially grown indigenous plant growing in a wild state on private land shall not be deemed for the purpose of this section to be in the possession of the owner or occupier of such land.	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment
<b>S205</b>	<ol style="list-style-type: none"> <li>1) Whenever any person is found trespassing on land for the purposes of gathering any indigenous plant, he shall be guilty of an offence</li> <li>2) If any person gathers any specially protected indigenous plant on the town lands or commonage of any municipal or like institution or other land which is open to the general public, or if any person enters upon any such town lands or commonage in circumstances indicating his intention to gather such indigenous plants thereon, he shall be deemed to be trespassing thereon unless he proves that permission was given to him to gather such indigenous plants.</li> </ol>	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment
<b>S207</b>	Any person who falsifies or misuses any permit or license to gather, sell, export or import indigenous plants shall be guilty of an offence.	A fine or imprisonment to a maximum period of 10 years or to both such fine and imprisonment

## CYCADS


**LIMPOPO:  
LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003**

SECTION	OFFENCE	PENALTY
<b>S64(1)</b>	No person may without a permit— <ul style="list-style-type: none"> <li>• pick, be in possession of, sell</li> <li>• purchase, donate, receive as a gift</li> <li>• import into, export or remove from the province, or convey a specially protected plant.</li> </ul>	Payment of a fine or Imprisonment for a Period not exceeding 3 years or to both such fine and imprisonment
<b>S64(1)(b)</b>	No person may without a permit pick sell, purchase, donate, receive as a gift, import into, export or remove from the Province, or convey, a protected plant	Payment of a fine not exceeding R150 000 or to Imprisonment for period not exceeding 7 years or to both such fine and imprisonment
<b>S64(1)(c)(i) &amp; (ii)</b>	Pick any indigenous plant <ul style="list-style-type: none"> <li>• On a public road;</li> <li>• On land next to a public road within a distance of 100 meters from the centre of the road</li> </ul>	Payment of a fine, or Imprisonment for a period of not exceeding 3 years or to both such fine and imprisonment
<b>S64(3)</b>	No person may on land of which that person is not the owner pick any indigenous plant without the owner's written permission	Payment of a fine or imprisonment for a period not exceeding 3 years or both such fine and imprisonment

## CYCADS


**MPUMALANGA:  
MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998**
**Section 1  
Definitions**
**Endangered Species:** fauna & flora as contemplated in Section 81

**Protected plant** means a plant as contemplated in Section 69

**SCHEDULE 11: Protected plants (Section 69(1) (a))**

All species of Cycads

**Schedule 12: Specially Protected plants (Section 69(1)(b))**

All species of cycads, all plants of the following species of cycads:

- all plants of the following species: cupidus and humilus of the Genus *Encephalartos*: *E. cupidus* and *E. humilus*
- all species of cycads in their natural habitat.
- all plants of the Genus *Encephalartos* in their natural habitat.

SECTION	OFFENCE	PENALTY
<b>S70</b>	<p>Subject to the provisions of this Act, no person shall pick a protected plant, unless he or she is the holder of a permit which authorises him or her to do so:</p> <p>Provided that the owner of land or his or her relative may, on the land of such owner, or the occupier of land or his or her relative may, on the land of such occupier, pick</p> <ol style="list-style-type: none"> <li>a) the flower of a protected plant;</li> <li>b) a protected plant               <ol style="list-style-type: none"> <li>i) as far as it is necessary for grazing, the making of hay or for any other bona fide farming purpose or by burning the veld;</li> <li>ii) on the portion of such land                   <ol style="list-style-type: none"> <li>aa) required for cultivation, the erection of a building, the construction of a road, dam or airfield, or other development necessitating the destruction of vegetation;</li> <li>bb) set apart solely for the cultivation of such plant.</li> </ol> </li> </ol> </li> </ol>	<p>Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment.</p>
<b>S71</b>	<ol style="list-style-type: none"> <li>1) No person shall pick an indigenous plant in a nature reserve, unless he or she is the holder of a permit which authorizes him or her to do so: Provided that the owner of land in a nature reserve or his or her relative may pick on such land or the occupier of land in a nature reserve or his or her relative may pick on such land           <ol style="list-style-type: none"> <li>a) an indigenous plant which is not a protected plant or specially protected plant,</li> <li>b) a protected plant as contemplated in the proviso to section 70(1).</li> </ol> </li> </ol>	<p>Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.</p>

## CYCADS



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S73</b>	<p><b>Picking of indigenous plants by any person other than owner or occupier.</b></p> <p>1) Subject to the provisions of this Act, no person shall pick an indigenous plant which is not a protected plant or specially protected plant on land of which he or she is not the owner or occupier:</p> <p>Provided that:</p> <ol style="list-style-type: none"> <li>a relative of the owner of land may pick on the land of such owner;</li> <li>a relative of the occupier of land may pick on the land of such occupier,</li> <li>any person who has obtained the written permission of the owner or occupier of land beforehand and who carries it with him, may pick on the land of such owner or occupier, such a plant.</li> </ol>	Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.
<b>S74</b>	<p><b>Donation, sale, export or removal from Province of protected plants.</b></p> <p>1) Subject to the provisions of this Act, no person shall donate, sell or export or remove from the Province a protected plant, unless he or she is the holder of a permit which authorizes him or her to do so: Provided that:</p> <ol style="list-style-type: none"> <li>any person: <ol style="list-style-type: none"> <li>who is authorized in terms of the proviso to section 70(1), 71(1) or 72(1) to pick a protected plant may donate the flower thereof;</li> <li>may donate a protected plant planted on land set apart solely for the cultivation thereof;</li> </ol> </li> <li>a protected plant may be donated or sold by <ol style="list-style-type: none"> <li>any person who, subject to the provisions of any other law, sells plants lawfully and who acquired the protected plant from any person who sold it lawfully;</li> <li>a botanical garden which is subject to the provisions of the Cultural Institutions Act, 1969 (Act 29 of 1969);</li> </ol> </li> <li>a protected plant donated or sold in terms of this subsection may be exported or removed from the Province by the donee or purchaser thereof if he or she has documentary proof of the donation or purchase and carries it with him or her when he or she conveys the plant.</li> </ol>	Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.
<b>S75</b>	<p><b>Purchase or receipt of protected plants.</b></p> <p>(1) No person shall purchase or receive as a donation a protected plant except from a person who sells or donates it lawfully</p>	Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.

## CYCADS


**MPUMALANGA:**  
**MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998** *continued*

SECTION	OFFENCE	PENALTY
<b>S76</b>	<p><b>Importing into and conveyance within Province of protected plants.</b></p> <p>1) Subject to the provisions of this Act, no person shall import into or convey within the Province a protected plant, unless he or she is the holder of a permit which authorizes him or her to do so:</p> <p>Provided that:</p> <ul style="list-style-type: none"> <li>a) any person may import into or convey within the Province a protected plant which he or she bought or received as a donation from any other person in any other province, if he or she has documentary proof of the purchase or donation and carries it with him or her when he or she conveys the plant;</li> <li>b) any person may convey a protected plant within the Province where: <ul style="list-style-type: none"> <li>i) he or she is authorized in terms of the proviso to section 70(1), 71(1) or 72(1) to pick it;</li> <li>ii) the protected plant has been donated or sold to him or her— <ul style="list-style-type: none"> <li>aa) in terms of section 74(1) and he or she complies with the provisions of paragraph (c) of the proviso to section 74(1);</li> <li>bb) by any person exempted in terms of section 77(1) and or she complies with the provisions of section 77(4).</li> </ul> </li> </ul> </li> </ul>	Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.
<b>S78</b>	<p><b>Receipt, possession, acquisition or handling of protected plants.</b></p> <p>Any person who:</p> <ul style="list-style-type: none"> <li>a) receives a protected plant knowing that it was not picked lawfully;</li> <li>b) is found in possession of a protected plant in respect of which there is a reasonable suspicion that it was not picked lawfully and is unable to give a satisfactory account of such possession;</li> <li>c) in any manner acquires or receives into his or her possession or handles a protected plant without having reasonable cause, proof of which shall be on him or her, for believing at the time of such acquisition, receipt or handling that such plant was picked lawfully,</li> </ul> <p>shall be guilty of an offence.</p>	A fine or imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.



## CYCADS



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S79</b>	<p><b>Prohibited acts with specially protected plants.</b></p> <ol style="list-style-type: none"> <li>1) Subject to the provisions of this Act, no person shall possess, pick, sell, purchase, donate or receive as a donation, import into or convey within the Province, export or remove from the Province a specially protected plant, unless he or she is the holder of a permit which authorizes him or her to do so: Provided that any person may possess a specially protected plant which grows in its natural habitat but which was not planted.</li> <li>2) The holder of a permit contemplated in subsection (1) who sells or donates a specially protected plant, shall deliver to the purchaser or donee, as the case may be, together with the plant, a document containing <ol style="list-style-type: none"> <li>a) the name and address of the seller or donor;</li> <li>b) the number of the permit;</li> <li>c) the name and address of the purchaser or donee;</li> <li>d) particulars of the species and quantity of plants sold or donated;</li> <li>e) the date of delivery of the plant; and</li> <li>f) the signature of the seller or donor.</li> </ol> </li> <li>3) A document contemplated in subsection (2) authorizes the holder thereof to convey the specially protected plant sold or donated to him or her to his or her address and to possess it there for a period not exceeding 60 days.</li> </ol>	<p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction in the case of a contravention of</p> <ol style="list-style-type: none"> <li>a) subsection (1) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence was committed;</li> <li>b) subsection (2) to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.</li> </ol>

## CYCADS


**NORTH WEST:  
BOPHUTHATSWANA NATURE CONSERVATION ACT, 3 OF 1973**

SECTION	OFFENCE	PENALTY
<b>S15(1)</b>	No person shall— Without a permit possess, pick, possess, gather, cut, chop oil, break off, uproot, dig out, damage, destroy, or convey in, introduce into or export from Bophuthatswana any specially protected plant: Provided that this provision shall not apply to such a plant which is growing in its natural habitat and which has not been planted; or; pick, gather, cut, chop off, break, dig out, damage or destroy, any protected plant wherever it may be growing.	A fine not exceeding R200 or a period of imprisonment not exceeding 6 months.
<b>S15(2)</b>	No person shall, subject to the provisions of sub section 3— a) Without a permit sell, donate, import into or convey within Bophuthatswana any protected plant, wherever it may be growing; b) Buy any protected plant or receive any protected plant as a donation, except from a person who may lawfully donate or sell it and unless he receives from the seller a document referred to in subsection 4	A fine not exceeding R200 or a period of imprisonment not exceeding 6 months.


**NORTH WEST NATURE CONSERVATION ORDINANCE, 12 OF 1983**

SECTION	OFFENCE	PENALTY
<b>S96</b>	<ol style="list-style-type: none"> <li>1) No person shall possess, pick, sell, purchase, donate or receive as a donation import into or convey within the Province, export or remove from the Province, a specially protected plant, unless he is the holder of a permit which authorises him to do so: Provided that any person may possess a specially protected plant which grows in its natural habitat but was not planted.</li> <li>2) The holder of a permit contemplated in subsection (1) who sells or donates a specially protected plant, shall deliver to the purchaser or donee, as the case may be, together with the plant, a document containing— <ol style="list-style-type: none"> <li>a) The name and address of the seller or donor;</li> <li>b) The number of the permit;</li> <li>c) The name and address of the purchaser or donee;</li> <li>d) Particulars of the species and quantity of plants sold or donated;</li> <li>e) The date of delivery of the plant; and</li> <li>f) The signature of the seller or donor.</li> </ol> </li> <li>3) A document contemplated in subsection (2) authorises the holder thereof to convey the specially protected plant sold or donated to him to his address and to possess it there for a period not exceeding 60 days.</li> </ol>	<b>Section 111:</b> Payment of a fine or a period of imprisonment not exceeding 10 years or to both such fine and imprisonment, and to a fine not exceeding three times the commercial value of the plant in respect of which the offence was committed

## CYCADS



**NORTHERN CAPE:**  
**NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009**

SECTION	OFFENCE	PENALTY
<b>S49(1)</b>	No person may, without a permit, pick, import, export, transport, possess, cultivate, trade in a specimen of a specially protected plant  [ <i>Stangeria</i> spp. (T. Moore) and <i>Encephalartos</i> spp all species of Cycads are listed in Schedule 1 as specially protected species]	<b>Section 67 (1):</b> A person convicted of an offence in terms of this Act is liable to a fine, or to imprisonment for a period not exceeding 10 years, or to be such fine and such imprisonment.  S 67(2) A fine in terms of subsection (1) may not exceed— a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991); or b) If a person is convicted of an offence involving a specimen of a specially protected or protected species or CITES species, an amount determined in terms of paragraph (a), or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.  67(3) Where reference is made in subsection (2) to the commercial value of a species for the purposes of determining an appropriate penalty for an offence under this Act and different commercial values for the specific item exist in the market at that specific point in time, whether nationally or internationally, the commercial value of such species must be determined by the calculation of the average of the various commercial values existing in the market at that specific point in time.
<b>S56</b>	No person may, without a permit import into the Province from another country or; export from the Province to another country, any species of fauna or flora listed in Appendix I ,II or II of CITES, including any specimen, carcass or derivative of such species	
<b>S14</b>	Prohibition of picking of flora in a provincial or local nature reserve	A fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed.
<b>S62</b>	No person shall without a permit, be in possession of, sell. Buy, donate, receive as a donation, pick or import into, or export from or transport in or through the Province any endangered flora  [In terms of Schedule 3 Cycad – <i>Encephalartos</i> spp is listed as endangered flora]	A fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed

## CYCADS


**NORTHERN CAPE:**  
**NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009** *continued*

SECTION	OFFENCE	PENALTY
<b>S63(1)(b)</b>	No person shall without a permit i) Pick any endangered protected flora	A fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed
<b>S64</b>	No person shall sell or buy any protected flora at any place other than on the premises of a registered flora grower or registered flora seller, and sell any protected flora without a license issued under section 65(2)	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed.
<b>S66</b>	No person shall sell any protected flora on the premises of— a) a registered flora grower unless such flora was propagated or cultivated or occurred in a natural state on such premises b) a registered flora seller unless such flora has been obtained from any other registered flora seller or registered flora grower c) a registered flora seller if such flora was propagated or cultivated or occurred in a natural state on any premises of any registered flora seller who is not registered as a flora grower in respect of such premises	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed
<b>S70</b>	Export and importation of flora	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed


**WESTERN CAPE:**  
**CAPE NATURE CONSERVATION ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S14</b>	Prohibition of picking of flora in a provincial or local nature reserve	A fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed.

## CYCADS



### WESTERN CAPE: CAPE NATURE CONSERVATION ORDINANCE, 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S62</b>	No person shall without a permit, be in possession of, sell, buy, donate, receive as a donation, pick or import into, or export from or transport in or through the Province any endangered flora" [In terms of Schedule 3 Cycad – <i>Encephalartos</i> spp is listed as endangered flora]	A fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed
<b>S63(1)(b)</b>	No person shall without a permit pick any endangered protected flora	A fine not exceeding R100 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered flora in respect of which the offence is committed
<b>S64</b>	No person shall— a) sell or buy any protected flora at any place other than on the premises of a registered flora grower or registered flora seller, and b) sell any protected flora without a license issued under section 65(2)	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed.
<b>S66</b>	<b>Sale of protected flora on premises of registered flora growers and sellers</b> No person shall sell any protected flora on the premises of— a) a registered flora grower unless such flora was propagated or cultivated or occurred in a natural state on such premises b) a registered flora seller unless such flora has been obtained from any other registered flora seller or registered flora grower c) a registered flora seller if such flora was propagated or cultivated or occurred in a natural state on any premises of any registered flora seller who is not registered as a flora grower in respect of such premises	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed
<b>S70</b>	Export and importation of flora	A fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any such flora in respect of which the offence was committed

## 2. Cheetahs

The cheetah is a large cat of the subfamily **Felinae** that occurs in North, Southern and East Africa, and a few localities in Iran. It inhabits a variety of mostly arid habitats like dry forests, scrub forests, and savannahs.

The species is IUCN<sup>23</sup> Red Listed as Vulnerable, as it suffered a substantial decline in its historic range in the 20th century due to

habitat loss, poaching for the illegal pet trade, and conflict with humans. By 2016, the global cheetah population is estimated at approximately 7 100 individuals in the wild.

Several African countries have taken steps to improve cheetah conservation measures<sup>24</sup>

<sup>23</sup> International Union for Conservation of Nature

<sup>24</sup> Wikipedia : Cheetah : August 2019

### CHEETAH

#### NATIONAL



#### THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004

SECTION	OFFENCE	PENALTY
<b>S57(1) read with S101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provides that no person may carry out a restricted activity without a permit issued in terms of chapter 7 of NEMBA	<b>Section 102:</b> A fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years, or both.



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restrictive activity involving cheetahs without a permit. <b>Restrictive activities include:</b> <ul style="list-style-type: none"> <li>Killing/hunting cheetahs without a permit;</li> <li>Possession of cheetahs without a permit;</li> <li>Selling / trading cheetahs without a permit.</li> </ul>	<b>Regulation 74:</b> A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 73(1)(aA)</b>	Hunting in contravention off Regulation 26 which prohibits certain forms of hunting such as poison.	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

## CHEETAH



### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(a)</b>	No person may import, export, re-export or attempt to import, export, re-export Cheetahs without a valid permit.	<p><b>Regulation 16(2):</b></p> <p>A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both</p>
<b>Reg. 16(1)(b)</b>	<p>No person may have in his / her possession or his / her control, or to offer, expose for sale, or display to the public, Cheetahs which were not legally acquired.</p> <p><b>Note</b> Reg. 14 provides the burden of proof of the legal possession of any specimen of a species lies with the possessor of the specimen</p>	<p>A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both</p>



### NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special Nature Reserve in contravention of section 45(1) or National Park, Nature Reserve or World Heritage Site in contravention of S. 46(1) such person has committed an offence.	<p><b>Section 89:</b></p> <p>A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years, or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both</p>



## CHEETAH

## PROVINCIAL


**WESTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or the carcass of any such animal	<b>Section 86:</b> 1) Any person convicted of an offence under this ordinance shall, subject to the provisions of subsection (2), be liable, in the case of— a) a contravention of section 29 or 44 (1) involving an endangered wild animal, 63 (1) involving endangered flora, 14, 26, 32 (1), 48, 50, 52 (a), 57 (a), 58 (b), 60, 62 (1), 72B or 85 (i), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered wild animal or the carcass thereof or any endangered flora in respect of which the offence was committed; b) a contravention of section 27 (1), 29, 31, 40, 41, 42 (1), 44 (1) (a), (b) or (e) or 46 involving an African elephant, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any African elephant or the carcass thereof in respect of which the offence was committed; c) a contravention of section 27 (1), 29, 31, 40, 41, 42 (1), 44 (1) (a), (b) or (e) or 46 or 58 (c) involving any protected wild animal other than an African elephant, 63 (1) involving protected or indigenous unprotected flora, 64, 66 or 70, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed; and
<b>S27(1)</b>	Subject to the provisions of subsections (2) and (3) no person shall hunt any protected wild animal— a) during any hunting season, unless he is the holder of a permit or of a licence in the prescribed form	
<b>S28</b>	No person authorised by any provision of this ordinance to hunt any wild animal shall at any time kill or capture a greater number of any species of protected wild animal than the daily bag limit determined in respect of such species by proclamation under section 79 (a).	

## CHEETAH



### WESTERN CAPE: CAPE NATURE AND ENVIRONMENTAL ORDINANCE, 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S28</b> <i>continued</i>		<b>Section 86: (continued)</b> d) any other offence in terms of this ordinance or any contravention of any other provision of this ordinance in respect of which no specific penalty is prescribed, to a fine not exceeding R5 000 or to imprisonment for a period not exceeding 1 year or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed.



### EASTERN CAPE: TRANSKEI ENVIRONMENTAL CONSERVATION DECREE, 9 OF 1992

SECTION	OFFENCE	PENALTY
<b>S13</b>	1) No person shall without a permit authorising him to do so: a) hunt any endangered animal; b) Sell, buy, donate, receive as a donation, trade or be in possession of a carcass of a protected wild animal c) Sell, transport, export or import any live endangered wild animal or carcass thereof.	<b>Section 8(1):</b> On a <b>first conviction</b> to a fine not exceeding R25 000 or a period of imprisonment not exceeding 2 years, or both such fine and imprisonment On a <b>second or subsequent conviction</b> to a fine not exceeding R50 000 or a period of imprisonment not exceeding 6 years, or both such fine and imprisonment.
<b>S17(1)</b>	No person shall without a permit keep wild animal in captivity	On a <b>first conviction</b> to a fine not exceeding R5 000 or a period of imprisonment not exceeding 6 months, or to both such fine or imprisonment On a <b>second or subsequent conviction</b> to a fine not exceeding R10 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.

## CHEETAH



### CISKEI NATURE CONSERVATION ACT, 10 OF 1987

SECTION	OFFENCE	PENALTY
<b>S8</b>	<p>No person shall without a permit</p> <ul style="list-style-type: none"> <li>a) Hunt any specially protected wild animal;</li> <li>b) Sell, buy, donate, receive as donation or be in possession of any specially protected wild animal;</li> <li>c) Sell, buy donate, receive as donation or be in possession of the carcass , or of anything manufactured of the carcass of any specially protected wild animal;</li> <li>d) Process, prepare, cure tan or in any other matter whatsoever treat the carcass of a specially protected wild animal for the purpose of               <ul style="list-style-type: none"> <li>i) Manufacturing any article therefrom;</li> <li>ii) Exhibiting such carcass or any such article manufactured therefrom, or</li> <li>iii) Mounting such carcass</li> </ul> </li> </ul>	<p><b>Section 73:</b></p> <p>On a <b>first offence</b> to a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months</p> <p>On a <b>second</b> or subsequent offence to a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p> <p>This shall not apply to a convicted person below the age of 18 years.</p>
<b>S11(1)</b>	No person shall without a permit keep any wild animal in captivity.	<p>On a <b>first conviction</b> to a fine not exceeding R500 or a period of imprisonment not exceeding 6 months</p> <p>On a <b>second or subsequent conviction</b> to a fine not exceeding R500 or a period of imprisonment not exceeding 6 months, or to both such fine or imprisonment</p> <p>This shall not apply to a convicted person below the age of 18 years</p>



### FREE STATE

<b>Section 1 – definitions</b>	<p>“endangered species”, in relation to an animal or plant, [means] a species specified in Appendix 1 to the Convention on International Trade in Endangered species of Wild Fauna and Flora (Washington, 1973) and includes any reasonably identifiable part or derivative of such species;</p> <p><b>Protected Game:</b> The species of wild animals specified in Schedule 1 to this Ordinance are hereby declared protected game</p>
<b>It is clear that cheetah does not fall within the ambit of protected game</b>	

## CHEETAH



### GAUTENG: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 of 1983

#### THE PROVINCIAL LEGISLATION DOES NOT DEAL WITH CHEETAH ON A CAPITAE SELECTAE BASIS

#### CHAPTER III: WILD ANIMALS

#### Protected game, ordinary game and protected wild animals

#### 15.(1) The wild animals referred to-

- a) in Schedule 4 to this Ordinance shall be protected wild animals

#### SCHEDULE 4: PROTECTED WILD ANIMALS (SECTION 15 (1) (c))

#### Wild Dog; Cheetah; Leopard; Lion; African Buffalo

SECTION	OFFENCE	PENALTY
<b>S18(1)</b>	<b>Hunting of protected wild animals</b> <ol style="list-style-type: none"> <li>1) Subject to the provisions of this Ordinance, no person shall hunt a protected wild animal: Provided that— <ol style="list-style-type: none"> <li>a) upon the written application of the owner of land a permit may be issued— <ol style="list-style-type: none"> <li>i) to the owner;</li> <li>ii) to any other person indicated by the owner in the application, which authorises the holder to hunt the species, number and sex of protected wild animals referred to in the permit on the land of the owner;</li> </ol> </li> <li>b) the owner of land or a relative of his or an occupier of that land to whom the owner has granted written permission to hunt on his land which permission shall be carried by that relative or occupier with him while he so hunts on that land— <ol style="list-style-type: none"> <li>i) may hunt a buffalo if cattle are kept on that land;</li> <li>ii) may hunt any other protected wild animal during the day or night while it is causing or is about to cause damage to stock or is in the immediate vicinity of the carcass of stock which it has or apparently has killed.</li> </ol> </li> </ol> </li> </ol>	<b>Section 18(3):</b> <p>In the case of a contravention of subsection (1)—</p> <ol style="list-style-type: none"> <li>a) where such person has not been previously convicted of a contravention of that subsection or section 16 or 23 or a provision of the repealed Ordinance corresponding to that subsection or section 16 or 23, to a fine not exceeding R1 500 or to imprisonment for a period not exceeding 18 months or to both such fine and such imprisonment;</li> <li>b) where such person has been previously convicted of a contravention of that subsection or section 16 or 23 or a provision of the repealed Ordinance corresponding to that subsection or section 16 or 23, to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment.</li> </ol>
<b>S18(2)</b>	<ol style="list-style-type: none"> <li>2) When any person has killed or wounded or has presumably wounded a buffalo, lion, leopard or cheetah in the circumstances contemplated in paragraph (b) of the proviso to subsection (1), he shall report it within 24 hours at the police station or the office of the nature conservator nearest to the place where the buffalo, lion, leopard or cheetah was killed or wounded or was presumably wounded</li> <li>3) Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence</li> </ol>	

## CHEETAH


**GAUTENG:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 of 1983** *continued*

SECTION	OFFENCE	PENALTY
<b>S23</b>	<p><b>Hunting of protected wild animals under certain circumstances</b></p> <p><b>23(1)</b></p> <p>Subject to the provisions of this Ordinance, no person shall hunt a protected wild animal which—</p> <ol style="list-style-type: none"> <li>is under the influence of a tranquillising, narcotic, immobilising or similar agent;</li> <li>has been allured— <ol style="list-style-type: none"> <li>by a simulation or recording of the natural sound made by an animal;</li> <li>by a sound made by man;</li> <li>by bait, whether alive or dead, or anything else on account of the edibility, smell or taste thereof;</li> </ol> </li> <li>has been confined to a cage or an enclosure the area of which is less than 400 hectare and from which it cannot escape readily,</li> </ol> <p>unless he is the holder of a permit which authorises him to do so: Provided that the owner of land or a relative of his or an occupier of that land, to whom the owner has granted written permission to hunt on his land, which permission shall be carried by that relative or occupier with him while he so hunts on that land, may hunt a lion, leopard, cheetah or wild dog allured as contemplated in paragraph (b)(iii) and which is in the immediate vicinity of the carcass of stock which it has or apparently has killed.</p> <ol style="list-style-type: none"> <li>When any person has killed or wounded or has presumably wounded a lion, leopard, cheetah or wild dog in the circumstances contemplated in the proviso to subsection (1), he shall report it within 24 hours at the police station or the office of the nature conservator nearest to the place where the lion, leopard, cheetah or wild dog was killed or wounded or was presumably wounded.</li> <li>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence</li> </ol>	<p><b>Section 23(3):</b></p> <p>On conviction of section 1</p> <ol style="list-style-type: none"> <li>where such person has not been previously convicted of a contravention of that subsection or section 18 or 27 or a provision of the repealed Ordinance corresponding to that subsection or section 18 or 27, to a fine not exceeding, R1 500 or to imprisonment for a period not exceeding 18 months, or to both such fine and such imprisonment;</li> <li>where such person has been previously convicted of a contravention of that subsection or section 18 or 27 or a provision of the repealed Ordinance corresponding to that subsection or section 18 or 27, to a fine not exceeding R2 000, or to imprisonment for a period not exceeding 24-months or to both such fine and such imprisonment.</li> </ol>

## CHEETAH



### KWAZULU NATAL: KWAZULU NATAL NATURE CONSERVATION ORDINANCE, 15 OF 1974

SECTION	OFFENCE	PENALTY
<b>S15</b>	It shall not be lawful for any person other than a Member of the Board— c) within a park to kill injure, capture or disturb any animal; provided that any dangerous animal may be killed in defence of human life or to prevent the infliction of personal injury f) to remove from a park any animal, whether alive or dead, other than an animal lawfully introduced into such park, or any part of an animal;	<b>Section 23(1):</b> Any persons who contravenes the provisions of section 15(1)(c) by wilfully or negligently killing, injuring or capturing specially protected game within a park or game reserve or nature reserve shall be guilty and liable to a fine not exceeding R10 000 or imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment

***Acinonyx jubatis* Cheetah is classified as specially protected game in terms of Schedule 3 and *Acinonyx jubatis venaticus*, Asiatic Cheetah, is classified as an endangered Mammal in terms of Shedule 6**

<b>S37(1)</b>	No person shall at any time hunt, capture or keep in captivity any specially protected game, unless the Administrator granted a written permit	<b>Section 55:</b> A fine not exceeding R10 000 or imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment
<b>S38(1)</b>	No person shall at any time capture or keep in captivity any protected game, unless the Board with prior approval of the Administrator granted a permit.	A fine not exceeding R5 000 or imprisonment for a period not exceeding 1 year, or to both such fine and such imprisonment
<b>S39(1)</b>	Whenever any person is or has been in possession of or deals or has dealt in or handles or has handled any game and there exists a reasonable suspicion that such game was hunted or acquired unlawfully he shall be guilty of an offence unless he proves the contrary.	A fine not exceeding R10 000 or imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment

**“Game” is defined as any of the mammals or bird, alive or dead mentioned in Schedule 1,2,3 or 4 and shall include any meat, fat or blood thereof, whether fresh, preserved, processed or manufactured in any manner and also any tooth, tusk, bone, head, horn, shell, claw, hoof, hide, skin, hair, egg, feather, or any durable portion of any such mammal or bird, whether preserved, processed, manufactured or not, but shall not include any trophy**

<b>S50(1)</b>	Any person who is in possession of atrophy derived from specially protected game after the Commencement of the Game preservation Amendment ordinance, 31 of 1957, shall be guilty of an offence unless it is proved that he is in lawful possession thereof or that he acquired it from an approved person	A fine not exceeding R10 000 or imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment
<b>S50(2)</b>	No person shall sell or otherwise dispose of any trophy except under and in accordance with a written permit	

**“trophy” means any mounted head or mounted skin of any game used or intended for private display or museum purposes or any skin or portion of such skin of any game used in a processed or manufactured article**

<b>S62</b>	Hunting of specially protected game in private wildlife reserve prohibited.	A fine not exceeding R10 000 or imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment
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## CHEETAH


**LIMPOPO:  
LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003**

SECTION	OFFENCE	PENALTY
<b>S31(1)(a)</b>	Hunting of specially protected wild animals	<b>Section 117:</b> A fine up to R250 000 or 15 years imprisonment, or both plus fine up to four times value of fauna involved
<b>S31(1)(b)</b>	Hunting of protected wild animals	A fine up to R150 000 or 7 years imprisonment, or both
<b>S31(1)(c)</b>	Hunting of game	A fine or 3 years imprisonment, or both
<b>S31(1)(d)</b>	Hunting during the night	A fine up to R150 000 or 7 years imprisonment, or both
<b>S31(1)(e)</b>	Hunting in a provincial nature reserve	A fine up to R150 000 or 7 years imprisonment, or both
<b>S31(1)(f)</b>	Hunting a wild animal in schedule 5 which is under the influence of an agent, has been lured, has been confined	A fine up to R150 000 or 7 years imprisonment, or both
<b>S31(3)</b>	No person may hunt a wild or alien animal on land of which that person is not the owner, except with the written permission of the owner of the land	A fine not exceeding R150 000 or to imprisonment for a period not exceeding 7 years, or both
<b>S35(1)</b>	No person may without a permit operate as a wildlife translocator. (This section does not apply to the owner of land who catches wild or alien animals on his or her own land.)	A fine not exceeding R250 000 or imprisonment of 15 years, or both
<b>S35(3)</b>	No person may without a permit catch specially protected wild animals, protected wild animals, game and non-indigenous wild animals. (This section does not apply to any person assisting the holder of a permit on the instructions of the permit holder)	A fine not exceeding R250 000 or imprisonment of 15 years, or both.
<b>S35(4)</b>	No person may catch a wild or alien animal on land of which that person is not the owner, except with the written permission of the landowner.	A fine, or imprisonment of 3 years or both such fine and imprisonment.
<b>S36</b>	No person may without a permit, on land upon which wild animals are found or likely to be found and which is fenced in such a manner that such wild animals cannot readily escape, make an opening in the fence so designed that wild animals entering the land through the opening cannot easily find the opening to escape.	A fine not exceeding R150 000, or imprisonment for a period not exceeding 7 years, or to both such fine and imprisonment.
<b>S37(1)</b>	No person may pick up or remove a wild animal which has not been hunted or caught lawfully or which has been killed and caught, or apparently killed or caught by an animal or bird of prey, unless such person has obtained the written permission of the owner of the land on which such an animal was found beforehand or, where the owner is not available, of the office of the environmental compliance officer or the official in charge of the police station nearest to the land or public road on which the wild animal was found.	A fine or imprisonment of a period not exceeding 3 years, or both such fine and imprisonment.



## CHEETAH



### LIMPOPO: LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003 *continued*

SECTION	OFFENCE	PENALTY
<b>S38(1)</b>	<p>No person may without a permit—</p> <ol style="list-style-type: none"> <li>Hunt specially protected wild animals, protected wild animals, game or non-indigenous wild animals with— <ol style="list-style-type: none"> <li>A fire-arm which after it has been discharge, automatically reloads and fires when the trigger is pulled or held in a discharged position;</li> <li>A fire-arm which discharges a rim-fire cartridge of a calibre of 5.6 millimetres or smaller</li> <li>A shotgun</li> <li>An air gun</li> </ol> </li> </ol>	A fine not exceeding R150 000 or imprisonment of a period not exceeding 7 years, or to both such fine and imprisonment.
<b>S41</b>	<ol style="list-style-type: none"> <li>No person may without a permit— <ol style="list-style-type: none"> <li>Acquire, possess, convey, keep, sell, purchase, donate or receive as a gift, any specially protected animal or protected wild animal;</li> <li>Import or export from the province or convey or set free a live wild animal.</li> </ol> </li> <li>Establish or operate a wild animal park.</li> </ol>	<p>A fine not exceeding R150 000 or a period of imprisonment not exceeding 7 years, or both such fine or imprisonment.</p> <p>A fine or imprisonment of a period not exceeding 3 years or both such fine and imprisonment.</p>
<b>S41(2)</b>	No person may without a permit in terms of this Act or other documents prescribed by other relevant legislation, convey any wild live animal through the Province	A fine not exceeding R250 000 or a period of imprisonment not exceeding 15 years, or to both such fine and imprisonment.
<b>S42</b>	<ol style="list-style-type: none"> <li>No person may keep or convey a wild animal in conditions— <ol style="list-style-type: none"> <li>Which are unhygienic</li> <li>In which a wild animal <ol style="list-style-type: none"> <li>May be injured</li> <li>Suffer unnecessarily</li> </ol> </li> </ol> </li> </ol>	A fine not exceeding R250 000 or a period of imprisonment not exceeding 15 years, or to both such fine and imprisonment.
<b>S43</b>	<ol style="list-style-type: none"> <li>No person may without a permit— <ol style="list-style-type: none"> <li>Sell any dead specially protected wild animal or protected wild animal.</li> </ol> </li> </ol>	A fine or a period of imprisonment of 3 years, or to both such fine and imprisonment.

