

## **SECTION 3**

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### **POLICY DEVELOPMENT AND IMPLEMENTATION: NATURAL FORESTS AND SAVANNA WOODLANDS**

# THE DEVELOPMENT AND IMPLEMENTATION OF THE COMPLIANCE AND ENFORCEMENT POLICY FOR THE NATIONAL FORESTS ACT, 1998 (ACT NO. 84 OF 1998) AND NATIONAL VELD AND FOREST FIRE ACT, 1998 (ACT NO. 101 OF 1998)

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## Abstract

The Department of Water Affairs and Forestry is responsible for the implementation of the National Forests Act, 1998 and National Veld and Forest Fire Act, 1998. Both pieces of legislation contain prescriptive elements and statutory frameworks (from which offences are identified) that require stakeholders to comply with the laws. However, despite these enabling provisions people still breach these laws. Through a study initiated by the Department during mid-2003, with funding from DFID, it was determined that the main reason for lack of compliance was that the Department followed a reactionary and inconsistent enforcement approach. This finding was discussed at an internal workshop where it was recommended that an enforcement policy be developed.

A process, which made use of consultations with both internal and external stakeholders (with experience in enforcement of environmental legislation), to develop a policy was embarked upon. Strategic and Co-operative Enforcement were identified as the most effective strategies to address Compliance and Enforcement. This option promotes employing a compliance and enforcement approach that is holistic and focused, making use of a combination of preventative and corrective measures to ensure maximum compliance and prevent criminal activities. It also requires that compliance and enforcement activities be guided by a strategic risk analysis of the consequences and likelihood rating of an offence in order to focus enforcement efforts. It also advocates strengthening the present partnership approach with other government agencies and communities through cooperative governance, cooperation agreements and community-based natural resource management approaches to facilitate better and more effective compliance and enforcement of the laws.

To effectively implement the policy, various institutional, administrative and operational systems, procedures, guidelines and training need to be developed and rolled-out to build the capacity of both internal and external stakeholders. All the systems, procedures, guidelines and training needed to facilitate this have been identified and concerted efforts are now being employed to bring them into operation. It is believed that through this the Department is moving in the right direction to effect changes in the attitudes and behaviour toward the use and development of forest resources.

This paper discusses the reasons for choosing the policy option of Strategic and Co-operative Enforcement and the institutional, administrative and operational systems, procedures, guidelines and training that need to be developed to implement the policy option.

## 1. Introduction

The Department of Water Affairs and Forestry is responsible for the implementation of the National Forests Act, 1998 (Act No 84 of 1998) and National Veld and Forest Fire Act, 1998 (Act No 101 of 1998). Both pieces of legislation contain prescriptive elements and statutory frameworks (from which offences are identified) that require and enable stakeholders to comply with the laws. However, despite these enabling provisions people still breach these laws.

Through a study initiated by the Department during mid-2003, with funding from the United Kingdom's Department for International Development (DFID), it was determined that the main reasons for failures to comply are that the Department followed a reactionary and inconsistent enforcement approach resulting in inadequate and unsatisfactory enforcement (Algottson, 2003a).

It was found that current enforcement practices are based almost exclusively on traditional approaches of detecting offences and arresting offenders. There is very little emphasis on crime prevention or compliance promotion. Enforcement has also been carried out in a relatively inconsistent, misdirected and *ad hoc* manner with enforcement activities being focused on less serious offences, while serious and organised offences are not being detected or the law enforced. Enforcement is also done in isolation of other organs of state, causing a duplication of efforts (Algottson, 2003a).

This finding was discussed at an internal workshop where it was recommended that an enforcement policy, supported by enforcement guidelines, be developed (DWAf, 2003). A process to develop a policy was embarked upon, which made use of consultations with both internal and external stakeholders (with

experience in enforcement of environmental legislation),. Strategic and Co-operative Enforcement were identified as appropriate strategies and an internal policy was developed along these lines (Algottson & Le Roux, 2004; DWAF, 2005).

This paper discusses the reasons for choosing the policy option of Strategic and Co-operative Enforcement and the institutional, administrative and operational systems, procedures, guidelines and training that need to be developed to implement the policy option.

## **2. Compliance and Enforcement Policy for the National Forests Act, 1998 (Act no. 84 of 1998) and the National Veld and Forest Fire Act, 1998 (Act no. 101 of 1998)**

The Compliance and Enforcement Policy for the National Forests Act, 1998 (Act no. 84 of 1998) and the National Veld and Forest Fire Act, 1998 (Act no. 101 of 1998) was approved and adopted by the Department on 12 October 2005 (DWAF, 2005).

