



To: **Center for Environmental Rights**
Per email: aagjee@cer.org.za

And To: **Endangered Wildlife Trust**

1 February 2018

RE: COMMENTS ON “THE WELL-BEING OF SOUTH AFRICAN WILDLIFE: INITIAL REVIEW OF THE LEGAL AND PRACTICAL REGULATION OF THE WELFARE OF WILD ANIMALS IN SOUTH AFRICA 2017” (the “Document”)

Dear Ms. Aagjee

Thank you for including Animal Law Reform South Africa in this initiative regarding the reform of animal wildlife laws in South Africa. We are extremely happy to see an acknowledgement by groups such as yourselves that the current legislative framework insofar as it relates to animals is insufficient and a move to improve these, and in particular, the welfare provisions.

We agree that there are numerous issues with the provisions currently in place as well as the enforcement thereof. Additionally, the current classification of animals as property means that they are often left without the protection they deserve, and this has been exploited in various ways. The importance of wild animals to South Africa cannot be over emphasized and accordingly it is imperative that we defend and protect them. Not only do animals have their own intrinsic value, they have so much value to humans and to the South African population as a whole (commercial value aside).

We believe that it is long overdue to improve the laws relating to wild animals, as well as the enforcement of such laws and ensuring accountability by the relevant stakeholders.

We have set out below some of our comments on the Document as well as some additional points for your consideration.

Please note that for purposes of our comments on the Document, we have not expressed a view in relation to the use of animals (wild or other) generally as commodities; the legalization of the trade of certain animal products within South African borders; animals’ legal status as property in terms of South African law; shortcomings in terms of specific

legislation in relation to animals nor comments on any specific legislation mentioned in the Document (other than as otherwise indicated). We have focused our comments specifically on improving the legal and other aspects in providing animals with the greatest legal protection.

Any comments in relation to the Animal Protection Act of 1962 relate to the Act as it currently stands and does not include reference to the proposed amendments in the Animal Protection Amendment Bill which were released in November 2017.

Most pressing concerns facing wildlife

A number of the most pressing concerns relating to wildlife have been highlighted in the Document itself including:

- a. inarticulacy of legal mandate in respect of wild animals in South Africa and general lack of sufficient welfare provisions;
- b. inconsistency in the way the current laws are drafted and applied both at a National and Provincial level;
- c. inadequate resources in respect of the enforcement of the laws; and
- d. general commoditization of wild animals and emphasis on their property status.

We agree with all the concerns expressed in the Document and have not repeated those again herein.

Our wildlife is used for many reasons including, but not limited to, as entertainment and exhibitions (circuses, zoos/aquariums, safari and game parks), hunting (sport, canned, “conservation” and trophy) and fishing (commercial, for food and sport), for scientific research, a range of products including medicinal products, ornamental, and clothing, as well as wild animals as pets (companion animals).

The legal frameworks governing the use of such animals needs to be clear and consistent and properly enforced. This is a fundamental principle of the rule of law and the Constitution. In order for this to happen, there needs to be dedicated resources, including trained personal and directed funds. In addition, there needs to be training for the relevant persons involved, including those keeping animals as well as those enforcing the legislation as well as

Furthermore, we need to ensure protection for the most vulnerable species, such as those that are endangered and threatened and the law needs to be easily adaptable to changing circumstances.

A huge issue which needs to be addressed is that of wildlife trafficking and the involvement of South Africa in the global black market for wildlife products. Trafficking in animals is a component of trafficking in human beings and drugs, both of which are a scourge on our country. Ensuring that the illegal trade in animals is properly regulated contributes to the enforcement of all illegal trade and trafficking and will only strengthen the legal intervention to protect against human and drug trafficking. Within our borders we need to ensure we are doing all that is possible to protect our wildlife. Then, at a Government level, we need to ensure that we are working together with the relevant stakeholders in other countries to promote strategies which reduce the demand for wildlife products. If necessary, Government should enter into Executive Agreements with key countries and ensure effective enforcement.