## CHEETAH



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998

#### SCHEDULE 4

#### Protected wild animals (section 4(1)(d))

#### Cheetah, Lion, Leopard, Spotted Hyena, African Buffalo

SECTION	OFFENCE	PENALTY
<b>S8</b>	<p><b>Hunting of protected wild animals.</b></p> <ol style="list-style-type: none"> <li>1) Subject to the provision of this Act, no person shall hunt a protected wild animal: Provided that:               <ol style="list-style-type: none"> <li>a) upon the written application of the owner of land a permit may be issued to                   <ol style="list-style-type: none"> <li>i) the owner;</li> <li>ii) any other person indicated by the owner in the application which authorizes the holder to hunt the species, number and sex of protected wild animals referred to in the permit on the land of the owner;</li> </ol> </li> <li>b) the owner of land, or his or her relative or an occupier of that land, to whom the owner has granted written permission to hunt on his or her land, which permission shall be carried by that relative or occupier with him or her while he or she so hunts on that land, may hunt:                   <ol style="list-style-type: none"> <li>i) a buffalo if cattle are kept on that land;</li> <li>ii) any other protected wild animal during the day or night while it is causing or is about to cause damage to stock or is in the immediate vicinity of the carcass of stock which it has or apparently has killed.</li> </ol> </li> </ol> </li> <li>2) When any person has killed or wounded or has presumably wounded a buffalo, lion, leopard or cheetah in the circumstances contemplated in paragraph (b) of the proviso to subsection (1), he or she shall report it within 24 hours at the police station or the office of the nature conservator nearest to the place where the buffalo, lion, leopard or cheetah was killed or wounded or was presumably wounded.</li> </ol>	<p><b>Section 8(3):</b></p> <p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction, in the case of a contravention of</p> <ol style="list-style-type: none"> <li>a) subsection (1), to a fine or to imprisonment for a period not exceeding 4 years or to both a fine and such imprisonment;</li> <li>b) subsection (2), to a fine or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment</li> </ol>
<b>S13</b>	<p><b>Hunting of protected wild animals under certain circumstances.</b></p> <ol style="list-style-type: none"> <li>1) Subject to the provisions of this Act, no person shall hunt a protected wild animal which:               <ol style="list-style-type: none"> <li>a) is under the influence of a tranquillising, narcotic, immobilising or similar agent;</li> <li>b) has been lured by                   <ol style="list-style-type: none"> <li>i) a simulation or recording of the natural sound made by an animal;</li> <li>ii) a sound made by man;</li> <li>iii) bait; or</li> </ol> </li> <li>c) has been confined to a cage or an enclosure the area of which is less than 1000 hectares and from which it cannot readily escape, unless he or she is the holder of a permit which authorizes him or her to do so:</li> </ol> </li> </ol>	<p><b>Section 13(3):</b></p> <p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment</p>

## CHEETAH



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S13</b> <i>continued</i>	<p>Provided that the owner of land, or his or her relative or an occupier of that land, to whom the owner has granted written permission to hunt on his or her land, which permission shall be carried by that relative or occupier with him or her while he or she so hunts on that land, may hunt a spotted hyenas, cheetah, leopard or lion, lured as contemplated in paragraph (b)</p> <p>iii) and which is in the immediate vicinity of the carcass of stock which it has or apparently has killed.</p> <p>2) When any person has killed or wounded or has presumably wounded a spotted hyenas, cheetah, leopard or lion in the circumstances contemplated in the proviso to subsection (1), he or she shall report it within 24 hours at the police station or the office of the nature conservator nearest to the place where the spotted hyenas, cheetah, leopard or lion was killed or wounded or was presumably wounded.</p>	<p><b>Section 13(3):</b></p> <p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment</p>



### NORTH WEST: NORTH WEST NATURE CONSERVATION ORDINANCE, 12 OF 1983

SECTION	OFFENCE	PENALTY
<b>S18(1)</b>	<p>Subject to the provisions of this ordinance no person shall hunt a protected wild animal: Provided that—</p> <p>(a) Upon the written application of the owner of land a permit may be issued:</p> <p>To the owner;</p> <p>To any other person indicated by the owner on the application</p> <p>Which authorizes the holder to hunt the species, number and sex of protected wild animals referred to in the permit on the land of the owner;</p> <p>(b)(ii) The owner of land, or a relative of his, or an occupier of that land, to whom the owner has granted written permission to hunt on his land, which permission shall be carried by the relative or occupier with him while he hunts on that land may hunt any other protected animal during day or night while it is causing or is about to cause damage of stock or is in the immediate vicinity of carcass of stock which is has or apparently has killed.</p>	<p><b>Section 18(3):</b></p> <p>Any person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence and liable on conviction, in the case of a contravention of subsection (1)-</p> <p>a) where such person has not been previously convicted of a contravention of that subsection or section 16 or 23 or a provision of the repealed Ordinance corresponding to that subsection or section 16 or 23, to a fine not exceeding R1 500 or to imprisonment for a period not exceeding 18 months or to both such fine and such imprisonment;</p> <p>b) where such person has been previously convicted of a contravention of that subsection or section 16 or 23 or a provision of the repealed Ordinance corresponding to that subsection or section 16 or 23, to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment.</p>

## CHEETAH



### NORTH WEST: NORTH WEST NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S18(2)</b>	When any person has killed or wounded or presumably wounded a cheetah in the circumstances contemplated in paragraph (b) of the proviso to subsection (1) he shall report it within 24 hours at the police station or to the office of the nature conservator nearest to the place where the cheetah was killed, wounded or presumably wounded	In the case of a <b>first-time offender</b> to a fine not exceeding R1 500 or a period of imprisonment not exceeding 18 months, or to both such fine and imprisonment.  In the case of a <b>second or subsequent offender</b> to a fine not exceeding R2 000 or a period of imprisonment not exceeding 2 years, or to both such fine and imprisonment.
<b>S22</b>	<p>1) Subject to the provisions of this ordinance no person shall, on land on which any wild animals are found or are likely to be found</p> <p>a) Bring, or be in possession of a snare, trap, gin, net, bird-lime, trap-cage, or other device or means intended or suiting for the hinting or catching of a wild animal,</p> <p>b) Construct a pit fall or holding pen.</p> <p>Provided that the</p> <p>Devices in sub paragraph (a) and the pit fall or holding pen in sub paragraph (b) may be brought, possessed or constructed by</p> <p>aa) the owner of the land or a relative of the owner with his permission;</p> <p>bb) the occupier of land on which he is the occupier;</p> <p>cc) the licenced trader on the premises he is conducting business;</p> <p>dd) any other person on any other land if he has obtained the written permission of the owner of such land beforehand.</p>	<p><b>Section 111:</b></p> <p>In case of a <b>first-time offender</b>, to a fine not exceeding R1 500 or a period of imprisonment not exceeding 18 months, or to both such fine and imprisonment.</p> <p>In case of a <b>second-time offender</b>, to a fine not exceeding R2 000 or a period of imprisonment not exceeding 2 years, or to both such fine and imprisonment.</p>
<b>S23(1)</b>	<p>Subject to the provisions of this ordinance, no person shall hunt a protected wild animal which is</p> <p>a) Under the influence of a tranquilizing, narcotic, immobilizing or similar agent;</p> <p>b) Has been allured—</p> <p>i) By a simulation or recording of the natural sound of that animal;</p> <p>ii) By a sound made by man;</p> <p>iii) By bait, whether alive or dead, or anything else on account of edibility, smell and taste thereof</p> <p>c) Has been confined by a cave or enclosure the area of which is less than 400 hectare and from which it cannot readily escape, unless he is the holder of a permit which authorises him to do so, provided that the owner of that land, or a relative of his, or the occupier of that land, to whom the owner has granted permission to hunt on his land, which permission shall be carried while the relative or occupier hunts, may hunt a cheetah allured and which is in the immediate vicinity of the carcass of stock which it has killed or apparently killed.</p>	<p><b>Section 23(3):</b></p> <p>In case of a <b>first-time offender</b> a fine not exceeding R1 500 or a period of imprisonment not exceeding 18 months, or both such fine and imprisonment.</p> <p>In case of a <b>second-time offender</b>, a fine not exceeding R2 000 or a period of imprisonment not exceeding 2 years, or both such fine and imprisonment</p>

## CHEETAH



## NORTH WEST:

NORTH WEST NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S27(1)</b>	<p>No person shall hunt or catch a wild animal with the aid of or by means of or with the use of</p> <ol style="list-style-type: none"> <li>a snare, trap, gin, net, pitfall, holding pen or trap cage or similar device, means or method;</li> <li>a bow and arrow, or similar weapon or any other weapon which discharges an arrow;</li> <li>a set gun or similar device;</li> <li>a dog;</li> <li>an aircraft</li> </ol> <p>Unless he is the holder of a permit which authorises him to do so, provided that</p> <ol style="list-style-type: none"> <li>the owner of land, or a relative of his with his permission, may on the land of which he is the occupier, hunt or catch a wild animal by means of trap, trap cage or set gun,               <ol style="list-style-type: none"> <li>where it is in the immediate vicinity of a carcass of stock which it apparently has killed or appeared to have killed;</li> <li>where there is a reasonable suspicion that it is about to cause damage to stock</li> </ol> </li> <li>a problem animal may be hunted with the use or aid of a pit fall, trap or dog.</li> </ol>	<p><b>Section 27(2):</b></p> <p>In case of a <b>first-time offender</b>, to a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p> <p>In case of a <b>second-time offender</b>, to a fine not exceeding R1 500 or a period of imprisonment not exceeding 18 months, or to both such fine and imprisonment.</p>
<b>S28 (1)</b>	<p>No person shall hunt or catch a wild animal on land of which he is not the owner, unless he has obtained the written permission of that land beforehand and he carries that written permission with him at the time he hunts or catches the wild animal.</p>	<p><b>Section 111:</b></p> <p>Payment of a fine not exceeding R750 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p> <p>In case of a <b>second offender</b>, payment of a fine not exceeding R1 500 or a period of imprisonment not exceeding 18 months, or to both such fine and imprisonment.</p>
<b>S40(1)</b>	<p>No person shall keep or convey or cause a wild animal to be kept or conveyed in conditions which are unhygienic or in which such animal may be injured or disturbed.</p>	<p>A fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p>
<b>S41(1)</b>	<p>No person shall import a live wild animal into the Province, unless he is a holder of a permit which authorises him to do so.</p>	<p>A fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p>
<b>S42(1)</b>	<p>No person shall export or remove a wild animal from the Province unless he has a permit which authorises him to do so; Provided that a person may export or remove the carcass or fresh meat or biltong of a wild animal which has been lawfully hunted</p>	<p>Payment of a fine not exceeding R1 000 or a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment.</p>

## CHEETAH



**NORTHERN CAPE:**  
**NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009**

SECTION	OFFENCE	PENALTY
<b>S3</b>	<p>Restricted activities involving specially protected animals—</p> <p>No person may, without a permit</p> <ul style="list-style-type: none"> <li>a) hunt</li> <li>b) import</li> <li>c) export</li> <li>d) transport</li> <li>e) keep</li> <li>f) possess</li> <li>g) breed; or</li> <li>h) trade in</li> </ul> <p>A specimen of a specially protected animal</p> <p>[<i>Acinonyx jubata</i> ~ Cheetah is listed in Schedule 1 as a specially protected species]</p>	<p><b>Section 67(1):</b></p> <p>A person convicted of an offence in terms of this Act is liable to a fine, or to imprisonment for a period not exceeding 10 years, or to be such fine and such imprisonment.</p> <p>A fine in terms of subsection(1) may not exceed—</p> <ul style="list-style-type: none"> <li>a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991); or</li> <li>b) If a person is convicted of an offence involving a specimen of a specially protected or protected species or CITES species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.</li> </ul> <p><b>67(3)</b></p> <p>Where reference is made in sub-section (2) to the commercial value of a species for the purposes of determining an appropriate penalty for an offence under this Act and different commercial values for the specific item exist in the market at that specific point in time, whether nationally or internationally, the commercial value of such species must be determined by the calculation of the average of the various commercial values existing in the market at that specific point in time.</p>
<b>S17(1)</b>	<p>No person may, unless he or she is the holder of a permit—</p> <ul style="list-style-type: none"> <li>a) keep any wild animal in captivity; or</li> <li>b) restrain any wild animal by means of a rope, cord, chain or any similar device</li> </ul>	<p><b>Section 67 – Section 67 (1)</b></p> <p>A person convicted of an offence in terms of this Act is liable to a fine, or to imprisonment for a period not exceeding 10 years, or to be such fine and such imprisonment.</p> <p><b>Section 67(2)</b></p> <p>A fine in terms of subsection (1) may not exceed—</p> <ul style="list-style-type: none"> <li>a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991); or</li> <li>b) If a person is convicted of an offence involving a specimen of a specially protected or protected species or CITES species, an amount determined in terms of paragraph (a) or which is</li> </ul>

## CHEETAH



### NORTHERN CAPE: NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009 *continued*

SECTION	OFFENCE	PENALTY
<b>S17(1)</b> <i>continued</i>		<p>equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.</p> <p><b>Section 67(3)</b> Where reference is made in subsection (2) to the commercial value of a species for the purposes of determining an appropriate penalty for an offence under this Act and different commercial values for the specific item exist in the market at that specific point in time, whether nationally or internationally, the commercial value of such species must be determined by the calculation of the average of the various commercial values existing in the market at that specific point in time.</p>
<b>S56</b>	<p>No person may, without a permit—</p> <p>a) import into the Province from another country or;</p> <p>b) export from the Province to another country,</p> <p>Any species of fauna or flora listed in Appendix I, II or III of CITES, including any specimen, carcass or derivative of such species</p>	<p><b>Section 67(1):</b> A person convicted of an offence in terms of this Act is liable to a fine, or to imprisonment for a period not exceeding 10 years, or to be such fine and such imprisonment.</p> <p>A fine in terms of subsection (1) may not exceed—</p> <p>a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991); or</p> <p>b) If a person is convicted of an offence involving a specimen of a specially protected or protected species or CITES species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.</p> <p><b>Section 67(3)</b> Where reference is made in subsection (2) to the commercial value of a species for the purposes of determining an appropriate penalty for an offence under this Act and different commercial values for the specific item exist in the market at that specific point in time, whether nationally or internationally, the commercial value of such species must be determined by the calculation of the average of the various commercial values existing in the market at that specific point in time.</p>

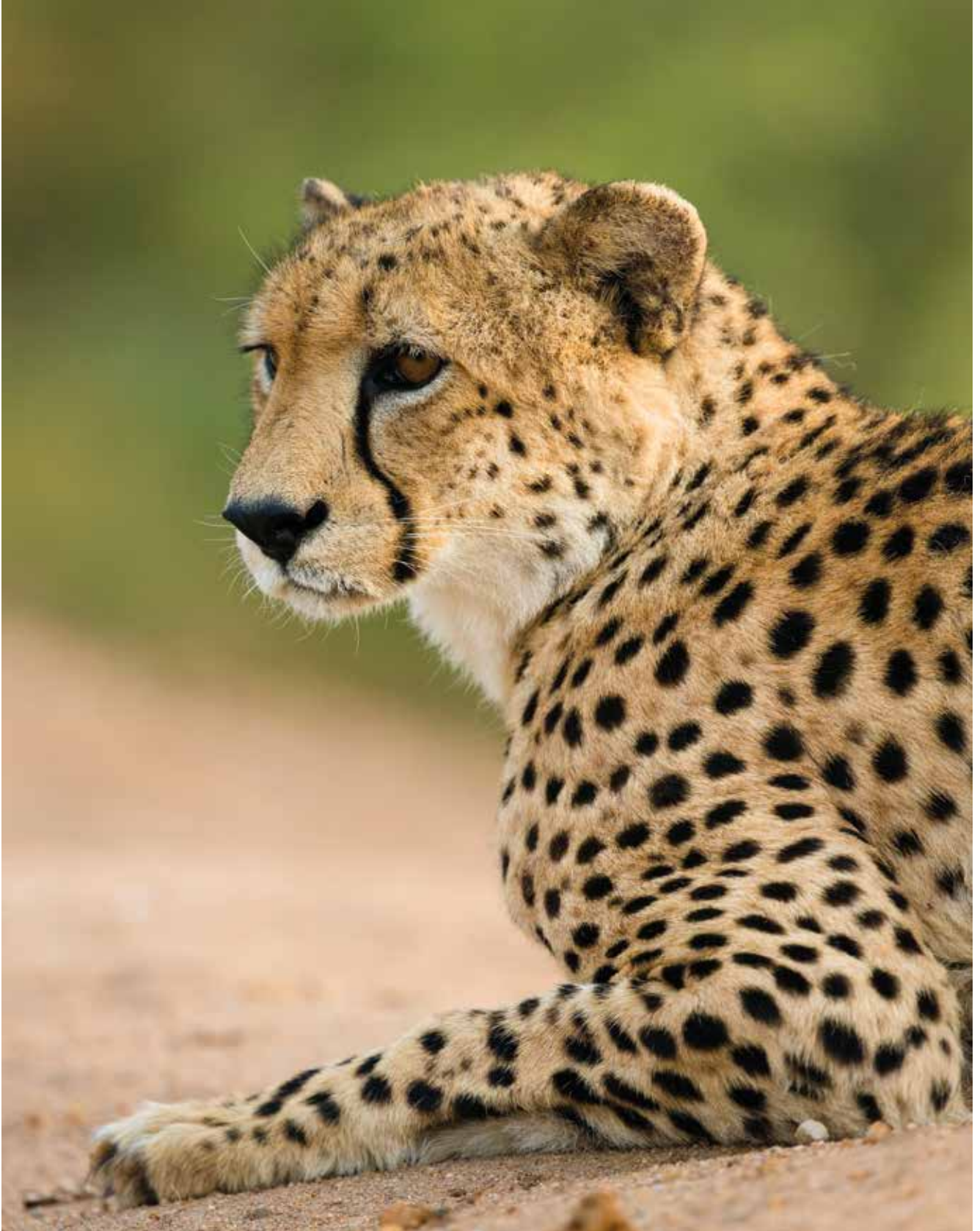




## CHEETAH


**WESTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or the carcass of any such animal	<p><b>Section 86(1):</b> Any person convicted of an offence under this ordinance shall, subject to the provisions of subsection (2), be liable, in the case of—</p> <ul style="list-style-type: none"> <li>a) a contravention of section 29 or 44 (1) involving an endangered wild animal, 63 (1) involving endangered flora, 14, 26, 32 (1), 48, 50, 52 (a), 57 (a), 58 (b), 60, 62 (1), 72B or 85 (i), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any endangered wild animal or the carcass thereof or any endangered flora in respect of which the offence was committed;</li> <li>b) a contravention of section 27 (1), 29, 31, 40, 41, 42 (1), 44 (1) (a), (b) or (e) or 46 involving an African elephant, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any African elephant or the carcass thereof in respect of which the offence was committed;</li> <li>c) a contravention of section 27 (1), 29, 31, 40, 41, 42 (1), 44 (1) (a), (b) or (e) or 46 or 58 (c) involving any protected wild animal other than an African elephant, 63 (1) involving protected or indigenous unprotected flora, 64, 66 or 70, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed; and</li> <li>d) any other offence in terms of this ordinance or any contravention of any other provision of this ordinance in respect of which no specific penalty is prescribed, to a fine not exceeding R5 000 or to imprisonment for a period not exceeding 1 year or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any wild animal or the carcass thereof or any such flora in respect of which the offence was committed.</li> </ul>



### 3. Abalone

Abalone<sup>25</sup> are marine snails. Their taxonomy puts them in the family ***Haliotidae***, which contains only one genus, ***Haliotis***, which once contained six subgenera. These subgenera have become alternate representations of *Haliotis*. The number of

species recognized worldwide ranges between 30 and 130 with over 230 species-level taxa described. The most comprehensive treatment of the family considers 56 species valid, with 18 additional subspecies.

<sup>25</sup> Wikipedia: Abalone: August 2019

#### ABALONE

#### NATIONAL



#### THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004

SECTION	OFFENCE	PENALTY
<b>S101(1)(a)</b>	Contravening or failing to comply with the provisions of section 57(1), which provides that no person may carry out a restricted activity involving South African Abalone without a permit issued in terms of Chapter 7 of NEMBA.	<b>Section 102:</b> A fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years, or both



#### MARINE LIVING RESOURCE ACT, 18 OF 1998

SECTION	OFFENCE	PENALTY
<b>S58</b>	Contravening section 18 which provides "No person shall undertake commercial fishing or subsistence fishing, unless a right to undertake or engage in such an activity has been granted to such a person by the Minister"	<b>Section 58:</b> A fine not exceeding R2 million, or to imprisonment for a period not exceeding 5 years

## ABALONE



### MLRA REGULATIONS

SECTION	OFFENCE	PENALTY
<b>Reg. 96</b>	<p>Contravening or failing to comply with the provisions of regulations 36, 37, 38 and 39</p> <p><b>Regulation 36(1)</b></p> <p>"No person shall during and following fishing or related activities, transport any abalone that is—</p> <ol style="list-style-type: none"> <li>not in the whole state, except on the authority of a permit; or Remove abalone other than with the use of a flat implement of which the front edge is not less than 25 mm wide and not more than 35 mm wide and that has been so rounded as not to cur or damage the foot of an abalone.</li> <li>No person under the age of 12 years shall be entitled to obtain a recreational abalone permit.</li> <li>No person shall sell, deliver, or acquire any abalone, or any part or product thereof, unless the seller issues an invoice described in sub-regulation (4) at the time of delivery in respect of such abalone or any part or product thereof to the person acquiring it."</li> <li>An invoice referred to in sub-regulation (3) shall be kept for no less than 4 months by the person to whom it has been issued and shall contain at least the following details: <ol style="list-style-type: none"> <li>The names and addresses of the parties to the sale;</li> <li>the date of delivery; and</li> <li>The quantity or mass of abalone or part or product thereof sold."</li> </ol> </li> </ol> <p><b>37. Minimum size</b></p> <p>"No person shall engage in fishing, keeping or controlling of, or be in possession of, any abalone of which the shell is able to pass through a ring with an inside diameter of 114 mm."</p> <p><b>38. Recreational or subsistence 38(3)</b></p> <p>No person shall—</p> <ol style="list-style-type: none"> <li>purchase or be the holder of more than one permit contemplated in sub regulation (1) and (2)</li> <li>keep, control or be in possession of more than 20 abalone at any one time</li> <li>engage in fishing or collecting any abalone between sunset and sunrise;</li> <li>use any artificial breathing apparatus, other than a snorkel for fishing abalone</li> <li>transport, keep, control or be in possession of any abalone in or on a fishing vessel or other vessel; or</li> <li>keep, control or be in possession in or on vehicle or other form of transport of more than four abalone unless— <ol style="list-style-type: none"> <li>all the persons by whom the abalone were caught are in or on the vehicle or other form of transport; and</li> <li>such vehicle or other form of transport is not used to transport more than 20 abalone per day"</li> </ol> </li> </ol>	<p><b>Regulation 96:</b></p> <p>A fine not exceeding R800 000 or to imprisonment not exceeding 2 years</p>



## ABALONE



### MLRA REGULATIONS *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 96</b> <i>continued</i>	<b>39. Commercial</b> <i>continued</i> 39(1) No person shall, except on the authority of a permit— a) engage in fishing, collecting, keeping or controlling of, or be in possession of, abalone for commercial purposes; b) Receive, keep, control, be in possession of or process any abalone at a fish processing establishment. 2) Abalone caught or collected for commercial purposes shall be kept in the whole state until delivered to the holder of a permit contemplated in sub-regulation (1)(b)	<b>Regulation 96:</b> A fine not exceeding R800 000 or to imprisonment not exceeding 2 years



### THREATENED OR PROTECTED SPECIES REGULATIONS 2007

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restricted activity involving South African Abalone without a permit. <ul style="list-style-type: none"> <li>Restricted activities include:</li> <li>Killing/hunting South African Abalone without a permit;</li> <li>Possession of South African Abalone without a permit;</li> <li>Exporting South African Abalone without a permit;</li> <li>Selling or otherwise trading South African Abalone without a permit.</li> </ul>	<b>Regulation 74:</b> A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>OTHER OFFENCES</b>	<b>Offences under POCA where abalone related offences are being committed within an organised crime syndicate, being the offence of racketeering. There are also often related offence linked to fraud, corruption, money laundering, customs and excise, tax evasion and links to drug-related offences.</b>	

## PROVINCIAL



### EASTERN CAPE: CISKEI NATURE CONSERVATION ACT, 10 OF 1987

SECTION	OFFENCE	PENALTY
<b>S53(3)(C)</b>	No person shall catch or disturb any abalone with the use of a crowbar or bait hook or otherwise than by hand or with the use of an implement held in the hand and whereof the blade, in case of a flat implement, is not wider than 35mm	On a <b>first conviction</b> to a fine not exceeding R1 000 or to a period of imprisonment not exceeding 12 months. On a <b>second or subsequent conviction</b> to a fine not exceeding R1 000 or to a period of imprisonment not exceeding 12 months, or to both such fine and imprisonment This shall not apply to a person below the age of 18 years.

## ABALONE



### FREE STATE

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### GAUTENG

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### KWAZULU NATAL: KWAZULU NATAL NATURE CONSERVATION ORDINANCE, 15 OF 1974

#### PROVINCIAL LEGISLATION CONTAINS NO SPECIFIC PROVISIONS REGARDING ABALONE, BUT...

Section 1 "fish" is defined in all matters pertaining to—

c) Coastal Fishing (Chapter X) means any species of:

- marine or estuarine fish,
- mammal,
- turtle or
- invertebrate and include porpoises,
- molluscs,
- crustaceans,
- worms,
- ascidians, as well as
- seals,
- subject to Sea Birds and Seals Protection Act, 1974 (Act 46 of 1973), and the spawn, eggs, brood or young or any part of fish as herein defined, but does not include whales

It seems as if abalone may be dealt with under molluscs.



### LIMPOPO

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### MPUMALANGA

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### NORTH WEST

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### NORTHERN CAPE

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.



### WESTERN CAPE

THE PROVINCIAL LEGISLATION DOES NOT SPECIFICALLY REFER TO ABALONE.

## 4. Pangolins

### PANGOLINS

### NATIONAL



#### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>S57(1) read with S101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provides that no person may carry out a restricted activity without a permit issued in terms of chapter 7 of NEMBA	<b>Section 102:</b> A fine not exceeding R10 million or imprisonment not exceeding 10 years, or both.



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restricted activity involving Pangolin without a permit.	<b>Regulation 74:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 73(1)(aA)</b>	Hunting in contravention off Regulation 26 that prohibits certain forms of hunting such as poison.	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 16(1)(A)</b>	No person may import, export, re-export or attempt to import, export, re-export Pangolin without a valid permit.	<b>Regulation 16(2):</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 16(1)(b)</b>	No person may have in his / her possession or his / her control, or to offer, expose for sale, or display to the public, Pangolin which were not legally acquired. <b>Note</b> Reg. 14 provides the burden of proof of the legal possession of any specimen of a species lies with the possessor of the specimen	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



## PANGOLINS



### ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special Nature Reserve in contravention of section 45(1) or National Park, Nature Reserve or World Heritage Site in contravention of S. 46(1) such person has committed an offence.	<p><b>Section 89:</b></p> <p>A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.</p> <p>In the case of a <b>second or subsequent conviction</b>, a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both</p>

## PROVINCIAL



### LIMPOPO: LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003

SECTION	OFFENCE	PENALTY
<b>S31(1)</b>	No person may hunt a specially protected wild animal without a permit	<p><b>Section 117:</b></p> <p>A fine not exceeding R250 000 or 15 years imprisonment or both, and a fine not exceeding four times the commercial value of the animal</p>
<b>S31(1)d</b>	Specially protected wild animals at night	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S36</b>	No person may without a permit leave or make an opening in certain fences on land on which wild animals are likely to be found	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S38(1)(a)</b>	No person may without a permit hunt specially protected wild animals with an automatic firearm, a calibre of 5.6mm or smaller, a shotgun or airgun	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S38(1)(b)</b>	No person may hunt a specially protected wild animal without a permit using a snare, trap cage, bow and arrow, dog or aircraft	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S39(1)</b>	No person in possession of a firearm may enter on land where wild animals are likely to be found without permission	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S41(1)a</b>	Possess, convey, keep, sell, donate or receive any specially protected wild animal	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal
<b>S41(2)</b>	No person may without a permit convey any wild live animal through the province	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal
<b>S43(1)</b>	No person may without a permit sell any dead specially protected wild animal	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal



## PANGOLINS



### NORTHERN CAPE: NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009

SECTION	OFFENCE	PENALTY
<b>S3</b>	Restricted activities in respect of specially protected animals: no person may without a permit hunt, import, export, transport, keep, possess, breed or trade in	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S8</b>	Hunting of wild animals in excess of daily limit	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S9</b>	No person may hunt a wild animal in a prohibited manner or with prohibited instruments	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(1)</b>	No person may hunt with certain minimum calibre firearms	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(3)</b>	No person may hunt an elephant with a bow and arrow	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S11</b>	No hunting on a public road	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S12</b>	No hunting, receipt possess, acquire or handle a wild animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S15</b>	No person may donate, sell remove or allow to be removed a wild animal or its carcass without a written document	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S17</b>	No person may keep a wild animal in captivity without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S19</b>	Manipulation of boundary offences	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S20</b>	No person may place or cause poison to be placed	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both

## PANGOLINS



### NORTHERN CAPE: NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009 *continued*

SECTION	OFFENCE	PENALTY
<b>S22</b>	No person may be in possession of carcass of dead animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S23</b>	No person to trade, buy and auction, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S26</b>	No person may import into, export from or transport in the province a wild animal, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to 3 times the commercial value of the specimen, or imprisonment not exceeding 10 years



### NORTH WEST: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983

SECTION	OFFENCE	PENALTY
<b>S16(1)</b>	No person shall hunt protected game without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S19(1)</b>	No person shall hunt game in a nature reserve without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S20(1)</b>	No person shall hunt game during the night without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S21(1)</b>	No person shall hunt game with an automatic firearm, a cartridge of .22 of an inch or smaller, a shotgun or an airgun without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S22(1)</b>	No person shall bring or be in possession of a snare, trap, net, trap cage on land on which wild animals are likely to be found	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S24(1)</b>	No person shall enter upon land upon which game is likely to be found in possession of a weapon without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S24(3)</b>	No person shall convey a firearm on a public road traversing land on which game is likely to be found without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S25(1)</b>	No person shall catch game without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both



## PANGOLINS



### NORTH WEST: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S26(1)</b>	No person shall without a permit leave or make an opening in certain fences on land where game is likely to be found	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S27(1)</b>	Wild animal using a snare, trap, trap cage, similar device, bow and arrow, a dog or aircraft	<b>First-time offender:</b> a fine not exceeding R1 000 or 12 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R1500 or 18 months imprisonment, or both
<b>S31(1)</b>	No person shall without a permit poison game	<b>First-time offender:</b> a fine not exceeding R1 000 or 12 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R1500 or 18 months imprisonment, or both
<b>S32(1)</b>	No person shall sell game without a permit	A fine not exceeding R1 000 or 12 months imprisonment, or both
<b>S34(1)</b>	No person shall purchase game except from a person who sells it lawfully	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S39(1)</b>	No person shall convey or keep live game without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S41(1)</b>	No person shall import a live wild animal into the province without a permit	A fine not exceeding R 750 or 9 months imprisonment, or both
<b>S42(1)</b>	No person shall export a wild animal from the province without a permit	A fine not exceeding R1 000 or 12 months imprisonment, or both



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998

SECTION	OFFENCE	PENALTY
<b>S6(1)</b>	No person shall hunt protected game without a permit	A fine or imprisonment not exceeding 5 years, or both
<b>S9(1)</b>	No person shall hunt game in a nature reserve without a permit	A fine or imprisonment not exceeding 4 years, or both
<b>S10(1)</b>	No person shall hunt protected game during the night without a permit	A fine or imprisonment not exceeding 4 years, or both
<b>S11(1)</b>	No person shall hunt protected game with an automatic firearm, a cartridge of .22 of an inch or smaller, shotgun, weapon fitted with a silencer without a permit	A fine or imprisonment not exceeding 3 years, or both
<b>S12(1)</b>	No person shall on land on which a wild animal is likely to be found bring or be in possession of a snare, a trap, trap cage or similar device	A fine or imprisonment not exceeding 2 years, or both
<b>S14(1)</b>	No person shall hunt protected game from a public road	A fine or imprisonment not exceeding 2 years, or both

## PANGOLINS



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S15(1)</b>	No person shall without a permit enter on land upon which game is likely to be found while in possession of a firearm	A fine or imprisonment not exceeding 3 years, or both
<b>S16(1)</b>	No person shall without a permit catch game	A fine or imprisonment not exceeding 3 years, or both
<b>S17(1)</b>	No person shall without a permit leave or make an opening in certain fences on land where game is likely to be found	A fine or imprisonment not exceeding 3 years, or both
<b>S18(1)</b>	No person shall hunt or catch a wild animal using a snare, trap, net, trap cage, bow and arrow, dog or aircraft without a permit	A fine or imprisonment not exceeding 2 years, or both
<b>S23(1)</b>	No person shall sell game without a permit	A fine or imprisonment not exceeding 2 years, or both
<b>S24(1)</b>	No person shall purchase game except from a person who sells it lawfully	A fine or imprisonment not exceeding 2 years, or both
<b>S31(1)</b>	No person shall import a live wild animal into the province without a permit	A fine or imprisonment not exceeding 2 years, or both
<b>S32(1)</b>	No person shall export a wild animal from the province without a permit	A fine or imprisonment not exceeding 2 years, or both



### KWAZULU NATAL: NATURE CONSERVATION ORDINANCE, 15 OF 1974

SECTION	OFFENCE	PENALTY
<b>S15(1)(b)</b>	No person shall without a permit convey into a park or within a park be in possession of any weapon, explosion trap or poison	A fine not exceeding R500 or 6 months imprisonment
<b>S15(1)(c)</b>	No person shall within a park kill, injure, capture or disturb any animal	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S15(1)(f)</b>	No person shall remove from a park any animal whether dead or alive	A fine not exceeding R500 or 6 months imprisonment
<b>S15(10)(h)</b>	No person shall within a park be in possession of a snare	A fine not exceeding R500 or 6 months imprisonment
<b>S15(1)(i)</b>	No person shall within a park hunt or capture any animal by means of a trap. Snare, poison, with an artificial light or from any vehicle	A fine not exceeding R500 or 6 months imprisonment



## PANGOLINS



### WESTERN CAPE: CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person shall hunt any wild animal in a provincial or local nature reserve without a permit	A fine up to R 100 000 or 10 years imprisonment or both fine not exceeding 3 times the commercial value
<b>S29</b>	No person shall hunt any wild animal by poison, artificial light, from a public road, by any trap, at night, bow and arrow, automatic weapon, without a permit	A fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S31</b>	No person shall keep any wild animal in captivity without a permit	A fine not exceeding R5 000 or 1 years imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S31(b)(a)</b>	No person shall alter, remove or partly remove any fence so as to cause any wild animal to gain access to its property	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S32</b>	No person shall lay poison that may be ingested by a wild animal	A fine up to R100 000 or 10 years imprisonment or both fine not exceeding three times the commercial value
<b>S33</b>	No person shall without a permit use any motor vehicle or aircraft to hunt any wild animal	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S40</b>	No person shall hunt any wild animal on land of which he is not the owner without permission	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S41</b>	No person shall donate or sell any wild animal or the carcass thereof without a written document signed by him	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S42</b>	No person shall possess any wild animal or the carcass thereof without written permission	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S44</b>	No person shall without a permit import into, export from or transport through the province any wild animal	A fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any endangered animal or its carcass
<b>S47(a)(a)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell receive or donate any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(a)(b)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell receive or donate the carcass of any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass

## PANGOLINS



### FREE STATE: NATURE CONSERVATION ORDINANCE, 8 OF 1969

SECTION	OFFENCE	PENALTY
<b>S2(3)</b>	No person shall hunt protected game without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S6</b>	No person shall hunt at night without	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S7(1)</b>	No person shall hunt with poison without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S7(2)</b>	No person shall hunt a wild animal by injecting an intoxicating agent or poison without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S8(a)</b>	No person shall hunt protected game with an automatic weapon	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S9</b>	No person shall hunt protected game with a snare, trap, trap cage, kerie or a dog without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S10</b>	No person shall without a permit be in possession of a snare, trap, trap cage suitable for hunting wild animals	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S11(1)</b>	No person shall sell a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S11(3)</b>	No person shall purchase a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S12(1)</b>	No person shall donate a wild animal without a document	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S13(1)</b>	No person shall convey a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S14(1)</b>	No person shall keep a live wild animal in captivity without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S15(b)</b>	No person shall export from the province a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S16(b)</b>	No person shall import into the province a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S21(a)</b>	no person shall while in possession of a weapon enter onto land where game is likely to be found without permission	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S21(b)</b>	A public road without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both



## PANGOLINS



### EASTERN CAPE: CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person shall hunt any wild animal in a provincial or local nature reserve without a permit	S 68(1)(a) – fine up to R100 000 or 10 years imprisonment or both fine not exceeding three times the commercial value
<b>S29</b>	No person shall hunt any wild animal by poison, artificial light, from a public road, by any trap, at night, bow and arrow, automatic weapon without a permit	A fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S31</b>	No person shall keep any wild animal in captivity without a permit	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S31(B)(a)</b>	No person shall alter, remove or partly remove any fence so as to cause any wild animal to gain access to its property	A fine not exceeding R5 000 or 1 year imprisonment and a fine not exceeding three times the commercial value of any such wild animal
<b>S32</b>	No person shall lay poison that may be ingested by a wild animal	A fine up to R100 000 or 10 years imprisonment or both fine not exceeding three times the commercial value
<b>S33</b>	No person shall without a permit use any motor vehicle to hunt any wild animal	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S40</b>	No person shall hunt any wild animal on land of which he is not the owner without permission	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S41</b>	No person shall donate or sell any wild animal or the carcass thereof without a written document signed by him	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S42</b>	No person shall possess any wild animal or the carcass thereof without written permission	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S44</b>	No person shall without a permit import into, export from or transport through the province any wild animal	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(A)(a)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell receive or donate any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(A)(b)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell receive or donate the carcass of any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass

## PANGOLINS



### GAUTENG: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983

SECTION	OFFENCE	PENALTY
<b>S16(1)</b>	No person shall hunt protected game without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S19(1)</b>	No person shall hunt game in a nature reserve without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S20(1)</b>	No person shall hunt game during the night without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S21(1)</b>	No person shall hunt game with an automatic firearm, a cartridge of .22 of an inch or smaller, a shotgun or an airgun without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S22(1)</b>	No person shall bring or be in possession which wild animals are likely to be found	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S24(1)</b>	No person shall enter upon land upon which game is likely to be found in possession of a weapon without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S24(3)</b>	No person shall convey a firearm on a public road traversing land on which game is likely to be found without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S25(1)</b>	No person shall catch game without a permit	A fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S26(1)</b>	No person shall without a permit leave or make an opening in certain fences on land where game is likely to be found	A fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S27(1)</b>	No person shall without a permit hunt a wild animal using a snare, trap, trap cage, similar device, bow and arrow, a dog or aircraft	A fine not exceeding R1 000 or 12 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both
<b>S31(1)</b>	No person shall without a permit poison game	A fine not exceeding R1 000 or 12 months imprisonment or both. <b>Second offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both

## PANGOLINS



### GAUTENG: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S32(1)</b>	No person shall sell game without a permit	A fine not exceeding R1 000 or 12 months imprisonment, or both
<b>S34(1)</b>	No person shall purchase game except from a person who sells it lawfully	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S38(1)</b>	No person shall convey dead game without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S39(1)</b>	No person shall convey or keep live game	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S41(1)</b>	No person shall import a live wild animal into the province without a permit	A fine not exceeding R750 or 9 months imprisonment, or both
<b>S42(1)</b>	No person shall export a wild animal from the province without a permit	A fine not exceeding R1 000 or 12 months imprisonment, or both



## 5. Elephants

### ELEPHANT

### NATIONAL



#### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>S57(1) read with S101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provides that no person may carry out a restricted activity without a permit issued in terms of chapter 7 of NEMBA	<b>Section 102:</b> A fine not exceeding R10 000 or imprisonment not exceeding 10 years, or both.



