ANIMAL RIGHTS AFRICA

SUBMISSION ON NATIONAL ENVIRONMENTAL MANAGEMENT:
PROTECTED AREAS AMENDMENT BILL

TO ENVIRONMENT AND TOURISM PARLIAMENTARY PORTFOLIO
COMMITTEE
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INTRODUCTION

Animal Rights Africa (ARA) thanks the Portfolio Committee on Environmental Affairs and Tourism for the opportunity to comment on the proposed Bill to amend the National Environmental Management: Protected Areas Act, 2003 (the National Environmental Management: Protected Areas Amendment Bill B67-2008).

ARA will only be commenting on one aspect of the Bill, namely Clause 5 of Section 54 which provides for the winding-up and dissolution of SANParks, which states: “Upon its winding-up or dissolution of the South African National Parks must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to some other institution, board or body with objects similar to those of the South African National Parks and which is itself exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

NATIONAL PARKS: HERITAGE OF GLOBAL AND NATIONAL SIGNIFICANCE

Protected areas are the last strongholds of nature and are an essential part of biological sustainability. In Africa, however, protected areas cover less than ten per cent of the land, leaving ninety per cent of land open to unrestrained exploitation.1 In South Africa currently (2007) only 2.92% of the total land area is designated to National Parks2 and only 0.1 per cent of the total area is strictly nature reserves or wilderness.3 South Africa has the highest extinction estimates for any area in the world, with thirty seven per cent of its mammal species threatened.4

South Africa’s national parks and protected areas are national and international heritage and unique and precious environmental treasures of incalculable value.

The Kruger National Park (KNP), for example, is seen as a flagship, both internationally and nationally. It comprises two million hectares and is one of the most biodiverse parks in the world.\(^5\) South Africa is therefore not only charged with the guardianship of the park, on behalf of South Africans, but also on behalf of the global public. There is therefore an enormous responsibility to protect it. Our national parks and protected areas are of such enormous consequence to humanity and are held in such importance that their value cannot be equated to any potential they may have to yield financial earnings – this is the intrinsic value of heritage and biodiversity. Thus criteria which may be applicable in the broader economic sectors must be examined closely in the context of heritage and circumspection applied.

Honourable Members of Parliament are surely aware that according to the South African Heritage Transformation Charter, heritage:

- Is a source for the cultivation of humanity;
- Contributes to social cohesion;
- Enhance our sense of solidarity and citizenship;
- Forms a basis for regional integration and global peace;
- Contribute to the democratization of the state and society.

By allowing this proposed clause to be included the repositioning of African heritage will be undermined and the government will be in breach of its obligation to promote and protect the national heritage for present and future generations.

The Government cannot absolve itself of financial responsibility for the management of our natural heritage. If cultural heritage, for example, was handled in the same way DEAT is proposing the handling of the national parks it has custody of on behalf on the nation, it would mean that national heritage agencies would be able to sell off items such as the records of the Truth and Reconciliation Commission, the Taung skull or Sol Plaatje’s Diary to rich capitalists.

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\(^5\) South Africa is also the third most biodiverse country on earth, after Brazil and Indonesia.
and private collectors – no matter how benevolent their intention. In principle, there is no difference.

**NATIONAL PARKS: HELD BY GOVERNMENT IN TRUST ON BEHALF OF ALL SOUTH AFRICANS**

National Parks are not “private goods” and the objectives of SANParks are social rather than financial. They are national assets and highly valued by the community – both locally and globally. Among our national assets, protected areas and national parks are the most cherished: they are the gift of one generation to another and the extent of our care of them marks the extent of our society. They are living heritage with intrinsic value and commercial accounting principles cannot and should not be applied to them. National parks are public heritage facilities and as such they are preserved indefinitely because of their importance. They are maintained and held in trust by the government for social purposes – such as heritage, environmental and biodiversity - and definitely not for the purposes of financial gain. This substantial social value to the community cannot be automatically translated into financial values and it is inappropriate for them to be treated as mere “financial assets” of the government. Financial value maximisation is not an appropriate goal for their management. Furthermore, in many cases they cannot be reliably valued in financial terms. For either or both reasons, they should not be included in a general purpose statement of financial position of the managing entity. Rather, they should be recognised as ‘assets’ held in trust by the government and appreciated for the non-financial benefits they provide to society.

Other important characteristics of these facilities for accounting purposes are:

- They are to be retained and maintained in good condition in perpetuity for the enjoyment of current and future generations because of their special and appreciated attributes.
- They are not to be sold.
- They are open to the public for their general enjoyment and appreciation
- Their benefits flow to the “general public good” rather than to the managing entity.