Proposed Suggestions / Looking forward

We agree with the proposed recommendations made in the document relating to reform.

In addition, we have set out below some additional proposed suggestions which may assist with the aforementioned recommendations and deal with supplementary issues:

a. Legislative Reform:

- i. Improved legislation as a matter of priority. Ideally this should be consolidated, or at the very least easily identifiable (currently the laws are numerous and dispersed).
- ii. Uniform provisions at a national and provincial level (unless extenuating circumstances exist).
- iii. Inclusion of welfare provisions in relation to wild animals (which should be compulsory and not voluntary, and which take into account the unique needs of the specific animal). Furthermore, these provisions should regulate welfare throughout the entire life of the relevant wild animal from capture or birth (if applicable – for example in captive breeding situations), to transportation of such animal, the keeping of such animal, the training of such animal (if applicable), any method of killing such animal, etc. The welfare provisions must consider the animal's physiological, psychological and physical needs and including the Five Freedoms.
- iv. The welfare provisions should apply throughout the relevant laws dealing with wild animals (for example once promulgated, these standards should apply nationally to all animal-relevant laws).
- v. Removal/reduction of exemptions which exclude certain animals (for example there are a number of acts that exclude groups of animals such as aquatic animals which deserve as much protection as terrestrial wildlife), certain industries (including for example the hunting industry), certain groups, certain activities (such as culling) and other similar unnecessary exemptions.

b. Resources:

- i. Establishment of specialized fund to deal with wildlife issues and allocation of funds as appropriate (including as part of National Treasury's budget).
- ii. Establishment of an organization to deal effectively with wild animal laws which is funded by government and one of the aims of which must be to consider the **welfare of animals and acts in the best interest of the animals.**
- iii. A dedicated, appropriately qualified person safeguarding the interests of animals especially when used in Tourism which specifically deals with welfare considerations. Such person should be independent from any tourism, industry or other group which has a commercial interest in the animals. Such person should ensure compliance and suggest reform when necessary.
- iv. Improvement of the provisions relating to unlawful and/or cruel hunting methods (expanding the scope, harsher penalties, etc.). Whether or not a method is deemed to be cruel will be determined by the qualified person identified in paragraph iii above.

- v. In the context of limited resources, we need to take a human centric approach to animal welfare, namely that it is in the best interests of humans to have a properly allocated budget that responds to the needs of animals and humans.
 - vi. In addition to the above, it would be useful to have a dedicated forum with representatives of Government and the relevant Departments as well as well as representatives of organizations representing the interests of animals.
- c. Compliance with CITES:
- i. Permitting requirements to be strictly enforced.
 - ii. Necessary non-detriment findings to be done prior to issuing of permits.
 - iii. Automation of permitting system. (See eCITES - <https://cites.org/eng/prog/eCITES>)
- d. Better regulation of hunting:
- i. Prohibitions against use of certain technologies in relation to hunting (including drones and other motorized vehicles and equipment).
 - ii. Cruel hunting methods – of particular concern is the weaponry and technology used (for example using helicopters, drones and other similar electronic equipment).
 - iii. An outright ban on the practice of canned hunting (see notes in Document regarding KZN Conservation Bill).
- e. Banning of certain practices:
- i. For example, the use of wild animals in circuses (which has been recognized as cruel in various countries around the world - <http://www.stopcircussuffering.com/circus-bans/>).
 - ii. Banning of certain training methods (especially for exhibition purposes, including but not limited to the use of a bull hook).
 - iii. As mentioned above, banning of certain hunting practices.
- f. Prosecution:
- i. Dealing with failure to prosecute by DPP.
 - ii. Potentially including provisions relating to private prosecutions by certain organizations for wildlife crimes (in addition to NSPCA).
 - iii. Harsher punishment for wildlife crimes (including in legislation itself).
 - iv. Specialized training for prosecutors dealing with wildlife crimes.
 - v. On successful prosecution, a list of animal offenders, individuals and organizations which have been prosecuted or alternatively found to be in non-compliance with the necessary legislative provisions.
- g. Training:
- i. Permit issuers (to ensure all requirements are complied with and necessary checks are done).
 - ii. Veterinarians to undergo specialized training in relation to animal ethics and animal welfare training in relation to wild animals specifically.
 - iii. Enforcement officers (e.g. members of SAPS and other officers tasked with enforcing wildlife legislation).