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restricted activity involving Elephants without a permit.	<b>Regulation 74:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 73(1)(aA)</b>	Hunting in contravention off Regulation 26 which prohibits certain forms of hunting such as poison.	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



#### CITES REGULATIONS (NEMBA)

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(A)</b>	No person may import, export, re-export or attempt to import, export, re-export elephants without a valid permit.	<b>Regulation 16(2):</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

## ELEPHANT

CITES REGULATIONS (NEMBA) *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(b)</b>	No person may have in his / her possession or his / her control, or to offer, expose for sale, or display to the public, Pangolin which were not legally acquired.  <b>Note:</b> Reg. 14 provides the burden of proof of the legal possession of any specimen of a species lies with the possessor of the specimen	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



## NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special Nature Reserve in contravention of section 45(1) or National Park, Nature Reserve or World Heritage Site in contravention of S. 46(1) such person has committed an offence.	<b>Section 89:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

## PROVINCIAL

EASTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person to hunt a wild animal without a permit	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or a carcass of such wild animal	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S27(1)(a)</b>	No person shall hunt a protected wild animal without having a permit or licence	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S28</b>	Prohibits killing or capturing protected wild animals in excess of daily limit	A fine of R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S29</b>	Prohibited ways of hunting	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of an any african elephant or its carcass

## ELEPHANT



### FREE STATE: NATURE CONSERVATION ORDINANCE 8 OF 1969

#### ELEPHANT IS PROTECTED GAME LISTED IN SCHEDULE 1

SECTION	OFFENCE	PENALTY
<b>S6</b>	Prohibits hunting at night	A fine of R20 000 or 5 years imprisonment, or both
<b>S7(1) or 7(2)</b>	Prohibits hunting with or laying out of poison	A fine of R100 000 or 10 years imprisonment, or both
<b>S8(a)</b>	Prohibits hunting with certain weapons	A fine of R20 000 or 5 years imprisonment, or both
<b>S9</b>	Prohibits hunting with certain contrivances	A fine of R20 000 or 5 years imprisonment, or both
<b>S10</b>	Prohibits possession of certain contrivances	A fine of R20 000 or 5 years imprisonment, or both
<b>S11</b>	Prohibits sale or purchase of wild animals	A fine of R20 000 or 5 years imprisonment, or both
<b>S12</b>	Prohibits donation of wild animals	A fine of R20 000 or 5 years imprisonment, or both
<b>S13</b>	Prohibits conveyance of wild animals	A fine of R20 000 or 5 years imprisonment, or both
<b>S14(1)</b>	Prohibited Acts i.R.o Wild Animals: Keeping Of Wild Animals	A fine of R20 000 or 5 years Imprisonment, or both
<b>S14(2)</b>	Possess, convey, buy, sell manufacture any product from a wild animal	A fine of R100 000, or 10 years imprisonment, or both
<b>S15</b>	Prohibits exporting of animals	A fine of R100 000 or 10 years imprisonment, or both
<b>S16</b>	Prohibits importing of animals into province	Regarding s 16(a): A fine of R100 000 or 10 years imprisonment, or both Regarding s 16(b): A fine of R20 000 or 5 years, or both



### WESTERN CAPE: CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person to hunt a wild animal without a permit	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or a carcass of such wild animal	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S27(1)(a)</b>	No person shall hunt a protected wild animal without having a permit or licence	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal

## ELEPHANT



## WESTERN CAPE:

CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S28</b>	Prohibits killing or capturing protected wild animals in excess of daily limit	A fine of R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S29</b>	Prohibited ways of hunting	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of an any african elephant or its carcass



## GAUTENG:

## TRANSCAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983

## ELEPHANT LISTED IN SCHEDULE 2 AS SPECIALLY PROTECTED GAME

SECTION	OFFENCE	PENALTY
<b>S16A(1)</b>	Prohibits hunting of specially protected game	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the commercial value of the wild animal
<b>S19(1)</b>	Prohibits hunting in nature reserve	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the commercial value of the wild animal
<b>S20(1)</b>	Prohibits hunting of specially protected game at night	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the of the wild animal
<b>S21(1)</b>	Prohibits hunting with certain weapons	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S22(1)</b>	Prohibited Acts With Certain Devices Or Means for example traps and gins	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S25(1)</b>	No person shall catch specially protected game without permit	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the commercial value of the wild animal
<b>S26(1)</b>	Leaving or making openings in certain fences	<b>First-time offender:</b> A fine of R1 500 or 18 months imprisonment or both <b>Second-time offender:</b> A fine of R2 000 or 24 months imprisonment, or both
<b>S27(1)</b>	Hunting or catching wild animals in certain ways	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the commercial value of the wild animal
<b>S31(1)</b>	Poisoning of game	A fine of R100 000 or 10 years, or both and fine not exceeding three times the commercial value of the wild animal



## ELEPHANT



### GAUTENG: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S32(1)</b>	Sale of game without permit	A fine of R100 000 or 10 years imprisonment, or both and fine not exceeding three times the commercial value of the wild animal
<b>S34(1)</b>	Unlawful Purchase Of game	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S35(1)</b>	Donation of game without documentation	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S36(1)</b>	Picking up or removal of illegally hunted game	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S37(1)</b>	Receipt, possession, acquisition or handling of dead game	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S38(1)</b>	Conveyance of dead game	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S39(1)</b>	Keeping of or conveyance of live game	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S41(1)</b>	Importing live wild animals	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S42(1)</b>	Exporting or removal of wild animals from province	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal
<b>S52(1)</b>	Hunting of wild animals by clients	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the wild animal

## ELEPHANT


**LIMPOPO:  
LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003**
**ELEPHANT LISTED IN SCHEDULE 2: SPECIALLY PROTECTED WILD ANIMALS**

SECTION	OFFENCE	PENALTY
<b>S31(1)(a)</b>	No hunting of specially protected wild animals without permit	<b>Section 117:</b> A fine of R250 000 or 15 years imprisonment, or both and fine not exceeding four times the commercial value of the wild animal
<b>S35(1)</b>	No person may act as a wildlife trans locator without a permit	A fine of R250 000 or 15 years, or both and fine not exceeding four times the commercial value of the wild animal
<b>S35(3)</b>	Catching specially protected wild animals without a permit	A fine of R250 000 or 15 years, or both and fine not exceeding four times the commercial value of the wild animal
<b>S36</b>	Leaving or making openings of fences	A fine of R150 000 or 7 years imprisonment, or both
<b>S37(1)</b>	Picking up or removal of wild animals caught or hunted unlawfully	A fine of R250 000 or 15 years imprisonment, or both and fine not exceeding four times the commercial value of the wild animal
<b>S38(1)</b>	Prohibited acts relating to ways of hunting or catching wild animals	A fine of R150 000 or 7 years imprisonment, or both
<b>S40(1)</b>	Poisoning of wild animal without permit	Not exceeding four times the commercial value of the wild animal
<b>S41(1)(a)</b>	No person shall acquire, possess, convey, keep, sell, purchase, donate or receive as a gift specially protected wild animals	A fine of R250 000 or 10 years imprisonment, or both and a fine not exceeding four times the commercial value of the wild animal
<b>S42(1)</b>	Keeping or conveyance of wild animals in certain conditions	A fine of R250 000 or 15 years imprisonment, or both and fine not exceeding four times the commercial value of the wild animal
<b>SS 43(1)</b>	No person may without a permit sell any dead specially protected wild animal	A fine of R250 000 or 15 years imprisonment, or both and fine not exceeding four times the commercial value of the wild animal
<b>S43(2)</b>	No person shall acquire possess, convey, keep, sell, purchase, donate or receive as a gift, import into export or remove from the province any dead wild animal	A fine of R250 000 or 15 years imprisonment, or both and fine not exceeding four times the commercial value of the wild animal
<b>S50(1)</b>	Hunting of wild animals by clients	A fine of R150 000 or 7 years imprisonment

## ELEPHANT



### NORTHERN CAPE: NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009

#### ELEPHANT LISTED IN SCHEDULE 1 AS SPECIALLY PROTECTED SPECIES

SECTION	OFFENCE	PENALTY
<b>S3</b>	Restricted activities regarding specially protected animals: no person may without a permit hunt, import, export, transport, keep, possess, breed or trade in	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S8</b>	Hunting of wild animals in excess of daily limit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S9</b>	No person may hunt a wild animal in a prohibited manner or with prohibited instruments	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(1)</b>	No person may hunt with certain minimum calibre firearms	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(3)</b>	No person may hunt an elephant with a bow and arrow	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years.
<b>S11</b>	No hunting on a public road	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S12</b>	No hunting, receipt possess, acquire or handle a wild animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S15</b>	No person may donate, sell remove or allow to be removed a wild animal or its carcass without a written document	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S17</b>	No person may keep a wild animal in captivity without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S19</b>	Manipulation of boundary offences	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S20</b>	No person may place or cause poison to be placed	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both

## ELEPHANT

**NORTHERN CAPE:**  
**NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009** *continued*

SECTION	OFFENCE	PENALTY
<b>S22</b>	No person may be in possession of carcass of dead animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S23</b>	No person to trade, buy, sell, keep or dispose of any wild animal by way of an auction, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S26</b>	No person may import into, export from or transport in the province a wild animal, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years

**NORTH WEST**

AS PER GAUTENG ABOVE

**MPUMALANGA:**  
**MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998****ELEPHANT LISTED IN SCHEDULE 1 AS SPECIALLY PROTECTED GAME**

SECTION	OFFENCE	PENALTY
<b>S5(1)</b>	No person may hunt specially protected game without a permit	A fine or 10 years imprisonment and fine not exceeding three times the commercial value of the animal
<b>S5(2)</b>	Failure to report a presumably wounded elephant within 24 hours	A fine or 2 years imprisonment, or both
<b>S10</b>	Hunting during night without permit	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S11</b>	Hunting of game with certain weapons	A fine or 3 years imprisonment, or both
<b>S12</b>	Prohibited acts by certain devices or means	A fine or 2 years imprisonment, or both
<b>S14</b>	Hunting from public road without permit	A fine or 2 years imprisonment, or both
<b>S16(1)</b>	No person shall catch game without permit	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S16(4)(a)</b>	No person shall capture, transport or keep game without a licence	A fine or 2 years imprisonment, or both
<b>S17</b>	Leaving of, or making openings in certain fences	A fine or 3 years imprisonment, or both
<b>S18(1)</b>	Hunting or catching of wild animals in certain ways for example snare, bow and arrow without a permit	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S22(1)</b>	No person shall possess an elephant tusk without a permit	A fine or 10 years imprisonment, or both

## ELEPHANT



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S23(1)</b>	No person shall sell game without a permit	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S24(1)</b>	No person shall sell, purchase or receive game without valid documents	A fine or 2 years imprisonment, or both
<b>S25(1)</b>	No person shall donate game hunted unlawfully	A fine or 2 years imprisonment, or both
<b>S25(2)</b>	Any person donating game must deliver document	A fine or 2 years imprisonment, or both
<b>S25(3)</b>	No person shall receive donated game without a document	A fine or 2 years imprisonment, or both
<b>S25(4)</b>	No person shall convey donated game without a document	A fine or 2 years imprisonment, or both
<b>S26(1)</b>	No person shall pick up or remove game which was caught or hunted unlawfully or that was caught or killed by an animal or bird of prey without written permission of the owner of land	A fine or 2 years imprisonment, or both
<b>S27(1)</b>	Receipt of dead game known to have been hunted unlawfully, possession of dead game regarding which reasonable suspicion unlawfully, receives or acquires dead game without having reasonable cause to believe that it was hunted lawfully,	A fine or 2 years imprisonment, or both
<b>S28(1)</b>	Dead game without a permit/valid document	A fine or 2 years imprisonment, or both
<b>S29(1)</b>	No person shall convey or keep game without a permit	A fine or 2 years imprisonment, or both
<b>S30(1)</b>	No person shall keep or Convey a live wild animal in certain conditions	A fine or 2 years imprisonment, or both
<b>S31(1)</b>	No person shall import a live wild animal into the province without a permit	A fine or 2 years imprisonment, or both
<b>S32(1)</b>	No person shall export or remove a wild animal from the province without a permit	A fine or 10 years imprisonment or both and fine not exceeding three times the value of the animal
<b>S39(1)(a)</b>	Professing to be the owner of land and granting permission to hunt on it	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S39(1)(b)</b>	Any person allowing another to contravene this act	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S39(1)(c)</b>	Any person professing falsely that he sells game lawfully	A fine or 10 years imprisonment, or both and fine not exceeding three times the value of the animal
<b>S39(1)(d)</b>	Any person who organises or conducts a hunt	A fine or 10 years imprisonment, or both and fine not exceeding three times the
<b>S42(1)</b>	Hunting of wild animals by clients not organised by a hunting outfitter and not escorted by a professional hunter	A fine or 2 years imprisonment, or both

## ELEPHANT


**KWAZULU NATAL:  
NATURE CONSERVATION ORDINANCE, 15 OF 1974**
**ELEPHANT LISTED IN SCHEDULE 3 AS SPECIALLY PROTECTED GAME**

SECTION	OFFENCE	PENALTY
<b>S37(1)</b>	No person shall hunt or keep in captivity any specially protected game	A fine of R100 000 or 10 years imprisonment, or both
<b>S39(1)</b>	Possession, dealing or handling of game regarding which there is a reasonable suspicion that it was hunted or acquired unlawfully	A fine of R100 00 or 10 years imprisonment, or both
<b>S42(2)</b>	Person who hunts or captures game on land whilst trespassing or if found in possession of a weapon or trap or if accompanied by a dog on land where game is likely to be found	<b>First-time offender:</b> A fine of R5 000 or 1 year imprisonment, or both <b>Second-time offender:</b> double the fine or imprisonment or a term of imprisonment without the option of a fine
<b>S44</b>	No person shall make use of unlicensed person to hunt or capture game	A fine of R500 or 6 months imprisonment, or both
<b>S45(1)</b>	No person shall hunt, kill or capture game on a public road	A fine of R500 Or 6 Months Imprisonment, or both
<b>S46</b>	No person shall possess or convey a loaded firearm on a road where game is likely to be found	A fine of R500 or 6 months imprisonment, or both
<b>S47</b>	No person to be in possession of a snare	A fine of R500 or 6 months imprisonment, or both
<b>S48(1)(a)</b>	No person to hunt or capture game by using prohibited methods as listed	A fine of R100 000 or 10 years imprisonment, or both
<b>S48(1)(e)</b>	No hunting between half hour after sunset and half hour before sunrise	A fine R100 000 or 10 years imprisonment, or both
<b>S49(1)</b>	No person shall sell game without permit	A fine of R100 000 or 10 years imprisonment, or both
<b>S49(2)</b>	No person shall purchase game other than game sold in accordance with a written permit	A fine of R100 000 or 10 years imprisonment, or both
<b>S51(1)</b>	No person shall export game from the province without a permit	A fine of R100 000 or 10 years imprisonment, or both
<b>S54(a)</b>	Making false declaration, statement or report for purpose of obtaining a permit or authority	A fine of R500 or 6 months imprisonment, or both
<b>S62</b>	No hunting of specially protected game in private protected game in private wildlife reserve without approval	A fine of R100 000 or 10 years imprisonment, or both

## 6. Rhino

### RHINO

#### NATIONAL



#### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>S57(1) read with S101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provides that no person may carry out a restricted activity without a permit issued in terms of chapter 7 of NEMBA	<b>Section 102:</b> A fine not exceeding R10 million or imprisonment not exceeding 10 years, or both.



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restricted activity involving Rhino without a permit.	<b>Regulation 74:</b> A fine not exceeding R5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 73(1)(aA)</b>	Hunting in contravention off Regulation 26 which prohibits certain forms of hunting such as poison.	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



#### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(A)</b>	No person may import, export, re-export or attempt to import, export, re-export Rhino without a valid permit.	<b>Regulation 16(2):</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

## RHINO

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(b)</b>	No person may have in his / her possession or his / her control, or to offer, expose for sale, or display to the public, Rhino which were not legally acquired.  <b>NOTE:</b> Reg. 14 provides the burden of proof of the legal possession of any specimen of a species lies with the possessor of the specimen	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



## NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special Nature Reserve in contravention of section 45(1) or National Park, Nature Reserve or World Heritage Site in contravention of S. 46(1) such person has committed an offence.	<b>Section 89:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or both

## PROVINCIAL

EASTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person shall hunt any wild animal in a provincial or local nature reserve without a permit	A fine up to R100 000 or 10 years imprisonment, or both – fine not exceeding three times the commercial value
<b>S29</b>	No person shall hunt any wild animal by poison, artificial light, from a public road, by any trap, at night, bow and arrow, automatic weapon, without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S31</b>	No person shall keep any wild animal in captivity without a permit	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S31(B)(a)</b>	No person shall alter, remove or partly remove any fence so as to cause any wild animal to gain access to its property	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S32</b>	No person shall lay poison that may be ingested by a wild animal	A fine up to R100 000 or 10 years imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal



## RHINO



### EASTERN CAPE: CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974 *continued*

SECTION	OFFENCE	PENALTY
<b>S33</b>	No person shall without a permit use any motor vehicle or aircraft to hunt any wild animal	A) fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S40</b>	No person shall hunt any wild animal on land of which he is not the owner without permission	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S41</b>	No person shall donate or sell any wild animal or the carcass thereof without a written document signed by him	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S42</b>	No person shall possess any wild animal or the carcass thereof without written permission	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S44</b>	No person shall without a permit import into, export from or transport through the province any wild animal	Aa fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any endangered animal or its carcass
<b>S47(A)(a)</b>	No person shall without a permit hunt capture, possess, import into, export from, transport through a province, buy, sell, receive or donate any rhino	A fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(A)(b)</b>	No person shall without a permit hunt, capture, possess, import into, export from, transport through a province, buy, sell, receive or donate the carcass of any rhino	A fine not exceeding R100 000 or 10 years imprisonment or both and a fine not exceeding three times the commercial value of any rhino or its carcass



### WESTERN CAPE: CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person shall hunt any wild animal in a provincial or local nature reserve without a permit	A fine up to R100 000 or 10 years imprisonment, or both fine not exceeding three times the commercial value of any such animal
<b>S29</b>	No person shall hunt any Wild animal by poison, artificial light, from a public road, by any trap, At night, bow and arrow, automatic weapon, without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S31</b>	No person shall keep any wild animal in captivity without a permit	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such animal



## RHINO


**WESTERN CAPE:**  
**CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974** *continued*

SECTION	OFFENCE	PENALTY
<b>S31(B)(a)</b>	No person shall alter, remove or partly remove any fence so as to cause any wild animal to gain access to its property	A fine not exceeding R5 000 or 1 year imprisonment or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S32</b>	No person shall lay poison that may be ingested by a wild animal	A fine up to R100 000 or 10 years imprisonment, or both such fine and imprisonment and a fine not exceeding three times the commercial value
<b>S33</b>	No person shall without a permit use any motor vehicle or aircraft to hunt any wild animal	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S40</b>	No person shall hunt any wild animal on land of which he is not the owner without permission	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S41</b>	No person shall donate or sell any wild animal or the carcass thereof without a written document signed by him	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S42</b>	No person shall possess any wild animal or the carcass thereof without written permission	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S44</b>	No person shall without a permit Import into, export from or transport through the province any wild animal	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered animal or its carcass
<b>S47(A)(a)</b>	No person shall without a permit hunt, capture, possess, import into, export from, transport through a province, buy, sell, receive or donate any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(A)(b)</b>	No person shall without a permit hunt, capture, possess, import into, export from, transport through a province, buy, sell, receive or donate the carcass of any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass


**NORTHERN CAPE:**  
**CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S3</b>	Restricted activities in respect of specially protected animals: no person may without a permit hunt, import, export, transport, keep, possess, breed or trade in	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years or both

**RHINO**
**NORTHERN CAPE:**  
**CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974** *continued*

SECTION	OFFENCE	PENALTY
<b>S8</b>	Hunting of wild animals in excess of daily limit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S9</b>	No person may hunt a wild animal in a prohibited manner or with prohibited instruments	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(1)</b>	No person may hunt with certain minimum calibre firearms	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(3)</b>	No person may hunt an elephant with a bow and arrow	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S11</b>	No hunting on a public road	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S12</b>	No hunting, receipt possess, acquire or handle a wild animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S15</b>	No person may donate, sell, remove or allow to be removed a wild animal or its carcass without a written document	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years or both
<b>S17</b>	No person may keep a wild animal in captivity without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S19</b>	Manipulation of boundary offences	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both

## RHINO


**NORTHERN CAPE:**  
**CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974** *continued*

SECTION	OFFENCE	PENALTY
<b>S20</b>	No person may place or cause poison to be placed	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S22</b>	No person may be in possession of carcass of a dead animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S23</b>	No person to trade, buy, sell, keep or dispose of any wild animal by way of an auction, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S26</b>	No person may import into, export from or transport in the province a wild animal, without a permit at night without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both


**FREE STATE:**  
**FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969**

SECTION	OFFENCE	PENALTY
<b>S7</b>	No person shall hunt with poison or lay poison where it is likely to be picked up by a wild animal without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S8</b>	No person shall hunt protected game with an automatic firearm	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S9</b>	No person shall hunt a wild animal without a permit by using a snare, trap, gin, net, pitfall, kerie, trap, cage, set a gun or a dog	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S11(1)</b>	No person shall sell a wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S12(1)</b>	No person shall donate a wild animal without a document containing the prescribed particulars	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S12(3)</b>	No person shall be in possession of a wild animal without a document	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S13</b>	No person shall convey a wild animal without a permit or document	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S14(1)</b>	No person shall keep in captivity any wild animal without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S14(2)(c)</b>	No person shall without a permit possess any processed part or product of a Rhino horn	A fine not exceeding R100 000 or 10 years imprisonment, or both

## RHINO



### FREE STATE:

#### FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969 *continued*

SECTION	OFFENCE	PENALTY
<b>S15(a)</b>	No person shall export from the province any endangered or wild animal without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S16</b>	No person shall import into the province any endangered or wild animal without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S21(a)</b>	No person shall with a weapon enter on land where game is likely to be found without written permission	A fine not exceeding R20 000 or 5 years imprisonment, or both
<b>S21(b)</b>	No person shall hunt a wild animal from any road without a permit	A fine not exceeding R20 000 or 5 years imprisonment, or both



### GAUTENG:

#### TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983

SECTION	OFFENCE	PENALTY
<b>S16A(1)</b>	No person shall hunt specially protected game without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S19(1)</b>	No person shall hunt game in a Nature Reserve without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S20(1)</b>	No person shall hunt game during the night without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S21(1)</b>	No person shall hunt game with an automatic firearm, a weapon of 22 of an inch or smaller calibre, a shotgun or an airgun without a permit	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S22(1)</b>	No person shall on land on which wild animals are likely to be found be in possession of a snare, trap, gin, net, trap cage or other device without permission	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S24(1)</b>	No person shall enter on land where game is found in possession of a weapon without lawful reason or permission	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S25(1)</b>	No person shall catch game without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S26(1)</b>	Leaving or making opening in certain fences without a permit	<b>First-time offender:</b> a fine not exceeding R1 500 or 18 months imprisonment, or both <b>Second-time offender:</b> a fine not exceeding R2 000 or 24 months imprisonment, or both
<b>S27(1)</b>	No person shall hunt or catch a wild animal using a snare, trap, gin, net, trap cage, bow and arrow, set gun, a dog or an aircraft without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S31(1)</b>	No person shall poison game without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both

## RHINO


**GAUTENG:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983** *continued*

SECTION	OFFENCE	PENALTY
<b>S32(1)</b>	No person shall sell game without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S34(1)</b>	No person shall purchase game except from a person who sells it lawfully	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S35(1)</b>	Any person donating game shall deliver together with the game a document containing his particulars	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S36(1)</b>	No person shall pick up or remove game not hunted or caught lawfully without permission	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S37(1)</b>	No person shall receive dead game knowing it was not hunted lawfully, found in possession of dead game as above, acquires or receives into his possession dead game as above	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of a wild animal
<b>S38(1)</b>	No person shall convey dead game without a document from the owner	A fine or imprisonment not exceeding 10 years, or both And a fine not exceeding three times the commercial value of a wild animal
<b>S39(1)</b>	No person shall keep or convey live game without a permit	A fine or imprisonment not exceeding 10 years, or both And a fine not exceeding three times the commercial value of a wild animal
<b>S41(1)</b>	No person shall import a live wild animal into the province without a permit	A fine or imprisonment not exceeding 10 years, or both And a fine not exceeding three times the commercial value of a wild animal
<b>S42(1)</b>	No person shall export or remove a wild animal from the province without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both


**NORTH WEST:**  
**TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983**

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person shall hunt any wild animal in a provincial or local nature reserve without a permit	A fine up to R100 000 or 10 years imprisonment, or both fine not exceeding three times the commercial value
<b>S29</b>	No person shall hunt any wild animal by poison, artificial light, from a public road, by any trap, at night, bow and arrow, automatic weapon, without a permit	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal

## RHINO



### NORTH WEST: TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983 *continued*

SECTION	OFFENCE	PENALTY
<b>S31</b>	No person shall keep any wild animal in captivity without a permit	A fine not exceeding R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any such wild animal
<b>S31(B)(a)</b>	No person shall alter, remove or partly remove any fence so as to cause any wild animal to gain access to its property	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S32</b>	No person shall lay poison that may be ingested by a wild animal	A fine up to R100 000 or 10 years imprisonment, or both, and a fine not exceeding three times the commercial value
<b>S33</b>	No person shall without a permit use any motor vehicle or aircraft to hunt any wild animal	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S40</b>	No person shall hunt any wild animal on land of which he is not the owner without permission	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S41</b>	No person shall donate or sell any wild animal or the carcass thereof without a written document signed by him	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S42</b>	No person shall possess any wild animal or the carcass thereof without written permission	A fine not exceeding R5 000 or 1 year imprisonment, or both, and a fine not exceeding three times the commercial value of any such wild animal
<b>S44</b>	No person shall without a permit import into, export from or transport through the province any wild animal	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered animal or its carcass
<b>S47(A)(a)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell, receive or donate any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any rhino or its carcass
<b>S47(A)(b)</b>	No person shall without a permit hunt capture, possess, import into, export from transport through a province, buy, sell receive or donate the carcass of any rhino	A fine not exceeding R100 000 or 10 years imprisonment, or both, and a fine not exceeding three times the commercial value of any rhino or its carcass

## RHINO



## KWAZULU NATAL:

## KWAZULU NATAL NATURE CONSERVATION ORDINANCE, 15 OF 1974

SECTION	OFFENCE	PENALTY
<b>S15(1)(b)</b>	No person shall without a permit convey into a park or within a park be in possession of any weapon, explosion trap or poison	A fine not exceeding R500 or 6 months imprisonment
<b>S15(1)(c)</b>	No person shall within a park kill, injure, capture or disturb any animal	A fine not exceeding R100 000 or 10 years imprisonment, or both
<b>S15(1)(f)</b>	No person shall remove from a park any animal whether dead or alive	A fine not exceeding R500 or 6 months imprisonment
<b>S15(10)(h)</b>	No person shall within a park be in possession of a snare	A fine not exceeding R500 or 6 months imprisonment
<b>S15(1)(i)</b>	No person shall within a park hunt or capture any animal by means of a trap, snare, poison, with an artificial light or from any vehicle	A fine not exceeding R500 or 6 months imprisonment



## MPUMALANGA:

## MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998

SECTION	OFFENCE	PENALTY
<b>S5(1)</b>	No person shall hunt specially protected game without a permit	A fine or imprisonment not exceeding 10 years, or both, and a fine not exceeding three times the commercial value of the animal
<b>S9(1)</b>	No person shall hunt in a Nature Reserve without a permit	A fine or imprisonment not exceeding 10 years, or both, and a fine not exceeding three times the commercial value of the animal
<b>S10(1)</b>	No person shall hunt game during the night without a permit	A fine or imprisonment not exceeding 10 years, or both, and a fine not exceeding three times the commercial value of the animal
<b>S11(1)</b>	No person shall hunt game with an Automatic weapon, a weapon of .22 Caliber or smaller, a weapon not smaller than 0.375 caliber, a weapon fitted with a silencer without a permit	A fine or imprisonment not exceeding 3 years, or both
<b>S12(1)</b>	No person shall on land on which any wild animal is found bring or be in possession of a snare, trap, gin, trap cage without a permit	A fine or imprisonment not exceeding 2 years, or both
<b>S14(1)</b>	No person shall hunt or catch any wild animal from a public road	A fine or imprisonment not exceeding 2 years, or both
<b>S15(1)</b>	No person shall enter upon land on which game is found in possession of a weapon without a permit	A fine or imprisonment not exceeding 3 years, or both
<b>S15(2)</b>	No person shall convey a firearm on public road on land where game is found without a permit	A fine or imprisonment not exceeding 3 years, or both
<b>S16(1)</b>	No person shall catch game without a permit	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the animal
<b>S17(1)</b>	No person shall leave or make an opening in certain fences so designed that game cannot escape without a permit	A fine or imprisonment not exceeding 3 years, or both



## RHINO



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998 *continued*

SECTION	OFFENCE	PENALTY
<b>S18(1)</b>	No person shall hunt or catch a wild animal by using a snare, trap, Gin, trap cage, bow and arrow, a dog, an aircraft without a permit	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the animal
<b>S22(1)</b>	No person shall possess a rhinoceros horn without a permit	A fine or imprisonment not exceeding 10 years, or both
<b>S23(1)</b>	No person shall sell game without a permit	A fine or imprisonment not exceeding 10 years, or both, and a fine not exceeding three times the commercial value of the animal
<b>S24(1)</b>	No person shall purchase game unlawfully	A fine or 2 years imprisonment, or both
<b>S32(1)</b>	No person shall export or remove a wild animal from the province without a permit	A fine or imprisonment not exceeding 10 years, or both and a fine not exceeding three times the commercial value of the animal



### LIMPOPO: LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003

SECTION	OFFENCE	PENALTY
<b>S31(1)</b>	No person may hunt a specially protected wild animal without a permit	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal
<b>S31(1)d</b>	No person may without a permit hunt specially protected wild animals at night	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S36</b>	No person may without a permit leave or make an opening in certain fences on land on which wild animals are likely to be found	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S38(1)(a)</b>	No person may without a permit hunt specially protected wild animals with an automatic firearm, a calibre of 5.6mm or smaller, a shotgun or airgun	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S38(1)(b)</b>	No person may hunt a specially protected wild animal without a permit using a snare, trap, cage, bow and arrow, dog or aircraft	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S39(1)</b>	No person in possession of a firearm may enter on land where wild animals are likely to be found without permission	A fine not exceeding R150 000 or 7 years imprisonment, or both
<b>S41(1)(a)</b>	No person may without a permit acquire, possess, convey, keep, sell, donate or receive any specially protected wild animal	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal
<b>S41(2)</b>	No person may without a permit convey any wild live animal through the province	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal
<b>S43(1)</b>	No person may without a permit sell any dead specially protected wild animal	A fine not exceeding R250 000 or 15 years imprisonment, or both and a fine not exceeding four times the commercial value of the animal

## 7. Lions

### LION

### NATIONAL



#### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 10 OF 2004 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>S57(1) read with S101(1)(a)</b>	Contravening or failing to comply with the provisions of S 57(1), which provides that no person may carry out a restricted activity without a permit issued in terms of chapter 7 of NEMBA	<b>Section 102:</b> A fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years, or both.



