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PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

Select Committee on Land and Mineral Resources

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DEA Briefing Session:
Challenges and constraints in
implementing the conservation
mandate at provincial level.

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1. BACKGROUND

Conservation management, including compliance monitoring, biodiversity management and law enforcement related to environmental transgressions are concomitant competencies, with national, provincial and local government structures all responsible for various aspects of conservation activity.¹ Biodiversity conservation in particular, however, is a highly technical activity, with the majority of policies, instruments and legislation applicable developed at national and international level. In terms of International Instruments, South Africa has signed the Convention on Biological Diversity, thus committing the country to internationally determined biodiversity conservation goals.² At national level, South Africa has a robust and well developed suite of policies and legislation pertaining to biodiversity management, including:³

- The White paper on the conservation and sustainable use of South Africa's biological diversity (1997);
- National Environmental Management Act (Act 107 Of 1998);
- National Environmental Management: Protected Areas Act (Act 57 Of 2003);
- National Environmental Management: Biodiversity Act (Act 10 Of 2004);
- National Biodiversity Strategy And Action Plan (2005);
- National Biodiversity Framework (2008); and
- National Protected Area Expansion Strategy (2008).

Complementary to these national policies and legislation is a host of provincial and local government legislation.

Biodiversity conservation in this country is particularly challenging, due to the large number of unique species, habitats and ecosystems occurring in South Africa – often in areas that are experiencing developmental pressures such as mining development, agriculture or urban expansion, and a host of other detrimental impacts including the spread of alien and invasive species, climate change impacts and illegal activity.

2. PROVINCIAL CONSERVATION ACTIVITIES

Provincial conservation activities cover a wide range of actions, including the administration of conservation areas, the enforcement of environmental legislation and the combating of high-profile environmental transgressions such as poaching and plant/wildlife smuggling. Activities include:

- The protection of fauna and flora;

¹ <http://www.sanbi.org/biodiversity-science/science-policyaction/biodiversity-policy>.

² Republic of South Africa (2014).

³ Ibid.

- The control of the import and export of fauna and flora species, is vested in the provincial conservation departments, resulting in provincial authorities being designated as CITES management authorities;
- The conducting of compliance inspections against the legislative provisions, as well as the authorisations and permits issued in terms of environmental law. Inspections are critical in order to determine whether the community is complying with the environmental authorisations and permits being issued, nor would there be a legal basis to pursue enforcement action in the case of non-compliance;⁴
- Ambient environmental monitoring⁵, including:
 - Air quality⁶;
 - Water quality and quantity;
 - Waste;
 - Faunal and floral biodiversity and indicator species;
 - Soil quality;
 - Human population settlements and quality of life.
- Environmental Impact Assessments (EIAs);
- Strategic Environmental Assessments (SEAs) aimed to determine the limitations that the environment places on future development options;
- Environmental Implementation Plans (EIPs), which are a requirement for all provincial departments that have a bearing to the environment. NEMA indicates that all planning processes including IDPs and LDOs should be aligned with the EIP and EMP for the Province.⁷

From the diverse list above, it is clear that provinces face a significant challenge with regards to environmental management responsibilities. Limited budget allocations have to be distributed among a number of critically important activities. Key to the fulfilment of many of the conservation responsibilities of provincial departments are the Environmental Management Inspectorate (EMI), which is sometimes also referred to as the Green Scorpions. Environmental Management Inspectorates form a network of environmental enforcement officials appointed to national, provincial and municipal government departments as mandated by the National Environmental Management Act (NEMA) of 2008. The EMI is responsible for the enforcement of environmental legislation, and Inspectors have powers to:⁸

- Investigate: question witnesses, inspect and remove articles, take photographs and audiovisual recordings, take samples and remove waste;
- Inspect: enter premises to ascertain whether legislation is being followed and seize evidence of criminal activity;
- Enforce: search premises, containers, vessels, vehicles, aircraft and pack animals; seize evidence and contraband; establish road blocks and make arrests; and

⁴ DEA (2013).

⁵ North-West Provincial Government (Undated).

⁶ Bird *et al.* (undated).

⁷ Ibid.

⁸ DEA (Undated).

