

**Ref:02/1/5/2**

**MINISTER**

**QUESTION NO. 432 FOR WRITTEN REPLY: NATIONAL ASSEMBLY**

A draft reply to **Mr T Z Hadebe (DA)** to the above-mentioned question is enclosed for your consideration.

**MS NOSIPHO NGCABA**

**DIRECTOR-GENERAL**

**DATE:**

**DRAFT REPLY APPROVED/AMENDED**

**DR B E E MOLEWA, MP**

**MINISTER OF ENVIRONMENTAL AFFAIRS**

**DATE:**

**NATIONAL ASSEMBLY**

**(For written reply)**

**QUESTION NO. 432 {NW486E}**

**INTERNAL QUESTION PAPER NO. 7 of 2017**

**DATE OF PUBLICATION: 3 March 2017**

**Mr T Z Hadebe (DA) to ask the Minister of Environmental Affairs:**

(1) With reference to her department’s draft regulations for the domestic trade in rhinoceros horn, or a part, product or derivative of rhinoceros horn, published in Notice 74 in Government Gazette 40601 on 8 February 2017, (a) how many times a year can a person export the two rhinoceros horns limitation contained in regulation 3(3) and (b) what steps will be taken to ensure that fraud, forgery and corruption will not be included in this process;

(2) will full criminal investigations and analyses be conducted in (a) South Africa and (b) internationally on any person applying for a permit to trade in rhinoceros horns; if not, why not; if so, (i) will the specified persons be excluded from trading in rhinoceros horns if they are found guilty and (ii) what are the further relevant details in this regard;

(3) whether the legal ramifications for non-compliance with Convention on International Trade in Endangered Species resolutions contained in the specified regulations will be amended to include harsher penalties for perpetrators; if not, why not; if so, (a) what are the relevant details, (b) will specialised courts with magistrates who specialise in environmental and conservation laws be established and (c) will enforcement bodies dealing with corruption, fraud and forgery be made available? NW486E

**432. THE MINISTER OF ENVIRONMENTAL AFFAIRS REPLIES:**

(1)

(a) The draft regulations propose that a person may export only two rhino horns for personal purposes. The intention was that two horns would be the total allowed as a once-off export provided an import permit is obtained and the importing country has legislation in place to ensure compliance with the Convention. This aspect will however be finalised after the closing date for the submission of comments, and will depend on the nature of comments received.

(b) The possession and trade in rhino horn requires that permits and various checks are build into the permit system to address concerns relating to fraud and forgery, including the DNA profiling and marking of each horn. To ensure uniformity and strict control the Minister of Environmental Affairs proposed to the Members of Executive Council (MECs) responsible for the environment that the issuance of these permits take place at a national level, with the Minister as the issuing authority. This option is possible in terms of section 87A(3) of the National Environmental Management: Biodiversity Act (NEMBA), 2004 (Act No. 10 of 2004), and with the written agreement of the MECs responsible for the conservation of biodiversity in the respective provinces. This is proposed as a mechanism is intended to reduce a number of authorisation and therefore be able to curb any potential gap in the system.

(2)

(a) and (b)(i) No.

An application for a permit will not trigger a criminal investigation unless there is information linked to the application that raises the reasonable suspicion that an offence has been committed. A query, however, will be made in relation to such applications to determine whether the parties involved in the application fall foul of section 92A of the NEMBA which enables the issuing authority to refuse a permit in the following circumstances:

* If the carrying out of the restricted activity is likely to have a negative impact on the survival of the listed threatened or protected species;
* if the applicant has been convicted of an offence in terms of this Act; or
* in accordance with a ground for refusal contemplated in any regulation.

However, criminal investigations may be conducted by both the Environmental Management Inspectors and members of the South African Police Service (SAPS) in the event that there is a reasonable suspicion that a crime has been committed within South Africa related to failure to comply with biodiversity-related legislation which would include these regulations once they are finalised and promulgated.