#### THREATENED OR PROTECTED SPECIES REGULATIONS 2007 (NEMBA)

SECTION	OFFENCE	PENALTY
<b>Reg. 73(1)(a)</b>	Undertaking a restricted activity involving lions without a permit.	<b>Regulation 74:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both
<b>Reg. 73(1)(aA)</b>	Hunting in contravention of Regulation 26 which prohibits certain forms of hunting such as poison.	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



#### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(A)</b>	No person may import, export, re-export or attempt to import, export, re-export Lions without a valid permit.	<b>Section 16(2):</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both. In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both



## LION

**CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) REGULATIONS** *continued*

SECTION	OFFENCE	PENALTY
<b>Reg. 16(1)(b)</b>	No person may have in his / her possession or his / her control, or to offer, expose for sale, or display to the public, Lions which were not legally acquired.  <b>Note:</b> Reg. 14 provides the burden of proof of the legal possession of any specimen of a species lies with the possessor of the specimen	A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

**NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 OF 2003**

SECTION	OFFENCE	PENALTY
<b>S89</b>	Should the offender be found within a special Nature Reserve in contravention of section 45(1) or National Park, Nature Reserve or World Heritage Site in contravention of S. 46(1) such person has committed an offence.	<b>Section 89:</b> A fine not exceeding R 5 million or imprisonment for a period not exceeding 5 years, or both.  In the case of a <b>second or subsequent conviction</b> , a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both

## PROVINCIAL

**LIMPOPO:  
LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003****LION LISTED IN SCHEDULE 3: PROTECTED WILD ANIMALS**

SECTION	OFFENCE	PENALTY
<b>S31(1)(b)</b>	No hunting of protected wild animals without permit	<b>Section 117:</b> A fine of R150 000 or 7 years imprisonment, or both
<b>S35(1)</b>	No person may act as wild life trans locator without a permit	A fine or 3 years imprisonment, or both
<b>S35(3)</b>	Catching protected wild animals without permit	A fine of R150 000 or 7 years imprisonment, or both
<b>S36</b>	Leaving or making openings of fences	A fine of R150 000 or 7 years imprisonment, or both
<b>S37(1)</b>	Picking up or removal of wild animals caught or hunted unlawfully	A fine or 3 years imprisonment, or both
<b>S38(1)</b>	Prohibited acts relating to ways of hunting or catching wild animals	A fine of R150 000 or 7 years imprisonment, or both
<b>S40(1)</b>	Poisoning of wild animal without permit	A fine or 3 years imprisonment, or both
<b>S41(1)(a)</b>	No person shall acquire possess, convey, keep, sell, purchase, donate or receive as a gift protected wild animals	A fine of R150 000 or 7 years imprisonment, or both

## LION



### LIMPOPO: LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003 *continued*

SECTION	OFFENCE	PENALTY
<b>S42(1)</b>	Keeping or conveyance of wild animals in certain conditions	A fine or 3 years imprisonment, or both
<b>S43(1)</b>	No person may without a permit sell any dead specially protected wild animal	A fine of R150 000 or 7 years imprisonment, or both
<b>S43(2)</b>	No person shall acquire possess, convey, keep, sell, purchase, donate or receive as a gift, import into export or remove from the province any dead wild animal	A fine of R150 000 or 7 years imprisonment, or both
<b>S50(1)</b>	Hunting of wild animals by clients	A fine of R150 000 or 7 years imprisonment, or both



### NORTHERN CAPE: NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009

#### LION LISTED IN SCHEDULE 1 AS SPECIALLY PROTECTED SPECIES

SECTION	OFFENCE	PENALTY
<b>S3</b>	Restricted activities in respect of specially protected animals: no person may without a permit hunt, import, export, transport, keep, possess, breed or trade in	<b>Section 67:</b> A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S8</b>	Hunting of wild animals in excess of daily limit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S9</b>	No person may hunt a wild animal in a prohibited manner or with prohibited instruments	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(1)</b>	No person may hunt with certain minimum calibre firearms	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S10(3)</b>	No person may hunt an elephant with a bow and arrow	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S11</b>	No hunting on a public road	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both

## LION


**NORTHERN CAPE:**  
**NORTHERN CAPE NATURE CONSERVATION ACT, 9 OF 2009** *continued*

SECTION	OFFENCE	PENALTY
<b>S12</b>	No hunting, receipt possess, acquire or handle a wild animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S15</b>	No person may donate, sell remove or allow to be removed a wild animal or its carcass without a written document	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S17</b>	No person may keep a wild animal in captivity without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S19</b>	Manipulation of boundary offences	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S20</b>	No person may place or cause poison to be placed	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S22</b>	No person may be in possession of carcass of dead animal	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S23</b>	No person to trade, buy, sell, keep or dispose of any wild animal by way of an auction, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years, or both
<b>S26</b>	No person may import into, export from or transport in the province a wild animal, without a permit	A fine in accordance with the Adjustment of Fines Act or a fine equal to three times the commercial value of the specimen, or imprisonment not exceeding 10 years



## LION



### MPUMALANGA: MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998

#### LION LISTED IN SCHEDULE 4 AS PROTECTED WILD ANIMALS

SECTION	OFFENCE	PENALTY
<b>S8(1)</b>	No person shall hunt a protected wild animal without a permit	A fine or 4 years imprisonment, or both
<b>S8(2)</b>	Failure to report a presumably wounded lion within 24 hours	A fine or 2 years imprisonment, or both
<b>S10</b>	Hunting during night without permit	A fine or 4 years imprisonment, or both
<b>S11</b>	Hunting of game with certain weapons	A fine or 3 years imprisonment, or both
<b>S12</b>	Prohibited acts by certain devices or means	A fine or 2 years imprisonment, or both
<b>S13(1)</b>	Hunting of protected wild animals under certain circumstances	A fine or 2 years imprisonment, or both
<b>S13(2)</b>	Failure to report within 24 hours a lion that was killed or presumably wounded, under certain circumstances	A fine or 2 years imprisonment, or both
<b>S14</b>	Hunting from public road without permit	A fine or 2 years imprisonment, or both
<b>S16(1)</b>	No person shall catch game without permit	A fine or 3 years imprisonment, or both
<b>S16(4)(a)</b>	No person shall capture, transport or keep game without a licence	A fine or 2 years imprisonment, or both
<b>S17</b>	Leaving of or making openings in certain fences	A fine or 3 years imprisonment, or both
<b>S18(1)</b>	Hunting or catching of wild animals in certain ways e.g. snare, bow and arrow etc. without a permit	A fine or 2 years imprisonment, or both
<b>S23(1)</b>	No person shall sell game without a permit	A fine or 2 years imprisonment, or both
<b>S24(1)</b>	No person shall sell, purchase or receive game without valid documents	A fine or 2 years imprisonment, or both
<b>S25(1)</b>	No person shall donate game hunted unlawfully	A fine or 2 years imprisonment, or both
<b>S25(2)</b>	Any person donating game must deliver document	A fine or 2 years imprisonment, or both
<b>S25(3)</b>	No person shall receive donated game without a document	A fine or 2 years imprisonment, or both
<b>S25(4)</b>	No person shall convey donated game without a document	A fine or 2 years imprisonment, or both
<b>S26(1)</b>	No person shall pick up or remove game which was caught or hunted unlawfully or that was caught or killed by an animal or bird of prey without written permission of the owner of land	A fine or 2 years imprisonment, or both
<b>S27(1)</b>	Receipt of dead game known to have been hunted unlawfully, possession of dead game in respect of which reasonable suspicion that it was hunted unlawfully, receives or acquires dead game without having reasonable cause to believe that it was hunted unlawfully,	A fine or 2 years imprisonment, or both
<b>S28(1)</b>	No person shall convey dead game without a permit/valid document	A fine or 2 years imprisonment, or both
<b>S29(1)</b>	No person shall convey or keep game without a permit	A fine or 2 years imprisonment, or both

## LION


**MPUMALANGA:**  
**MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998** *continued*

SECTION	OFFENCE	PENALTY
<b>S30(1)</b>	No person shall keep or convey a live wild animal in certain conditions	A fine or 2 years imprisonment, or both
<b>S31(1)</b>	No person shall import a live wild animal into the province without a permit	A fine or 2 years imprisonment, or both
<b>S32(1)</b>	No person shall export or remove a wild animal from the province without a permit	A fine or 2 years imprisonment, or both
<b>S39(1)(a)</b>	Professing to be the owner of land and granting permission to hunt on it	A fine or 3 years imprisonment or both
<b>S39(1)(b)</b>	Any person allowing another to contravene this act	A fine or 3 years imprisonment, or both
<b>S39(1)(c)</b>	Any person professing falsely that he sells game lawfully	A fine or 3 years imprisonment, or both
<b>S39(1)(d)</b>	Any person who organises or conducts a hunt with false pretences	A fine or 3 years imprisonment, or both
<b>S42(1)</b>	Hunting of wild animals by clients not organised by a hunting outfitter and not escorted by a professional hunter	A fine or 2 years imprisonment, or both


**KWAZULU NATAL:**  
**NATURE CONSERVATION ORDINANCE, 15 OF 1974**
**LION LISTED IN SCHEDULE 3 AS SPECIALLY PROTECTED GAME**

SECTION	OFFENCE	PENALTY
<b>S37(1)</b>	No person shall hunt or keep in captivity any specially protected game	A fine of R10 000 or 2 years imprisonment, or both
<b>S39(1)</b>	Possession, dealing or handling of game in respect of which there is a reasonable suspicion that it was hunted or acquired unlawfully	A fine of R10 000 or 2 years imprisonment, or both
<b>S42(2)</b>	Person who hunts or captures game on land whilst trespassing or if found in possession of a weapon or trap or if accompanied by a dog on land where game is likely to be found	<b>First-time offender:</b> fine R5 000 or 1 year imprisonment, or both <b>Second-time offender:</b> double the fine or imprisonment or an imprisonment term without the option of a fine
<b>S44</b>	No person shall make use of unlicensed person to hunt or capture game	A fine of R500 or 6 months imprisonment, or both
<b>S45(1)</b>	No person shall hunt, kill or capture game on a public road	A fine of R500 or 6 months imprisonment, or both
<b>S46</b>	No person shall possess or convey a loaded firearm on a road where game is likely to be found	A fine of R500 or 6 months imprisonment, or both
<b>S47</b>	No person to be in possession of a snare	A fine of R500 or 6 months imprisonment, or both
<b>S48(1)(a)</b>	No person to hunt or capture game by using prohibited methods as listed	A fine of R10 000 or 2 years imprisonment, or both



## LION


**KWAZULU NATAL:  
NATURE CONSERVATION ORDINANCE, 15 OF 1974** *continued*

SECTION	OFFENCE	PENALTY
<b>S48(1)(e)</b>	No hunting between half-hour after sunset and half-hour before sunrise	A fine of R10 000 or 2 years imprisonment, or both
<b>S49(1)</b>	No person shall sell game without permit	A fine of R10 000 or 2 years imprisonment, or both
<b>S49(2)</b>	No person shall purchase game other than such game as may be sold in terms of subsection (1) or (3).	A fine of R10 000 or 2 years imprisonment, or both
<b>S51(1)</b>	No person shall export game from the province without a permit	A fine of R10 000 or 2 years imprisonment, or both
<b>S54(a)</b>	Making false declaration, statement or report for the purpose of obtaining a permit or authority	A fine of R500 or 6 months imprisonment, or both
<b>S62</b>	No hunting of specially protected game in private wildlife reserve without approval	A fine of R10 000, or 2 years imprisonment, or both


**NORTHERN CAPE AND WESTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person to hunt a wild animal without a permit	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or a carcass of such wild animal	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S27(1)(a)</b>	No person shall hunt a protected wild animal without having a permit or licence	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S28</b>	Prohibits killing or capturing protected wild animals in excess of daily limit	A fine of R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S29</b>	Prohibit ways of hunting	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of an any african elephant or its carcass

## LION


**EASTERN CAPE:  
CAPE NATURE AND ENVIRONMENTAL CONSERVATION ORDINANCE, 19 OF 1974**

SECTION	OFFENCE	PENALTY
<b>S14</b>	No person to hunt a wild animal without a permit	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S26</b>	No person shall without a permit hunt or be in possession of any endangered wild animal or a carcass of such wild animal	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S27(1)(a)</b>	No person shall hunt a protected wild animal without having a permit or licence	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S28</b>	Prohibits killing or capturing protected wild animals in excess of daily limit	A fine of R5 000 or 1 year imprisonment, or both and a fine not exceeding three times the commercial value of any endangered wild animal
<b>S29</b>	Prohibit ways of hunting	A fine of R100 000 or 10 years imprisonment, or both and a fine not exceeding three times the commercial value of an any african elephant or its carcass


**NORTH WEST:  
TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983**

## LISTED IN SCHEDULE 4 AS A PROTECTED WILD ANIMAL

SECTION	OFFENCE	PENALTY
<b>S18(1)</b>	Prohibits hunting of protected wild animal	<b>First-time offender</b> of this section as well as section 16 or 23: fine R1 500 or 18 months imprisonment or both <b>Second-time or subsequent offender:</b> fine R2 000 or 24 months imprisonment
<b>S20</b>	Prohibits hunting at night without permit	<b>First-time offender</b> of this section as well as section 16 or 23: fine R1 500 or 18 months imprisonment or both <b>Second-time or subsequent offender:</b> fine R2 000 or 24 months imprisonment
<b>S21(1)</b>	Prohibits hunting with certain weapons	A fine or imprisonment not exceeding 10 years imprisonment or both, and a fine not exceeding three times the commercial value of such animal
<b>S22(1)</b>	Prohibits acts with certain devices or means	A fine or imprisonment not exceeding 10 years imprisonment or both, and a fine not exceeding three times the commercial value of such animal

## LION


**NORTH WEST:  
TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983** *continued*

SECTION	OFFENCE	PENALTY
<b>S23(1)</b>	Hunting protected wild animals under certain circumstances e.g. canned hunting	<b>First-time offender</b> of this section and sections 23(3)(a) : fine R1 500 or 18 months imprisonment  <b>Second-time or subsequent offender:</b> R2 000 or 24 months imprisonment
<b>S25(1)</b>	Prohibits catching of game	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both, and a fine not exceeding three times the commercial value of animal in respect of which offence was committed
<b>S27(1)</b>	Prohibits hunting or catching of wild animals in certain manners	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both and a fine not exceeding three times commercial value of animal in respect of which offence was committed
<b>S31(1)</b>	Prohibits poisoning of game	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both and a fine not exceeding three times commercial value of animal in respect of which offence was committed
<b>S32(1)</b>	Prohibits sale of game	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both and a fine not exceeding three times commercial value of animal in respect of which offence was committed
<b>S36(1)</b>	Prohibits picking up or removal of game	A fine or imprisonment not exceeding 10 years imprisonment, or both and a fine not exceeding three times the commercial value of such animal
<b>S37(1)</b>	Prohibits receipt, possession, acquisition or handling of dead game	A fine or imprisonment not exceeding 10 years imprisonment, or both and a fine not exceeding three times the commercial value of such animal
<b>S38(1)</b>	Prohibits conveyance of dead game	A fine or imprisonment not exceeding 10 years imprisonment, or both and a fine not exceeding three times the commercial value of such animal
<b>S39(1)</b>	Prohibits keeping or conveying live game animals into the province	A fine or imprisonment not exceeding 10 years imprisonment, or both and a fine not exceeding three times the commercial value of such animal
<b>S41(1)</b>	Prohibits exporting or removal of wild animals into province	A fine or imprisonment not exceeding 10 years imprisonment, or both and a fine not exceeding three times the commercial value of such animal

## LION

**NORTH WEST:  
TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983** *continued*

SECTION	OFFENCE	PENALTY
<b>S42(1)</b>	Prohibits exporting or removal of wild animals from province	A fine or imprisonment not exceeding 10 years ,or both, and a fine not exceeding three times commercial value of animal in respect of which offence was committed

**BOPUTHATSWANA NATURE CONSERVATION ACT, 3 OF 1973****LION LISTED IN SCHEDULE 3 AS SPECIALLY PROTECTED GAME**

SECTION	OFFENCE	PENALTY
<b>S3</b>	Prohibits hunting, buying, selling conveying, keeping in captivity being in possession or in charge of	A fine not exceeding R200 000 or imprisonment not exceeding 20 years
<b>S4</b>	Prohibited ways of hunting	A fine not exceeding R200 000 or imprisonment not exceeding 20 years
<b>S3</b>	Prohibits sale, donation, possession and transport of dead game	A fine not exceeding R200 000 or imprisonment not exceeding 20 years

**GAUTENG:  
TRANSVAAL NATURE CONSERVATION ORDINANCE, 12 OF 1983****AS LISTED UNDER NORTH WEST****FREE STATE:  
FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969**

SECTION	OFFENCE	PENALTY
<b>S6</b>	Prohibits hunting at night	<b>Section 40:</b> A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S7</b>	Prohibits hunting with or laying of poison	A fine not exceeding R100 000, or imprisonment not exceeding 10 years, or both and may also impose fine not exceeding damage caused or imprisonment not exceeding 6 months
<b>S8</b>	Prohibits hunting with certain weapons	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S9</b>	Prohibits hunting with certain contrivances	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S10</b>	Prohibits possession of certain contrivances	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both

**LION****FREE STATE:****FREE STATE NATURE CONSERVATION ORDINANCE, 8 OF 1969** *continued*

SECTION	OFFENCE	PENALTY
<b>S11</b>	Prohibits sale or purchase of wild animal	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S12</b>	Prohibits donation of wild animal	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S13</b>	Prohibits conveyance of wild animal	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S14(1)</b>	Prohibits keeping wild animal in captivity	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both
<b>S14(2)(a)</b>	Prohibits possession, conveyance buying, selling, exchange, processing or manufacturing of products from body of wild animal	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both
<b>S15</b>	Prohibits exporting of wild animal from the province	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both
<b>S16</b>	Prohibits import of wild animal into the province	A fine not exceeding R100 000 or imprisonment not exceeding 10 years, or both
<b>S 21</b>	Prohibits entry upon land and hunting on public road	A fine not exceeding R20 000 or imprisonment not exceeding 5 years, or both





# **PROCEDURAL ASPECTS IN ADJUDICATION OF ENVIRONMENTAL DISPUTES**



## CHAPTER 5

# Trial and Evidential Matters

## 1. Prosecution of corporations and members of associations

In most instances where environmental crimes are committed in respect of natural resources, juristic persons are involved. Typically, companies are involved in mining operations, waste disposal and harvesting of natural resources.

In this regard, it is imperative that the entities prosecuted must be cited correctly.



Section 332 of the Criminal Procedure Act<sup>1</sup> sets out the requirements in those instances.

Section 332 provides as follows:

**"Prosecution of corporations and members of associations**

1) *For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law—*

- a) *any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and*
- b) *the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,*

*in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.*

2) *In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt*

*with as if he were the person accused of having committed the offence in question: Provided that—*

- a) *if the said person pleads guilty, other than by way of admitting guilt under section 57, the plea shall not be valid unless the corporate body authorized him to plead guilty;*
  - b) *if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for the said person any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;*
  - c) *if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 288;*
  - d) *the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of subsection (5).*
- 3) *In criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of the corporate body within the scope of his activities as such director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such director, servant or agent, shall be admissible in evidence against the accused.*
- 4) *For the purposes of subsection (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any*

<sup>1</sup> Act 51 of 1977



time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such director, servant or agent, unless the contrary is proved.

- 5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.
- 6) In criminal proceedings against a director or servant of a corporate body in respect of an offence—
  - a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;
  - b) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of business of that corporate body or which was at any time in the custody or under the control of any director, servant or agent of such corporate body, in his capacity as director, servant or agent, shall be prima facie proof of its contents and admissible in evidence against the accused, unless he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of such document or memorandum or the making of any relevant entries in such book or record.
- 7) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further

its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this subsection shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

- 8) In any proceedings against a member of an association of persons in respect of an offence mentioned in subsection (7) any record which was made or kept by any member or servant or agent of the association within the scope of his activities as such member, servant or agent, or any document which was at any time in the custody or under the control of any such member, servant or agent within the scope of his activities as such member, servant or agent, shall be admissible in evidence against the accused.
- 9) For the purposes of subsection (8) any record made or kept by a member or servant or agent of an association, or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such member or servant or agent, unless the contrary is proved.
- 10) In this section the word “director” in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.
- 11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

**12) Where a summons under this Act is to be served on a corporate body, it shall be served on the director or servant referred to in subsection (2) and in the manner referred to in section 54(2)."**

The actions of its directors and servants are deemed to be the acts of that corporation and the intention of the director or servant that of the corporation. All offences, regardless of whether committed under common law or statutory law are included. The corporation can, therefore, be held accountable for any act or omission that constitutes a crime in terms of the substantive law.<sup>2</sup>

When a director of a company is prosecuted, it must be evident from the charge sheet that he or she is charged as a director and in a representative capacity of the company. If not, he or she may not be convicted and sentenced.

A partnership is not an incorporated entity but is considered an association of persons for the purpose of subsection (7). Section 96 provides that any reference in a charge to a company, firm or partnership shall be adequate if the reference is to the name of the company, firm or partnership.<sup>3</sup>



In **State v Coetzee and Others**<sup>4</sup> it was held that the words **"unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it,"** in subsection (5) creates a reverse onus on a director and is a breach of the presumption of innocence enshrined in section 25(3)(c) of the Constitution. It was, therefore, declared unconstitutional.

The Companies Act<sup>5</sup> contains a number of provisions<sup>6</sup> setting out the duties of companies and directors of companies in respect of the companies. This may be useful when directors are prosecuted.

If a plea of guilty is tendered, other than by way the payment of an admission of guilt fine, the person tendering the plea must be authorized in writing to do so by the corporate body.<sup>7</sup>

<sup>2</sup> Faisani, DM

<sup>3</sup> **R v Limbada & another** 1958 (2) SA 481 (A)

<sup>4</sup> 1997 (4) BCLR 437 (6 March 1997)

<sup>5</sup> Act 71 of 2008

<sup>6</sup> Sections 22, 76, 77 and 162

<sup>7</sup> **S v Lark Clothing (Pty) Ltd** 1973 (1) SA 239 (C)

## 2. Traps and Undercover Operations

Section 252A of the Criminal Procedure Act<sup>8</sup> was introduced in 1996 and introduced an evidentiary rule when dealing with traps and undercover operations. The purpose was not to create a substantial defence.



**Section 252A provides as follows:**

**"1) Any law enforcement officer, official of the State or any other person authorised thereto for such purpose (hereinafter referred to in this section as an official or his or her agent) may make use of a trap or engage in an undercover operation in order to detect, investigate or uncover the commission of an offence, or to prevent the commission of any offence, and the evidence so obtained shall be admissible if that conduct does not go beyond providing an opportunity to commit an offence: Provided that where the conduct goes beyond providing an opportunity to commit an offence a court may admit evidence so obtained subject to subsection (3)."**

When considering the evidence regarding the use of traps and undercover operations, the only aspect to consider is whether the conduct of the trap went beyond providing an opportunity to commit an offence. Subsection 2 provides a number of factors to take into account when determining whether the trap went beyond providing an opportunity to commit the offence.

They are the following factors:

- Whether approval was obtained from the Director of Public Prosecutions to engage such investigation methods and the extent to which the instructions or guidelines issued were adhered to;
- the nature of the offence under investigation, including safety and security concerns, prevalence of offence and then seriousness thereof.
- the availability of other techniques for the detection, investigation or uncovering of the commission of the offence or the prevention thereof;

<sup>8</sup> Act 51 of 1977

- d) whether an average person who was in the position of the accused, would have been induced into the commission of an offence by the kind of conduct employed by the official or his or her agent concerned;
- e) the degree of persistence and number of attempts made by the official or his or her agent before the accused succumbed and committed the offence;
- f) the type of inducement used, including the degree of deceit, trickery, misrepresentation or reward;
- g) the timing of the conduct, in particular, whether the official or his or her agent instigated the commission of the offence or became involved in an existing unlawful activity;
- h) whether the conduct involved an exploitation of human characteristics such as emotions, sympathy or friendship or an exploitation of the accused's personal, professional or economic circumstances in order to increase the probability of the commission of the offence;
- i) whether the official or his or her agent has exploited a particular vulnerability of the accused such as a mental handicap or a substance addiction;
- j) the proportionality between the involvement of the official or his or her agent as compared to that of the accused, including an assessment of the extent of the harm caused or risked by the official or his or her agent as compared to that of the accused, and the commission of any illegal acts by the official or his or her agent;
- k) any threats, implied or expressed, by the official or his or her agent against the accused;
- l) whether, before the trap was set or the undercover operation was used, there existed any suspicion, entertained upon reasonable grounds, that the accused had committed an offence similar to that to which the charge relates;
- m) whether the official or his or her agent acted in good or bad faith; or
- n) any other factor.



In the case **S v Hammond**<sup>9</sup> it was held that the factors listed are to be considered in determining whether the entrapper has gone further than providing an opportunity. There is no requirement that each be considered.

If the court concludes that the conduct of the trap went beyond providing an opportunity to commit the offence, the provisions of section 252A(3) becomes relevant. The court must then consider the admissibility of the evidence by evaluating the nature and seriousness of the offence and the extent of the effect of the trap or undercover operation upon the interests of the accused.

The Prosecution bears the onus to prove beyond reasonable doubt that the evidence is admissible.

### 3. Electronic Evidence

Cybercrime is a generic term that encompasses any illegal activity wherein a computer or electronic device capable of connecting to the internet is used as an instrument in the commission of crimes or to enable the commission of other crimes, such as fraud, robbery or illegal activities relating to the environment. Cybercrime is unique as it is not localised and may occur anywhere in the world, creating jurisdictional problems. "Cyber-enabled crime" is crime where a computer or data device is being used to further the crime.

At the moment, the only statutes in South Africa dealing with cyber-enabled crime related issues are the Electronic Communications and Transactions Act<sup>10</sup> and the Regulation of Interception of Communications and Provision of Communication-Related Information Act<sup>11</sup>.

### 4. Regulation of Interception and Monitoring of Communications

The Regulation of Interception of Communications and Provision of Communication-Related Information Act<sup>12</sup> was enacted to inter alia regulate the making of applications for, and the issuing of, directions authorising the interception of communications and the provision of communication-related information under certain circumstances; to regulate the execution of directions and entry warrants by law enforcement officers and the assistance to be given by postal service providers, telecommunication service providers

<sup>10</sup> Act 25 of 2002

<sup>11</sup> Act 70 of 2002

<sup>12</sup> Act 70 of 2002

<sup>9</sup> 2008(1) SACR 476 (SCA) at paragraph 485

and decryption key holders in the execution of such directions and entry warrants.

It came into effect on the 1 July 2011. The Act was promulgated in the context of an escalation in organized criminal activity caused by sophisticated communication technology such as mobile telephones, satellite communications, email and other computer-related communications. The legislature found it necessary to enact an act to combat such crimes and further assist the prevention thereof.

No definite reference is made of crime prevention throughout the pre-amble. However, it is implicit that the motivation behind RICA is to effectively prevent crime and prosecute criminals.

As a general rule, RICA prohibits the interception and monitoring of direct and indirect communications. However, there are certain exceptions, including where the interception and monitoring take place with the consent of the parties involved or where it is carried out by law enforcement personnel in certain circumstances. RICA assists the investigation, detection and prevention of crime by law enforcement officers and agencies.



**The schedule to RICA lists the different kinds of crimes the Act aims to combat.**

- 1. high treason;**
- 2. any offence referred to in paragraph (a) of the definition of "specified offence" of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004.**
- 3. ....**
- 4. sedition;**
- 5. any offence which could result in the loss of a person's life or serious risk of loss of a person's life;**
- 6. any offence referred to in Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act 27 of 2002);**
- 7. any specified offence as defined in section 1 of the National Prosecuting Authority Act;**
- 8. any offence referred to in Chapters 2, 3 and 4 of the Prevention of Organised Crime Act;**
- 9. any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);**<sup>10.</sup>

**10. any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament;**

**11. any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones;**

**12. any offence contemplated in Part I to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004**

**13. dealing in, being in possession of or conveying endangered, scarce and protected game or plants or parts or remains thereof in contravention of any legislation;**

**14. any offence the punishment whereof may be imprisonment for life or a period of imprisonment prescribed by section 51 of the Criminal Law Amendment Act, 1997 (Act 105 of 1997), or a period of imprisonment exceeding five years without the option of a fine.**

The Act provides for circumstances under which law enforcement officers may apply to a designated Judge of a High Court for an interception and monitoring direction and entry warrants, and the manner in which such directions and entry warrants are to be executed.

Section 5 of RICA allows communications to be intercepted if a party to those communications gave prior written consent to do so.

In *Thint (Pty) Ltd v National Director of Public Prosecutions and Others, Zuma and Another v National Director of Public Prosecutions and Others*<sup>13</sup> the court maintained that attorney-client privilege is to be taken very seriously, but it is not an absolute right and can be outweighed by countervailing considerations. Similarly, in *S v Tandwa and Others*<sup>14</sup>, the Constitutional Court outlined that attorney-client privilege can be waived expressly, tacitly or by conduct sufficient to impute that the privilege has been waived by the client.

<sup>13</sup> 2009 (1) SA 1 (CC) in paragraphs 183 and 184

<sup>14</sup> 2008 (1) SACR 613 (SCA)

In each instance, one would have to look at the surrounding circumstances and the parameters of the written consent to determine if such infringement was justifiable.

In **S v Miller and Others**<sup>15</sup> the validity of cell phone records obtained by the police to establish that accused were in communication with one another was tested. The interrelation between The Criminal Procedure Act and RICA was discussed.

It was stated that section 205(1) of the CPA contains a cross-reference to section 15 of RICA. It was pointed out that the prohibition contained in section 12 of RICA was ameliorated by section 15 thereof. In other words, if the police wish to obtain cell phone records, they may do so provided they make use of a 205 warrant and provided further that a separate subpoena is issued in respect of each individual request. The process to obtain a section 205 warrant and the qualification under section 35(5) of the Constitution were considered and the evidence was allowed.

## 5. Section 212 of the CPA

The chain of evidence or custody can be defined as the movement and location of real evidence from the time it is obtained to the time it is presented in court.



Lirieka Meintjies-Van der Walt<sup>16</sup> correctly refers to the chain evidence as the chain of custody and identifies the purpose thereof as follows—

**“The chain of custody requirement has two objectives:**

- 1. The first is to lay a proper foundation connecting the evidence to the accused or to a place or object that is relevant to the case.**
- 2. The second purpose of the chain of custody for physical evidence is to ensure that the object is what its proponent claims it to be.**

**These are accomplished by ruling out any tampering with, and substantial alteration or substitution of, the evidence. If the substance analysed for the presence of DNA has been tampered with or altered in a substantial way,**

**it becomes, in effect a substance different from the one originally seized and its relevance to the case disappears. Alterations performed as a result of testing of the substance, of course, do not affect the chain of custody.**

**In most cases, the critical links in the chain of custody are those from the time the evidence was obtained to the time it was scientifically analysed, since the latter is the time at which the integrity of the evidence is of paramount importance. The chain of custody is the means of verifying the authenticity and legal integrity of trace or sample evidence by establishing where the evidence has been and who handled it prior to the trial.”**

Section 212 explicitly provides for the reception of affidavits and certificates on production by the state as prima facie proof of their contents. Although the section thereby facilitates the production of evidence, it does of course not relieve the prosecution of proving its case beyond a reasonable doubt.



In **S v Veldthuisen**<sup>17</sup> it was held that:

**“As used in this section they mean that the judicial officer will accept the evidence as prima facie proof of the issue and, in the absence of other credible evidence, that that prima facie proof will become conclusive proof. In deciding whether there is credible evidence which casts doubt on the prima facie evidence adduced the court must be satisfied on the evidence as a whole that the State has discharged the onus which rests on it of proving the guilt of the appellant.”**

Through either evidence or admissions by the defence, the prosecution will have to show that the evidence has been kept safe, without tampering, prior to bringing it to trial. Any person who had contact with the evidence must also be accounted for.

In **Matshaba v S**<sup>18</sup> it was held that the state must establish the name of each person who handled the evidence, the date on which it was handled and the duration the person had custody of the evidence. Failure by the state to establish the chain of evidence affects the

<sup>15</sup> (SS13/2012) [2015] ZAWCHC 118 (2 September 2015)

<sup>16</sup> DNA in the Courtroom – Principles and Practice by Lirieka Meintjies – Van der Walt Juta Law (2010)

<sup>17</sup> 1982 (3) SA 413 (A) at 416G-H

<sup>18</sup> (CA 4-16) [2016] ZANWHC 36 (1 September 2016)

integrity of such evidence and thus rendering it inadmissible.

The reasoning in **State v Zulu**<sup>19</sup> is to a certain degree more accommodating in that it was held that if the seal number on the sample when it is sealed and dispatched is the same as the seal number when received at the Forensic Laboratory it must logically follow that it is that same sample and that it was not tampered with.

If the affidavit/certificate complies with all the provisions of s 212(8), it is not necessary for the State to prove the custody, delivery and dispatch of the blood sample after the doctor drew the blood, provided that it is proven that, when the analyst received the blood sample, it was sealed and bore the same seal number as that which had been placed on it by the doctor who drew the blood. This was held in a number of cases<sup>20</sup>, and the principle will be applicable in respect of any matter scientifically analysed.



In **Gcaza v The State**<sup>21</sup> it was held:

***“One has to bear in mind that the cardinal rule is whether on a conspectus of the evidence as a whole, it was established beyond a reasonable doubt that the commission of the offences were committed by the accused. It is unacceptable that any possibility, no matter how far-fetched, should be elevated to a defence in law, as there is a veiled suggestion for which no foundation was laid that the evidence may have been contaminated or that the wrong items were examined. It is my view that affidavits submitted in terms of s 212 are conclusive proof of the lack of any interference or contamination.”***

## 6. Jurisdiction in Environmental Matters

In order for the court to be able to try (to deal with) any matter presented before it, that court should have jurisdiction. The court should have both, the territorial (geographical) and punitive jurisdiction. In environmental matters, there are a few qualifications to the normal punitive and territorial jurisdiction that are applicable.

The punitive jurisdiction in the Lower Court is mainly regulated by the Magistrates Court Act 32 of 1944, as well as the notices that are published in terms of Section 92 of the Act. The limitations in punitive jurisdiction are controlled by the Minister through Legislation, with the current limitation which was published in Government Notice N R1411 of 30 October 1998.

However, in environmental matters, there are several Environmental Acts that expressly increase the Lower Court’s punitive jurisdiction set by the Magistrate Court Act. As an example in this regard, the **National Environmental Laws Amendment Act No 14 of 2009** amends **NEMA** by inserting Section 34H, which reads as follows:

***“Notwithstanding anything to the contrary in any other law, a magistrate’s court shall have jurisdiction to impose any penalty provided for by this Act or any Environmental Management Act”.***

A number of **SEMA**s (Specific Environmental Management Acts) were amended by the **National Environmental Law Amendment Act No 14 of 2009**, to include a similar provision.

Subject to the general principles of territorial jurisdiction, the prosecution chooses the forum in which a matter or charges are to be prosecuted. There are some specific provisions in the environmental Laws that have a bearing on territorial jurisdiction, most of those relate to the so-called “off-shore” offences.

The following are examples of such Acts:

- i) Under the **Antarctic Treaties Act 60 of 1996**, Section 8 provides that the jurisdiction for environmental offences committed in the Antarctic resides in the magisterial district of Cape Town”.
- ii) The **Sea Birds and Seals Protection Act 46 of 1973**, in Section 13, stipulates that :

***“If any person charged with having committed any offence under this Act at any place within the territorial waters or fishing zone of the Republic, any court whose***

<sup>19</sup> (189/2011) [2012] ZAKZPHC 26 (4 May 2012)

<sup>20</sup> **Boyce** 1990(1) SACR 13 (T), **De Leeuw** 1990 (2) SACR 165 (NC) and **Jantjies** 1993 (2) SACR 475 (A)

<sup>21</sup> (1400/16) [2017] ZASCA 92 (9 June 2017)

***area of jurisdiction abuts on or includes any portion of the sea, may hear the charge and the offence shall, for the purposes incidental to or consequential upon the hearing of the charge be deemed to have been committed within the area of jurisdiction of the court so hearing it".***

- iii) Under the **Marine Living Resources Act, No 18 of 1998**, Section 70 stipulates that:
  - 1) Any act or omission in contravention of any of the provisions of this Act which is committed:
    - a) by any person within South African waters;
    - b) outside South African waters by any citizen of the Republic or any person ordinarily resident in the Republic, or
    - c) by any person on board any local fishing vessel; shall be dealt with and juridical proceedings taken as if such act or omission had taken place in the territorial of the Republic.
  - 2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.
- iv) The **Aviation Act 74 of 1962** under Section 18 deems an offence committed on a South African aircraft to have been committed in any place where the accused happens to be.
- v) The **Prevention of Organised Crime Act No 121 of 1998 (POCA)**, under Section 3 provides that the regional court after it has convicted an accused of an offence referred to in Section 2 (1) of the Act and before sentence, is of the opinion that the offence in respect of which the accused has been convicted merits punishment not exceeding a fine of R100 million or, 30 years imprisonment the Regional Court has the jurisdiction to impose that penalty.

See **Annexure I** for specific provisions.







## CHAPTER 6:

# Confiscation orders, Sentencing and Ancillary orders

## 1. Prevention of Organised Crime (POCA)

Confiscation Orders: section 18, Chapter 5, Prevention of Organised Crime Act, 121 of 1998 (POCA)

### 1.1 When is the application made?

An application for a confiscation order in terms of section 18(1) is made by the prosecution (usually will be from the asset forfeiture unit of the NPA) directly after conviction but before sentence is passed.

The application for a confiscation order in terms of section 18 of POCA cannot be instituted in terms of section 18(5), without the written authorisation by NDPP.

In terms of section 18(1), the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from—

- a) that offence;
- b) any other offence of which the defendant has been convicted at the same trial; and
- c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the defendant has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order.

When a defendant is convicted of an offence and the prosecutor applies for a confiscation order, the court must first determine whether the defendant derived any benefit from his crime(s). If it is not already evident from the evidence before the court, then it may undertake an enquiry into the question.

The offences concerned need not be of any particular kind. Any offence may underpin a confiscation order as long as the defendant derived benefit from it. Section 18(1) clearly states: "Whenever a defendant is convicted of an offence..." Section 18 of the POCA thus provides that a confiscation order can be made for any offence and does not limit it to certain particular offences.

If a court finds that the accused has so benefited, then it may make a confiscation order against him for payment to the State of "any amount it considers appropriate".

In **NDPP v Kyriacou**<sup>22</sup> the court had held that it might be necessary to first order the return of stolen property in terms of s 34(1)(a) of the CPA, 1977.

### 1.2 When to hold an enquiry

The enquiry into whether a confiscation order should be made can be done immediately or at later stage. Section 18(3) provides that the court may, when passing sentence, indicate that it will hold the enquiry at a later stage if—

- a) it is satisfied that such enquiry will unreasonably delay the proceedings in sentencing the defendant; or
- b) the public prosecutor applies to the court to first sentence the defendant and the court is satisfied that it is reasonable and justifiable to do so in the circumstances.

### 1.3 Purpose of a confiscation order

The purpose of a confiscation order is to deprive the defendant of the benefit derived from ill-gotten gains through criminal activities and to ensure that criminals cannot enjoy the fruits of their crimes. It also aims at deterring people from engaging in criminal activity and to remove their financial means to commit further crimes.

### 1.4 The application is civil proceedings

Section 13(1) provides that the proceedings on application for a confiscation order are civil, not criminal proceedings. The rules of evidence applicable in civil proceedings apply to proceedings on application for a confiscation order and no rule of evidence applicable only in criminal proceedings will apply to proceedings on application for a confiscation order. Section 13(5) states that any question of fact to be decided by a court in any proceedings in respect of an application must be decided on a balance of probabilities.

