



SOUTH AFRICAN PERMANENT MISSION GENEVA

Rue du Rhône 65, 1204 Geneva Tel. +41 (0)22 849 54 54 Fax +41(0)22 735 73 64 www.safrikaun.ch mission@safrikaun.ch

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The Permanent Mission of the Republic of South Africa to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honour to submit South Africa's response to the Questionnaire by the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment.

The Permanent Mission of the Republic of South Africa to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the OHCHR, the assurances of its highest consideration.

Geneva, 01 November 2016



UN Special Rapporteur on Human Rights and the Environment
Thematic Engagement, Special Procedures and Rights to Development Division
UNOG-OHCHR
Palais des Nations
CH 1211 Geneva 10

Fax: 022 917 9006

Questionnaire

The Special Rapporteur would welcome answers to the following questions:

- 1. Please provide, in detail, examples of biodiversity-related legislation, policies and programmes that incorporate human rights obligations.**

Section 24 of the Constitution of the Republic of South Africa, 1996 provides the overarching legislative foundation for environmental management in South Africa:

- : ‘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;
 - j. Promote conservation; and
 - k. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’.

This ensures that there is a balance between environmental and human rights and economic development. Human rights cannot be fully realised within a degraded or polluted environment. Linking economic development with environmental rights creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at the centre of Section 24.

National Environmental Management Act (NEMA) (107 of 1998): primary environmental Act in South Africa.

- Provides for co-operative environmental governance based on the principles set out in Section 24 of the Constitution of the Republic of South Africa, ensuring that human rights are at the forefront of environmental considerations and enabling the administration and enforcement of environmental management laws to ensure both human and environmental protection.

Specific Environmental Management Acts: the following SEMAs, are linked to NEMA in its attempt to ensure the rights of the people and the natural environment:

- **National Environmental Management: Biodiversity Act (10 of 2004):** supports conservation of plant and animal biodiversity, including the soil and water upon which it depends, it ensures the sustainable use of natural resources by the people without compromising the integrity of the natural environment.
- **National Environmental Management: Protected Areas Act (57 of 2003, amended No. 31 of 2004):** supports the protection and conservation of biodiversity in legally protected environments, which have an intrinsic value on the overall human wellbeing.
- **National Environmental Management: Integrated Coastal Management Bill (2008) (and amendments):** supports integrated coastal and estuarine management system to promote conservation of the coastal environment, maintain natural coastal landscape and seascape attributes, and ensure that development and

use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable.

- **National Environmental Management: Air Quality Act (39 of 2004)** **Air Quality Act (39 of 2004):** replaces the Atmospheric Pollution Prevention Act (No. 45 of 1965).
- **National Environmental Management: Waste Act (59 of 2008):** aims to prevent pollution and ecological degradation, thus protecting the environment and our health.

Related Acts that consider Human Rights in environmental protection include:

- **National Water Act (36 of 1998)** - *enforced by Dept of Water Affairs:* promotes the protection, use, development, conservation, management, and control of water resources in a sustainable and equitable manner.
- **National Forests Act (84 of 1998)** - *enforced by Dept of Agriculture, Forestry and Fisheries:* supports sustainable forest management and the restructuring of the forestry sector, as well as protection of indigenous trees in general.
- **Marine Living Resources Act (18 of 1998)** - *enforced by Dept of Agriculture, Forestry and Fisheries:* supports conservation of marine ecosystems.
- **Mineral and Petroleum Resources Development Act (28 of 2002)** (South Africa): for equitable access to and 'sustainable development' of the nation's mineral and petroleum resources.

2. Please provide specific examples of good practices in the implementation of human rights obligations in biodiversity-related matters.

- a) The role played by the DEA Environmental Programmes /EWP in job creation, skills development and SMME development contributes to poverty alleviation and improving the beneficiaries' standard of living, resulting in benefiting families having adequate food, clothing and housing. The internship programmes run by the Department of Environmental Affairs create better chances for unemployed graduates in terms of absorbing them and/or exposing them to relevant experience. Environmental programmes such as "working for" programmes (working for water, working for wetlands, working on fire, working for the coast, etc) create employment and skills development opportunities for beneficiaries which result in benefiting individuals and families towards an adequate standard of living including adequate food, clothing and housing.
- b) The Department is also promoting the biodiversity economy through the development of the National Biodiversity Economy Strategy, and Phakisa Lab events that are geared to fast track implementation and subsequently improve the livelihoods of people.
- c) South Africa is signatory party to the Convention on Biological Diversity and the Nagoya Protocol on Access and Benefit-sharing which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable

way. The Nagoya Protocol on access and benefit sharing creates economic opportunities for the communities whilst contributing to the conservation and sustainable use of biological resources. South Africa also has its own domestic legislation Biodiversity Access and Benefit Sharing Regulations (BABS). The National Biodiversity Economy strategy developed addresses human livelihoods, poverty and equitable sharing of benefits of biodiversity. This strategy is being implemented through a series of Phakisa type of events such as the oceans, wildlife economy and Rhino labs. This new approach to biodiversity conservation and wildlife management is designed to create more job and economic opportunities for people whilst enhancing the conservation of both marine and terrestrial biodiversity.

- d) South Africa is a Party to the Ramsar Convention on the conservation of wetlands and the implementation of this Convention is a significant contribution to water conservation. Wetlands act as a source of water and their conservation results in good quality and healthy water from sustainable water sources. The Ramsar Convention has a Communication Education Participation and Awareness (CEPA) programme designed to educate people from all walks of life on wetlands, conservation matters, water conservation, hygienic use of water and methods to minimise water wastage. The newly adopted CEPA Action Plan is being implemented and it will tremendously contribute to empowering target audiences on the hygienic use and conservation of water as well as the adequate protection of water sources.

- e) South Africa, as a signatory to the CBD, is obliged to meet the provisions set out in Article 8(j) - Traditional Knowledge, Innovations and Practices makes provision for each contracting Party, as far as possible and as appropriate subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

- f) South Africa is also a member of the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES). IPBES was established by an intergovernmental meeting in Panama City, Panama on 21 April 2012 with the objective of strengthening the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human wellbeing and sustainable development. IPBES responds to requests for scientific information related to biodiversity and ecosystem services from Governments, relevant multilateral environmental agreements and United

Nations bodies, as well as other relevant stakeholders. IPBES has four main functions namely:

- Knowledge generation
- Regular and timely assessments
- Support policy formulation and implementation
- Capacity building

g) Conservation Policy improving livelihoods of communities:

- (i) The *Aloe Ferox project* which has improved livelihoods in community of previously high unemployment rates. There has been a significant increase in the income levels of this community to a point of adequate food and all-round living conditions.
- (ii) Species of Hoodia, a succulent plant indigenous to Southern Africa have been used for over a century by the San people as an appetite suppressant. The San, an indigenous people of Southern Africa, was one of the first globally where the holders of traditional knowledge received a share of royalties/financial benefits from the patenting of the active constituents.
- (iii) The uKhahlamba Drakensberg Park World Heritage Site Management Area and the uMngeni Vlei Nature Reserve- The reserve protects the principal source of the uMngeni River, which is of major significance for downstream users, including the two largest cities in the province. It is managed to ensure that the water resources are conserved, and managed to ensure the sustained yield of high quality water. This project ensures the protection of basic human rights, the supply of essential services such as water.
- (iv) The use of Fuelwood in the BushBuck Ridge Biosphere as a main energy source in BBR is an ideal example of the poor communities relying on biodiversity for their livelihoods.

f) A core strategy is the protection of priority biodiversity areas on privately owned land in production landscapes through biodiversity stewardship. Biodiversity stewardship recognises landowners/users as custodians of their land, including the biodiversity and natural resources. It is a mechanism that promotes and supports the wise use and management of natural resources and biodiversity, and the ecosystem services they provide, through the form of voluntary legal agreements with private and communal landowners/users. The Biodiversity Stewardship and Land Reform Initiative, recognises the interdependence of humans and biodiversity by identifying the overlap of biodiversity protection on lands of high economic value to its people.

3. Please specify, where relevant, challenges your Government has experienced in the integration and protection of human rights in biodiversity-related matters.

a. There are three primary issues that can be associated with the current degradation of biodiversity and how it effects human rights in South Africa. The first is the increase of agriculture to support an ever growing population. Plant diversity is heavily

impacted by agriculture in the form of farming and over grazing. This results in bush encroachment, which puts great pressure on the biomes of South Africa. In spite of the signs of decline, laws concerning South African conservation are still lacking the required enforcement).

