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The Director-General: Department of Forestry, Fisheries and the Environment

Attention: Magdel Boshoff

By Email: biodiversitybill@dffe.gov.za

Biowatch South Africa Comments on the Draft National Environmental Management: Biodiversity Bill, 2024

Thank you for the opportunity to provide input on the **Draft National Environmental Management:
Biodiversity Bill, 2024**.

Biowatch South Africa supports the submission made by the group of scholars affiliated with the DSI/NRF Bio-economy SARChI Research Chair in the Department of Environmental and Geographical Science at the University of Cape Town.

Further to this, our submission follows below and consists of:

1. Introduction to Biowatch South Africa
2. Additional comments on the Draft Biodiversity Bill
 - 2.1 Definitions
 - 2.2 Objectives of Act
 - 2.3 Well-being of animals
 - 2.4 GMOs
 - 2.5 Prior informed consultation...
 - 2.6 Public participation
 - 2.7 Penalties

Yours sincerely

Rose Williams
Director

1. Biowatch South Africa

Biowatch is a non-governmental organisation established in 1999, which strives for social and environmental justice within the context of food sovereignty. Biowatch works to challenge unsustainable agricultural practices and to advocate for agroecology as an ecologically viable alternative that safeguards people and land. This includes supporting smallholder farmers; working with civil society to create joint understanding and action; and constructively engaging with government in implementing policies and practices that promote, facilitate, and actively support agroecology, biodiversity, justice and Farmers' Rights. We have a long track record of working on policy issues concerning agriculture, the food system, biodiversity and indigenous knowledge systems.

2. Additional comments on the Draft National Environmental Management: Biodiversity Bill, 2024

2.1 Definitions (Section 1)

Agrobiodiversity

Although implicitly part of 'living organisms' we recommend including specific reference to the biodiversity associated with food and agriculture in the Bill, so that consequent National biodiversity strategy and action plans also include the conservation and management of South Africa's dwindling agrobiodiversity.

Agrobiodiversity could be included in the Definitions (Section 1) as well as an additional Objective of the Act (Section 2):

Additional definition: **"Agrobiodiversity"**

includes all components of biological diversity of relevance to food and agriculture, and all components of biological diversity that constitute the agricultural ecosystems, also named agro-ecosystems: the variety and variability of animals, plants and micro-organisms, at the genetic, species and ecosystem levels, which are necessary to sustain key functions of the agro-ecosystem, its structure and processes (CBD COP decision V/5).

2.2 Objectives of the Act (Section 2)

Additional objective: provide for the conservation and sustainable use of agrobiodiversity and associated traditional knowledge with due care, including facilitating cultural practices.

2.3 Well-being of animals (Section 37 (c))

We support the inclusion throughout the Bill of the provision of measures to support animal well-being and their humane treatment.

In Biodiversity management plans: *Section 37 (c)* to 'promote well-being and humane practices, actions, and activities towards wild animals' should also be extended to individuals from usually wild species that are being kept as pets or in captivity.

2.4 Genetically modified organisms (Section 49)

We note the ongoing responsibility of SANBI in Section 8 (b) that it “must monitor and assess the status and trends in biological invasions and the environmental impacts of all categories of genetically modified organisms, and may assess the status and trends related to other threats and pressures on biodiversity.” To do this effectively SANBI must have access to relevant information and resources. Furthermore, this clause should include impacts on agrobiodiversity and not be limited to impacts on wild species.

With regard to environmental impact assessments for the release of GMOs in our environment, we are very concerned about the circular responsibilities created between the Bill and other legislation related to GMOs.

For example, Section 49 (2) of the Bill requires the Minister of Environment to notify the GMO Council of the need to “(a) apply for an environmental authorisation in terms of the National Environmental Management Act; or (b) undertake any other environmental assessment as may be prescribed.” However, in the 2010 Regulations to the Genetically Modified Organisms Act (2006) the GMO Council should make representation to the Minister of Environment on whether an Environmental Impact Assessment is required.

The Biodiversity Bill also omits to define the conditions that would trigger the need for an environmental assessment for a GMO, as does the GMO Act and Regulations.

This is likely to default to the onus resting on the GMO Council, which has included members with a bias towards the promotion of GMOs rather than a precautionary approach to safeguarding biodiversity. The need for the Biodiversity Bill to take a strong lead in safeguarding our environment and ensuring the provisions of the CBD regarding GMOs are upheld is more urgent than ever with the emergence of new biotechnologies, such as gene drive organisms and many others.

2.5 Prior informed consultation... (Section 52)

We very much support the inclusion of Free Prior Informed Consent procedures regarding the use of biodiversity and traditional knowledge.

A caveat to our support of the submission of the DSI/NRF Bio-economy SARChI Research Chair in the Department of Environmental and Geographical Science at the University of Cape Town, regarding ‘Discovery research’ in Section 52, we recognise that the procedures may be cumbersome for public interest research, especially in the discovery phase. However, we also recognise that the research community are not necessarily located in Academic research institutions, but may also come from the private sector. We therefore suggest that the permitting process outlined in Section 52 should be considered for the Discovery Phase research unless it can be shown by the applicant that these measures have been addressed through an equivalent ethics process at a recognised academic institution.

2.6 Public participation (Section 68)

We are concerned with the weakening of the provisions for public participation in the Bill, compared to the NEMBA (2004). For example, provisions 100 2 (b), 3 and 4 of NEMBA should be considered for re-inclusion.

With respect to the intent of the Bill to “provide for the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources and protecting indigenous knowledge”, there should be greater access to notices about permits allowing bioprospecting and use of resources by potentially affected communities as well as the greater public.

Although the requirements around free prior informed consent and agreements from the resource ‘owners’ and knowledge holders have been strengthened, this relies on the users of the resource to follow due process. The public should be able to scrutinise the details about the permits issued (and any conditions), as well as the applications lodged for new permits in a central online portal on the Department website so that one is able to respond with comments and objections timeously and in the public interest.

This is relevant for applications which may intentionally or unintentionally circumvent the ‘Prior informed consultation and consent process’ with a specific knowledge holding community, as may happen, for example, where the applicant is bioprospecting on their own land (Section 5 (2. b.v.2)). Or where the authority of ‘the person giving access’ to a resource is contested, or not acknowledged by all parts of the community using the resources or holding traditional knowledge about it or where it is not possible to adequately consult where the knowledge and use of a resource may be widespread over a geographical area.

2.7 Penalties (Section 72)

As has been noted by UCT, that the requirement for a Biotrade agreement (Section 56) from the Minister may adversely affect informal traders and pickers and trap them into an inaccessible bureaucratic environment. Furthermore, we are concerned about the penalties then described in Section 72 (2) which says that a person is convicted of an offence “involving a specimen of a listed species, listed ecosystem, a species managed in terms of section 41 (1) or 45 (3), or an alien species” that they can be fined for the higher amount between “a fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years” or the “three times the commercial value of the specimen or activity”. Some consideration and guidance needs to be given to the penalties inflicted on traditional knowledge holders who are often caught in the cross-hairs of the law because they can’t afford permits or marginalised communities exploited by poaching rings and the kingpins in this trade.