<sup>22</sup> 2003 (2) SACR 524 (SCA)

Section 18(6) provides that a court, before which proceedings under this section are pending, may in considering an application—

- i) refer to the evidence and proceedings at the trial;
- ii) hear such further oral evidence as the court may deem fit;
- iii) direct the public prosecutor to tender to the court a statement referred to in **section 21 (1) (a)**; and
- iv) direct a defendant to tender to the court a statement referred to in section 21 (3) (a)

## 1.5 Type of proceedings: Section 21

The application for a confiscation order is essentially an application similar to an application in terms of MCR 55. Section 21(1) provides for a statement under oath by the Applicant (which essentially is the founding affidavit), regarding any matter which is being enquired into by the court under section 18(1), or which relates to the determination of the value of a defendant's proceeds of unlawful activities.

A copy of the statement must be served on the defendant (the Accused in the criminal case) at least 14 days before the date on which that statement is to be tendered to the court. The defendant may, in terms of section 21(2), dispute the correctness of any allegation contained in a statement and must state the grounds on which he or she relies (similar to a replying affidavit).

In so far as the defendant does not dispute the correctness of any allegation contained in such statement, that allegation will be deemed to be conclusive proof of the matter to which it relates.

A defendant may or, if so directed by the court, must tender to the court a statement in writing under oath or affirmation by him or her or by any other person in connection with any matter which relates to the determination of the amount which might be realised as contemplated in **s 20 (1)**.

A copy of the statement must be served on the public prosecutor at least 14 days before the date on which that statement is to be tendered to the court. The public prosecutor may admit the correctness of any allegation contained in a statement. In so far as the public prosecutor admits the correctness of any allegation contained in such statement, that allegation will be deemed to be conclusive proof of the matter to which it relates.

## 1.6 Confiscation order

The confiscation order is an order in addition to any punishment the court imposes for an offence, and is not in itself a punishment. It is directed at confiscating the benefit that accrued to the defendant (the Accused), irrespective of whether or not he/she is still in possession of the proceeds in question.

The court may order that a monetary equivalent of the demonstrated material benefit be paid to state even if it means it is to be paid from legitimately acquired assets. It is immaterial for determining whether the confiscation order ought to be granted that some assets were acquired before the offence was committed and that those assets were not acquired through the proceeds of unlawful activities.



In **NDPP v Rautenbach**<sup>23</sup> it was held that such an order is directed at confiscating a benefit that accrued to offender whether or not the offender is still in possession of particular proceeds— Once it is shown that material benefit accrued, the offender may be ordered to pay to State monetary equivalent of that benefit even if that means that it must be paid from assets that were legitimately acquired.

## 1.7 The “benefits” and “proceeds” of crime

The court must first determine whether the offender derived any “benefit” from his/her crimes. Only if it finds that he/she has, may it make a confiscation order against him/her for any amount up to the value of the “proceeds” he/she derived from his/her crimes.

The two concepts of “benefit” and “proceeds” are interrelated. Section 12(3) provides that a person “has benefited from unlawful activities” if he/she has at any time “received or retained any proceeds of unlawful activities”. It follows that in both cases the enquiry is one into the proceeds the defendant derived from his/her crime. If he/she derived any proceeds from his/her crime, then he has benefited from it. If he/she has benefited from it, a confiscation order may be made against him/her. It may be made for any amount up to the value of the proceeds he/she derived from his/her crime.

Both the definition of “proceeds of unlawful activities” in s 1(1) and s 19(1) makes it clear that the connection between the proceeds and the crime need not be direct. The proceeds include everything

<sup>23</sup> 2005 (1) SACR 530 (SCA)

“derived, received or retained”. It, for instance, includes benefits which the defendant legitimately acquired but retained by or as a result of his offences.

The proceeds need not have been derived, received or retained “as a result of” the defendant’s offences. It also suffices if they were derived, received or retained “in connection with” the offences. The causal link, in other words, need not be close.

## 1.8 The amount: Section 18(2)

The amount which a court may order the defendant to pay to the State under section 18(1) must not exceed the value of the defendant’s proceeds of the offences or related criminal activities, as determined by the court in accordance with the provisions of chapter 5. If the court is satisfied that the amount which might be realised as contemplated in **section 20(1)** is less than the value of the defendant’s proceeds, then the amount of the court order must not exceed the amount which in the opinion of the court might be realised.

The value of a defendant’s proceeds of unlawful activities in terms of section 19, is the sum of the values of the property, services, advantages, benefits or rewards received, retained or derived by him or her at any time, whether before or after the commencement of the Act, in connection with the unlawful activity carried on by him or her or any other person.

Section 20 provides that the amount which might be realised at the time of the making of a confiscation order against a defendant is the amount equal to the sum of the values at that time of all realisable property held by the defendant; and the values at that time of all affected gifts made by the defendant, less the sum of all obligations, if any, of the defendant having priority and which the court may recognise for this purpose.

A court should not determine the amounts which might be realised unless it has afforded all persons holding any interest in the property concerned an opportunity to make representations to it in connection with the realisation of that property.

## 1.9 Restraint order

There may be a restraint order in place in terms of section 26, which was made by the High Court. The rule *nisi* and the final restraint order will be an indication of the amount which might be realised. The restraint order is usually made soon after the arrests as an ex parte application to the High Court.

## 1.10 Irrelevant considerations

The severity of the sentence should generally not have a bearing on whether court makes a confiscation order. Even though the effect of a confiscation order might be punitive, punishment is not a reason for order. The court also should not consider any payments made to a liquidator which are unrelated to the offence the defendant has been convicted of.



In **NDPP v Gardener**<sup>24</sup> it was held that the rationale for the legislation is to deprive offenders of the full extent of the benefit they have received from the commission of the offences. This includes the value of the appreciation of the assets that were acquired with the criminal proceeds and not just the appreciation in the money-benefit they received.

## 1.11 Effect of confiscation orders: section 23

A confiscation order made by a district court has the effect of a civil judgment of that court and if made by a regional court has the effect of a civil judgment of the district court, of the district in which the relevant trial took place.

# 2. Sentencing

The judiciary will serve their communities better when dealing with environmental crimes, constantly keep the words of Navsa, J delivering the judgment in the Lemthongthai case in mind:

***“The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.”***

Factors which would play a role specific to environmental crimes may include, but are not limited to the negative impact on the environment, the decimation of the wildlife and or plant population, of the natural resources of the country which negatively impacts on the economy of the country as revenue is lost, impact on the international, national and regional security, for example food security and loss of government revenue.

<sup>24</sup> 2011 (1) SACR 612 (SCA) [23]

Judicial officers should be aware that it may be lucrative to commit environmental crimes for the profits gained. In those instances, it would be prudent to deprive the offender of the benefit and impose an appropriate sentence, whether it is a fine or imprisonment.



In **Thonga**<sup>25</sup> Du Toit AJ stated the following regarding the court's approach to the sentencing issue:

*"In my view the punishment must firstly be reasonable, i.e. it should reflect the degree of moral blameworthiness attaching to the offender, as well as the degree of reprehensibleness or seriousness of the offence. Punishment therefore should ideally be in keeping with the particular offence and the specific offender. It is necessary, secondly, for the punishment to clearly reflect the balanced process of careful and objective consideration of all relevant facts, mitigating and aggravating. The sentence should, thirdly, reflect consistency, as far as is humanly possible, with previous sentences imposed on similar offenders committing similar offences, lest society should believe that justice was not seen to be done. Lastly, the penal discretion is to be exercised afresh in each case, taking the facts of each case and the personality of each offender into account.*

*To all this I would add that the trial Court does not impose sentence in vacuo. It, to the contrary, certainly does so within a certain time frame and at a certain stage in the development of the people(s) of a district, or a province, or a country, or even a continent. The criminal court is also an instrument in the hands of society, applying its laws, reflecting its values and its moral indignation at unlawful conduct, as well as the negative or harmful effect thereof on third parties or society itself. But in a civilised society punishment reflects also the interests of the offender himself. The trial court, in a criminal matter then, functions not in a technical laboratory, but as a living instrument, a vital component of the fabric of society, serving the interests of society and all of its law-abiding members.*

***The criminal court primarily seeks to establish and maintain peaceful co-existence among the members of society within a territory, offering protection to life, limb and property by dispensing criminal justice. Furthermore, during the imposition of punishment, the trial court jealously guards the fine line between raw revenge or emotional punishment and the judicial, reasonable and objectively balanced (effective) exercise of its penal discretion. Judicial aloofness, not amounting to judicial remoteness, is called for. Seeking to prevent the need (or desire) for self-help from arising, courts of law simultaneously refuse to take emotional revenge on behalf of indignant society and its members."***

Without the risk of hefty financial punishment, some corporations or individuals might find that non-compliance with statutory provisions is more cost-effective than adhering thereto. Heavy fines are meant to offset the financial allure of illegal activities. When sentencing sight should not be lost of the money spent by the Government to restore the environment to its state before the crime was committed. An offender should be made to pay for that as well, and where not possible, contribute to the prevention of future infringements.

### 3. Ancillary orders

In addition to the remarks made in respect of Prevention of Organised Crime in the circumstances discussed under paragraph 5.1, judicial officers must be aware of certain ancillary orders that may be made when sentencing.

As the National Environmental Management Act is the overarching legislation when dealing with environmental crimes, judicial officers must take section 34 into account when sentencing.

<sup>25</sup> 1993 (1) SACR 365 (V)

Section 34 and the relevant provisions of NEMA are as follows:



#### **"34. Criminal proceedings**

- 1) Whenever any person is convicted of an offence under any provision listed in Schedule 3 and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.
- 2) Upon proof of such amount, the court may give judgement therefor in favour of the organ of state or other person concerned against the convicted person, and such judgement shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.
- 3) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order—
  - (a) the award of damages or compensation or a fine equal to the amount so assessed; or
  - (b) that such remedial measures as the court may determine must be undertaken by the convicted person.
- 4) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may, upon application by the public prosecutor or another organ of state, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in the investigation and prosecution of the offence.
- 5) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of the said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this sub-section, liable on conviction to the penalty specified in the relevant law, including an order under subsections (2), (3) and (4), and proof of such act or omission by a manager, agent or employee shall constitute prima facie evidence that the employer is guilty under this subsection.
- 6) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, he or she shall be liable to be convicted and sentenced in respect thereof as if he or she were the employer.
- 7) Any person who is or was a director of a firm at the time of the commission by that firm of an offence under any provision listed in Schedule 3 shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2), (3) and (4), if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection.
- 8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.

9) In subsection (7) and (8)—

- a) “firm” shall mean a body incorporated by or in terms of any law as well as a partnership; and
- b) “director” shall mean a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership.

10)

- a) The Minister may amend Part (a) of Schedule 3 by regulation.
- b) An MEC may amend Part (b) of Schedule 3 in respect of the province of his or her jurisdiction by regulation.

34A. ....

(Section 34A inserted by section 7 of Act 46 of 2003)

34B. Award of part of fine recovered to informant

- 1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.
- 2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

34C. Cancellation of permits

- 1) The court convicting a person of an offence in terms of this Act or a specific environmental management Act may—
  - a) withdraw any permit or other authorisation issued in terms of this Act or a specific environmental management Act to that person, if the rights conferred by the permit or authorisation were abused by that person;
  - b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years;

- c) issue an order that all competent authorities authorised to issue permits or other authorisations be notified of any disqualification in terms of paragraph (b).

34D. Forfeiture of items

- 1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.
- 2) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.
- 3) The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is—
  - a) repatriated to the country of export or origin as appropriate, at the expense of the person convicted of the offence involving that specimen; and
  - b) deposited in an appropriate institution, collection or museum, if—
    - i) the specimen is clearly marked as a seized specimen; and
    - ii) the person convicted of the offence does not benefit or gain from such deposit; or
  - c) otherwise disposed of in an appropriate manner.

34E. Treatment of seized live specimens

Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

**34F. Security for release of vehicles, vessels or aircraft**

- 1) *If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.*
- 2) *A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.*
- 3) *The amount of the security must at least be equal to the sum of—*
  - a) *the market value of the vehicle, vessel or aircraft;*
  - b) *the maximum fine that a court may impose for the alleged offence; and*
  - c) *costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.*
- 4) *If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount."*

It must be borne in mind that some SEMAs may not be included in Schedule 3 of NEMA, but may have similar provisions.

See **Appendix H** for orders in terms of specific legislation.





## **APPENDICES**



## APPENDIX A

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## APPENDIX B

# International Environmental Conventions relevant to South Africa

## The Marine Environment

- Agreement for the Implementation of the Provisions of United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (acceded August 2003);
- Agreement to Promote Compliance with International Conservation and Management Measures by vessels fishing on the High Seas (The FAO Compliance Agreement), 1995 (neither signed nor ratified);
- Code of Conduct for Responsible Fisheries, United Nations Food and Agricultural Organisation (FAO) (1995) (neither signed nor ratified);
- Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 1981 'Abidjan' (ratified on 16 May 2002);
- Convention for the Prevention of Marine Pollution from Land-Based Sources, 1974 (neither signed nor ratified);
- Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, 1946 (neither signed nor ratified);
- Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (neither signed nor ratified);
- Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958 (acceded April 1963);
- Convention on the Conservation and Management of Fishery Resources in the South East Atlantic, 2001 (ratified on 18 June 2008);
- Convention on the Conservation of the Living Resources of the Southeast Atlantic, 1969 (ratified October 1970);
- Convention on the Continental Shelf, 1958 (acceded April 1963);
- Convention on the High Seas, 1958 (acceded April 1963);
- Convention on the International Maritime Organisation, 1948 (acceded February 1995);
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (acceded 1978);
- Convention on the Territorial Sea and Contiguous Zone, 1958 (acceded April 1963);
- International Convention for the Conservation of Atlantic Tunas, 1966 (acceded October 1997);
- International Convention for the Control and Management of Ships' Ballast Water and Sediment, 2004 (ratified on 15 April 2008);
- International Convention for the Prevention of Pollution from Ships, 1973 'MARPOL' (acceded 1978);
- International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (not a party);
- International Convention on Civil Liability for Oil Pollution Damage, 1969, 'CLC' (acceded March 1976);
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- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Noxious and Hazardous Substances at Sea, 1996 (signed but not yet ratified);
- International Convention on Oil Pollution Preparedness Response and Co-operation, 1990 (acceded on 4 July 2008);
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- Nairobi International Convention on the Removal of Wrecks, 2007;
- Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (acceded November 1984);
- Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, 1996 (Acceded);
- United Nations Convention on Law of the Sea, 1982, 'UNCLOS' (acceded December 1997)

## Antarctica

- Agreed measures for the Conservation of Antarctic Fauna and Flora, 1964 (a party);
- Convention for the Conservation of Antarctic Seals, 1972 (ratified August 1972);
- Convention for the Regulation of Antarctic Mineral Resource Activities, 1988 (not a party);
- Convention on the Conservation of Antarctic Marine Living Resources, 1980 (ratified July 1981);
- Protocol on Environmental Protection to the Antarctic Treaty, 1991 (acceded August 1995);
- The Antarctic Treaty, 1959 (ratified June 1960)

## Natural and Cultural Resources

- Agreement on the Conservation of Albatrosses and Petrels, 2001 (signed and ratified November 2003);
- Cartagena Protocol on Biosafety to the Convention on Biodiversity, 2000 (signed June 2003, acceded August 2003);
- Convention Concerning the Protection of the World's Cultural and Natural Heritage, 1972 (acceded July 1997);
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- Treaty on the Non-Proliferation of Nuclear Weapons, 1968 (acceded 1991);
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil thereof, 1971 (ratified November 1973);
- United Nations Comprehensive Test Ban Treaty, 1996 (ratified March 1999)

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- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental modification Techniques, 1977 (not a party);
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons, and on their Destruction, 1972 (ratified 1975);
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- Control of Trans-boundary Movement and Management of Hazardous Waste within Africa, 1991 (neither signed nor ratified);
- Convention on Persistent Organic Pollutants, 2001 ('Stockholm') (signed 2001, ratified, 4 September 2002);
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- Convention on the Prior Informed Consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade, 1998 (acceded 4 September 2002);
- Framework Convention on Climate Change: Kyoto Protocol, 1997 (acceded February 2004);
- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (acceded January 1990);
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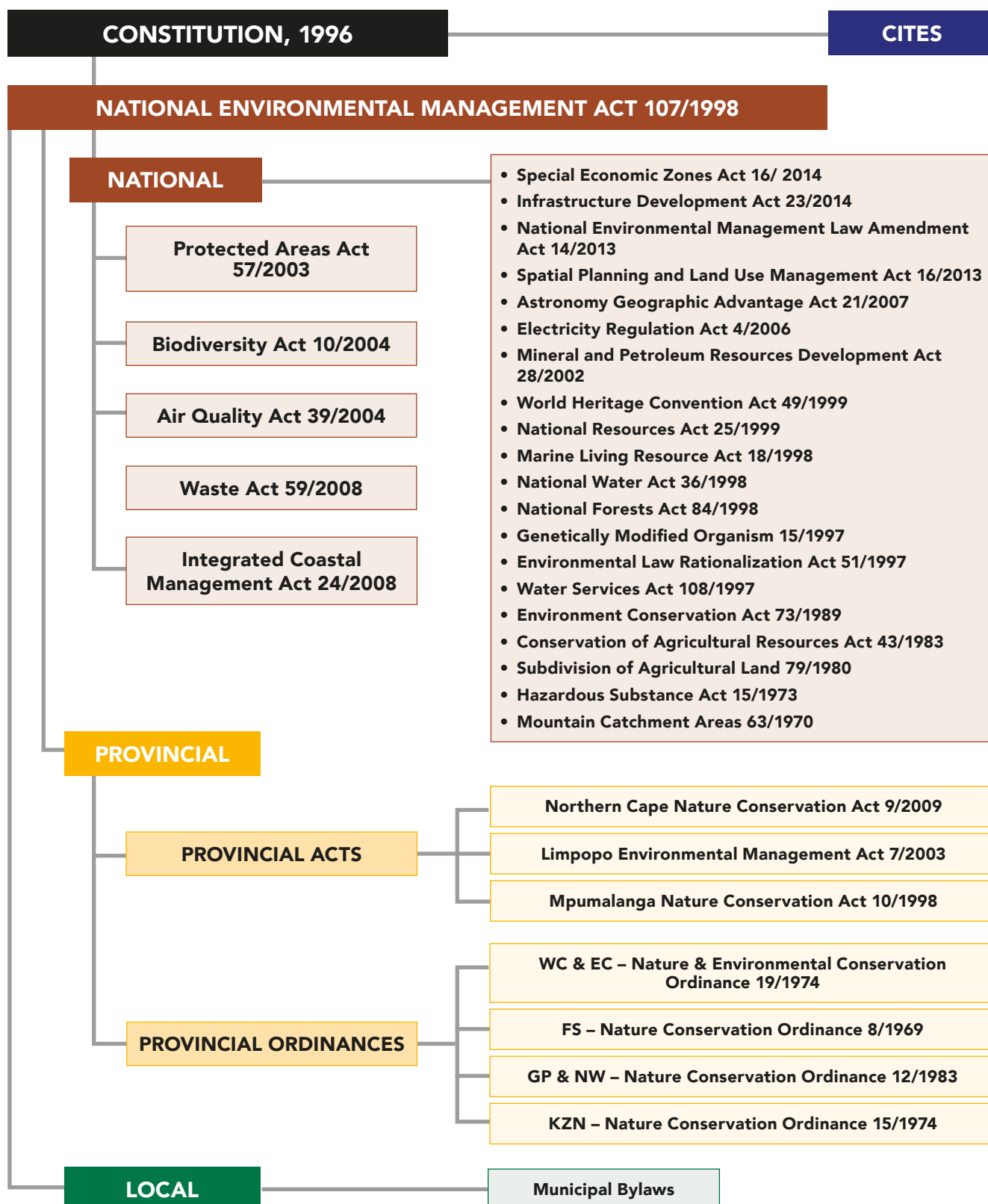
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- African Maritime Transport Charter, 1994 (not a party);
- African Nuclear Free Zone Treaty, 1996 (ratified 27 March 1998);
- Agreement Amending the Treaty of the Southern African Development Community, 2001 (signed and entered into force 14 August 2001);
- Amendment Protocol on Trade, 2000;
- Charter of Fundamental and Social Rights in SADC, 2003;
- Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, 1985 'Nairobi Convention' (ratified May 2003);
- Protocol to the Nairobi Convention on Land-Based Sources of Marine Pollution, 2010 (signed but not ratified);
- Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 1981 'Abidjan' (ratified on 16 May 2002);
- Declaration on Agriculture and Food Security, 2004;
- Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994 (signed but not ratified);
- Namibia-South Africa Agreement on the Establishment of a Permanent Water Commission, 1992;
- Phyto-Sanitary Convention for Africa, 1967 (not a party);
- Protocol on Energy, 1996 (ratified 29 April 1999);
- Protocol on Fisheries, 2001 (ratified 24 July 2003);
- Protocol on Forestry, 2002 (ratified 24 November 2003);
- Protocol on Health, 1999;
- Protocol on Mining, 1997 (ratified 29 April 1999);
- Protocol on Shared Watercourse Systems in the Southern African Development Community, 1995 (ratified 1997);
- Protocol on Tourism, 1998;
- Protocol on Trade, 1996;
- Protocol on Transport, Communications and Meteorology, 1996;
- Protocol on Wildlife Conservation and Law Enforcement, 1999 (ratified 31 October 2003);
- Revised 2003 African Convention on Conservation of Nature and Natural Resources 1968 ('Algiers') (signed in 2012, but not ratified);
- Revised African Maritime Transport Charter, 2010 (signed in 2011);
- Revised Protocol on Shared Watercourses in the Southern African Development Community Region, 2000 (ratified 8 January 2002);
- Treaty Establishing the African Economic Community, 1991 (signed 1997, acceded 31 May 2001);
- Treaty of the Southern African Development Community, 1992 (acceded 29 August 1994)



# APPENDIX C

## Legislative Framework



## APPENDIX D

# Offences in terms of provincial legislation



## NORTHERN CAPE NATURE CONSERVATION ACT, 2 OF 2009

SECTION	OFFENCE	PENALTY
<b>S3 read with 66</b>	Restricted activities involving specially protected animals	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S4 read with 66</b>	Restricted activities involving protected animals	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S5 read with 66</b>	Hunting of protected animals	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S6 read with 66</b>	Hunting of protected animals out of season	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S7 read with 66</b>	Hunting licences	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S8 read with 66</b>	Hunting of wild animals in excess of daily bag limit	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S9 read with 66</b>	Prohibited hunting methods or instruments	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S10 read with 66</b>	Hunting with certain minimum calibre firearms	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S11 read with 66</b>	Hunting from a public road	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S12 read with 66</b>	Hunting, receipt, possession, acquisition or handling of a wild animal	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S19 read with 66</b>	Manipulation of boundary fences	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species



## NORTHERN CAPE NATURE CONSERVATION ACT, 2 OF 2009 *continued*

SECTION	OFFENCE	PENALTY
<b>S20 read with 66</b>	Placing of poison	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S21 read with 66</b>	Entering land with weapons and conveyance of firearms	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S22 read with 66</b>	Prohibitions regarding carcasses of wild animals	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species
<b>S26 read with 66</b>	Prohibitions regarding wild animals	S67(1): A fine or 10 years imprisonment or both. If a specially protected or protected species a fine not exceeding three times the commercial value of the species



## LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003

SECTION	OFFENCE	PENALTY
<b>S31(1)(a)</b>	Hunting of specially protected wild animals	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S31(1)(b)</b>	Hunting of protected wild animals	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S31(1)(c)</b>	Hunting of game	S117(1)(c): A fine or 3 years imprisonment or both
<b>S31(1)(d)</b>	Hunting during the night	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S31(1)(e)</b>	Hunting in a provincial nature reserve	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S31(1)(f)</b>	Hunting a wild animal in schedule 5 which is under the influence of an agent, has been lured, has been confined	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S35(1)</b>	Operate as wildlife translocator without permit	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S35(3)</b>	Catch specially protected wild animals	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S35(3)</b>	Catch protected wild animals without permit	S117(1)(a): A fine up to R150 000 or 7 years imprisonment or both
<b>S35(5)</b>	Catch wild or alien wild animal on land not being owner	S117(1)(c): A fine or 3 years imprisonment or both



**LIMPOPO ENVIRONMENTAL MANAGEMENT ACT, 7 OF 2003** *continued*

SECTION	OFFENCE	PENALTY
<b>S36</b>	Leaving or making of openings in certain fences	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S37(1)</b>	Picking up or removal of specially protected wild animals	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S37(1)</b>	Picking up or removal of wild animals	S117(1)(c): A fine or 3 years imprisonment or both
<b>S38(1)(a)</b>	Hunt specially protected wild animals, protected wild animals, or game with certain type of firearm	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S38(1)(b)</b>	Hunt or catch a wild or alien animal with snare, trap, dog, aircraft	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S39(1)</b>	Entering on land where wild or alien animals are with firearm	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S39(3)</b>	Convey a firearm on a public road traversing land where wild or alien animals are	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S40(1)</b>	Poisoning of wild and alien animals	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S41(1) and (2)</b>	Prohibited acts regarding wild and alien animals	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S42(1)</b>	Keeping or conveyance of wild and alien animals in certain conditions	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S43 (1)(a)</b>	Sell dead specially protected wild animal	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S43 (1)(a)</b>	Sell dead protected wild animal	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both
<b>S43(2)(a)</b>	Acquire, possess, convey donate, export, import remove from province specially protected wild animal	S117(1)(a): A fine up to R250 000 or 15 years imprisonment or both, plus fine up to four times value of fauna involved
<b>S43(2)(a)</b>	Acquire, possess, convey donate, export, import remove from province protected wild animal	S117(1)(b): A fine up to R150 000 or 7 years imprisonment or both



## MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998

SECTION	OFFENCE	PENALTY
<b>S5(1)</b>	Hunting of specially protected game	S5(3)(a): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal
<b>S6(1)</b>	Hunting of protected game	S6(3)(a): A fine or 5 years imprisonment or both
<b>S7(1)</b>	Hunting of ordinary game	S7(4): A fine or 3 years imprisonment or both
<b>S8(1)</b>	Hunting of protected wild animals	S8(3)(a): A fine or 4 years imprisonment or both
<b>S9(1)</b>	1. Hunting in nature reserves 2. Hunting in nature reserves in respect of specially protected game	1. S9(2): A fine or 4 years imprisonment or both 2. S9(3): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal
<b>S10(1)</b>	1. Hunting during night 2. Hunting during night in respect of specially protected game	1. S10(2): A fine or 4 years imprisonment or both 2. S10(3): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal
<b>S11(1)</b>	Hunting of game with certain weapons	S11(2): A fine or 3 years imprisonment or both
<b>S12(1)</b>	Prohibited acts with certain devices or means	S12(3): A fine or 2 years imprisonment or both
<b>S13(1)</b>	Hunting of protected wild animals under certain circumstances	S13(3): A fine or 2 years imprisonment or both
<b>S14(1)</b>	Hunt from public road	S14(2): A fine or 2 years imprisonment or both
<b>S15</b>	Enter of land with weapons and conveyance of firearms	S15(4): A fine or 3 years imprisonment or both
<b>S16(1)</b>	Catching of game	1. S16(2): A fine or 3 years imprisonment or both 2. S16(3): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal in respect of specially protected game
<b>S18(1)</b>	Hunting or catching animals in certain manners	S18(3): A fine or 2 years imprisonment or both S18(4): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal in respect of specially protected game
<b>S19(1)</b>	Hunting or catching of exotic animals and wild animals which are not game	S19(3): A fine or 2 years imprisonment or both
<b>S21(1)</b>	Poisoning of game or wild animals which are not game	S21(2): A fine or 2 years imprisonment or both. S21(3): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal in respect of specially protected game

**MPUMALANGA NATURE CONSERVATION ACT, 10 OF 1998** *continued*

SECTION	OFFENCE	PENALTY
<b>S23(1)</b>	Sale of game	S23(2): A fine or 2 years imprisonment or both S23(3): A fine or 10 years imprisonment or both, plus a fine three times the commercial value of the animal in respect of specially protected game
<b>S24(1-3)</b>	Purchase of game	S24(5): A fine or 2 years imprisonment or both
<b>S25(1-4)</b>	Donation of game	S25(5): A fine or 2 years imprisonment or both
<b>S26(1)</b>	Picking up or removal of game	S26(2): A fine or 2 years imprisonment or both
<b>S27(2)</b>	Receipt, possession, acquisition or handling of dead game	S27(1)(c): A fine or 2 years imprisonment or both
<b>S28(1)</b>	Conveyance of dead game	S28(2): A fine or 2 years imprisonment or both
<b>S29(1)</b>	Keeping or conveyance of live game	S29(2): A fine or 2 years imprisonment or both
<b>S30(1)</b>	Conveyance or keeping of wild animals or exotic animals in certain conditions	S30(4): A fine or 2 years imprisonment or both
<b>S31(1)</b>	Importing of live wild animals	S31(2): A fine or 2 years imprisonment or both
<b>S32(1)</b>	Exporting or removal of wild animals from province	S32(2): A fine or 2 years imprisonment or both S32(3): In respect of specially protected game, a fine or 10 years imprisonment or both, and a fine not more than three times than the commercial value of the wild animal

# APPENDIX E

## Schedule 3 of NEMA (Section 34)



### PART (A): NATIONAL LEGISLATION

LEGISLATION	SHORT TITLE	RELEVANT PROVISIONS
<b>Act 36 of 1947</b>	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	Section 18(1)(i) in so far as it relates to contraventions of sections 7 and 7bis
<b>Act 71 of 1962</b>	Animals Protection Act, 1962	Sections 2(1) and 2A
<b>Act 63 of 1970</b>	Mountain Catchment Areas Act, 1979	Section 14 in so far as it relates to contraventions of section 3
<b>Act 15 of 1973</b>	Hazardous Substances Act, 1973	Section 19(1)(a) and (b) in so far as it relates to contraventions of sections 3 and 3A
<b>Act 63 of 1977</b>	Health Act, 1977	Section 27
<b>Act 73 of 1980</b>	Dumping at Sea Control Act, 1980	Sections 2(1)(a) and (b)
<b>Act 6 of 1981</b>	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2(1)
<b>Act 43 of 1983</b>	Conservation of Agricultural Resources Act, 1983	Sections 6 and 7
<b>Act 2 of 1986</b>	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	Section 3A
<b>Act 73 of 1989</b>	Environment Conservation Act, 1989	Sections 19(1) and 19A read with 29(3), 20(1) and (9) read with section 29(4), 29(2)(a), 31A and 41A read with 29(3)
<b>Act 18 of 1998</b>	Marine Living Resources Act, 1998	Section 58(1) in so far as it relates to contraventions of sections 43(2), 45 and 47, and section 58(2) in so far as it relates to contraventions of international conservation and management measures
<b>Act 36 of 1998</b>	National Water Act, 1998	Section 151(1)(i) and (j)
<b>Act 84 of 1998</b>	National Forests Act, 1998	Sections 4(8), 7(1), 10(1), 11(2)(b), 15(1)(a) and (b), 17(3) and (4), 20(3), 21(2), 21(5), 24(8), 63(1)(a), (d), (e) and (f), 63(2)(a) and (b), 63(3) to (5), 64(1) and (2)
<b>Act 101 of 1998</b>	National Veld and Forest Fire Act, 1998	Sections 10(2), 12(1), 12(2)(b), 12(14)(a), (4), 17(1), 18(1)(a), 18(2), 18(3)(b), 18(4), 18(4)(b), (25)(a) to (e), 25(5), (6) and (7)
<b>Act 107 of 1998</b>	National Environmental Management Act, 1998	Section 49A
<b>Act 25 of 1999</b>	National Heritage Resources Act, 1999	Sections 27(18) and (22), (23)(b), 28(3), 29(10), 32(13), (15), (16), (17), (19) and (20) 33(1) and (2), 34(1), 35(3), (4), (6) and (7)(a) 36(3), 44(2) and (3), 50(5) and (12) and 51(8)
<b>Act 57 of 2003</b>	National Environmental Management: Protected Areas Act, 2003	Sections 45(1), 46(1), 47(2), 47(3), 48(1), 50(5), read with sections 89(1), 89(1)(b), (c) and (d) and 50A
<b>Act 10 of 2004</b>	National Environmental Management: Biodiversity Act, 2004	Sections 57(1) read with 101(1)(a), 65(1) read with 101(1)(a), 67(2) read with 101(1)(a), 71(1) read with 101(1)(a), 81(1)



**PART (A): NATIONAL LEGISLATION**

LEGISLATION	SHORT TITLE	RELEVANT PROVISIONS
<b>Act 39 of 2004</b>	National Environmental Management: Air Quality Act, 2004	Sections 51(1)(a) to (h), 51(2) and (3)
<b>Act 59 of 2008</b>	National Environmental Management: Waste Act, 2008	Sections 15(1) and (2), read with 67(1)(a), 16(1) (c), (d), (e), (f) read with 67(1)(a), 20(a) and (b), read with 67(1)(a), 26(1)(a) and (b), read with 67(1)(a), 38(2) and (3), read with 67(1)(a), 17(2) read with 67(1)(a), 18(1) read with 67(1)(a), 21 read with 67(1)(b), 22(1) read with 67(1)(b), 24 read with 67(1)(b), 27(2) read with 67(1)(b), 36(5) read with 67(1)(b), 40(1) read with 67(1) (b), 67(1)(c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), 67(2)(a), (b), (c), (d), (e)
<b>Act 24 of 2008</b>	National Environmental Management : Integrated Coastal Management Act, 2008	Sections 69 read with 79(1)(a), 70(1) read with 79(1)(b), (c), (d), (e), 79(1)(f), (g), (h), (i), 79(2)(a), (b), (c), 79(3)(a), (b), (c), 79(4)(a), (b)

**PART (B): PROVINCIAL LEGISLATION**

LEGISLATION	SHORT TITLE	RELEVANT PROVISIONS
<b>Ordinance 8 of 1969</b>	Orange Free State Conservation	Section 40(1)(a) in so far as it relates to contraventions of sections 2(3), 14(2), 15(a), 16(a) and 33
<b>Ordinance 9 of 1969</b>	Orange Free State Townships	Section 40(1)(a)(ii)
<b>Ordinance 15 of 1974</b>	Natal Nature Conservation	Section 55 in so far as it relates to section 37(1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152; section 185 in so far as it relates to section 183, and section 208 in so far as it relates to section 194 and to section 200
<b>Ordinance 19 of 1974</b>	Nature and Environmental Conservation Ordinance	Section 86(1) in so far as it relates to contraventions of sections 41(1)(b)(iii) and (c) to (e), 52(a), 57(a), 58(b) and 62(1)
<b>Ordinance 12 of 1983</b>	Gauteng Nature Conservation	Sections 16A, 17 to 45, 47, 48, 51, 52, 54, 66, 71 to 78, 79, 80, 81, 83, 84, 85, 87, 88 to 93, 95, 96, 98, 99, 100 and 107
<b>Ordinance 15 of 1985</b>	Cape Land Use Planning	Section 46(1) in so far as it relates to sections 23(1) and 39(2)
<b>Ordinance 15 of 1986</b>	Transvaal Town Planning and Townships	Sections 42, 93 and 115



## PART (B): PROVINCIAL LEGISLATION

LEGISLATION	SHORT TITLE	RELEVANT PROVISIONS
<b>Act 29 of 1992</b>	KwaZulu Nature Conservation	Section 67 in so far as it relates to sections 59(1), 59(2), 60(1) and 62(1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109
<b>Act 5 of 1998</b>	KwaZulu Natal Planning and Development	Section 48



## APPENDIX F

# Extracts from law reports

## [1] Mpumalanga Tourism and Parks Agency and Another v Barberton Mines (Pty) Ltd 2017 (5) SA 62 (SCA)

### Headnote:

Sections 48(1)(a) and (b) of the National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA) prohibits 'commercial prospecting or mining activities' in respect of inter alia a 'nature reserve' or a 'protected environment'; and s 48(1)(c) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) the issuing of inter alia a prospecting right in respect of land 'being used for public or government purposes or reserved in terms of any other law'.

This case concerned an appeal to the Supreme Court of Appeal against a High Court's declaratory order that the respondent – the holder of a prospecting right over land in respect of which the appellants contended that the prohibitions in ss 48(1)(a) and (b) of NEMPAA and s 48(1)(c) of the MPRDA applied – was entitled to conduct prospecting activities on the relevant land and that the appellants be interdicted from interfering with such activities. In arriving at its decision, the High Court had held that none of the provincial legislative acts relied on by the appellants as having established a nature reserve or protected area, validly did so – in particular, that the 1996 proclamation of the area as 'conservation area' was void for vagueness because it did not identify the designated area adequately (see [10] and [15]).