In relation to international investigations, the South African authorities do not have mandate to conduct criminal investigations outside of South Africa; however, where a criminal investigation may have been initiated either in South Africa or in another country based on reasonable suspicion that an offence has been committed, the authorities have mechanisms to share information and co-operate, for example, through International Criminal Police Organization (Interpol) or Convention on International Trade in Endangered Species of Fauna and Flora (CITES).

(b)(ii)

Where necessary, the CITES Management Authorities of importing countries can be requested to verify whether rhino horns that have been exported for personal purposes, are still in the possession of the persons who have imported the horns. If it is found not to be the case, South Africa may consider refusing export permits for persons from those countries (as has previously been done in respect of the refusal of rhino hunting permits in similar circumstances). If a person is found guilty within the Republic of South Africa of an offence in terms of NEMBA, for instance in respect of the domestic trade in rhino horn, a permit in this regard may be refused in terms of section 92A.

(3)

(a) No. Section 98(2) of NEMBA makes provision for the maximum penalties that may be imposed in terms of regulations, which is:

* imprisonment for a period not exceeding five years;
* a fine not exceeding R5 million, and in the case of a second or subsequent conviction, 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.

However, a process involving the substantial amendment of NEMBA has been initiated which will include a proposed adjustment of the maximum penalties that may be imposed in terms of NEMBA for the carrying out of, among others, a restricted activity involving a specimen of a listed threatened or protected species without a permit.

The Department of Environmental Affairs has held previous engagements with representatives from the National Prosecuting Authority (NPA), the South African Police Service (SAPS) and the legislative development section of the Department of Justice and Constitutional Development (DOJ&CD) to discuss proposals for legislative amendments related to minimum sentences and bail proceedings for contraveners of biodiversity legislation. All of the role-players agreed that the current maximum penalty provided for in NEMBA of a fine not exceeding R10 million and/or imprisonment for a period exceeding 10 years is sufficiently high to obtain sentences that are in accordance with the gravity of these types of offences. In this respect, the NPA, SAPS, DOJ&CD and the Department of Environmental Affairs (DEA) agreed that the ongoing sensitising of magistrates and prosecutors to the nature, extent and impacts of environmental crimes should continue as a key awareness-raising mechanism in supporting the handing down of appropriate sentences.

A critical initiative that did emanate from the above-mentioned discussion, was the bringing into effect of the Criminal Matters Amendment Act, 2015 (Act No. 18 of 2015) that included several new offences for which there is now a ‘reverse onus’ on the accused to show that they are entitled to bail. Of specific relevance for the illegal trade or export of rhino horn is the inclusion of specific offences in terms of the Prevention of Organised Crime Act (Chapter 2, 3, 4) into schedule 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as these crimes are executed by criminal syndicates for which charges such as racketeering and money laundering would be appropriate. Where these charges are being investigated, the onus will be on the accused to demonstrate why s/he is entitled to bail, rather than the onus being on the State to show why the accused should not be released on bail.

(b) During the course of 2009 and 2010, the Department of Environmental Affairs collaborated with the Department of Water Affairs (DWA), as it was then known, and the DOJ&CD to undertake a feasibility study into the establishment of dedicated environmental courts. While the results of the study highlighted the highly complex legal and scientific considerations required in the proper investigation, prosecution and adjudication of these types of offences, the statistics showed that the volume of cases being handed down to the NPA for prosecution, at that particular time, did not warrant the establishment of a dedicated environmental court. Subsequent to this and based on the number of rhino related cases linked to the Kruger National Park, the Department of Justice and Constitutional Development has recently decided to open the Skukuza Regional Court with effect from 7 March 2017. In addition to the ongoing awareness-raising initiatives of the department in relation to magistrates and prosecutors, it has also recently presented a round of advanced training for Environmental Management Inspectors focusing on criminal investigation techniques and procedures.

(c) The department already works with those authorities handling enforcement in relation to corruption, fraud and forgery. Once these aspects are identified to be present in a particular matter, the department engages with the relevant SAPS units and refers the matter for further investigation by these authorities. NW486E

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