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- Administrative: issue compliance notices and admission of guilt fines.

While the EMIs have far-reaching powers to access, investigate and enforce, their powers do not extend to the prosecution of cases in court. All cases continue to be handed over to the National Prosecuting Authority (NPA) for prosecution. In terms of law enforcement, the SAPS continues to play a crucial role in enforcing environmental legislation and EMIs work closely with the SAPS in the investigation of environmental crimes. In terms of the National Environment Management Act, all police officers have the powers of an EMI.⁹

Table 1. Number of EMIs in the employment of each province from 2010/11 to 2012/13.
Source: Department of Environmental Affairs.

	2010/11	2011/12	2012/13
SANPARKS	603	603	672
Ezemvelo KwaZulu-Natal Wildlife	159	310	423
Limpopo	33	75	104
National DEA	51	66	63
Western Cape	43	64	68
Eastern Cape Parks and Tourism Agency	3	62	107
Gauteng	51	43	70
Eastern Cape	26	39	39
KwaZulu-Natal	25	37	34
North West	22	25	26
Free State	21	22	30
Northern Cape	11	16	19
Mpumalanga	14	14	12
Mpumalanga Parks and Tourism Agency	11	11	11
CapeNature	2	8	22
Isimangaliso Wetland Park Authority	1	4	5

Table 1 provides a breakdown of the distribution of EMIs across provinces and institutions. What is concerning to note is the major differences in enforcement official numbers between provinces. Mpumalanga, in total, presently only has 23 EMIs and North-West 26, while there are 672 in SANParks, 475 in KZN, 146 in the Eastern Cape, and 107 in Limpopo.¹⁰

⁹ DEA (Undated).

¹⁰ Ibid.

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Table 2. Enforcement statistics, prosecutions, acquittals and fines paid as a result of EMI activities. Source: Department of Environmental Affairs.

Criminal Enforcement	2010/11	2011/12	2012/13
Arrests by EMIs	1988	1339	1818
Criminal dockets registered	718	1080	1488
Cases handed to NPA 234 201 268	234	201	268
NPA declined to prosecute ("nolle prosequi")	21	20	37
Section 105A agreements (plea bargains)	19	13	14
Acquittals	22	7	8
Convictions	72	82	70
J534 (Admission of Guilt Fines):Total number issued	1 615	1498	5825
J534: Total number paid 1245 759 993	1245	759	993
J534: Total value of fines paid	R 867,010	R 470,080	R 654 250

3. AN ANALYSIS OF MEDIUM TERM BUDGET ALLOCATION TRENDS

Figure 1 and 2 highlights the trends in budget allocation to key Biodiversity Management tasks within provinces. Figure 1 clearly indicates the wide range of allocations specifically earmarked for Biodiversity management. The Western Cape and the Eastern Cape Provinces received relatively noticeable increases over the reporting period, with allocations in remaining provinces remaining relatively stagnant.