The land in question formed part of an ecologically important area in Mpumalanga Province that was approved as an area reserved for nature conservation and outdoor recreation in 1985 by the executive committee of the erstwhile Transvaal Provincial Administration. A resolution to this effect was made in terms of the Transvaal Nature Conservation Ordinance 12 of 1983 (the Ordinance) in respect of 'approximately 20 000 hectares of state land and mining in Barberton', and the reserved properties depicted on a map annexed to the memorandum of the resolution. Under the post-1994 provincial dispensation, conservation management in this region fell under the Eastern Transvaal Parks Board (the ETPB), established under the Eastern Transvaal Parks Board Act 6 of 1995 (the ETPB Act). This Act also provided for the transfer of the administration of certain provincial nature conservation laws, including the Ordinance, to the ETPB. A proclamation issued in 1996 under the ETPB Act (the 1996 Proclamation) included the Barberton Nature Reserve as a 'conservation area' as defined therein; and in a 2014 proclamation it was again included in a schedule of provincial nature reserves. This schedule included a map defining the boundaries of the reserve and a list of properties within it. The properties listed in Barberton's prospecting right were included in

the properties comprising part of the reserve.

### Held:

The High Court took too narrow a view of the matter. The definitions of a 'protected area' in s 1 of NEMPAA encompassed a 'protected environment', which included an area 'declared or designated in terms of provincial legislation'; and the definition of 'nature reserve' included areas 'designated in terms of provincial legislation'. NEMPAA thus contemplated the protection of areas that had been either 'declared' or 'designated' in terms of provincial legislation. Also, the deeming provision in s 12 of NEMPAA (set out in [13]) extended the protection afforded to a nature reserve by NEMPAA, broadening its scope to include a protected area reserved in terms of provincial legislation. The effect of the 1996 Proclamation was thus that the designated area was reserved or protected in terms of provincial legislation for a purpose for which it could be declared as a nature reserve or protected environment under s 12 of the NEMPAA. (Paragraphs [10], [12] and [13] – [15])

The validity and effectiveness of the 1996 Proclamation did not require a detailed description of the area concerned, as the High Court had found. The reference to the 'Barberton Nature Reserve' in the 1996 Proclamation had the meaning given and applied to it by the provincial authorities since at least 1985. And when regard was had to the nature of the 1996 Proclamation as a 'designation', and to its context – including its relationship to the 1985 resolution, the administration of the land as the Barberton Nature Reserve since then, and that it was a designation of an area already as a matter of fact reserved – it had achieved its purpose of informing the public that the areas were classified as 'conservation areas' under the ETPB Act. It therefore sufficed that it simply indicated the designated area by name. (Paragraphs [17])

Section 48 of NEMPAA provides that it trumped other legislation in the event of a conflict concerning the management or development of protected areas. As the 1996 Proclamation met the requirements of s 12 of NEMPAA, it followed that the prospecting area fell to be protected against prospecting under s 48(1) of the MPRDA. The High Court was accordingly in effect being asked to compel an illegality, which it could not do, and Barberton Mines' application ought to have failed. It followed that the appeal would be upheld. (Paragraphs [11] and [20] – [21].)

## [2] Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd T/A Crown River Safari 2018 (4) SA 206 (SCA)

### Headnote:

The Agency's buffalo escaped onto Medbury's land, and Medbury declined to return them, considering it had become their owner under the common law.

Under the common law, when a wild animal escapes its owner it becomes *res nullius*, and susceptible to the ownership of another party by means of occupation – capture and control with the intention to possess (see [18]).

However, under s 2 of the Game Theft Act 105 of 1991:

**“(1) Notwithstanding the...common law—**

**a) a person who keeps or holds game...on land that is sufficiently enclosed as contemplated in subsection (2) shall not lose ownership of that game if the game escapes from such enclosed land;**

...

**(2)(a) For the purposes of subsection (1)(a) land shall be deemed to be sufficiently enclosed if, according to a**

**certificate of the Premier of the province in which the land is situated,...it is sufficiently enclosed to confine to that land the species of game mentioned in the certificate.’**

The Agency instituted an action for the buffalo's return and the matter proceeded on a stated case confined to the question, *inter alia*, whether the certificate in s 2(2)(a) was a prerequisite for the protection in s 2(1)(a). (The Agency had no certificate.) (See [10] – [11])

The High Court **held**, that it was, and dismissed the action, causing the Agency to appeal to the Supreme Court of Appeal. (See [12] and [16])

It held that the certificate was not a prerequisite for the protection – it was intended merely to facilitate proof of the enclosure required to receive s 2(1)(a)'s protection (sufficient enclosure to confine the game concerned). (See [34] – [35])

The appeal upheld, the High Court's order set aside and substituted with an order favouring the Agency on the above issue. This would have the effect that the matter would continue in the High Court on the remaining issues. (See [38] – [39])

## [3] Long Beach Home Owners Association v Department of Agriculture, Forestry and Fisheries and Another 2018 (2) SA 42 (SCA)

### Headnote:

Appellant association applied to first respondent department for a licence to 'damage' indigenous trees in a natural forest (s 7(4) of the National Forests Act 84 of 1998. The section allows the Minister to license the cutting, disturbing, damaging or destroying of indigenous trees in such forests.)

In coming to refuse the application, the department reasoned (1) that destruction of any part of a natural forest would constitute 'destroying' natural forest for the purposes of s 3(3)(a) ('natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use

is preferable in terms of its economic, social or environmental benefits'); and (2) that no exceptional circumstances were present. (See [15.4] and [18].)

The association applied to the High Court to review the refusal; it dismissed the application; and the association appealed to the Supreme Court of Appeal.

**Held**, that the department's interpretation in (1) would have absurd results. Properly interpreted, whether a proposed destruction of indigenous trees would amount to 'destroying' natural forest was to be determined on the facts of a given case, and was a

matter of degree. In making the determination the administrator had to compare, *inter alia*, the extent of the trees proposed to be destroyed, and the extent of the forest concerned. (Thus, to destroy one tree in a forest of 10 acres would not be to 'destroy' natural forest; but to destroy one acre of those trees would.) (See [15.5] – [15.6])

**Held**, further, that the department had reached the conclusion in (2) that there were no exceptional circumstances, through a flawed

exercise of its discretion. It had applied its policy, that a residential development did not constitute an exceptional circumstance, without considering, as it ought to have, the merits of H the association's application. (See [18] and [20].)

The appeal accordingly upheld; the order of the High Court set aside; and substituted with an order setting aside the department's refusal of the licence, and remitting the association's application to it. (See [23].)

## [4] Corrans v MEC for the Department of Sport, Recreation, Arts and Culture, Eastern Cape, and Others 2009 (5) SA 512 (ECG)

### Headnote:

The applicant approached the High Court in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) for an order reviewing and setting aside the decision of the Provincial Heritage Resources Authority, Eastern Cape (PHRA), not to approve her application, in terms of s 34(1) of the National Heritage Resources Act 25 of 1999 (the National Act), for permission to demolish a building of historical interest, the PHRA having granted its permission for only a partial demolition, on certain conditions. She brought her application on the grounds that: (1) the PHRA was not authorised by the empowering legislation either to consider or to refuse her application inasmuch as, from the date of commencement of the Eastern Cape Heritage Resources Act 9 of 2003 (the Provincial Act), i.e. 4 March 2004, the PHRA had lacked the competence to consider her application (s 6(2)(a)(i) of PAJA); alternatively, (2) the PHRA took into account irrelevant considerations and ignored relevant ones, and the decision was not rationally connected to the purpose for which it was taken, the purpose of the empowering legislation, the information before it and the reasons given for it by the PHRA (ss 6(2)(e)(iii) and 6(2)(f)(ii) of PAJA).

**Held**, as to (1), that, according to s 146(2)(b) of the Constitution, where national legislation provided uniformity by establishing norms, standards, frameworks or national policies, national legislation

prevailed. Further, it was clear from not only the introduction to the National Act which, *inter alia*, vested a provincial heritage authority with limited powers in respect of certain categories of heritage resources, but from the entire structure of the National Act that it took precedence over the Provincial Act. (Paragraph [15] at 518B – G)

**Held**, further, that, therefore, the ground of review premised on s 6(2)(a)(i) of PAJA could not be sustained. (Paragraph [17] at 519D – E)

**Held**, further, as to (2), that the applicant was contending that, as a matter of fact, the decision was wrong. In the court's judgment, a court of law had to give due weight to policy decisions and findings of fact by a decision-making body, particularly where, as in the present case, the decision appeared to conform to the overall scheme of the legislation. (Paragraph [21] at 520I – 521B)

**Held**, further, that the present case was not one in which judicial intervention in the decision reached by the PHRA's permit and appeal committee was warranted. The conditional demolition permit accorded with the duty imposed on the PHRA to preserve buildings which were of cultural significance and its decision was consonant with the overall scheme of the National Act. (Paragraph [23] at 521G) Application dismissed.

## [5] Prinsloo v Van der Linde and Another 1997 (3) SA 1012 (CC)

### Headnote:

The first respondent instituted action in a Provincial Division as a result of damage allegedly caused to his farmlands when a fire had spread to it from the applicant's land. It had been common cause that the fire had occurred on land situated outside a fire control area. The Provincial Division referred the matter to the Constitutional Court in terms of s 102(1) of the Constitution of the Republic of South Africa Act 200 of 1993. The Forest Act 122 of 1984 had as one of its principal objectives the prevention and control of veld and forest fires. Section 84 of the Act dealt with responsibility for fire on land outside fire control areas and provided that 'when in any action by virtue of the provisions of this Act or the common law the question of negligence in respect of a veld, forest or mountain fire which occurred on land outside a fire control area arises, negligence is presumed until the contrary is proved'. The issues referred were whether the presumption in s 84 of the Forest Act was in conflict either with the right to be presumed innocent under s 25(3)(c) of the Constitution or with the right to equality before the law and not to be unfairly discriminated against under s 8(1) and (2) of the Constitution.

The presumption of innocence under s 25(3)(c)

In order to overcome the obvious obstacle of being a defendant in a civil trial and not an accused in a criminal trial, the applicant argued that the test was an objective one that did not depend on his subjective situation but on the objective reach of the provision. He further contended that the word 'action' in s 84 of the Forest Act was wide enough to include both criminal and civil proceedings and that it accordingly infringed the rights of accused persons as protected by s 25(3)(c). If invalid because of its application to criminal trials, he argued, the section lost all force and effect and could not be invoked in civil proceedings.

The Court (per Ackermann J, O'Regan J and Sachs J; Chaskalson P, Mahomed DP, Goldstone J, Kriegler J, Langa J, Madala J and Mokgoro J concurring)

**Held**, that the applicant was wrong both in his approach to the interpretation of s 84 and with regard to the alleged consequences of the construction he urged upon the Court. The reason was that, even if it were assumed in favour of the applicant that standing of a civil claimant to challenge a reverse onus in a civil trial provided standing to challenge the constitutionality of a statutory reverse onus provision relating to criminal trials even when that claimant was not in jeopardy of prosecution; that the word 'action' in s 84 H was wide enough to encompass criminal proceedings; that there was

sufficient material before the Court for it to determine whether a reverse onus in a criminal trial would be unconstitutional; and that it was, in fact, unconstitutional, s 35(2) of the Constitution still provided an insuperable barrier to applicant's argument. (Paragraphs [11] and [12] at 1020A/B--D) This was because s 35(2) provided that 'no law which limits any of the rights entrenched in this chapter shall be constitutionally invalid solely by reason of the fact that the wording used prima facie exceeds the limits imposed in this chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation'. Its terms were peremptory, and the Court's task was thus not to find the 'correct' interpretation of s 84 but, given more than one reasonably possible construction, to choose the one consistent with the Constitution. Any ambiguity had to be resolved by favouring the construction which kept the provision constitutionally alive. On this approach the word 'action', even if it were capable of including criminal proceedings and even if such inclusion resulted in a constitutional invasion of the right to a fair criminal trial, was reasonably capable of a more restricted meaning which excluded criminal trials and thereby avoided unconstitutionality. It followed that under s 35(2) the latter interpretation had to be preferred. Accordingly, even if all the above assumptions were correct, the attack based on s 25(3)(c) still had to fail. (Paragraph [13] at 1020E/F--H) Section 98(5), by providing that 'in the event of the Constitutional Court finding that any law or any provision thereof is inconsistent with this Constitution, it shall declare such law or provision invalid to the extent of its inconsistency' was a further barrier to the applicant's approach, for even if the Court were to hold that s 84 necessarily included criminal as well as civil proceedings, and that the presumption in relation to criminal trials was unconstitutional, it would have to declare in any order it made that the provisions of the section were inconsistent only to the extent that they applied to criminal proceedings. (Paragraph [14] at 1020H-- 1021B/C)

The equality issues: s 8(1) and (2)

Section 8 provided that '(1) (e)very person shall have the right to equality before the law and to equal protection of the law' and that '(2) (n)no person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language'. The applicant contended that the differentiation between defendants in veld fire cases and those in other delictual matters had no rational basis.

The Court held that the idea of differentiation was at the heart of equality jurisprudence in general and of the s 8 rights in particular. Section 8 distinguished between differentiation which did not involve unfair discrimination and that which did. The former involved the differentiation necessary for the efficient government of the modern State in the interests of all its people, which was impossible without classifications that treated and impacted on people in different ways. For such 'mere' differentiation not to infringe s 8 a rational relationship was required between the differentiation in question and the governmental purpose preferred to validate it. The State could not regulate in an arbitrary manner or manifest naked preferences that served no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of the constitutional State. But while such a rational relationship was a necessary condition for the differentiation not to infringe s 8, it was not a sufficient condition, for the differentiation could still constitute unfair discrimination if a further element, to be found in s 8(2), was present. Section 8(2) did not prohibit all differentiation or even all discrimination but only unfair discrimination, which it divided into two categories: unfair discrimination on the grounds specified in the subsection, which were not exhaustive and which carried a presumption of unfairness, or on grounds not specified therein, which carried no presumption of unfairness. (Paragraphs [23]--[28] at 1024C--1025G), paraphrased) The existence of this second category of unfair discrimination

could be inferred from the introductory phrase 'without derogating from the generality of the provision' and was present when people were treated differently in a way which impaired their fundamental dignity as human beings. (Paragraphs [28] and [31] at 1025F--G and 1026F--G) Reverting to the facts of the instant case, the Court pointed out that the purpose of the Forest Act was to prevent veld fires, that the State had a legitimate interest in doing so, and that there was a rational relationship between the purpose sought to be achieved in s 84 and the means chosen to do so. (Paragraphs [39] and [40] at 1028H/I and 1029F/G) Furthermore, the differentiation between owners and occupiers of land in fire control areas and those who owned or occupied land outside such areas could not by any stretch of the imagination be seen as impairing the dignity of the owner or occupier of land outside the fire control area. Accordingly, it also did not constitute unfair discrimination of the second kind mentioned in s 8(2). No breach of s 8(1) or 8(2) was thus established. (Paragraph [41] at 1029G--1030A/B)

The Court accordingly declared that s 84 of the Forestry Act was not inconsistent with the Constitution and referred the matter back to the Provincial Division for it to be dealt with in the light of its judgment. (Paragraph [42] at 1030B--C)

Didcott, J delivered a separate but concurring judgment that covered much the same ground as the majority judgment.

## [6] Harmony Gold Mining Co Ltd v Regional Director, Free State Department of Water Affairs, and Others 2014 (3) SA 149 (SCA)

### Headnote:

The appellant (Harmony) had managed gold mining operations on behalf of a landowner. During this time a directive was issued by the first respondent I (regional director, acting on behalf of the Minister) in terms of s 19(3) of the NWA requiring Harmony, and various other gold mining companies in the area, to take anti-pollution measures in respect of water contamination caused by their gold mining activities. The entire gold mining business and land were subsequently sold by the landowner to another company which assumed all of Harmony's obligations, including those arising from the directive. This company then went into liquidation, and the obligations arising from the directive were resumed by Harmony. As it no longer had any connection to the land, Harmony took the position that the directive was invalid or unenforceable against it, and requested that it be withdrawn. When this was

refused, an unsuccessful high court application followed, seeking the review and setting-aside of the directive or the refusal to withdraw it. In a further appeal to the SCA, Harmony contended, inter alia, that the third respondent's (the Minister's) powers under ss (3) were subject to the limitation that the 'landholder' might only be directed to take anti-pollution measures for as long as it owned, controlled, occupied or used the land. The court held that there was nothing in the wording of ss (3), or in the other provisions of s 19, which warranted this conclusion, and the appeal was accordingly dismissed. (Paragraph [23] at 159D – F)



## [7] Maccsand (Pty) Ltd v City of Cape Town and Others 2012 (4) SA 181 (CC)

### Headnote:

M, a mining company, obtained a mining right and permit under the Mineral and Petroleum Resources Development Act 28 of 2002 in respect of dunes zoned as public open space under the Land Use Planning Ordinance 15 of 1985 (Cape). In issue was whether

LUPO's application to the land ended on grant of the mining right and permit. The court held that it did not: exercise of the mining right was subject to LUPO and mining could not take place until the land was appropriately rezoned. (Paragraphs [34], [40], [48] and [51] at 195D – F, 196F – H, 198E/F – H and 200B)

## [8] Company Secretary, Arcelormittal South Africa Ltd and Another v Vaal Environmental Justice Alliance 2015 (1) SA 515 (SCA)

### Headnote:

The parties, in this case, were the Vaal Environmental Justice Alliance (VEJA), a non-profit voluntary association, and ArcelorMittal South Africa Ltd (Arcelor), a steel producer. VEJA asked Arcelor for a copy of its Environmental Master Plan, a document containing data on the environment at its Vanderbijlpark site. VEJA made the request in terms of s 50(1)(a) of the Promotion of Access to Information Act 2 of 2000 which provides that '(a) E requester must be given access to any record of a private body if that record is required for the exercise or protection of any rights;...' ('Required' has been held to mean reasonably required in the circumstances.) VEJA asserted it required the document in order to ensure Arcelor carried out its obligations under the National Environmental Management Act 107 of 1998, National Environmental Management: Waste Act 59 of 2008, and National Water Act 36 of 1998 (NEMA, NEMWA and NWA). The right VEJA sought to protect was the environmental right in s 24 of the Constitution. Arcelor refused the request and VEJA applied to a high court for a declaration that the refusal was invalid and that the document was to be supplied. The high court granted the relief sought. Arcelor then appealed to the Supreme Court of Appeal. It argued as follows:

VEJA was not a bona fide advocate for environmental justice but sought impermissibly to use PAIA to turn itself into a parallel regulatory authority.

**Held**, that there was no evidential basis for Arcelor's assertion. (Paragraphs [38] and [53] at 528I – 529B and 532A – D)

The document sought was obsolete.

**Held** that the document remained important as a baseline of information against which current data could be compared. (Paragraphs [30], [44] and [56] at 526J – 527C, 530D – E and 532G – I)

The right sought to be protected had to be more specifically identified.

**Held**, that VEJA had also stated that it sought to protect the rights in NEMA, NEMWA and NWA, and that this constituted a sufficiently specific identification. (Paragraphs [60] – [61] at 534A/B – E)

The duty of a private party to disclose information was much less stringent than that of a state body, and courts had to respect this distinction.

**Held**, that courts had indeed to be wary of forcing corporations to provide information where alleged minor irregularities formed the basis of the request. Here, however, the basis for the request was neither trivial nor frivolous. (Paragraphs [75] and [80] at 537F – G and 538D – E) Appeal dismissed.

## [9] Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province, and Others 2007 (6) SA 4 (CC)

### Headnote:

In terms of the Constitution of the Republic of South Africa, 1996, and the environmental legislation, the obligation of environmental authorities to consider the socio-economic impact of a proposed development is wider than the requirement to assess need and desirability under the Town-Planning and Townships Ordinance, 1986. It also comprehends the obligation to assess the cumulative impact on the environment of the proposed development. (Paragraph [82] at 34H – 35A)

The applicant applied in the High Court for the review and setting aside of a decision by the third respondent (the Department) to grant authorisation, in terms of the provisions of s 22(1) of the Environment Conservation Act 73 of 1989 (ECA), for the construction of a filling station. The application was brought in terms of s 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), on the ground that, in arriving at its decision, the Department had failed to consider the socio-economic impact of the proposed filling station. The Department resisted the application on the ground that the local authority had assessed the need and desirability – which it equated with the socio-economic impact – of the proposed development, in deciding the application, and it was, therefore, unnecessary to reassess these. The High Court upheld the Department's contentions, as did the Supreme Court of Appeal (SCA). The applicant then approached the Constitutional Court for leave to appeal against the decision of the SCA.

### Proper cause of action

**Held**, that the provisions of s 36 of the ECA, which provided for review of decisions of the environmental authorities, had to be read in conjunction with PAJA, which set out the grounds on which administrative action could be reviewed. (Paragraph [37] at 20B)

### Obligations of environmental authorities

**Held**, that the National Environmental Management Act 107 of 1998 (NEMA) made it clear that the obligation of the environmental

authorities included the consideration of socio-economic factors as an integral part of their environmental responsibility. (Paragraph [62] at 27E – F) That obligation required consideration by the Department of the impact of the proposed development in combination with existing developments and on existing developments. (Paragraph [72] at 31E – F) The obligation on the Department to consider the socio-economic impact of a proposed development was, therefore, wider than the requirement of a local authority to assess the need and desirability thereof for purposes of rezoning. The Department was also obliged to assess the cumulative impact. (Paragraph [82] at 34H – 35A)

**Held**, further, that in the present case, the environmental authorities had assumed that the duty to consider need and desirability in the context of rezoning was identical to the obligation as the duty to consider the social, economic and environmental impacts of a proposed development as required by the provisions of NEMA. They were wrong in that assumption. They had misconstrued the nature of their obligations under NEMA and, as a consequence, failed to apply their minds to the socio-economic impact of the proposed filling station, a matter which they were required to consider. That fact alone was sufficient to warrant the setting aside of the decision. (Paragraph [86] at 35G – H)

**Held**, accordingly, granting the application for leave to appeal and upholding the appeal that the orders of the SCA and the High Court were set aside; the decision of the first, second and third respondents granting authorisation for the construction of the filling station was reviewed and set aside; and the matter was remitted to said respondents to consider afresh the application for authorisation for the construction of the filling station. (Paragraph [108] at 41D – G)

# [10] Joint Owners, Erf 5216 Hartenbos v Minister for Local Government, Environmental Affairs and Development Planning, Western Cape, and Another 2011 (1) SA 128 (WCC)

## Headnote:

Section 24F(1) of the National Environmental Management Act 107 of 1998 (NEMA) requires environmental authorisation before any activities E listed in regulations published in terms of NEMA may be commenced with. Activities commenced with prior to the listing coming into effect, and subsequently included in the listed activities, are exempted from compliance with the subsection. NEMA's definition of 'commence' includes the commencement of any physical activity in furtherance of a listed activity.

The applicants were property developers who had, prior to the listing coming into effect, commenced with the filling-in and compacting of a depression on the property to be developed. By doing so, it was argued, all the listed activities they would undertake during the development had been commenced with and, accordingly, a declaratory order was sought to the effect that they were exempted from having to obtain environmental authorisation.

The applicants also sought a further declaratory order to the effect that the earthworks they conducted did not constitute the construction, erection or upgrading of a 'road', as envisaged by regulations promulgated under the Environment Conservation Act 73 of 1989 (ECA), and that they were accordingly not required to have obtained written authorisation in respect thereof.

This aspect arose by virtue of s 21(1) of the ECA, in terms of which the minister identified, by notice in the Government Gazette, the construction of 'any road or track in an area regarded by the relevant authority as a sensitive area' as having a substantial detrimental effect on the environment. In terms of s 22(2) of the ECA, no activities so identified may be undertaken without the written authorisation of the minister or a competent authority designated by him or her. The applicants did not obtain such authorisation,

but contended that 'the relevant authority' had not published its 'regard' of theirs as a sensitive area in any form or notice.

**Held**, that, since listed activities and their impact were the focus of NEMA, for an activity to have qualified as being 'in furtherance' of a listed activity, it had to have the effect of advancing the listed activity, so that it had to be shown that there was a reasonably direct connection between the commencement activity and any of the listed activities. The applicants did not attempt to show such a connection, instead relying on a connection between the activity and the development. A development, however, consisted of many activities and therefore, it was not possible to determine whether there was a reasonable connection between the act of filling in the depression and any of the listed activities. It followed that the applicants were not entitled to a declaration that they were exempted from obtaining environmental authorisation under NEMA. (Paragraphs [40] – [41] at 138G – J)

**Held**, further, that, in lieu of publication by the relevant authority of what it regarded as a sensitive area, objective evidence sufficed as an indication thereof. Objective evidence existed that the relevant authority (the first respondent's predecessor) regarded the area as sensitive for the purposes of development. The work constituted partial construction of an access road which intruded into an area regarded as a 'sensitive area' by the relevant authority and accordingly ECA authorisation was required. (Paragraphs [13] and [47] – [48] at 133F – G and 140D – E)

**Held**, further, that the applicants could also not rely on the filling-in and compacting as an activity in furtherance of a listed activity, because the applicants started the road in contravention of the ECA. The application was accordingly dismissed with costs. (Paragraphs [49] – [50] at 140F – G)

## [11] Nature's Choice Properties (Alrode) (Pty) Ltd v Ekurhuleni Municipality 2010 (3) SA 581 (SCA)

### Headnote:

The instant appeal dealt with municipal smoke-control regulations issued under s 18 of the Atmospheric Pollution Prevention Act 45 of 1965. The Act in s 15(1) prohibited the installation of a fuel-burning appliance that: (1) emitted dark smoke or smoke of a colour darker than was prescribed by regulation; or (2) was designed to burn solid fuel, unless it is provided with effective appliances to limit the emission of grit and dust. The Act did not prohibit the installation of fuel burners or burners of any particular type, but only the installation of burners that emitted smoke and grit in contravention of s 15(1), including the regulations.

It appeared that the appellant had erected the boiler on its property without the prior consent of the municipality. This, the municipality alleged, amounted to a contravention of reg 3 of the smoke-control regulations, which provided that one could not install any fuel-burning appliance (which included a boiler) designed to burn solid or liquid fuel on any premises, unless the plans and specifications in respect of such installation had been approved by the municipality. Regulation 4 provided that the municipality could order the removal of fuel-burning devices installed in contravention of reg 3. Although the appellant had installed the boiler without complying with reg 3, the municipality had elected not to proceed in terms of reg 4, but rather to require of the appellant that it remedy the situation by submitting plans and specifications. The appellant did as requested, whereupon the municipality rejected the application, not on the ground that it emitted smoke in contravention of

s 15(1) of the Act, but because it was for a coal-burner and not for a gas-burner.

The High Court rejected the appellant's argument that reg 3 was ultra vires the Act, and held that the boiler had been installed in contravention of that regulation. It consequently issued an interdict restraining the appellant from utilising the boiler. It also ordered it to remove the boiler from its property within 30 days. In an appeal to the Supreme Court of Appeal,

**Held**, that, though reg 3 was clearly intra vires the Act, its purpose was to enable the municipality to determine in advance whether the relevant burner complied with s 15(1). If it did, the municipality had no choice, but to accept the plans. (Paragraph [10] at 586C – D)

**Held**, further, that the municipality had, in refusing the appellant's eventual application, overstepped the mark: it had been entitled to refuse the application if, and only if, the boiler's smoke emission did not comply with s 15(1). (Paragraph [12] at 587D – E)

**Held**, further, since the municipality's rejection of the appellant's plans and specifications had been unlawful, it could not, by seeking to interdict the use of the boiler, revert to the position that had existed before it had made its election. The municipality was in effect seeking to enforce an illegal decision, something it was not entitled to do. (Paragraph [13] at 588C – D) Appeal upheld.

## [12] Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd T/A Pelts Products, and Others 2004 (2) SA 393 (E)

### Headnote:

The applicant was the owner of certain immovable property adjacent to that of the first respondent. The first respondent carried on business as a semi-processing tannery. This tanning process produced a number of chemical waste products, in particular, the malodorous hydrogen sulphide (H<sub>2</sub>S) and was, therefore, a 'sulphide process' as envisaged by the Second Schedule to the Atmospheric Pollution Prevention Act 45 of 1965 (APPA). The applicant alleged that noxious gases created by the tannery were discharged into the atmosphere, causing not only a foul and offensive odour but the rapid

and uncontrollable corrosion of metal structures and equipment on its property and that such gases were prejudicial to the health and well-being of those present on its premises and other inhabitants of Port Elizabeth. The applicant claimed that the Director-General: Environment Affairs and Tourism (the second respondent), the chief air pollution control officer (the third respondent), the head of E the Department of Economic Affairs and Tourism, Eastern Cape (the fourth respondent) and the interim municipal manager of the Mandela Metropolitan Municipality (the fifth respondent) had failed, neglected or refused to take such reasonable steps as

were required to bring this pollution to an end, notwithstanding its attempts to persuade them to do so. Complaints of corrosion and odour problems attributable to H<sub>2</sub>S at the applicant's premises led to CSIR investigations and reports in November 1997 and 1998. It had identified sulphide gas as the cause of corrosion which had commenced in 1996. It furthermore found that (a) the main contributing source of H<sub>2</sub>S omissions was the pond on the first respondent's premises which was situated a mere 25 m from the applicant's premises, the H<sub>2</sub>S level there being measured up to six parts per million (b) that both nuisance and public health exposure guidelines were being exceeded, and (c) that occupational health exposure limits were being approached, and possibly exceeded during normal operations. The amounts of H<sub>2</sub>S exceeded by more than 300 times the Department of Environmental Affairs and Tourism nuisance guidelines and by up to 30 times the public exposure guideline. The first respondent was registered as a Schedule 8 process under APPA and on 1 November 1999, the third respondent issued the first respondent with a provisional registration certificate with certain conditions. The first respondent was required to adjust its system in order to meet the requirements set out in the conditions. As the first respondent failed to meet the stated requirements, the provisional certificate was extended from time to time. On 2 February 2001 the applicant's attorney gave notice to the fourth respondent under s 28(12) of the National Environmental Management Act 107 of 1998 (NEMA) that the pollution emanating from the tannery had become intolerable. The third respondent also received a copy of this notice, and after an official site visit, a directive was issued giving the first respondent 30 days within which to comply with a number of requirements or cease trading. After the 30 days had lapsed the first respondent had not been able to comply with the directives given. The applicant then turned to the Court for relief, mainly under s 28(12) of NEMA, but also relying on s 32(1) for 'appropriate relief'. What was sought was an investigation, evaluation and assessment of the impact of the noxious gases emitted from the first respondent's tannery, and a directive that the fourth respondent, who thus far had taken no steps under s 28(4), should take whatever steps may be necessary in the light of the findings of the investigation.

**Held**, that even though s 28(12) might be relied upon to found the relief sought against the fourth respondent, it did not empower the Court to direct the third respondent to suspend the first respondent's registration certificate or to direct the first respondent to halt its activities at the tannery. (At 407D – D/E)

**Held**, further, that a cause of action for 'appropriate relief' under s 32(1) might not on the papers have been spelled out as one would have liked, but there was no reason for the applicant to be limited to relief under s 28(12) if the facts which were set out justified other appropriate relief being granted under s 32(1), to which reference was made. (At 408A/B – B)

**Held**, further, that the circumstances of a case might be such that a Court would find that a person in the position of the present applicant was entitled to an order in effect usurping the function bestowed upon the third respondent by legislation to withdraw a certificate issued under APPA and directing the closure of a factory. (At 410D – E)

**Held**, further, that even if the Court had the power of making such an order, the exercise thereof had to be determined largely by proof of the level and severity of the offending pollution. One would be far more inclined to direct closure of a factory where there was evidence of persistent, serious and on-going pollution than in a case where, even if there was a degree of pollution, it could neither be regarded as particularly serious, nor likely to persist indefinitely in the future. (At 410H – I/J)

**Held**, further, that in the exercise of the functions bestowed upon them, the second, third and fourth respondents were obliged to act responsibly and to take action to ensure, insofar as they were able, that a person causing pollution did not impinge upon the rights of others. Pollution was a complex, technical and scientific issue that raised questions that could only be answered properly with insight into detailed scientific knowledge and information. Certain functionaries had been appointed by the Legislature in order to weigh up all the relevant information necessary to take informed decisions on matters of scientific import, including the issue of a certificate for a scheduled process and the conditions that should apply thereto. (At 412D/E – G)

**Held**, further, that these functionaries were pre-eminently the persons who should have taken the decision whether the first respondent should have been obliged to stop its operations. Without it being shown that the functionaries concerned had not exercised the discretion vested in them by the Legislature reasonably and properly, this Court would probably not have been prepared to interfere by granting an order effectively usurping their powers and functions. (At 412H – I/J.)

**Held**, further, that 'appropriate relief' as envisaged by s 32 of NEMA did not in the present case constitute an order effectively shutting down the first respondent's tanning processes. (At 413D – D/E)

**Held**, further, that it was clear from the evidence as a whole that there had been a pollution of the environment (in the sense envisaged by the definition of 'pollution' in NEMA) at a level which had to be regarded as 'significant'. The first respondent conceded that it was unable to comply with the third respondent's requirements relating to its levels of DO and MLSS, the two components crucial to the formation of H<sub>2</sub>S. The undisputed evidence showed that even the

most minute concentration of H<sub>2</sub>S in the atmosphere was detected by the human nose as a stink similar to rotten eggs. Therefore the H<sub>2</sub>S generated by the first respondent would regularly have been detectable to the persons working nearby on the premises of the applicant. One should not be obliged to work in an environment of stench and to be in an environment contaminated by H<sub>2</sub>S was adverse to one's 'well-being'. (At 415A/B – E)

**Held**, further, that the activities of the first respondent had caused 'pollution' as defined in NEMA. (At 415E/F)

**Held**, further, that although the fourth respondent argued that the question of pollution was an area which was the domain of the third respondent and that the fourth respondent did not have the personnel with the necessary training and expertise, the Legislature had imposed certain obligations upon the fourth respondent under s 28 which were not met by 'co-operative governance'. The fourth

respondent was obliged to carry out the obligations imposed upon him under s 28(4), which he had failed to do. The applicant was entitled to apply for an order directing the fourth respondent to take any of the steps listed in s 28(4). (At 417G – I/J)

**Held**, further, that in considering an application under s 28(12), this Court was obliged by s 28(13) to take into account the factors set out in s 28(5). (At 417I/J) The problems at the first respondent's tannery were longstanding and persisted despite the efforts taken to curtail them. Accordingly, in the light of the relevant facts and circumstances this was a matter where the fourth respondent should be ordered to direct the first respondent to investigate, evaluate and assess the impact of its activities and to report thereon. (At 418F/G – G/H)

Application granted.

## [13] Laskey and Another v Showzone CC and Others 2007 (2) SA 48 (C)

### Headnote:

The applicants were the owners of residential apartments in the Cape Town CBD. In the same building the respondent conducted a theatre-restaurant business. They sought to interdict the respondent from continuing to contravene the Noise Control Regulations (Western Cape) by causing a 'disturbing noise' and/or a 'noise nuisance' as defined in the regulations through the amplification of sound during performances. In the event of the Court's granting the interdict sought, the respondent requested that the order be suspended in order to give it an opportunity to take steps to remedy the applicants' complaint.

**Held**, that when an applicant sought to interdict the continued contravention of a particular statute, and that statute had been enacted in the interests of a particular person or class of persons, the applicant was required to show that he or she was such a person or belonged to such class of persons, but was not required to show harm as a result of such contravention, harm is presumed. However, where the statute had been enacted in the public interest generally, the applicant was required to show that he or she had sustained, or apprehended, actual harm in order to obtain an interdict on the grounds of contravention of the statute. (Paragraph [13] at 54E – H)

**Held**, further, that the noise control regulations had been enacted for the general benefit of the public and not for the benefit of any particular person or class of persons. (Paragraph [16] at 55D – E)

**Held**, further, that it followed that, in order for the applicants to secure their interdict, they had to show that the breach of the Regulations had occasioned or was likely to occasion them harm. The requirement of harm would be established if the conduct of the respondent about which applicants complained gave rise to a private nuisance actionable at their instance. (Paragraph [18] at 56B – C)

**Held**, further, that, in the present case, an actionable nuisance had been proved: (a) The extent of the increase in noise levels occasioned by productions at the premises had been shown to be significant; (b) the applicants' evidence was that they endured material discomfort as a result of the increase in noise levels; (c) while the performances were themselves short-lived, they were a regular occurrence and occurred late at night; and (d) it was significant that there were obvious steps that the respondent could take to ameliorate the problem. (Paragraph [37] at 65D – I)

**Held**, further, that the Court did have the power to suspend the operation of a final interdict. (Paragraph [45] at 69D – F)

**Held**, further, that the respondent would need a reasonable period of time to do what was necessary to abate the nuisance. The social utility of its business, which provided not only an important facility of entertainment and culture, but also employment and theatrical career opportunities to many, outweighed the applicants' right to

an immediate cessation of the nuisance and justified the temporary suspension of the order. In the circumstances of the case, a suspension of four months would be reasonable. (Paragraph [47] at 70B – F.)

