



Comments on National Environmental Management Biodiversity Act
2004: Draft CITES Regulations

Submission to the Department of Environmental Affairs
22 September 2009

1. Introduction and Mandate

The South African Human Rights Commission (hereinafter “the Commission”) welcomes the opportunity to make a submission on the *National Environmental Management Biodiversity Act: Draft Convention on International Trade in Endangered Species (“CITES”) Regulations, August 2009* (“regulations”), and thanks the Department of Environmental Affairs (“DEA”) for affording the public this opportunity.

In accordance with its constitutional mandate, the Commission wishes to make the following submission and to emphasise specific matters for consideration. Enshrined in section 24 of the Constitution of the Republic of South Africa Act, 108 of 1996, is a provision, which states that everyone has the right –

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

Of particular relevance to this submission are sections 24 (b), which places emphasis on the protection of the environment for the benefit of present and **future generations** and 24 (b)(iii), which insists on the **sustainable use of resources**. The right to a healthy environment is fundamental to the enjoyment of all human rights and is closely linked with the right to health, well being and dignity. A sound and healthy natural environment lends an enabling background for the enjoyment of other human rights. It is therefore clear that the right to a healthy environment is a fundamental part of the right to life and to personal integrity.

While South Africa is blessed with a variety and abundance of animal and plant species and despite the fact that local communities and the tourism industry benefits from the trade in wildlife and biological resources, regulation of the trade in wildlife is critical for various reasons. South Africa has to:

- Ensure the sustainable use of wildlife and biological resources for present and future generations;
- Ensure that trade in endangered and threatened species is carefully regulated;
- Ensure that wildlife used in the trade industry are properly cared for, so as to minimise the risk of injury, damage to health or cruel treatment;
- Take the lead in the South African Development Community (“SADC”) region and the African continent in regulating, monitoring and reporting on the trade in wildlife; and
- Ensure the practical implementation of CITES regulations, while ensuring that strict enforcement is not compromised.

Given recent reports¹ of increased poaching and trade in species like rhino, proper and effective enforcement of the CITES regulations is essential.

2. General Comments on the Draft Regulations

Overall, DEA can be commended for drafting regulations that will allow more control over the trade in wildlife and for designating more authority to the “Scientific Authority.” However, it must be emphasised that the designated “Scientific Authority” will require extensive training from the relevant authorities if that body is to fulfil its mandate effectively.

¹ <http://www.mg.co.za/article/2008-10-01-sa-experiences-surge-in-rhino-poaching> (accessed on 22 September 2009) and <http://www.legalbrief.co.za/article.php?story=20090714092343206> (accessed on 21 September 2009).

There is concern over the enforcement of the regulations. While the regulations clearly outline conditions of an “offence” and the “penalties” that should be applied in the event of a contravention of the convention, the concern is that currently, courts might not necessarily have the expertise to dispense the correct penalty (leading to an overly stiff or overly lenient sentence). The need for *green courts* or courts that deal solely with environmental matters is therefore suggested as a vehicle for enforcing these regulations and other national and international environmental legislation and conventions. The Commission, however, would like to emphasise that appropriate resourcing and training is essential to the effective operationalising of *green courts*.

3. Specific Comments

Part 3, section 3(2)(d): annual report must also report on details of awareness-raising, training, education and information related to CITES.

Part 3, section 3(k): no mention is made of who is responsible for monitoring the Rescue Centres. Neither are there any prescribed guidelines for the operation of a valid Rescue Centre.

Part 4, section 10(11): no mention is made of permits that have been issued in a country that is not currently a CITES signatory. What is the protocol in this case?

Part 5, section 11(1): provision should apply to all persons wishing to trade in specimens of any species listed in Appendix I, Appendix II or Appendix III

Part 5, section 11(3): The Management Authority must inspect the premises and records of persons registered with the Management Authority at any reasonable time.

Part 6, section 12(1): the Commission does not agree with this provision. Trade in endangered wildlife has cross-border impacts and South Africa has the ability to play a leading role in Africa, in the management of trade in fauna and flora, and the enforcement of CITES regulations. For example, if rhino is illegally poaching in a Trans-frontier Park, and illegally traded via South Africa, law enforcement officials should have the right to confiscate such items if the trader is not in possession of the relevant valid documents.

Part 7: this “offences and penalties” section should include provisions for persons withholding information that is relevant to a case where the CITES convention has been

contravened and should include penalties for persons colluding with an offender – for example employees at ports.

Part 7, section 16(2): an additional penalty should be stipulated as follows: “A person contravening subregulation (1) is guilty of the offence and shall be liable on conviction to-“
(d) Confiscation of his or her trading licence and ban prohibited from further future trading.
This penalty should apply in cases of serious contravention of the CITES regulations.

Part 7, section (2): clarity is needed on application of penalties. Greater mention of this is made under the General Comments (above).

Part 8, section 19 and Appendix V: the administrative fees are too low for proper administration of these regulations.

4. Conclusion

The Commission would like to again thank the Department of Environmental Affairs for this opportunity to submit comments on the proposed CITES regulations.