- h. Jurisdictional issues:
 - i. As indicated in the Document, clarity regarding the authority and enforcement of wild animal issues, between Department of Environment Affairs and Department of Agricultural Affairs (as well as NSPCA and other organizations).
 - ii. As indicated in the Document, clarity regarding the applicable legislation and its enforcement as between the provinces and national government and identification and clarity in respect of inconsistencies.
 - iii. Ensuring accountability by the relevant stakeholders including those tasked with enforcement of the applicable legislation.
 - iv. Engaging and co-operating with neighboring countries regarding matters affecting animals such as migration issues, border control (including for wildlife trafficking), liability issues (for damage caused by wild animals) and other matters arising from wildlife (including for example, spread of diseases).

- i. TOPS Regulations:
 - i. Updating species in line with IUCN list.
 - ii. Consider similar protection for animals which may not fall into TOPS but which are importance to overall biodiversity and a healthy ecosystem.

- j. Permitting:
 - i. All breeding of wild animals to require permits (see notes regarding Free State ordinances for example which does not require a permit).

- k. Community Involvement:
 - i. As animals and wildlife are an important part of various communities, there should be community involvement in relation to the issues of wildlife management. The relevant communities should be given a voice in relation to these issues.

- l. Other:
 - i. The following additional issues, not yet mentioned herein, in relation to wildlife are extremely important and we would like to see further regulation in respect thereof:
 - 1. Wildlife trafficking.
 - 2. Prohibitions on wild animals as pets.
 - ii. Wild animal welfare is becoming increasingly important in International Law. In this regard, we refer to the EC Seals Case where the Appellate Body of the World Trade Organization considered welfare of wild animals [Appellate Body Report, European Communities Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R and WT/DS401/AB/R (May 22, 2014) [[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20Symbol=%20wt/ds400/ab/r*%20not%20rw*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20Symbol=%20wt/ds400/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)]].

- iii. We offer as a suggestion the following additional reading material which may be of assistance for further steps involved in this process:
1. Rachele Adam and Joan Schaffner, 'International Law and Wildlife Well-Being: Moving from Theory to Action' (2017) 20 Journal of International Wildlife Law & Policy 1.
 2. Michael Bowman, Peter Davies and Catherine Redgwell, Lyster's International Wildlife Law (2nd ed, Cambridge University Press 2010) ch 20
 3. Werner Scholtz, 'Killing Them Softly? Animal Welfare and the Inhumanity of Whale Killing' (2017) 20 Journal of International Wildlife Law & Policy 18
 4. Stuart Harrop, 'Climate Change, Conservation and the Place for Wild Animal Welfare in International Law' (2011) 23 Journal of Environmental Law 441
 5. Werner Scholtz, 'Injecting Compassion into International Wildlife Law: From Conservation to Protection?' (2017) 6 Transnational Environmental Law 467
 6. Katie Sykes, 'The Appeal to Science and the Appeal to Global Law' (2016) 17 EJIL 497
 7. Katie Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5 Transnational Environmental Law 55
 8. Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5 Transnational Environmental Law 9

We thank you again for this initiative which is much needed. Please do let us know if there is further scope for us to get involved, as we look forward to moving the matter along.

Yours sincerely,

Amy P. Wilson
Director
Animal Law Reform South Africa NPC
Registration Number: 2017/330930/08

[Submitted electronically and therefore unsigned]