It is crucial to note that the right of government to dispose of ‘assets’ is not an unfettered one and that the ‘assets’ that SANParks takes custody of and responsibility for belong to the public. National Parks and their so-called ‘assets’ can therefore not be handed over to some non-state,
private, or public benefit “entity” – whether it is a board or a body which has “similar objects”. It is unethical, will open the door to irreversible degradation, will be a direct attack on our National Parks and is clearly unconstitutional. Our national parks are a part of our history and heritage and our legacy to future generations. We should be working to protect these special places, not auctioning the birthright of the South African people to the highest bidder – even if they have a PBO number.

CONSTITUTIONAL REQUIREMENTS: WHY NATIONAL PARKS MUST BE IN THE CUSTODY OF A PUBLIC ENTITY ONLY AND WHY THEY NEED TO REPORT DIRECTLY TO GOVERNMENT

Legally Government is required to protect national parks and protected areas in perpetuity and to take stewardship of them on behalf of the nation. This responsibility cannot be outsourced. A service such as SANParks serves the Public Interest and will always be required. SANParks or another State equivalent MUST be the custodian of the national parks system of South Africa because it is protecting one of South Africa’s most valuable national assets.

Moreover, the management and governance of national parks and protected areas is so onerous and so strategic, and the need for accountability so necessary, that it MUST be answerable to a Ministry, the Treasury and the Auditor-General.

The honourable Members of Parliament need to take note that in terms of the Protected Areas Act, the State is the trustee of protected areas and that this is in fulfilment of the rights contained in section 24 of the Constitution, which affirms that the State through the organs of state implementing legislation applicable to protected areas must:

a. Act as the trustee of protected areas in the Republic; and
b. Implement this Act in partnership with the people to achieve the progressive realization of those rights.

The regulatory environment for SANParks is established by the Public Finance Management Act (No. 1 of 1999 as amended by Act 29 of 1999). SANParks is established in terms of national legislation and is accountable to Parliament. As such SANParks is officially a “national public
entity”. As a national public entity SANParks already has the ability to respond to technical developments in a more flexible manner because decisions are taken by a Board, rather than by Cabinet or Parliament.

Legally the management of a national park can only be assigned to the South African National Parks or an equivalent Schedule 3A Public Entity. Therefore the functions, responsibility and management of national parks and protected areas can only be transferred to another Public Entity. 

**IMPLICATIONS OF PRIVITISATION IN TERMS OF PROPOSED CLAUSE 5**

This proposed clause is counterintuitive, dangerous and illogical. It shows indifference to the future of our National Parks and is frankly totally irresponsible. As South Africans, we need to seriously consider what the future of our parks would be should these devastating proposals move forward unchanged. Moving the national parks from the public to the private arena in this way will open them to the world of risk and to failure. South Africans will not accept this.

If Clause 5 is allowed in its present form it will unquestionably open up our national parks to what is tantamount to theft and plunder. It ignores onerous public accountability provisions and considerations. No company or trust or body should be given absolute rights over our natural resources. The protected areas are South African assets and heritage and must be protected for public purposes. This shared moral and civic heritage cannot be alienated and commodified. If this proposed amendment is allowed to go ahead it will open up the real possibility of the theft of our shared assets and civic inheritance. Protected areas need to be saved because they are precious. That is why we preserve them. We owe our children and grandchildren the opportunity to experience these heritage and wilderness areas. We will be unable to do this if we pursue

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6 In terms of Section 1 of the *Public Finance Management Act, 1999* (PFMA) a Public Entity is, “A board, commission, company, corporation, fund or other entity which is: (i) Established in terms of national legislation; (ii) Fully or substantially funded from either the National Revenue Fund or by way of tax, levy or other money imposed in terms of national legislation; and (iii) Accountable to Parliament.”
policies that place national parks in danger. These parks belong to every South African - past, present and future.

Every citizen in this nation should be troubled about this creeping shift toward private and corporate control of the management of our national parks. The shift is incremental and is motivated by the desire of powerful forces in our country to deprive public institutions of their ability to manage public resources and to deliver these resources into the hands of interests who only want to profit from their management at any cost. This extreme form of privatisation imperils and threatens our National Parks – this will not benefit our treasured national parks, will destroy our national park system and will result in the dismantling of a publicly accountable entity that is the guardian of our natural heritage and responsible for safeguarding, caring for and protecting our biodiversity.

CONCLUDING REMARKS

The assets or the proceeds of those assets of SANParks must be prohibited from being transferred or disposed of to a non-state body even if it has objects similar to those of the South African National Parks and which is itself exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962). Also of concern is that the words and meaning of “objects similar” are alarmingly vague and unclear and further open the clause to abuse.

Clause 5: “Upon its winding-up or dissolution of the South African National Parks must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to some other institution, board or body with objects similar to those of the South African National Parks and which is itself exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).”

Must be replaced with:

“Upon its winding-up or dissolution of the South African National Parks must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to an equivalent Schedule 3A Public Entity which has the same objectives as SANParks.”