The objective of the policy is to reverse the destruction of forest resources, support the integrity of forest ecosystems and uphold the rights of forest-using communities as well as minimising the environmental, social and economic risk of veldfires through focused situational strategies and systems for achieving compliance with the Acts, at costs that are justified by the public benefits achieved. As its main aim it wishes to achieve compliance with the objectives and provisions of the National Forests Act, 1998 and the National Veld and Forest Fire Act, 1998, and it therefore goes beyond the matter of only enforcement, which is the matter of taking action in the event of an offence (DWAF, 2005).

To achieve this, the Department has to create a Compliance and Enforcement environment (DWAF, 2005) in which:

- The behaviour of people are changed to comply with the law
- The opportunities to commit offences are reduced
- Compliance to the provisions of the laws are made easy
- The committing of an offence is made more difficult, more risky and less rewarding
- The likelihood that a violation will be detected is increased
- There will be a swift and certain response to violations
- Appropriate sanctions/penalties will be imposed for violations
- The committing of an offence is made less excusable

To establish this environment, the policy option of Strategic and Co-operative Enforcement has been chosen as the preferred option for the enforcement of the National Forests Act, 1998 and National Veld and Forest Fire Act, 1998. This policy option introduces various essential measures for creating the appropriate compliance and enforcement environment. It requires that Compliance and Enforcement activities should be holistic, comprehensive and integrated, strategic and focused and cooperative. The Policy therefore requires that a combination of prevention, detection and correction (reactive enforcement) measures should be employed; that compliance and enforcement efforts should be focussed on particular offences (priority offences) and areas (hotspots) as identified through strategic risk analysis; and that relationships with communities and other government agencies should be established and strengthened to enhance enforcement capacity (DWAF, 2005).

## **3. The reason for the policy option: Strategic and Co-operative Enforcement**

One of the Department of Water Affairs and Forestry's main roles is to ensure compliance with the legislation it administers. Most people want to act in accordance with the laws, rules and regulations. However, some do still break the law. Various forest and fire related offences therefore occur. The types and seriousness of offences differ from area to area. The people committing the offences also differ from one offence to the other and from area to area. This is because the motivations to commit offences differ from area to area and person to person (Algottson, 2003a).

The Department's current enforcement practices do not address this situation effectively. The Department is following a reactionary and inconsistent enforcement approach. Enforcement activities are based almost exclusively on traditional approaches of detecting offences and arresting offenders of especially less serious offences. Little emphasis is placed on crime prevention, compliance promotion and detecting and enforcing serious and organised offences and offenders. In many cases inappropriate compliance and enforcement measures to address threats, offences and offenders are also employed. The Department therefore realised that it had to address this situation, starting at the policy level (Algottson, 2003a; DWAF, 2003).

Various policy options were considered. These included amongst others transferring the administration of the Acts to other organs of state, repealing it and continuing in the present way. Not any of these options were found suitable. Withdrawing from administering the legislation by either transferring the

administration of the Acts to other organs of state or repealing it would create a hiatus and a hesitancy among all role-players that would irresponsibly aggravate the ongoing degradation of veld and forest resources in the country. While continuing in the present way will in time have real effect, it is not cost-effective and can be improved. The option of zero tolerance, which involves full enforcement of all prescriptive provisions in both Acts everywhere by an uncompromising application of the law, was also considered. This option was also found unsuited, as it is not cost-effective (There are some situations where risk is negligible, where little intervention is needed, for example) and is also not sensitive to the need to recognise people's underlying rights to the use of natural resources (DWAF, 2005).

The Department therefore realised that it had to adopt a strategy that is cost-effective and that is sensitive to the need to recognise people's underlying rights to use natural resources. A study of literature on compliance and enforcement and comments from various stakeholders revealed that a strategy that employs crime prevention and enforcement measures in combination with each other to address specific identified risk/threats together with other stakeholders is the best to achieve compliance (Algottson, 2003b; Algottson & Le Roux, 2004; 2005).

The strategy requires that an analysis of the risks/threats of an area needs to be done and that preventative measures then be employed to prevent the risk/threat from happening. It also requires that where a threat/risk has resulted in an incident the incident has to be responded to and measures be taken to prevent it from reoccurring. It also requires that stakeholders work together in both preventing and enforcing crime (Algottson & Le Roux, 2005).