**Held**, accordingly, that:

- a) The conducting of the respondent’s theatre-restaurant business from the premises constituted a noise nuisance actionable at the instance of the applicants;

- b) the respondent was prohibited from conducting its business until effective measures had been taken to abate the nuisance; and

- c) the operation of the interdict was suspended for a period of four months. (Paragraph [49] at 70G – I)

## [14] Minister of Water and Environmental Affairs and Another v Really Useful Investments 219 (Pty) Ltd and Another 2017 (1) SA 505 (SCA)

### Headnote:

Really Useful Investments (the Company) was the owner of a number of immovable properties in Cape Town located next to a river and near the seashore. With a view to developing them, it raised the height of the lower-lying properties to four metres above sea level, by dumping waste matter and fill in and adjacent to, the river.

This prompted the City of Cape Town, acting in terms of ss 31A(1) and (2) of the Environment Conservation Act 73 of 1989 (the ECA), to issue a directive to the Company, aimed at environmental preservation and protection in relation to the land owned by the latter and setting out a number of steps it was required to undertake. The Company complied with the directive and then instituted action in the court a quo against the City, the Minister and the MEC. It claimed payment of compensation in terms of s 34 of the ECA on the basis that the directive issued by the City resulted in a substantial diminution in the value of the land, in that the extent to which the land could be developed was greatly restricted as a result of the steps taken. The City excepted to the claim, on the basis that the Company had disclosed no cause of action. Reliance was placed on s 49 of the National Environmental Management Act 107 of 1998 (NEMA), which provided that inter alia the state was not liable for loss caused by the exercise of any power under NEMA or ‘any specific environmental management Act’ unless it was unlawful, negligent or in bad faith. The ECA, in terms of ss 1(1) of NEMA, was such an environmental management Act. Given that no allegation of unlawfulness, negligence or bad faith was made, no cause of action was made out, the City alleged. Rejecting this argument, the court a quo granted the order sought by the Company. It found that a statutory right to recover compensation was clearly provided for in s 34 of the ECA and was not limited or restricted by s 49 of NEMA nor by the

similarly worded s 37 of the ECA, both of whose purpose was to provide a defence in delict.

The Supreme Court of Appeal reversed the decision of the court a quo. It agreed with the High Court’s finding that ss 49 of NEMA and 37 of ECA did not operate to exclude a claim for compensation under s 34 of ECA in circumstances where the City did not act either unlawfully, in bad faith or negligently. However, the SCA found that the circumstances of the case were such as to fall outside the purview of s 34 of the ECA.

**Held**, that s 31A of the ECA (in terms of which the City issued the directive) was one of several distinct regulatory provisions set out in the ECA and NEMA that regulated the activities of owners of land or of holders of real rights in land and were aimed at preventing such activities from causing environmental harm. Section 34 could not have been directed at providing compensation for actions taken under those provisions. It was difficult to conceive of a right to compensation for restrictions rightly put in place to prohibit harmful processes. To interpret s 34 so as to allow compensation in such circumstances would be to discourage environmental authorities from fulfilling their constitutional obligation to protect the environment. It would, perversely, encourage landowners to act in an environmentally offensive manner so as to solicit compensation. (Paragraphs [34], [39] and [40])

**Held**, that the Company’s claim could be rejected also on the basis that a claim in terms of s 34 for compensation could only be brought against ‘the Minister or competent authority concerned’. That did not include a local authority. The Company’s claim in terms of s 34 of the ECA against the City was thus not sustainable. (Paragraph [55])



**Held,** that, while s 34 of the ECA provided a statutory right to compensation in restricted circumstances (namely in the case of the curtailment of real rights as a result of the creation of limited development areas in terms of s 23), s 37 provided protection against liability to pay damages in delict arising out of the proper exercise of powers or functions under the ECA. The protection did not extend to acts that were performed negligently or in bad faith or outside the terms of the statute, as such actions were by definition not lawful. It followed that s 37 had no application in relation to situations falling within s 34 and did not operate to exclude the right of any landowner or holder of a real right in land to claim compensation under that section. (Paragraphs [36] – [37] and [47])

**Held,** that s 49 of NEMA could not be construed in the manner suggested on behalf of the City, i.e. that it excluded claims for compensation under s 34 where the interference occurred as a result of lawful, non-negligent acts undertaken in good faith, but to afford such a claim where the interference was unlawful, negligent or undertaken in bad faith. Section 34 of the ECA provided a holder of a real right in land with a real right to compensation as a result not of regulatory interference, but because of the creation of protected environmental areas. The interpretation contended by the City would have had the effect of nullifying the right to compensation that had existed since the enactment of the ECA. (Paragraph [49])

## [15] Aquila Steel (Sa) Ltd v Minister of Mineral Resources and Others 2017 (3) SA 301 (GP)

### Headnote:

#### The facts

The Department of Mineral Resources (the DMR) granted a prospecting right in favour of the applicant (Aquila) in October 2006 over a number of properties. Aquila, a subsidiary of an Australian resources company, discovered substantial manganese deposits and applied for mining rights in respect of one of these properties. This application was accepted by the DMR on 22 December 2010 but not considered further. In a meeting with the DMR (during January 2011) relating to status of this application, the DMR claimed that the reason for not considering it was the existence of an earlier grant of prospecting rights, allegedly over the same property, to the fifth respondent (PAMDC).

The only success Aquila had in getting information about the alleged double grant was through two requests in terms of the Promotion of Access to Information Act 2 of 2000. On the strength of documents received in terms of these requests, Aquila launched an internal appeal (on 29 October 2013) against the grant of the prospecting right to PAMDC. The Minister only decided the appeal 20 months later and only after Aquila obtained a mandamus directing him to do so and then rejected it (against legal advice) without giving proper reasons (see [57] – [58] and [111]).

This case concerned Aquila's application for the review of the Minister's rejection of this internal appeal; his decision to allow PAMDC's cross-appeal against the DMR's acceptance of Aquila's application for prospecting rights and the granting thereof; and his dismissal of Aquila's mining rights application. Aquila also requested related declaratory relief, including that the court

substitute the Minister's decision with its own decision upholding the internal appeal and granting the mining right application. In this regard Aquila set out extensive grounds – including institutional bias, inordinate administrative delays – none of which were contradicted by the state respondents or the other parties (see [107] – [109]).

Although the Minister concluded in the internal appeal that the PAMDC grant was lawful, it was conceded in the review proceedings that it was erroneous. This was because it was not PAMDC that had applied for the prospecting rights concerned but the sixth respondent (ZiZa), a company incorporated in England and the holder of unused 'old order mineral rights'. PAMDC is a company that was established as a joint venture between the governments of Zimbabwe and of Zambia (ZiZa's shareholders) and the South African Government with the purpose that PAMDC would eventually hold ZiZa's mineral rights. In order to preserve these rights, ZiZa had lodged a number of applications under item 8 of Schedule II of the Minerals and Petroleum Resources Development Act 28 of 2002 (the MPRDA) for prospecting rights over the different agglomerations of land making up its unused old-order mineral-rights holding. (Item 8(2) confers an exclusive right on holders of any unused old order rights, to apply for a prospecting right or a mining right within the one-year period that such old order mineral rights remained in force after the MPRDA took effect.) ZiZa's applications included an application, filed on 19 April 2005, in respect of which the alleged double grant was made. (In the review proceedings the court assumed, without deciding, that there was such 'double grant' – see [37].)

### The issues

The nature of the MPRDA's queuing system and the effect of non-acceptance of an application for prospecting and mining rights on such an applicant's place in the queue

The MPRDA distinguishes between the DMR's acceptance of an application for prospecting rights – which must comply with certain requirements before it may be validly accepted by the regional manager of the DMR – and the granting thereof. One of the grounds upon which the prospecting-right grant decision was attacked was that the ZiZa prospecting-right acceptance decision was irregular. This, Aquila contended, affected ZiZa's place in the queue. The 'queue' is a reference to the MPRDA's queuing system in terms of which the applicant first in the queue – a status which it achieves by submitting its application to the relevant regional manager of the DMR – has the right to have its application adjudicated first and should such application be granted, the other applications cannot be considered in relation to the same land and the same mineral.

**Held,** the return of an application under s 16 was equivalent to the rejection of such an application. Such an applicant did not retain its place in the queue. It was, of course, open to such an unsuccessful applicant to amend or amplify its application and resubmit it, but then the application would be treated as a new application and given a place in the queue as such, rather than as a pending application enjoying first place in the queue. (See [17] – [21].)

The duration of the preferent right under item 8(2) and its effect on when other applicants may join the queue

It was not contested that ZiZa's application was non-compliant and that therefore the DMR's 'acceptance decision' was irrational. The acceptance decision was defended on the basis (inter alia) that item 8(3), properly interpreted, preserved the exclusivity that item 8(2) conferred beyond the one-year period and, regardless of any defects in the application, until the application was either granted or refused. Therefore, according to the respondents, the lodging of ZiZa's application for a prospecting right not only precluded Aquila from joining the queue during the one-year period of exclusivity afforded by item 8(2), but also from joining the queue at all until ZiZa's application had been granted or refused.

**Held,** the purpose of item 8 was to enable the holder of an old order right to comply with the MPRDA by applying, within the period of exclusivity, for a prospecting or mining right in terms of the MPRDA. During this period no other person may join the queue, but after its expiry other aspirant right holders may do so. After expiry of the exclusivity period, a holder of an old order right-holder had to be

treated like any other applicant and other applicants may lawfully join the queue for rights under the MPRDA. (See [77] – [83].)

The effect of restoration of a deregistered company on the revival of its prospecting right which had lapsed due to the effluxion of the time it was granted for

ZiZa was deregistered on 9 November 2010 and restored to the register on 14 October 2014. In terms of s 56 of the MPRDA any mining right lapses upon the deregistration of the right-holder. However, a deregistered company may be reconstituted with such lapsed mining rights upon restoration of a company to the register (as confirmed in the Palala case – see [95]). Aquila contended that, at the time of restoration, any prospecting rights that Aquila may have had would have lapsed due to the expiry of the period for which they were granted.

### Held:

Prospecting rights did not survive the expiry of the period for which they were granted. In such a case they lapsed because they 'expired' as contemplated in s 56(a). Therefore, the restoration of ZiZa to the company register did not have the effect of reconstituting it with its prospecting right and also had no legal effect on the Aquila prospecting rights. (See [100] – [101].)

### Substitution of the Minister's decision with that of the court

The Minister found that the existence of the ZiZa prospecting right precluded the grant of the Aquila mining right. This was the only ground upon which the Minister found that Aquila's application for a mining right should not be granted. The issue was whether to set aside this decision on appeal and remit the matter to the Minister to decide the question afresh, or whether (as Aquila requested) to substitute the decision of the court for that of the Minister to the extent of directing the Minister to grant Aquila the mining right for which it applied and to determine, within a specified time, appropriate conditions to which the mining right should be subject. This question raised the principle of the separation of powers and was regulated by s 8(1)(c)(ii)(aa) of the Promotion of Administrative Justice Act 3 of 2000.

### Held:

The court may only exercise its power to substitute its decision for that of the administrator when exceptional circumstances are present and it would be fair, just and equitable to do so. This involved a consideration of the fairness to all implicated parties. (See [105] – [106].)

Neither PAMDC nor ZiZa had ever conducted any prospecting activities on the ground over which they ostensibly obtained rights.

Their purpose in this litigation was been to obstruct the exercise by Aquila of the rights which it acquired and sought to acquire, no doubt in the hope that its capacity to obstruct would drive Aquila commercially to cut PAMDC, or one or more of those associated with PAMDC, into its operation or to pay PAMDC a sum of money to stop obstructing the process. (See [110].)

While institutional bias had not been established, Aquila had established a high degree of institutional incompetence on the part of the government respondents and a lack of energy in resolving the issues which arose from that very incompetence. The Minister

made no attempt to give proper reasons for the conclusions to which he had come. The absence of any suggestion from the respondents in the papers in these proceedings that there was any issue of substance which might be raised to deny Aquila the grant of the mining right it seeks, leads to the conclusion that this court was in as good a position as the Minister to make the decision. Delaying the grant of Aquila's mining right any longer than was necessary would not advance the declared aim in the preamble to the MPRDA to build an internationally competitive administration and regulatory regime. Regard being had to these considerations; Aquila had established its case for substitution. (See [111] – [114].)

## [16] MTO Forestry (Pty) Ltd v Swart NO 2017 (5) SA 76 (SCA)

### Headnote:

The appellant company, which ran a forestry business, was the beneficial owner of a plantation called Witelsbos in the district of Humansdorp. It suffered considerable damages when a fire burned through the plantation, despite the efforts of teams of fire-fighters to halt the spread. The fire had started on the respondent's immediately adjacent farm – in an area packed with dense thickets of highly flammable alien plants ('warbos') – and had spread rapidly as a result of a strong wind. The appellant sued the respondent in the High Court, Cape Town, for damages of more than R23 million, alleging that its negligent omissions had caused or allowed the fire to spread onto Witelsbos. Relief was refused in the High Court, so the appellant approached the SCA on appeal.

### Wrongfulness and foreseeability

While the matter turned on negligence, the court took the opportunity to rule conclusively on the relevance of foreseeability in the determination of wrongfulness, an area of some controversy in the law of delict.

**Held**, that it was potentially confusing to take foreseeability into account as a factor common to the inquiry in regard to the presence of both wrongfulness and negligence. Such confusion would have the effect of the two elements being conflated and lead to wrongfulness losing its important attribute as a measure of control over liability. Accordingly, foreseeability of harm should not be taken into account in respect of the determination of wrongfulness and its role should be confined to the rubrics of negligence and causation. (See [18].)

### Negligence

As to the question of negligence, the key issue for consideration was whether the steps that had been taken by the respondent to

prevent the fire spreading to its neighbour's property had been reasonable in the circumstances.

The court considered the fire fighting facilities the respondent had in place, which the appellant attacked as inadequate. The respondent had appointed an independent contractor, Mr Wasserman, to fight fires on its behalf. Mr Wasserman headed what was acknowledged by the appellant to be an effective, well-equipped fire fighting unit. On the day in question, Mr Wasserman reacted promptly on being alerted of the fire, immediately sending his team to the scene. Aside from these fire fighting measures, on its part the appellant had also put in place extensive measures to fight fires on its own property as well as that of the respondent. The appellant had at its disposal a highly trained and equipped fire fighting team. The respondent had come to rely on these services provided by the appellant, equally on the day in question when the appellant's team had arrived on the scene shortly after being informed of a fire on the respondent's land.

The court further considered the obligations of the respondent to remove from its property the 'warbos', a clear fire hazard.

A preliminary issue raised was the applicability of the presumption of negligence prescribed by s 34(1) of the National Veld and Forest Fire Act 101 of 1998. The respondent argued that, because it did not 'control' the land on which the fire started, it was not an 'owner' for the purposes of s 34(1) and the presumption, therefore, did not apply. The appellant submitted that the case authority upon which the respondent relied was flawed. The SCA noted that the presumption was really an evidential aid and where, as here, the essential facts were known; its role was to a large extent truncated. It, however, found it unnecessary to make a finding on this disputed point as the proven facts in this case, in any event, rebutted any presumption of

negligence. The court proceeded on the assumption that the section placed an onus on the respondent to show that the fire spread to Witelsbos without negligence on its part.

**Held that** a reasonable landowner in the respondent's position was not obliged to ensure that in all circumstances a fire on its property would not spread beyond its boundaries. All the respondent was obliged to do was to take steps that were reasonable in the circumstances to guard against such an event occurring. If it took such steps and a fire spread nevertheless, it could not be held liable for negligence just because further steps could have been taken. (See [47].)

**Held that** the respondent had taken such steps that were reasonable in the circumstances to guard against the fire spreading beyond its property. It had engaged Mr Wasserman to make his fire fighting services available if need be. Not only that, it was aware that the appellant would take steps (as it had always done in the past and in the present instance) to come to its assistance in combating any fire that should break out. All these fire-fighting forces were considerable. Finally, the respondent had not acted negligently in failing to remove the warbos, a natural resource on the property, as opposed to a 'man-made tinderbox'. (See [40], [41], [46], [48] and [50].)

## [17] York Timbers (Pty) Ltd v National Director of Public Prosecutions 2015 (3) SA 122 (GP)

### Headnote:

York Timbers (Pty) Ltd, which owned and operated a sawmill plant, was convicted in a regional magistrates' court for grading a road on its property before obtaining environmental authorisation in terms of s 24 of NEMA. It had been accepted as part of its guilty plea statement in terms of s 112(2) of the CPA that the grading had been undertaken by an overzealous forester who had been requested only to survey and mark out a proposed new ramp road. The new road had been planned specifically to avoid environmental harm to the residents of the neighbouring town and had taken place after the engagement of the services of an environmental affairs practitioner, and an environmental impact assessment had been lodged with the authorities. After conviction, the court ordered that a confiscation enquiry be held in terms of s 18 of POCA into any benefit that the appellant may have derived out of its criminal activity. The appellant was subsequently sentenced to a fine of R180 000,00 and a confiscation order granted in the amount of R450 000,00 for expenses ostensibly saved. The present matter concerns

an appeal lodged against this order. A further appeal against the sentence was still pending at the time of the hearing of the present appeal.

**Held,** the onus was on the NDPP to make out a case for the order and in the present case the evidence of York Timbers was undisputed that it had derived no benefit whatsoever from the grading operation: the grading had been done with the noble purpose of accommodating the neighbouring community and the environment had been taken into consideration. The whole new ramp road would also have cost it a considerable sum. Moreover, its premature grading activities could not be regarded as resorting under the ills which the legislature had sought to control and eliminate when enacting POCA or be compared to 'offences relating to proceeds of unlawful activities' as defined in ch 3. The NDPP had accordingly failed to discharge the onus of proving any 'benefit' was derived by York Timbers. Appeal upheld and order set aside. (Paragraphs [53] – [54])

## [18] S V Miller and Others [2017] ZAWCHC 124 (4 September 2017)

The charges against the accused are formulated in three broad categories. The first category relates to contraventions of POCA, the second category relates to various contraventions of the Marine Living Resources Act 18 of 1998 ("the MLRA") and the third category is fraud.

We now turn to the POCA charges. As we demonstrated at the outset, once the State has conclusively established the commission of two or more predicate offences on the part of an accused it is

entitled to ask the Court to find that such accused has participated in a pattern of racketeering activity in the enterprise. To repeat the dictum in De Vries in the SCA:

"In order to secure a conviction under s2(1)(e) of POCA the State must do more than merely prove the underlying predicate offences. It must also demonstrate the accused's association with an enterprise and a participatory link between the accused and the enterprise's affairs by way of a pattern of racketeering activity."

## [19] Oosthuizen v Van Heerden T/A Bush Africa Safaris 2014 (6) SA 423 (GP)

### Headnote:

Should a court assist a farmer who, having done nothing to reduce his risk, claimed damages from his neighbour after his cattle was infected by a disease that spread from the neighbour's farm?

Mr Oosthuizen sued his neighbour, Mr Van Heerden, after some of his cattle died from a disease (snotsiekte) allegedly contracted from blue wildebeest on Van Heerden's game farm. Oosthuizen – who had introduced cattle onto his land after Van Heerden had started keeping blue wildebeest – did not ask Van Heerden to take precautionary measures against the possible infection of his (Oosthuizen's) cattle, nor did he take any himself. Oosthuizen's attitude throughout was that the risk of infection was all Van Heerden's and that he himself was not required to do anything about it. He saw the risk as quite low. The magistrate dismissed his claim on the ground that he failed to prove that it was Van Heerden's blue wildebeest that had infected his cattle. In an appeal to the high court—

**Held,** although the magistrate's finding on causation was correct, the claim would, in any event, fail for want of negligence and wrongfulness. Negligence was excluded by the low risk of infection coupled with the high cost to Van Heerden of erecting a game fence to prevent it; wrongfulness by Oosthuizen's passive conduct. Wrongfulness would be present only if Van Heerden offended Oosthuizen's interests in an unreasonable manner. It was unreasonable for Oosthuizen to expect Van Heerden to take sole responsibility, at substantial cost to him, for the reduction of the (admittedly low) risk of snotsiekte infection while at the same time taking no such responsibility himself. Oosthuizen had assumed the risk and deliberately did nothing about it. To hold Van Heerden responsible in such circumstances would be contrary to the underlying principles governing the reasonable use of property between neighbours. Moreover, the *boni mores* of the community would not expect the court to assist a supine litigant such as Oosthuizen. There was no wrongful conduct on the part of Van Heerden and the appeal would be dismissed. (Paragraphs [40] and [44] – [50])

## [20] New Foodcorp Holdings (Pty) Ltd and Another v Minister of Agriculture, Forestry and Fisheries and Others 2013 (1) SA 406 (SCA)

### Headnote:

The 'Policy for the Transfer of Commercial Fishing Rights' (TP), issued in terms of the Marine Living Resources Act 18 of 1998 (MLRA) and published in GN 789 of 2009, does deal with matters beyond the narrow description in its heading, as is evidenced by paras 6.2 and 6.3. Paragraph 6.2 records that approval for a transfer of a right is not required if the sale of shares does not result in a change in control of the company or close corporation when the company or close corporation remains as transformed as at the time of the allocation of the right. Paragraph 6.3 requires consideration by the Minister when a sale of the shares or members' interest results in the company not being as transformed as it was at the time of the allocation of fishing rights. Furthermore, commercial fishing permits are issued subject to the provisions of the 'General Policy for the Allocation and Management of Long-Term Commercial Fishing Rights: 2005' (the GP), which emphasises the need to restructure the fishing industry in order to address historical imbalances and to achieve equity within all branches of the fishing industry. The GP states that one of its objectives is to improve on transformation levels achieved during the preceding medium-term fishing-rights allocation process. Therefore, where

these conditions of a permit appear to have been contravened by a restructuring exercise of the company holding the fishing rights, resulting in a dramatic reduction in black shareholding (as in the present case), the Minister is entitled to require scrutiny of that restructuring exercise to ensure that the objectives and principles of s 2, read with s 18, of the MLRA are met and complied with. Far from being ultra vires, paras 6.2 and 6.3 appear to be admirably consonant and in line with the provisions of the MLRA. Throughout the various processes transformation of the fishing industry to address historical imbalances and to achieve equity is a constant imperative. (Paragraphs [30] – [32])

Paragraphs 6.2 and 6.3 of the TP are not impermissibly vague: they enable one to identify cases in which the need for ministerial approval is triggered or to identify with any certainty how approval might be obtained. Paragraph 6.3 comes into operation when the sale of shares results in the company not being as transformed as at the date of allocation of fishing rights. There is nothing mystifying or unclear about this. Furthermore, paras 6.2 and 6.3 are not irrational. They are in line with constitutional and statutory objectives. (Paragraphs [35] and [37]).

## [21] Mondi South Africa Ltd v Martens and Another 2012 (2) SA 469 (KZP)

### Headnote:

First defendant, registered in the deeds registry as the owner of an immovable, by agreement gave over complete control in the property to second defendant. The agreement provided that the control would be for as long as second defendant wished and that second defendant would have the right to use the property or to rent it to someone else. First defendant also gave second defendant a power of attorney to take transfer of the property; to sell the property at a price second defendant decided; to do all things to take transfer of it or to sell and transfer it; and to keep all proceeds of farming, leasing or sale of the property. First defendant moved off the farm and left second defendant as its sole occupier and in exclusive control. Sometime later, while first

defendant was still the registered owner; a fire broke out on the property and spread onto plaintiff's neighbouring farm, causing damage to trees growing there. Plaintiff instituted proceedings for damages against first defendant, alternatively second defendant, alternatively first defendant and second defendant jointly and severally. It claimed a breach of the duties in ss 12, 13, 17 and 18 of the National Veld and Forest Fire Act 101 of 1998. In issue here was whether, given that first defendant had entirely given over control in the property to second defendant, first defendant fell within the Act's definition of 'owner' in s 2. (Paragraph [6]) That definition provides that—

"owner" has its common-law meaning and includes—

- a) a lessee or other person who controls the land in question in terms of a contract, testamentary document, law or order of a High Court;
- b) in relation to land controlled by a community, the executive body of the community in terms of its constitution or any law or custom;
- c) in relation to State land not controlled by a person contemplated in paragraph (a) or a community—
- d) the Minister of the Government department or the member of the executive council of the provincial administration exercising control over that State land; or
- e) a person authorised by him or her; and
- f) in relation to a local authority, the chief executive officer of the local authority or a person authorised by him or her;”

The court began by examining the common-law meaning of ownership. Central to this was unrestricted and exclusive control and possession of the thing, together with the power of alienation. And these, first defendant had disposed of. The only interest first defendant retained was the registration in his name. And registration was not an incident of ownership within the common-

law meaning of the term, flowing as it did from a statute, the Deeds Registries Act 47 of 1937. (Paragraphs [16], [18] and [20])

The court held further that in its view the right of control was the decisive incident of ownership to determine whether first defendant fell within the ‘common-law meaning’ of owner in s 2. Control of the land was listed as the determining requirement for the other entities mentioned in the definition to be an ‘owner’ and it would be anomalous to require it there, but not for the ‘common-law meaning’ of owner. (Paragraphs [22] – [23])

Moreover, where courts had tried matters dealing with the predecessors to s 34 of the Act (a presumption of negligence), control over the properties by the landowner had been a requirement in their determining liability. Having regard to this, the ‘common-law meaning’ of ‘owner’ had to include the right of control over the property. Indeed, were this not so, the presumption of negligence in s 34 would operate against an owner who had no right of control over the land. (Paragraphs [33] – [34])

Accordingly, as first defendant had divested the right of control, he ceased to be an owner within the ‘common-law meaning’. (Paragraphs [34] – [35]).

## [22] Mathenjwa No and Others v Magudu Game Co (Pty) Ltd 2010 (2) SA 26 (SCA)

### Headnote:

In the late 1990s three farmers agreed to remove the fences between their properties to form a game reserve. The farmers formed a company, the respondent, to own and manage the game on the reserve and they signed certain agreements to regulate the arrangement. In 2001, B, a neighbouring landowner, entered into certain agreements with the respondent and joined the venture. The fence around the reserve was upgraded and electrified and then the internal fences between B’s properties and the reserve were removed. The game on B’s properties mingled with the game on the rest of the reserve. In April 2006 claimed his agreement with the respondent was void and sought restitution. In May 2006, a trust represented by the appellants acquired ownership of B’s properties following a successful land claim. The trust declined to become a member of the reserve. Disagreement developed between the trust and the respondent and the trust denied the respondent access to the trust’s properties. Litigation ensued, the respondent applying to the High Court for, inter alia, a declarator that it was the owner of the game on the trust properties. The High Court granted the relief sought and the appellants appealed the decision

to the Supreme Court of Appeal. There, the questions to be decided were whether the respondent acquired ownership of the game and if so, whether it retained or lost ownership. The appellants contended that the agreements between B and the respondent failed to reflect an intention to transfer ownership of the game to the respondent. The appellants also contended that with B’s joinder of the venture, approximately 10 000 hectares were added to the 5 000 hectares of the reserve. The added land was rugged and mountainous, where game disappeared from sight. This and the ‘vast’ size of the reserve made ‘recovery of game’ difficult. Even though the upgraded and electrified fence contained the game in the reserve, the control of the game required for ownership, was absent. Thus, the common law provision, that a wild animal which escaped physical control, disappeared from the sight of its owner and regained its natural state of freedom became *res nullius*, with a consequent loss of ownership, applied.

**Held that** the abstract theory applied in our law in respect of the passing of ownership in property. In terms of the theory, a valid underlying transaction or *iusta causa traditionis* was not a



requirement for the valid transfer of ownership. Provided that the agreement to transfer ownership (the 'real agreement' or 'saaklike ooreenkoms') was valid, ownership would pass in pursuance and on implementation thereof, notwithstanding that the causa (the 'verbintenissekkende ooreenkoms' or 'contractual agreement') might be defective. All that was required was delivery (actual or constructive) coupled with an intention to pass and receive ownership. (Paragraph [25])

**Held further**, that while the interpretation of the underlying agreements was relevant to the extent that they bore on the question whether the parties had the required reciprocal intention, the question was not whether the parties intended that ownership pass via the agreements. The legal issue was whether there was a valid 'real agreement' to transfer ownership on delivery. While there was no express statement in the agreements that the respondent would acquire ownership of the game, the provisions invoked by the respondent could only be interpreted as carrying the necessary implication that the respondent would acquire ownership of the game. (Paragraphs [43] and [45])

**Held further**, that regard had to be had to the nature of the game reserve venture conducted by the respondent, large scale game-farming. For the purpose of carrying on that venture the perimeter fence was upgraded and electrified, which resulted in the game being

confined within the boundaries of the reserve. The confinement, coupled with the purpose thereof and seen in the light of the approach adopted in *Richter v Du Plooy* 1921 OPD 117, *Lamont v Heyns and Another* 1938 TPD 22 and *Strydom v Liebenberg* [2007] ZASCA 117, constituted the requisite control to vest ownership of the game in the respondent. The size of the reserve and the circumstance that 'recovery of the game' might be a difficult and time-consuming exercise did not affect that conclusion; recovery of the game would eventually be achieved. (Paragraph [59])

**Held accordingly**, that the respondent had acquired ownership of all the game in the reserve in that it and the three farmers who had founded the reserve, had had the common intention that ownership of the game on the land of the founders would pass to the respondent; and subsequently the respondent and B had had the common intention that ownership of the game on the land of B would pass to the respondent. Actual delivery of the game had taken place when the internal fences were dropped, alternatively constructive delivery had taken place by virtue of the fences being dropped, followed by the possession of the game by the landowners on behalf of the respondent. (Paragraph [60])

**Held further**, that the respondent had not lost ownership of the game. (Paragraphs [61] and [62]) Appeal dismissed.

## [23] S V Mostert and Another 2010 (2) SA 586 (SCA)

### Headnote:

Arising out of their allegedly illegal use of water from a river in the Lomati irrigation district, the appellants, who were sugarcane farmers, had been charged in a magistrates' court on seven charges under s 151 of the National Water Act 36 of 1998 and with the common-law crimes of fraud and theft of water from the river. Despite both appellants denying their guilt, the first appellant was convicted on all counts, while the second appellant was convicted on six of the seven counts. They were then both sentenced to either pay substantial fines or to undergo imprisonment. An appeal to a High Court succeeded to the extent that the appellants' convictions and sentences on all but two counts were set aside, including those of fraud and theft, while the sentence imposed on the remaining two counts, which had been taken together for purpose of sentence, was reduced. With leave of the High Court, the appellants appealed to the Supreme Court of Appeal against their two remaining convictions and their sentence. The State sought and obtained leave to appeal on points of law against the High Court's decision in regard to the charges of fraud and theft.

The appellants contended that the charges under the 1998 Act could not be brought against them, as the irrigation board, which was the complainant on all the charges, had continued to operate under the Water Act 54 of 1956 at the material time, despite the 1998 Act having been brought into operation. It was also contended that it was not competent for the State to charge the appellants with the common-law offences of fraud and theft, as the legislature, by comprehensively regulating the use of water by way of the 1998 Act, in which it created numerous statutory offences, necessarily intended to limit the prosecution of persons for offences, in relation to water and its use, to those it had provided under that Act and had excluded common-law offences, the elements of which overlapped with such statutory offences.

**Held** after a review of water legislation in South Africa and of the provisions of the 1998 Act, that, while it was so that the complainant had continued to exist and exercise the functions it had performed under the 1956 Act, this did not mean that the 1956 Act had not been repealed throughout the country, including within its

irrigation district. The complainant's existence and functions were merely preserved as a temporary measure to enable it to continue to operate. Had the legislature intended the 1956 Act not to have been repealed within the areas of operation of irrigation boards established under that Act when the 1998 Act came into operation, it would have been a simple matter for it to have said so. It did not do so, and such an intention is not a necessary inference. Indeed, the provisions of the 1998 Act clearly indicate the contrary. (Paragraph [15])

**Held further**, that, although an irrigation board might continue to exist and operate with the various duties and obligations it had under the 1956 Act, despite the coming into operation of the 1998 Act, it did so by reason of the provisions of the latter which clearly applied within the irrigation district of each such irrigation board and regulated the use of water. Accordingly, anyone who committed an offence envisaged by s 151 of the 1998 Act might be charged under that Act, even if the offence was committed within the irrigation district of an irrigation board established under the 1956 Act, which continued to exist and operate by reason of s 98 of the 1998 Act. (Paragraph [16])

**Held further**, that it was therefore clearly competent for the State to charge the appellants with offences under s 151 of the 1998 Act. (Paragraph [17])

**Held further**, that the court a quo had misdirected itself in finding that the legislature, by comprehensively regulating the use of water by way of the 1998 Act, in which it had created numerous statutory offences, had necessarily intended to limit the prosecution of persons for offences in relation to water and its use to those it had provided under that Act and had excluded common-law offences the elements of which overlapped with such statutory offences. The

mere fact that certain conduct might constitute an element of both a common-law offence and a statutory offence was not in itself any reason to find that the legislature had intended only the statutory offence to be capable of prosecution. (Paragraphs [18] – [19])

**Held further**, that, in principle, the legislature could bar the prosecution of certain common-law offences and restrict the prosecuting authority to bringing charges solely in respect of statutory offences. But there was no provision in the 1998 Act which specifically debarred common-law offences relating to water or its misuse, nor could such a provision be found by necessary implication and the court a quo had erred in finding that the appellants could not be prosecuted for common-law offences. (Paragraph [20])

**Semble**: Having regard to the common law and the provisions of past and present water legislation, water flowing in a stream or river (a water resource as envisaged by the 1998 Act) was not capable of being stolen, so that a riparian owner who abstracts more water from such a water resource than that to which he or she is legally entitled may commit a statutory offence under s 151 of the 1998 Act, but does not commit the offence of theft. (Paragraph [24])

**Held further**, that, even if it had been competent for the State to charge the appellants with the theft of water, the State had failed to establish that the appellants had abstracted more water from the river than that to which they had been entitled, even if the circumstances were such that their actions gave rise to a very real suspicion that they had done so. (Paragraph [24])

**Held further**, on the facts, that the appellants had been correctly convicted on the charge of fraud and the charges under s 151 of the 1998 Act. (Paragraphs [30], [31] and [33]) Appeal and cross-appeal allowed in part and dismissed in part.

## [24] Botha v Andrade and Others 2009 (1) SA 259 (SCA)

### Headnote:

The appellant applied in a magistrates' court for a prohibitory interdict restraining his neighbours (the respondents) from conducting a sawmill business and a brick making business on their farm on the grounds that the businesses caused a nuisance and entailed usage of the farm contrary to the municipal zoning of the farm under the town planning scheme. The respondents contended **in limine** that the court lacked jurisdiction to grant the order sought since the value of the matter in dispute exceeded the court's R100 000 jurisdictional limit set in s 29(1)(g) of the Magistrates' Courts Act 32 of 1944. The respondents adduced evidence that the sawmill

business generated a net annual profit of R180 000 and that the brick-making business had a turnover of approximately R100 000 per month.

The magistrate dismissed the point **in limine**, finding that s 29(1)(g) was not applicable to an application for an interdict under s 30(1) of the Act as s 29(1)(g) referred to 'actions' and not 'applications'. He concluded that he had jurisdiction in the matter and granted the application for a prohibitory interdict in the appellant's favour. The respondents appealed to the High Court, which found that s 29(1)(g) was indeed applicable to an application for an interdict;

that the value of the matter in dispute exceeded the jurisdictional limit of R100 000,00; and that the plea of lack of jurisdiction was therefore sound and ought to have been upheld by the magistrate. The High Court proceeded to set aside the magistrate's decision. In an appeal to the SCA,

**Held** that it was clear from s 30(1) of the Act that the magistrate's power to grant the interdict was circumscribed since s 29(1)(g) was applicable to interdicts granted under s 30 and operated to set the jurisdictional limit of the value of the subject-matter in dispute. (Paragraphs [13] and [15])

**Held further**, as to the 'value of the matter in dispute', that the High Court had erred in attaching value to the businesses rather than to the subject-matter in dispute, which was the abatement of the unlawful activities. It was that conduct or the cost of the abatement of the unlawful activities to which value had to be attached and not the businesses per se. While it had been incumbent on the respondents to prove the cost of abating the nuisance, they had failed to do so. (Paragraphs [16] and [17] – [18]) Appeal upheld and the magistrate's order reinstated.