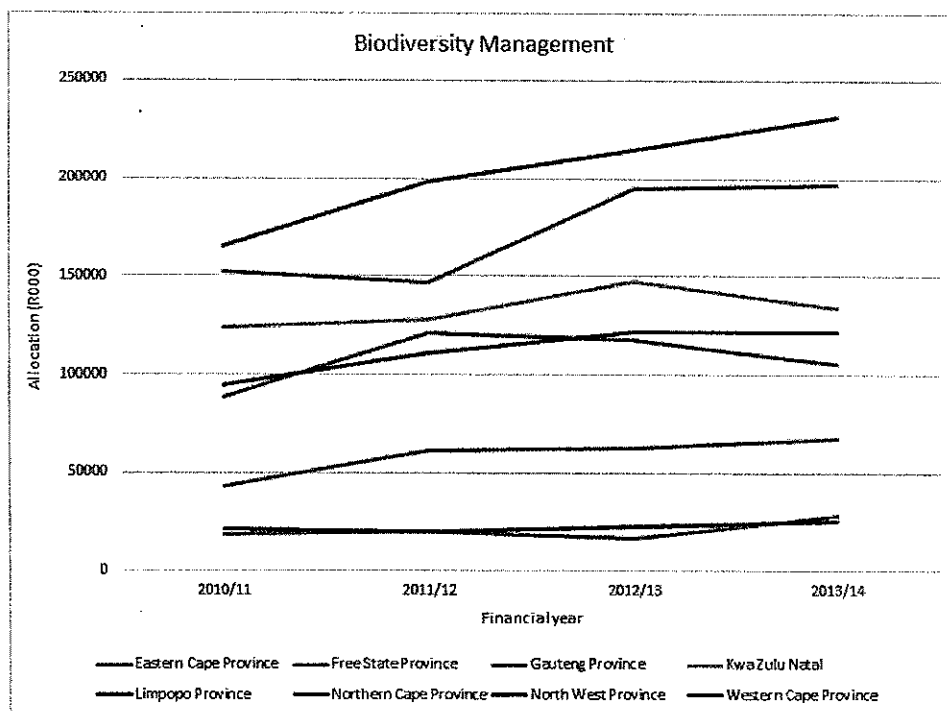


Figure 1. Summary of provincial allocations to the Biodiversity Management programme from 2010 to the current financial year. Source: National Treasury.

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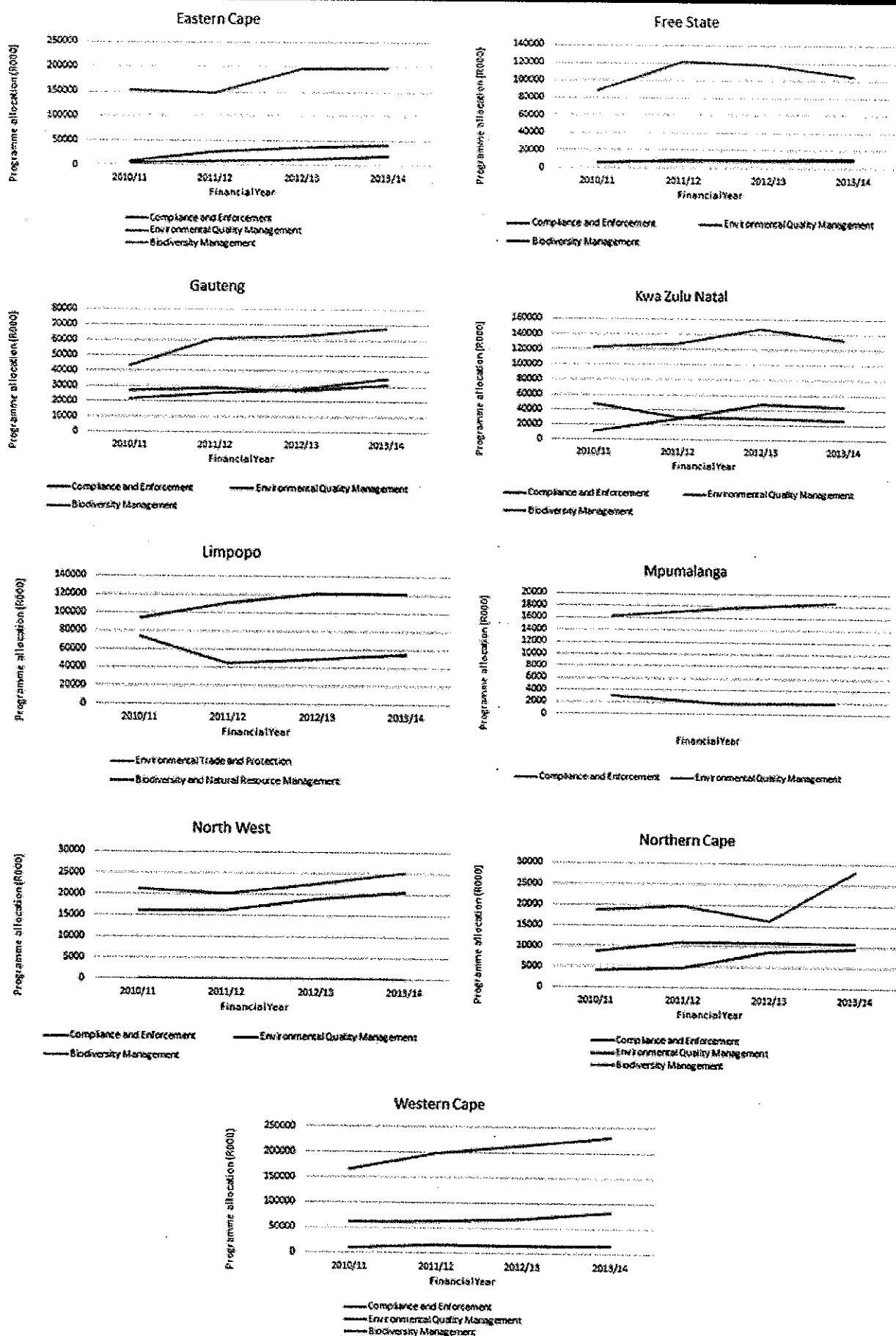