The chosen strategy has various benefits. It makes it possible to improve compliance. It employs a holistic, comprehensive and focused compliance and enforcement approach through which it makes provision that a combination of prevention, detection and correction (reactive enforcement) measures can be determined and employed to deal with particular offences (priority offences). It further also makes it possible to be strategic and focus on priority areas (hotspots) and priority offences, because, through the process of developing a Risk Management Strategy, it facilitates the identification of offences and areas in which compliance efforts are to be focused on. Through promoting co-operative enforcement the strategy also facilitates greater detection of threats and offences. It also ensures co-ordination between stakeholders to facilitate optimal and effective use of resources. Apart from the benefits as described above, the policy option does not have immediate additional financial implications for the Department. It only requires that existing compliance and enforcement systems, initiatives and use of resources be improved by focussing and coordinating it (DWAF, 2005).

#### **4. Implementing the policy**

The policy has specific objectives. These are (DWAF, 2005):

- a) The elimination of unwanted enforcement practices.
- b) The transformation of the existing command and control styled enforcement approach to a more holistic compliance approach.
- c) The promotion of a culture of positive action, consultation and cooperation with the Department and other enforcement agents.
- d) The promotion of participation by people who benefit from or are affected by the enforcement of the Acts on a fair and equitable basis.
- e) The promotion of positive incentives to provide a supportive enabling environment for more effective compliance of the Acts and the involvement of local communities and stakeholders.
- f) Improving existing compliance and enforcement systems, initiatives and use of resources by focussing and coordinating efforts.

To achieve these objectives, the Department has to strive to put in place and meet some conditions.

Algottson & Le Roux (2004 and 2005) indicated that DWAF should build its internal capacity through amongst others:

- Improving the working conditions of enforcement personnel by building their enforcement skills and capacitating them through providing them with the relevant training for the functions they perform
- Putting in place Operational Specific Enforcement plans, which are guided by threat analyses and the continuous analysis of reported offences, at National, Cluster, Regional and local level.
- Developing and Implementing a needs based cross-sectoral Communication/Extension strategy, which should raise awareness about the Acts and its provisions
- Developing and implementing an illegal activity recording and monitoring system to identify area specific offences in order to facilitate a more focused approach to enforcement.

- Developing and implementing National enforcement guidelines on best enforcement practice to guide enforcement personnel and ensure uniform and standardised enforcement.

DWAF should also build external capacity through amongst others (Algottson & Le Roux, 2004; 2005):

- Seeking the co-operation of the SAPS and other agencies and putting Co-operation and Joint Enforcement Agreements and guidelines in place at National, Cluster, Regional and Local level. This should especially be done in areas where a high risk of offences occurs and/or where DWAF is not present.
- Capacitating the SAPS, Prosecuting authorities and other enforcement agencies on the provisions of the National Forests Act, 1998 and National Veld and Forest Fire Act, 1998.
- Identifying, approaching and capacitating Non-DWAF staff to be appointed as Forest Officers and supporting and monitoring them when they have been appointed
- Establishing and/or strengthening Participatory Forest Management structures and discussing enforcement issues in these structures
- Establishing and/or strengthening Compliance and Enforcement Committees/Forums at National, Cluster and Regional level to coordinate and monitor enforcement activities.

As it is realised that above mentioned conditions will not be able to be met at once, the Department has recognised that Compliance and Enforcement Policy Implementation Plans needs to be developed, implemented and monitored at National, Cluster, Regional and Local levels. Concerted efforts are now being employed to develop and implement these plans to bring the necessary systems, procedures, guidelines and training needed into operation.

## 5. Conclusion

Government wishes to ensure compliance with legislation. Achieving compliance is however complex. There are various reasons why people do not comply with legislation and these reasons differ from area to area and person to person. A compliance and enforcement strategy that deals with this complex situation in a cost-effective manner is needed.

The Department of Water Affairs and Forestry has adopted a policy option of Strategic and Co-operative Enforcement to ensure compliance with the National Forests Act, 1998 and National Veld and Forest Fire Act, 1998. The effective implementation of the policy option requires that priority areas and threats (offences) need to be identified and that crime prevention and enforcement measures then, in combination with each other, be focussed on these hotspots by working together with other stakeholders.

To implement this strategy the Department has to put in place various systems, procedures, guidelines and training measures to build both its internal and external capacity. Most of the systems, procedures, guidelines and training needed have been identified and concerted efforts are being employed to bring them into operation.

It is believed that through this the Department is moving in the right direction to effect changes in the attitudes and behaviour toward the use and development of forest resources and management and combating fires.

## References

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