



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA



TERMS OF REFERENCE FOR A SOLICITED WRC PROJECT

THEME	Water Advisory
TITLE	Analysis of factors influencing the successful conviction and sentencing of water-related criminal offenders
TOR NUMBER	

Rationale

Water pollution, illegal abstraction and other offences under the National Water Act (NWA) not only have broader environmental and social impacts, but also strain regulatory, prosecutorial and judicial capacities. Obtaining appropriate convictions and sentences for such offences in South Africa faces multiple challenges, including prolonged prosecution timelines, low conviction rates, capacity constraints and insufficient sentences that fail to act as deterrents. The investigation, prosecution and adjudication of offences under the NWA, the National Environmental Management Act (NEMA) and associated legislation frequently require specialised knowledge that the respective authorities may lack, leading to inconsistent outcomes.

Robust criminal investigation, prosecution and conviction of offenders under the NWA is critical to elevate the seriousness of these types of offences to the level of other statutory and common law offences in South Africa. It highlights the fact that certain water and environmental offences should be considered as “crimes” as they pose a significant threat to the country’s natural resource base, which constitutes the foundation for human well-being and socio-economic development. In addition, the imposition of appropriate sentences provides a deterrent to would-be offenders, thereby amplifying the effects of the conviction.

Data from the Department of Water and Sanitation (DWS), the Department of Forestry, Fisheries and the Environment (DFFE), and the National Prosecuting Authority (NPA) indicate that only a small percentage of initiated criminal enforcement actions result in successful convictions. Factors that have been suggested as contributing to this outcome include challenges in collecting evidence, the complexity of proving environmental harm in court, the need for expert testimony, and prosecutorial and judicial familiarity with water and environmental law. The average time from investigations commencing to finalised prosecution is

a further area of concern. Many environmental cases stall before prosecution, are not prosecuted or are dismissed due to procedural weaknesses. These challenges span the investigative, prosecutorial and adjudication phases of the criminal justice cycle, with different role-players being responsible for leading the execution of each of these phases.

Failure to consistently apply the Polluter Pays Principle undermines the ability to hold offenders financially responsible and accountable. This results in diminishing incentives for compliance, and the social and environmental costs of non-compliance being shifted onto the public. There is ongoing concern as to whether plea and sentence agreements effectively address non-compliance and associated harm, or whether they may undermine deterrence and accountability.

These terms of reference set out the framework for a research study to support improved compliance with and enforcement of the NWA. This will involve critically examining the factors that influence the investigation, prosecution and adjudication (including sentencing) of offences under the NWA and water-related offences under NEMA (particularly those under section 24G). It is expected that the collection of primary data will include review of relevant documents and databases, as well as direct interactions with key actors involved in the investigation, prosecution and adjudication stages. Drawing on this analysis, the study will formulate evidence-based solutions that respond to the identified driving forces and give effect to the rights enshrined in the Constitution, as well as the principles underpinning the NWA, social justice and integrated environmental management.

Central to this initiative is reinforcing the Polluter Pays Principle, ensuring that those responsible for illegal activities bear the full costs of remediation and penalties, thereby promoting accountability and deterrence. It is recognised that criminal prosecution is not the only enforcement mechanism and must be considered alongside administrative and civil remedies. This study, however, focuses specifically on the criminal route, with cross-reference where relevant to other enforcement tools.

Objectives

General

Develop evidence-based solutions to address impediments to the successful investigation, prosecution and adjudication (including sentencing) of offences under the NWA and water-related cases under NEMA.

Specific

1. Identify and critically examine factors that influence the investigation, prosecution and adjudication (including sentencing) and case attrition in criminal matters under the NWA and water-related offences under NEMA.
2. Calculate the success rate of criminal dockets handed to the NPA that result in convictions and identify the key factors contributing to successful outcomes in these cases.

3. Assess the average time taken to conclude the investigation, prosecution and adjudication phases of cases under the NWA and NEMA.
4. Assess the extent to which sentences handed down, both through full trial outcomes and plea and sentence agreements, adequately reflect the cost of the loss, harm and damage incurred, including consideration of both economic valuation and legal proportionality and the Polluter Pays Principle.
5. Propose a set of priority solutions, along with practical implementation plans, for addressing the identified factors influencing investigation, prosecution and adjudication success of criminal enforcement under the NWA and NEMA.

Deliverables

The following deliverables are indicative and may be tailored to suit the proposed approach:

1. Inception report, including detailed project work plan and methodology
2. Report on factors influencing investigation, prosecution, adjudication and case attrition with preliminary findings and proposed solutions
3. Draft implementation plans for prioritised solutions
4. Final report covering all aspects researched as per specific objectives

Notes

1. Proposals must be submitted online via the WRC [Business Management System](#) (BMS). A user guide to BMS is available [here](#). For technical queries regarding BMS, contact bms-support@wrc.org.za. Closing date for submission of proposals is 15:00 on 15 August 2025.
2. Prior to capturing a proposal on BMS, proposers should familiarise themselves with the [guidelines for submission of research proposals](#). Please take note of the section in the guidelines on budgeting.
3. Addressing this scope of work requires a diverse range of skills and experience. A multidisciplinary project team is required with experience and expertise that reflects the necessary legal, financial, technical and other expertise on water and environmental law, including investigation, prosecution and enforcement. Proposals must include the details of all team members, their experience and expertise relevant to this assignment and their role in the project.
4. Contact person for enquiries on these terms of reference: John Dini (johnd@wrc.org.za)

Time Frame:

Planned project start date: 1 April 2026

Duration: 12 months

Total Funds Available:

R1,000,000 including VAT