Figure 2. Summary of Treasury allocations to Provinces from 2010 to the current financial year.
Source: National Treasury.

What is concerning, is that the two provinces that indicated the greatest commitment increase to Biodiversity Management expenditure are not at the forefront of combating rhino poaching, suggesting that the provincial response to this problem has not been as significant as would be required to effectively deal with the challenge.

A further concern relating budget allocations is the lack of a Compliance and Enforcement programme within the budget of North West province, and the lack of a dedicated Biodiversity Management allocation within the budget of Mpumalanga. It is not clear whether these tasks are funded within an alternatively named programme, but a lack of earmarked funding for these EMI duties is potentially problematic.

4. COMMENTS AND QUESTIONS RELATED TO THE PRESENTATION FROM DEA

1. While the presentation highlights the fact that nature conservation is a concurrent competency and that wildlife crime is recognised as a "priority crime", the chronic under-funding of provincial nature conservation activity can be traced back prior to escalations in rhino poaching. What, according to the view of DEA, is the main causes for the under-staffing and under-equipped nature of provincial conservation bodies?
2. A large percentage of provinces list a strained relationship with SAPS as a challenge. What structures exist between the Department, Provincial administrations and SAPS structures to ensure an optimal response to wildlife crime?
3. The different departments also almost unanimously list operational and equipment budget shortfalls as challenges. One provincial conservation body, Ezemvelo Wildlife (KZN), reported receiving significant Provincial Treasury funding in order to improve its operational capabilities. Is it possible for other provinces to receive similar financial assistance? What process did the province in question follow differently in order to successfully motivate for earmarked funding, as compared to other provincial conservation entities that are funded out of joint budgets?
4. A number of provinces reported vacancies where posts were approved, but not funded. Why is this the case? In Mpumalanga, for example, there is a total of 94 unfunded posts that have been approved. Funding these positions will nearly double the total number of staff in the province. Under what circumstances are post approved but not funded?
5. Many provinces report what appears to be an extreme shortage of vehicles – in the case of Mpumalanga there is 1 vehicle reported for a staff compliment of 104, in the Eastern Cape there is 2 vehicles reported (120 EMI and Ranger posts), while in North-West the figure is 16 vehicles for 159 personnel (EMI and Rangers combined) and Cape Nature reports roughly 100 vehicles for a staff compliment of around 135. How did the disparities between provinces

develop and how can provincial entities achieve their mandate with a shortage of vehicles?