## [25] Hexvallei Besproeiingsraad en 'n Ander v Geldenhuys NO en Andere 2009 (1) SA 547 (SCA)

### Headnote:

Anyone who is entitled to the use of water of a public stream is entitled to an interdict against anyone else who interferes with the course of that stream to his detriment. The appellants accordingly

were held to be entitled to an interdict restraining the respondent from diverting certain public water away from land farmed by the members of the appellants, to his land, contrary to the terms of a court order. (Paragraph [20])

## [26] Khabisi, NO and Another v Aquarella Investment 83 (Pty) Ltd And Others 2008 (4) SA 195 (T)

### Headnote:

The applicants (the department) applied for a final interdict restraining the respondents from proceeding with an intended development on two adjacent properties owned respectively by the first and third respondents. The respondents made conditional counter-application for the review and setting aside of the decision by the department to disallow the development on the basis that the compliance notices issued to them in terms of s 24(1) and (2) of the National Environmental Management Act 107 of 1998 (NEMA) were invalid and of no force or effect. The respondents had simply ignored the notices and proceeded with the development on the properties. In reply, the applicants contended that, in light of the respondents' failure to have objected to the notices in terms of s 31 of NEMA, they were precluded from raising a collateral attack on their validity in the present proceedings.

**Held** as to whether the respondents had been entitled to simply ignore the notices, that, once a compliance notice was issued, the person on whom it is served was obliged, in terms of s 31L(4) of

NEMA to comply with the notice. In the present matter, therefore, the respondents had had no choice but to abide by the notices issued to them by the second applicant. The respondents' only options had been (1) to abide by the notices; or (2) to lodge an objection to the notices in terms of s 31L(5) and 31M of NEMA; or (3) to bring an application for judicial review of the decision to issue the notices. (Paragraphs [18] and [20])

**Held further**, that any decision by an administrative body, whether valid or invalid, existed in fact and had legal consequences – and could not simply be ignored – until such time as it was set aside by a court in proceedings for judicial review. (Paragraph [21])

**Held further**, that the respondents had therefore not been entitled to adopt the attitude that, because they considered the second applicant's notices to be invalid, they were not obliged to comply with them. They had in so doing acted in contravention of s 31L(4) of NEMA. (Paragraph [22])

**Held further**, as to the collateral attack on the validity of the notices, that a party who felt aggrieved by a decision to issue a compliance notice had an effective internal remedy in the form of the right to lodge an objection plus the right to seek a suspension of the notice pending finalisation of the objection. (Paragraph [24])

**Held further**, that because NEMA made elaborate provisions for effective internal remedies, the respondents were not entitled to

launch a collateral attack against the compliance notices by raising their invalidity as a defence in the present proceedings. (Paragraph [25])

**Held further**, that the applicants had satisfied all of the requirements for the grant of a final interdict. (Paragraph [30]) Interdict accordingly granted.

## [27] National Council of Societies for the Prevention of Cruelty to Animals v Openshaw 2008 (5) SA 339 (SCA)

### Headnote:

The appellant made an application in the High Court for an interim interdict, pending institution of an action within 30 days of the grant of the interim order, restraining the respondent from feeding live prey to tigers, in contravention of the Animals Protection Act 71 of 1962. The appellant alleged that the respondent's conduct was an offence in terms of s 2(1)(g) of the Act and that it was an on-going practice which constituted the apprehension of harm required for an interdict. The High Court found that it had not been established that the respondent would persist in his *prima facie* contravention of s 2(1)(g) of the Act in the future and dismissed the application. The appellant appealed against that decision to the Supreme Court of Appeal. The respondent raised the point *in limine* that, by its delay in instituting the action envisaged, being more than 19 months since the application was launched; the appellant had forfeited its right to interim relief.

**Held** as to the point *in limine*, that there was no doubt that, if the appellant had acted promptly, the trial of the action would probably have preceded the determination of the present appeal. The delays were highly prejudicial to the respondent. The appeal accordingly fell to be dismissed on account of the appellant's delay in instituting the principal action to which its claimed interdictory relief was ancillary. (Paragraph [18])

**Held further**, as to the merits of the application, that one of the requirements for the grant of an interim interdict was a well-grounded apprehension of irreparable harm if the interim relief were not granted. (Paragraph [20])

**Held further**, that, where the infringement complained of was one that, *prima facie*, appeared to have occurred once and for all and was finished and done with, then the applicant should allege facts which justified a reasonable apprehension that the harm was likely to be repeated. (Paragraph [22])

**Held further**, that on the evidence the court *a quo* correctly found only a single contravention of s 2(1)(g) of the Act. (Paragraph [23])

**Held further**, that the appellant had placed no other evidence before the court that could objectively be viewed as showing a reasonable apprehension of harm. In the result it could not be said that the more plausible inference to be drawn was the likelihood that the respondent would contravene s 2(1)(g) in the future. (Paragraph [26])

**Held further**, that in the circumstances the appeal had to fail. (Paragraph [30])

## [28] S v Peppas 1977 (2) SA 643 (A)

### Headnote:

If what has been discharged by a ship into the sea is a mixture of mineral oil and water or any other substance, the commission of the offence of contravening section 2(1) of the Prevention and Combating of Pollution of the Sea Act, 67 of 1971, read with the

definition of "oil" in section 1, will not be established unless it is proved that the proportion of such oil in the mixture is not less than 100 parts of oil in 1 000 000 parts of the mixture. The onus of proof is firmly established on the State to establish the necessary proportions of oil in the mixture discharged.

## [29] Gongqose v Minister of Agriculture, Forestry and Fisheries 2018 JDR 0711 (SCA)

### Summary:

Customary law – Rights – When statute extinguishing – Whether customary right of access to and use of marine resources extinguished by Marine Living Resources Act 18 of 1998.

- 1 The application for special leave to appeal in case number 287/17 is granted.
- 2 Paragraph 1 of the order of the High Court is set aside and replaced with the following order: 'The appeal is upheld and the appellants' convictions and sentences are set aside.'

### Order:

On appeal from: Eastern Cape Division of the High Court, Mthatha (Mbenenge JP and Griffiths J sitting as court of first instance):

## [30] National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others (86515/2017) [2019] ZAGPPHC 337 (6 AUGUST 2019)

"[1] These proceedings relate to the process by which South Africa sets annual export quotas for trade in lion bone, bone pieces, bone products, claws skeletons, skulls and the like for commercial purposes which are derived from captive breeding operations in South Africa. This application is not about the captive lion breeding industry as a whole and the debates that have emerged at both the national as well as at an international level concerning its existence and continuance.

[2] The Applicant seeks to review and have declared unlawful and constitutionally invalid the decisions of the First Respondent of the 28 June 2017 and 7 June 2018 in which the quotas for the exportation of lion bone were determined at 800 and 1500 lion skeletons respectively. All the Respondents oppose the relief sought."

## [31] Wilkinson and Another v National Director of Public Prosecutions and Others (50395/2016) [2019] ZAGPPHC 229 (5 June 2019)

### Summary:

Criminal law – Constitutionality of reverse onus provisions – provincial ordinances on nature conservation – application premature – reverse onus provisions justified – rhino horns

[51] Reverse onus provisions are generally only introduced when every other measure previously in place was not able to achieve the objective and are generally rationally proportionate, where competing interests are outweighed against each other.

[52] I agree with the respondents' submissions that the reverse onus provisions contained in the Provincial Ordinances are justified in light of the serious concerns regarding the conservation of our wildlife, and in this case, the rhinoceros. The implementation of reverse onus provisions would have the effect of imposing deterrent measures and would enable Government to act in the public interest both domestically and internationally.

[53] Although the presumption of innocence is sacrosanct, the right to a fair trial is not absolute. A balance should be struck between an accused's right to a fair trial and the interest of the public, in effectively combatting and prosecuting same. I have considered the gravity of the harm resulting from rhino poaching and the frequency of the occurrences of rhino poaching, the difficulty of the prosecution in making proof of fact, as well as the relative ease with which the applicants may disprove the facts. I am satisfied that the reverse onus provisions in the Provincial Ordinances in the context of environmental governance are justifiable.

[54] I therefore conclude that the reverse onus provisions are justified by virtue of section 36 of the Constitution, more particularly, that these provisions are reasonable and proportionate, as no lesser intrusive means exists to achieve the objective and the manner in which the trial is to be conducted.

## [32] Mkhabela and Others v S (A334/15) [2016] ZAGPPHC 936 (8 November 2016)

The three Appellants were charged on a count of contravening the Riotous Assemblies Act, No 17 of 1956, in that they conspired to commit the offence of illegal hunting of a rhinoceros within a National Park, prohibited by section 46 (1) of the National Environmental Management: Protected Areas Act, No 57 of 2003. Furthermore, the Appellants were charged with the unlawful possession of a firearm and ammunition in contravention of respectively section 3 and 90 of the Fire Arms Control Act, No 60 of 2000. The Appellants were represented during the plea and sentence proceedings. All three pleaded guilty to the three counts against them. The court a quo convicted them as charged on the basis of the admissions contained in their signed statements in terms of section 112 of the Criminal Procedure Act, No 51 of 1977.

The Appellants were sentenced as follows:

Count 1: 5 years Imprisonment each

Count 2: 1st Appellant – 5 years imprisonment, 2nd Appellant – 3 years imprisonment and 3rd Appellant – 4 years imprisonment

Count 3: 4 years imprisonment each.

The sentence on Count 3 was to run concurrently with the sentence on Count 2 in respect of each Appellant.

**Held:** The appeal against the sentences is dismissed

### [33] Langebaan Ratepayers and Residents Association v Western Cape Provincial Minister for Local Government Environmental Affairs and Developmental Planning and Others (4917/2013) [2014] ZAWCHC 212 (19 August 2014)

This is an application in terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA)<sup>1</sup> for the review and setting aside of a decision of the first respondent to uphold the second respondent's appeal in terms of section 432 of the National Environmental Management Act 107 of 1998 (NEMA) and to grant

an environmental authorization in terms of section 243 of NEMA and Regulation 664 of the Environmental Impact Assessment Regulations 2010 (the EIA regulations, 2010).

**Held:** The application is dismissed





## APPENDIX G

# Links to other resources

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### **Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites)**

<https://cites.org/eng>  
<https://cites.org/eng/app/appendices.php>

### **Centre for Environmental Rights (CER)**

<https://cer.org.za/>  
<https://cer.org.za/virtual-library/legislation>

### **Department of Environmental Affairs (DEA)**

<https://www.environment.gov.za/legislation/actsregulations>

### **Potchefstroom Electronic Law Journal (PER)**

<http://law.nwu.ac.za/per>

### **The Southern African Legal Information Institute (SAFLII)**

<http://www.saflii.org/>

### **World Wildlife Fund**

<https://www.worldwildlife.org/>

### **Endangered Wildlife Trust**

<https://www.ewt.org.za/>

### **University of Pretoria Law Library**

<http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>

### **United Nations Environment Programme (UNEP)**

<https://www.unenvironment.org/>

# APPENDIX H

# Forfeiture Provisions

GENERAL PROVISION	
<b>Criminal Procedure Act</b> <b>51 of 1977</b> <b>(CPA)</b>	<b>Section 35: Forfeiture of article to State</b> 1) A court which convicts an accused of any offence may, without notice to any person, declare— a) any weapon, instrument or other article by means whereof the offence in question was committed or which was used in the commission of such offence; or b) if the conviction is in respect of an offence referred to in Part I of Schedule 1, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or for the conveyance or removal of the stolen property, and which was seized under the provisions of this Act, forfeited to the State: Provided that such forfeiture shall not affect any right referred to in subparagraph (i) or (ii) of subsection (4)(a) if it is proved that person who claims such right did not know that such weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use, and that he may lawfully possess such weapon, instrument, vehicle, container or other article, as the case may be. 2) A court which convicts an accused or which finds an accused not guilty of any offence, shall declare forfeited to the State any article seized under the provisions of this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.
NATIONAL LEGISLATION	
<b>National Environmental Management Act</b> <b>107 of 1998</b> <b>(NEMA)</b>	<b>Section 34D: Forfeiture of items</b> 1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State. 2) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.
<b>National Environmental Management: Biodiversity Act</b> <b>10 of 2004</b> <b>(NEMBA)</b>	None See the provision under NEMA
<b>NEMBA:</b> <b>Threatened or Protected Species Regulations, 2007</b> <b>(TOPS Regulations)</b> <b>GN R150, Gazette No. 29657</b>	None See the provision under NEMA

## NATIONAL LEGISLATION

<b>Convention on International Trade in Endangered Species of Wild Fauna and Flora Regulations (CITES)</b> <b>Government Notice R173 in Government Gazette 33002, dated 5 March 2010</b>	<p>None</p> <p>See the provision under NEMA</p> <p><b>Section 17: Disposal of confiscated specimens</b></p> <p><b>NOTE:</b> The National Management Authority, in consultation with the Scientific Authority and the Provincial Management Authority, may decide on the disposal of a confiscated specimen in accordance with the appropriate Resolution of the Conference of the Parties.</p>
<b>National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA)</b>	<p>None</p> <p>See the provision under NEMA</p>
<b>National Environment Management: Integrated Coastal Management Act 24 of 2008 (NEMICMA)</b>	<p>None</p> <p>See the provision under NEMA</p>
<b>The Living Marine Resources Act 18 of 1998 (LMRA)</b>	<p><b>Section 68: Forfeiture orders by Court</b></p> <ol style="list-style-type: none"> <li>1) If any person is convicted of an offence in terms of this Act, the court may, in addition to any other penalty, order that any fishing vessel, together with its gear, equipment, any fish caught unlawfully or the proceeds of sale of such fish or any perishables, and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the State.</li> <li>2) If any vessel, vehicle, aircraft or other thing seized in terms of this Act, or any security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed in terms of this Act, it shall be made available to the registered owner or his or her nominee or, in the absence of such persons, a person who appears to be entitled to it.</li> <li>3) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the security.</li> <li>4) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, the court may order any person convicted of an offence in connection therewith and the owner of the vessel, vehicle, aircraft or other thing concerned, whether or not he or she is an accused, to pay the difference between the amount lodged in respect of security and the aggregate value of the forfeited property</li> </ol>
<b>Environment Conservation Act No. 73 of 1989 (ECA)</b>	<p><b>Section 30: Forfeiture</b></p> <ol style="list-style-type: none"> <li>1) Notwithstanding anything to the contrary in any law contained, a court convicting any person of an offence under this Act may declare any vehicle or other thing by means whereof the offence concerned was committed or which was used in the commission of such offence, or the rights of the convicted person to such vehicle or other thing, to be forfeited to the State.</li> <li>2) A declaration of forfeiture under subsection (1) shall not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he could not prevent such use.</li> <li>3) The provisions of section 35 (3) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall mutatis mutandis apply to any declaration of forfeiture under this section</li> </ol>

## NATIONAL LEGISLATION

### Marine Living Resources Act 18 of 1998 (MLRA)

#### Section 68: Forfeiture orders by court

- 1) If any person is convicted of an offence in terms of this Act, the court may, in addition to any other penalty, order that any fishing vessel, together with its gear, equipment, any fish caught unlawfully or the proceeds of sale of such fish or any perishables, and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the State.
- 2) If any vessel, vehicle, aircraft or other thing seized in terms of this Act, or any security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed in terms of this Act, it shall be made available to the registered owner or his or her nominee or, in the absence of such persons, a person who appears to be entitled to it.
- 3) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the security.
- 4) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, the court may order any person convicted of an offence in connection therewith and the owner of the vessel, vehicle, aircraft or other thing concerned, whether or not he or she is an accused, to pay the difference between the amount lodged in respect of security and the aggregate value of the forfeited property.

## PROVINCIAL LEGISLATION



## LIMPOPO

**Limpopo Environmental  
Management Act  
7 of 2003**
**Section 118: Forfeitures and orders of court:**

- 1) A court convicting a person of an offence in terms of this Act shall—
  - a) declare any wild or alien animal, invertebrate, aquatic biota, indigenous plant, aquatic growth, endangered species, rare species, indeterminate species or cave-formation in connection with which the offence was committed;
  - b) declare any weapon, net, article, device or apparatus of any nature whatsoever, used for the purpose of or in connection with the unlawful—
    - i) hunting, catching or keeping of a wild or alien animal, aquatic biota, invertebrate, or an endangered, rare or indeterminate species; or
    - ii) picking of an indigenous plant or cave formation;
 to be forfeited to the Environmental Management Authority.
- 2) The court convicting any person of an offence in terms of this Act may—
  - a) declare a vessel or any fishing tackle used for the purpose of or in connection with the commission of the offence, to be forfeited to the Environmental Management Authority;
  - b) instruct the Environmental Management Authority to destroy or otherwise to dispose of any object forfeited to it in terms of subsection (1);
  - c) cancel any or all of the permits, licences, permissions or exemptions granted or issued to the convicted person in terms of this Act; or
  - d) disqualify the convicted person for a period not exceeding 5 years, from obtaining in terms of this Act—
    - i) any specific permit, licence, permission or exemption; or
    - ii) any permit, licence, permission or exemption whatsoever.
- 3) A forfeiture in terms of subsection (2) (a) does not affect the rights which a person other than the convicted person may have in the vessel or other thing concerned, if it is proved that the other person—
  - a) did not know that the vessel or other thing was used or would be used for the purpose of or in connection with the commission of the offence; or
  - b) could not prevent such use.
- 4) The MEC must deal with an object forfeited in terms of an order of the court—
  - a) in accordance with the order; or
  - b) in the absence of any specific instructions in the order, in a manner determined by the MEC with the concurrence of the Member of the Executive Council responsible for finance in the Province, except perishable goods which must be destroyed or otherwise disposed of expediently.
- 5) A forfeited object may not be destroyed or disposed of until—
  - a) any appeal against the conviction which led to the forfeiture has been decided;
  - b) any appeal against or review of the forfeiture order has been decided; or
  - c) the time allowed for an appeal against the conviction has lapsed,
 except for perishable goods which must be disposed of in terms of subsection (4) (b).

## PROVINCIAL LEGISLATION



### MPUMALANGA

#### Mpumalanga Nature Conservation Act 10 of 1998

#### Section 101: Forfeiture of certain goods and privileges

- 1) The court convicting any person of an offence in terms of this Act shall—
  - a) declare a wild animal, exotic animal, invertebrate, fish, indigenous plant, aquatic growth, endangered species, rare species or cave-formation in connection with which the offence was committed;
  - b) declare a weapon, net, article, device or apparatus, of any nature whatsoever, used for the purpose of or in connection with the unlawful—
    - i) hunting, or catching of a wild animal or invertebrate;
    - ii) catching of a fish with a net,to be forfeited to the Board: Provided that the court shall not declare such weapon, net, article, device or apparatus to be forfeited where the offence was committed by the owner of land or a relative of his or her on the land of such owner: and may—
  - c) declare a boat, aircraft, vehicle or any fishing tackle used for the purpose of or in connection with the commission of an offence, to be forfeited to the Board: Provided that the court shall not declare a boat, aircraft or vehicle to be forfeited where it is proved that the convicted person is not the owner thereof and that the owner did not know that it was used or would be used for or in connection with an unlawful purpose or that he or she could not prevent such use: Provided that in the case of a second or subsequent conviction of an offence under the same Chapter of this Act, shall declare forfeited to the Board any vehicle, boat, aircraft or other means of transport and any right, title and interest of such person in or to such vehicle, boat or aircraft used in, for the purpose of, or in connection with the commission of the offence in contravention of the Act;
  - d) cancel a licence, permit or exemption issued to the convicted person in terms of this Act in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed;
  - e) declare the convicted person unfit for a period not exceeding 5 years to obtain any licence, permit or exemption in terms of this Act in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed.

## PROVINCIAL LEGISLATION



## NORTHERN CAPE

**Northern Cape Nature  
Conservation Act  
9 of 2009**

**Section 62: Cancellation of permits, certificates and forfeiture of certain articles**

- 1) The court convicting a person of an offence under this Act—
  - a) may issue an order that a certificate, licence, permit, written authority or exemption issued to such person under this Act be cancelled if in its opinion the rights conferred by such certificate, licence, permit, written authority or exemption were abused by such person in the commission of such offence;
  - b) may issue an order disqualifying such person from obtaining any specified certificate, licence, permit, written authority or exemption under this Act for a specified period not exceeding five years; and
  - c) i) may declare any animal, vehicle, vessel, boat, craft, float, aircraft or other means of conveyance (hereafter referred to as "means of conveyance") and any weapon, instrument, receptacle or other thing (hereafter referred to as "article") which was used for the purpose of or in connection with the commission of the offence and was produced to the court, to be forfeited to the Province, but that no declaration may be made in terms of this subparagraph in respect of any means of conveyance or article referred to in this subparagraph if the court is satisfied that the convicted person at the time of the commission of the offence was not the owner thereof and that the owner thereof was unable to prevent the use thereof by the convicted person; and  
ii) must declare any wild animal or the carcass thereof or any plant in respect of which the offence was committed to be forfeited to the Province.
- 2) The registrar or clerk of the court which has—
  - a) issued an order under subsection (1) (a) or (b), must advise the Director of such order and of the sentence imposed on the convicted person; or
  - b) made a declaration under subsection (1) (c), must advise the Director of such order and of the sentence imposed on the convicted person and must also forward the article or thing to which the declaration relates to the Director for disposal in terms of section 68.
- 3) The provisions of section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), read with the changes required by the context, apply in respect of any forfeiture in terms of this section.



## PROVINCIAL LEGISLATION

### PROVINCIAL ORDINANCES



#### EASTERN CAPE

##### **Nature and Environmental Conservation Ordinance 19 of 1974**

##### **Section 87: Cancellation of certificates etc. and forfeiture of certain articles**

- 1) The court convicting any person of an offence under this ordinance—
  - a) may issue an order that any certificate, licence, permit, written authority or exemption issued to such person under this ordinance be cancelled if in its opinion the rights conferred by such certificate, licence, permit, written authority or exemption were abused by such person in the commission of such offence;
  - b) may issue an order disqualifying such person from obtaining for a specified period not exceeding three years, any specified certificate, licence, permit, written authority or exemption under this ordinance, and
  - c) i) may declare any animal, vehicle, vessel, boat, craft, float, aircraft or other means of conveyance (hereafter referred to as “means of conveyance”) and any weapon, instrument, receptacle or other thing (hereafter referred to as “article”) which was used for the purpose of or in connection with the commission of the offence and was produced to the court, to be forfeited to the Administrator; provided that no declaration shall be made in terms of this subparagraph in respect of any means of conveyance or article referred to in this subparagraph if the court is satisfied that the convicted person at the time of the commission of the offence was not the owner thereof and that the owner thereof was unable to prevent the use thereof by the convicted person, and  
ii) shall declare any wild animal or the carcass thereof or any flora in respect of which the offence was committed to be forfeited to the Administration.

##### **Ciskei Nature Conservation Act 10 of 1987**

##### **Section 73(3): Forfeiture**

- 1) The court convicting a person of an offence under this Act, may in addition to any penalty imposed under subsection (1) of this section or under any other provision of this Act—
  - a) shall cancel any or all licences, permits or other authorisations held by person;
  - b) debar such person from obtaining any particular license, permit or other authorization or authorizations generally for a specified period not exceeding five years; and
  - c) declare to be forfeited to the State—
    - i) any vehicle, boat, craft, float, aircraft or other conveyance, any container, lamp, weapon, ammunition, implement, trap, net or other thing which was used for the purpose of or in connection with the commission of the offence; and
    - ii) any fauna flora or fish in respect of which the offence was committed.

##### **Transkei Environmental Decree 9 of 1992**

##### **Section 82(3): Forfeiture**

- 1) The court convicting a person of an offence under this Act, may in addition to any penalty imposed under subsection (1) of this section or under any other provision of this Act—
  - a) shall cancel any or all licences, permits or other authorisations held by person;
  - b) debar such person from obtaining any particular license, permit or other authorization or authorisations generally for a specified period not exceeding five years; and
  - c) declare to be forfeited to the State—
    - i) any vehicle, boat, craft, float, aircraft or other conveyance, any container, lamp, weapon, ammunition, implement, trap, net or other thing which was used for the purpose of or in connection with the commission of the offence; and
    - ii) any fauna flora or fish in respect of which the offence was committed.

## PROVINCIAL LEGISLATION

## PROVINCIAL ORDINANCES



## FREE STATE

**Bophuthatswana Nature  
Conservation Act 3 of 1973**
**Section 28(2): Forfeiture**

- 1) The court convicting any person of an offence under this Act, may in addition to any penalty imposed—
  - a) cancel any or all permits granted or issued to such person;
  - b) debar such person from obtaining a specified permit or any permit whatsoever for a specified period not exceeding five years;
  - c) declare to be forfeited to the Government—
    - i) any vehicle, vessel, raft, boat, aircraft or other conveyance or container used for conveying the wild animals or plants in respect of which the offence was committed; or;
    - ii) any vehicle, vessel, raft, boat, aircraft or other conveyance or container, weapon, ammunition, snare, net or anything in which fish are caught, bait, lure, explosive or poison used or forming an element in the commission of the offence;
  - d) declare any animal, fish or plant in respect of which the offence was committed, forfeited to the Government or may order it to be destroyed.

**Nature Conservation Ordinance  
(Free State)  
8 of 1969**
**Section 41: Forfeiture**

- 1) a) Whenever any person is convicted of an offence under this Ordinance, the court shall—
  - i) declare any wild or exotic animal, fish, indigenous or exotic plant or aquatic growth in respect of which the offence was committed forfeit to the Administration;
  - ii) if such person is the holder of a permit, licence or exemption issued in terms of this Ordinance, cancel such permit, licence or exemption.
- b) The holder of a permit, licence or exemption cancelled in terms of paragraph (a) (ii) shall return it immediately after it has been cancelled to the Administrator.
- 2) Whenever any person has been convicted of any offence under this Ordinance—
  - a) the court may declare any weapon, lamp, battery, fishing tackle, contrivance, article referred to in sections 9 and 27, animal or other article or object used for the purpose or in connection with the commission of the offence forfeit to the Administration;
  - b) the court may declare any vehicle, vessel, float or aircraft used in connection with the commission of such offence or for the conveyance of anything in respect of which such offence was committed, or the right of such person to such vehicle, vessel, float or aircraft, forfeit to the Administration: Provided that such a declaration of forfeiture shall not be made if the court is satisfied that the vehicle, vessel, float or aircraft does not belong to the person convicted of such offence and that the owner thereof was unable to prevent it from being so used by such person.
- 3) The provisions of subsection (2), shall not apply—
  - a) in the case of an offence which was committed by the owner of land or a relative of such owner on such land;
  - b) in the case of a contravention of section 21 or 24 (b), or of section 23 (1) where the convicted person was the holder of a licence but did not have it with him while he was angling.
- 4) The provisions of section 35 (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall apply *mutatis mutandis* to a forfeiture under subsection (2)

## PROVINCIAL LEGISLATION

### PROVINCIAL ORDINANCES



#### GAUTENG

##### Transvaal Nature Conservation Ordinance

No. 12 of 1983

##### Section 112: Forfeiture of certain goods and privileges

- 1) The court convicting any person of an offence in terms of this Ordinance-
  - a) shall—
    - i) declare a wild animal, exotic animal, invertebrate, fish, indigenous plant, aquatic growth, endangered species, rare species, or cave-formation in connection with which the offence was committed, to be forfeited to the Administration;
    - ii) declare a weapon, net, article, device or apparatus, of any nature whatsoever, used for the purpose of or in connection with the unlawful-
      - aa) hunting or catching of a wild animal or invertebrate;
      - bb) catching of a fish with a net,to be forfeited to the Administration: Provided that the court shall not declare such weapon, net, article, device or apparatus to be forfeited where the offence was committed by the owner of land or a relative of his on the land of such owner;
  - b) may in any other case—
    - i) declare a float, vessel, hovercraft, aircraft, vehicle or any fishing tackle, excluding fishing tackle contemplated in paragraph (a)(ii), used for the purpose of or in connection with the commission of an offence, to be forfeited to the Administration: Provided that the court shall not declare a float, vessel, hovercraft, aircraft or vehicle to be forfeited where it is proved that the convicted person is not the owner thereof and that the owner did not know that it was used or would be used for or in connection with an unlawful purpose or that he could not prevent such use;
    - ii) cancel a licence, permit or exemption issued to the convicted person in terms of this Ordinance in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed;
    - iii) declare the convicted person unfit for a period not exceeding 5 years to obtain any licence, permit or exemption in terms of this Ordinance in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed.

## PROVINCIAL LEGISLATION

## PROVINCIAL ORDINANCES



## KWAZULU NATAL

**Nature Conservation Ordinance  
No. 15 of 1974**
**Section 215B: Forfeitures**

- 1) Whenever any person is convicted of an offence under this Ordinance the court—
  - a) shall declare forfeited to the Natal Provincial Administration—
    - i) any animal or part of an animal in respect of which section 15(1)(f) has been contravened;
    - ii) any game or trophy, or any indigenous amphibian, invertebrate or reptile, or any wild bird or foreign bird, including any such bird found in any unregistered or unlicensed aviary or in excess of the number of such birds authorised to be kept in any such aviary, or any fish, or any indigenous plant in respect of which the offence was committed;
    - iii) any weapon, explosive, trap, snare, poison, receptacle, instrument, implement of fishing, animal or any other article or object used by such person in, for the purpose of, or in connection with the commission of the offence;
  - b) may, and in the case of a second or subsequent conviction of an offence under the same chapter of this Ordinance, shall declare forfeited to the Natal Provincial Administration any vehicle, vessel, boat, craft, float or aircraft and any right, title and interest of such person in or to such vehicle, vessel, boat, craft, float or aircraft used in, for the purpose of, or in connection with the commission of the offence;
  - c) shall cancel any licence or permit or other authority issued to such person in terms of this Ordinance and declare him to be ineligible for obtaining any such licence or permit or other authority under this Ordinance for a period not exceeding three years.



## WESTERN CAPE

**Nature and Environmental  
Conservation Ordinance  
No. 19 of 1974**
**Section 87: Cancellation of certificates etc. and forfeiture of certain articles**

- 1) The court convicting any person of an offence under this ordinance—
  - a) may issue an order that any certificate, licence, permit, written authority or exemption issued to such person under this ordinance be cancelled if in its opinion the rights conferred by such certificate, licence, permit, written authority or exemption were abused by such person in the commission of such offence;
  - b) may issue an order disqualifying such person from obtaining for a specified period not exceeding three years, any specified certificate, licence, permit, written authority or exemption under this ordinance, and
  - c) i) may declare any animal, vehicle, vessel, boat, craft, float, aircraft or other means of conveyance (hereafter referred to as "means of conveyance") and any weapon, instrument, receptacle or other thing (hereafter referred to as "article") which was used for the purpose of or in connection with the commission of the offence and was produced to the court, to be forfeited to the Administrator; provided that no declaration shall be made in terms of this subparagraph in respect of any means of conveyance or article referred to in this subparagraph if the court is satisfied that the convicted person at the time of the commission of the offence was not the owner thereof and that the owner thereof was unable to prevent the use thereof by the convicted person, and
    - ii) shall declare any wild animal or the carcass thereof or any flora in respect of which the offence was committed to be forfeited to the Administration.

## PROVINCIAL LEGISLATION

### PROVINCIAL ORDINANCES



#### NORTH WEST

##### **Bophuthatswana Nature Conservation Act 3 of 1973**

##### **Section 28(2): Forfeiture**

- 1) The court convicting any person of an offence under this Act, may in addition to any penalty imposed—
  - a) cancel any or all permits granted or issued to such person;
  - b) debar such person from obtaining a specified permit or any permit whatsoever for a specified period not exceeding five years;
  - c) declare to be forfeited to the Government—
    - i) any vehicle, vessel, raft, boat, aircraft or other conveyance or container used for conveying the wild animals or plants in respect of which the offence was committed; or;
    - ii) any vehicle, vessel, raft, boat, aircraft or other conveyance or container, weapon, ammunition, snare, net or anything in which fish are caught, bait, lure, explosive or poison used or forming an element in the commission of the offence;
  - d) declare any animal, fish or plant in respect of which the offence was committed, forfeited to the Government or may order it to be destroyed.

##### **Transvaal Nature Conservation Ordinance No. 12 of 1983**

##### **Section 112: Forfeiture of certain goods and privileges**

- 1) The court convicting any person of an offence in terms of this Ordinance-
  - a) shall—
    - i) declare a wild animal, exotic animal, invertebrate, fish, indigenous plant, aquatic growth, endangered species, rare species, or cave-formation in connection with which the offence was committed, to be forfeited to the Administration;
    - ii) declare a weapon, net, article, device or apparatus, of any nature whatsoever, used for the purpose of or in connection with the unlawful-
      - aa) hunting or catching of a wild animal or invertebrate;
      - bb) catching of a fish with a net,
 to be forfeited to the Administration: Provided that the court shall not declare such weapon, net, article, device or apparatus to be forfeited where the offence was committed by the owner of land or a relative of his on the land of such owner;
  - b) may in any other case—
    - i) declare a float, vessel, hovercraft, aircraft, vehicle or any fishing tackle, excluding fishing tackle contemplated in paragraph (a)(ii), used for the purpose of or in connection with the commission of an offence, to be forfeited to the Administration: Provided that the court shall not declare a float, vessel, hovercraft, aircraft or vehicle to be forfeited where it is proved that the convicted person is not the owner thereof and that the owner did not know that it was used or would be used for or in connection with an unlawful purpose or that he could not prevent such use;
    - ii) cancel a licence, permit or exemption issued to the convicted person in terms of this Ordinance in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed;
    - iii) declare the convicted person unfit for a period not exceeding 5 years to obtain any licence, permit or exemption in terms of this Ordinance in respect of the wild animal, invertebrate, fish or plant in connection with which the offence was committed.

## APPENDIX I

## Jurisdictional Provisions

LEGISLATION	PENALTY JURISDICTION	TERRITORIAL JURISDICTION
<b>National Environmental Management: Protected Areas Act</b> 57 of 2003	<b>Section 89. Offences and penalties:</b> 4) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.	
<b>Marine Living Resource Act</b> 18 of 1998	<b>Section 70. Jurisdiction of courts:</b> 3) Notwithstanding anything to the contrary in any other Act, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.	<b>Section 70. Jurisdiction of courts:</b> 1) Any act or omission in contravention of any of the provisions of this Act which is committed— a) by any person within South African waters; b) outside South African waters by any citizen of the Republic or any person ordinarily resident in the Republic; or c) by any person on board any local fishing vessel; shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic. 2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.
<b>National Environmental Management: Integrated Coastal Management Act</b> 24 of 2008		<b>81. Jurisdiction of courts</b> 1) Any act or omission in contravention of any of the provisions of this Act which is committed— a) by any person in, on or above coastal waters; b) outside coastal waters by any citizen of the Republic or any person ordinarily resident in the Republic; or c) by any person on board any South African vessel, shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic. 2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

LEGISLATION	PENALTY JURISDICTION	TERRITORIAL JURISDICTION
<b>National Environmental Management: Biodiversity Act 10 of 2004</b>	<b>Section 102. Penalties:</b> 3) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.	
<b>Animal Matters Amendment Act 42 of 1993</b>	<b>Section 1(6):</b> Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty which is provided for in this section.	
<b>Conservation of Agricultural Resources Act 43 of 1983</b>	<b>Section 23(2):</b> A magistrate's court shall be competent to impose any penalty provided for in this section	
<b>Game Theft Act 105 of 1991</b>	<b>Section 6: Jurisdiction of magistrate's courts in respect of sentence:</b> Notwithstanding anything to the contrary in any law contained, any magistrate's court shall have jurisdiction to impose, in respect of a contravention of section 3 or the theft of game, a contravention of section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955), if the goods involved in such an offence are game- a) where the court is not a court of a regional division, a fine or imprisonment for a period not exceeding three years; or b) where the court is a court of a regional division, a fine or imprisonment for a period not exceeding fifteen years	
<b>Mountain Catchment Areas Act 63 of 1970</b>	<b>Section 16 – Jurisdiction of magistrate's court:</b> Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.	
<b>National Heritage Resources Act 25 of 1999</b>	<b>Section 58(7):</b> A magistrate's court shall, notwithstanding the provisions of any other law, be competent to impose any penalty under this Act.	
<b>Sea Birds And Seals Protection Act 46 of 1973</b>		<b>13. Jurisdiction and evidence:</b> 1) If any person is charged with having committed any offence under this Act at any place within the territorial waters or fishing zone of the Republic, any court whose area of jurisdiction abuts on or includes any portion of the sea, may hear the charge, and the offence shall, for all purposes incidental to or consequential upon the hearing of the charge, be deemed to have been committed within the area of jurisdiction of the court so hearing it.





LEGISLATION	PENALTY JURISDICTION	TERRITORIAL JURISDICTION
<b>The National Environmental Management Act 107 of 1998</b>	<b>Section 34H:</b> <ol style="list-style-type: none"> <li>1) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.</li> <li>2) Where a competent authority is of the view that a more severe penalty could be considered than those penalties referred to in section 49B, the competent authority may request the National Prosecuting Authority to institute the criminal proceedings in the High Court.</li> </ol>	
<b>Environment Conservation Act 73 of 1989</b>	<b>Section 29(9):</b> Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.	
<b>National Environmental Management: Air Quality Act 39 of 2004</b>	<b>Section 52(3):</b> Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.	









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