- b. Urbanisation is the second topic of discussion, as it too is growing immensely. South Africa's demand for development is a lose - lose situation, as there is a need for one basic human need at the cost of another, and damage is irreversible once done.
- c. Invasive species within South Africa's boundaries have become a major problem. Over 8 percent of South Africa has been invaded by invasive plant species. Invasive species occupy between 27.2 percent and 32 percent of the country's land. This shows an increase in alien plants of approximately 28 percent in the last 18 years.
- d. Water is South Africa's lifeblood. It influences the wellbeing of the country's people, and water shortages, or a decline in water quality, will hamper economic development and compromise basic human rights in the country. Water is intrinsically linked with the ecosystems through which it passes; deteriorating ecosystems will adversely affect the quantity and quality of water. Over half of the ecosystems associated with our rivers and fresh water supply are seriously degraded.

4. How are the rights of those who may be particularly vulnerable to the loss of biodiversity, including but not limited to indigenous peoples, provided with heightened protection?

- a) Avoided loss/degradation: By ensuring that biodiversity is properly considered during development planning and decision-making, loss of biodiversity priority areas can be prevented. Habitat loss from necessary development can be directed away from highest value biodiversity areas and into areas of lower value where loss is less critical.
- b) Protection: Establishment of formal protected areas is essential in ensuring biodiversity priority areas and regulatory processes are protected. Agreements with production sectors, provincial and municipal authorities, non-governmental organisations (NGOs) and private land owners ensures everyone is included in the process as all benefit from the services biodiversity provides. A core strategy is the protection of priority biodiversity areas on privately owned land in production landscapes through biodiversity stewardship.
- c) Restoration: By creating awareness of the ecosystem services that are generated and delivered by natural areas, government and the private sector can be encouraged to invest in the restoration of ecological infrastructure that delivers ecosystem services in priority areas.

5. How do you ensure that the rights of environmentalists working on biodiversity issues (environmental human rights defenders) are protected? What efforts has your Government made to create a safe and enabling environment for them to freely exercise their rights without fear?

- a) The constitution of the Republic of South Africa provides for the Bill of Rights which enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. These rights bind natural or jurisdiction persons. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- b) In response to the above paragraph b), the formulation of biodiversity legislation in terms NEM: BA follows a process that is inclusive of a formal consultation process and public participation which, natural persons or juristic persons or representatives of a particular group or individuals or those who are not able to do so themselves to submit their representations comments and suggestions.
- c) Amongst others the above-mentioned Bill of Rights are; the right to Equality; everyone is equal before the law and has the right to equal protection and benefit of the law, the right to Assembly, demonstration, picket and petition – everyone has the has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions, the right to Just administration action.- everyone has the right to administrative action that is lawful, reasonable and procedurally fair, everyone whose rights have been adversely affected by administration action has the right to be given written reasons, this further provides for the national legislation to be enacted to give effect to the rights as presented – and for the administrative actions to be reviewed by a court and where appropriate an independent and impartial tribunal.
- d) In the case of the Section 24 on Environmental Rights provided in response to Question 1, the Minister of Environmental Affairs has established a variety of platforms aimed to provide a stage where government and industry role-players including environmental rights groups to engage in formulation of legislation, making representation on issues that the public need to be addressed and also to suggest solutions. These include amongst others, The Biodiversity Indaba which is a public platform held once year, Lekgotla (which addresses different issues, including Air Quality, Environmental Compliance and Enforcement.
- e) With the above it is clear that the environmental human rights defenders (Environmental Rights Groups) are protected to freely exercise their rights without fear.

Submission of responses



Responses to the questionnaire can be sent to srenvironment@ohchr.org (encouraged) or addressed to:

UN Special Rapporteur on human rights and the environment
Thematic Engagement, Special Procedures and Right to Development Division
UNOG-OHCHR
CH-1211 Geneva 10, Switzerland
Fax : +41 22 917 9006

Due to a limited capacity for translation, we kindly request that your responses to the questionnaire be in English, French or Spanish. We kindly request that your submission be concise and limited to a maximum of 5 pages (or 3,000 words).

The deadline for submission is **30 September 2016**.

Unless otherwise requested, all submissions will be posted on the OHCHR webpage and *made publicly available*:

www.ohchr.org/EN/Issues/SREnvironment/Pages/SREnvironmentIndex.aspx

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