6. The section on the Free State states that the budget is only sufficient for salaries and does not adequately cover equipment. It further states that Wildlife crime is not recognised as a priority. This statement contradicts that of the National Department on the matter. Is there any specific reason for this development?
7. The Section on North-West Parks reports that the province has 15 provincial reserves and only 16 vehicles. Is this adequate coverage for the area? At the same time, the province lists 7 EMIs and 31 Compliance officers in their employment, but only 3 vehicles. Can the province fulfil its duties adequately?
8. Continuing with the North-West province figures, it lists 151 Parks staff, but only 300 ration packs, which would amount to around 2 issued per staff member per year. Can the Department perhaps supply clarity as to what the relationship is between patrols and the allocation of ration packs? Surely it is incorrect to assume that each staff member responsible for reserve patrols rarely embarks on prolonged/overnight patrols?
9. In a number of provinces' financial reports, there is detailed reports about the requirements for specialist patrol and anti-poaching equipment such as night-vision equipment, bullet-proof vests, additional fire-arms, mobile command centres and aerial support. Surely these items cannot be purchased from standard Treasury allocations and should be funded through the same process followed for KZN province, where a Treasury grant allocation was successfully applied for.
10. Even after receiving a significant Provincial Treasury allocation, KZN warns in its section on challenges faced that there is a need to develop a sustainable funding model for provincial conservation activities. This is a salient warning for all provinces, and perhaps one of the central themes for provincial conservation planning and budgeting. While policies are advanced and generally sufficient for the task at hand, the Committee could perhaps request that the DEA supply it with an envisaged annual provincial budget allocation that would ensure sustainable operations.
11. The presentation speaks to the challenges for conservation activity competing within a province or department that is a combination of agriculture, tourism, conservation and/or economic development. The presentation also speaks to the fact that priority matters such as rhino poaching has to be prioritised, sometimes to the detriment of other conservation needs. Can the Department perhaps supply input regarding the possibility for earmarked conservation funding to ensure future sustainability for this Concurrent competency?
12. On a small technical note, the section for the Northern Cape refers to the need to purchase three rifles and ammunition at a unit cost of R100 000. This has to be an error as other provinces motivate for similar rifles at less than a quarter of the unit cost.

5. CONCLUDING REMARKS

The recent escalation in rhino poaching in the country has brought to the fore the challenge that provincial conservation agencies and law enforcement bodies have struggled with for a protracted period of time. Funding allocations beyond basic staff needs is not sufficient to adequately patrol and investigate offences across the entire jurisdiction of the provincial authority. Most provinces highlight challenges with more traditional challenges such as basic equipment, vehicles, ration packs and vacancies, which indicate challenges with the fulfilment of more traditional tasks covered by the officials prior to the rapid escalation in rhino poaching.

A second clear category of equipment requirements observed in the challenges listed by the provinces is clearly the type of specialist equipment that dedicated anti-poaching units will require. These include aerial surveillance capacity, night time operation equipment, additional firearms, bullet-proof vests and patrol vehicles. What is concerning with this shortfall is that it appears that there has not been a significant funding response with regards to the specialist anti-poaching law enforcement needs of the provinces. Rhino poaching has been a serious problem for a number of years, and one would have expected a resultant funding response from government in order to equip provinces with the tools required to sufficiently deal with the problem. It is not inconceivable to believe that the shortfalls reported in the briefing document supplied by the Department had been raised on a number of occasions between 2010 and the present, and if the need arises, the outcomes of such applications, should they exist, can be investigated to determine how these applications were responded to.

The diverse portfolio of provincial conservation agencies, potentially faced with funding challenges prior to the escalation of poaching, is most likely resulting in a need for officials to prioritise actions between compliance monitoring and law enforcement activity, with insufficient resources to cover each competency adequately. Symptoms of such outcomes are visible with regards to water quality challenges in urban areas resulting from industrial pollution, challenges with pinpointing sources of air pollution and frequent challenges with the enforcement of the Records of Decision (ROD) associated with permits issued to individuals/companies participating in listed activities governed to conditions imposed after an EIA process was completed.

Although the total amount of money earmarked as bailouts to various SOEs have been disputed, it is clear that billions of Rand have been paid out in the last decade to entities such as South African Airways, Transnet, South African Express, Denel, Alexcor, and the Pebble Bed Modular Reactor programme¹¹ to ensure their viability. South Africa receives an enormous amount of Environmental services

¹¹ Klopper (2010).

directly from its biodiversity worth many billions of Rand annually¹², and it is important that oversight entities such as this Committee highlights the need for adequate government spending in order to retain the ecosystem services on which so many industries and indeed the citizens of South Africa depend either directly or indirectly. The Treasury allocations to most provincial conservation entities currently does not display sufficient increase to deal with immediate threats such as rhino poaching, but are perhaps also indicative of chronic under-funding of critical environmental management services.

¹² De Wit (2006) estimated in 2006 that the value of South African biodiversity and ecosystem services is at least R27 Billion annually.

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