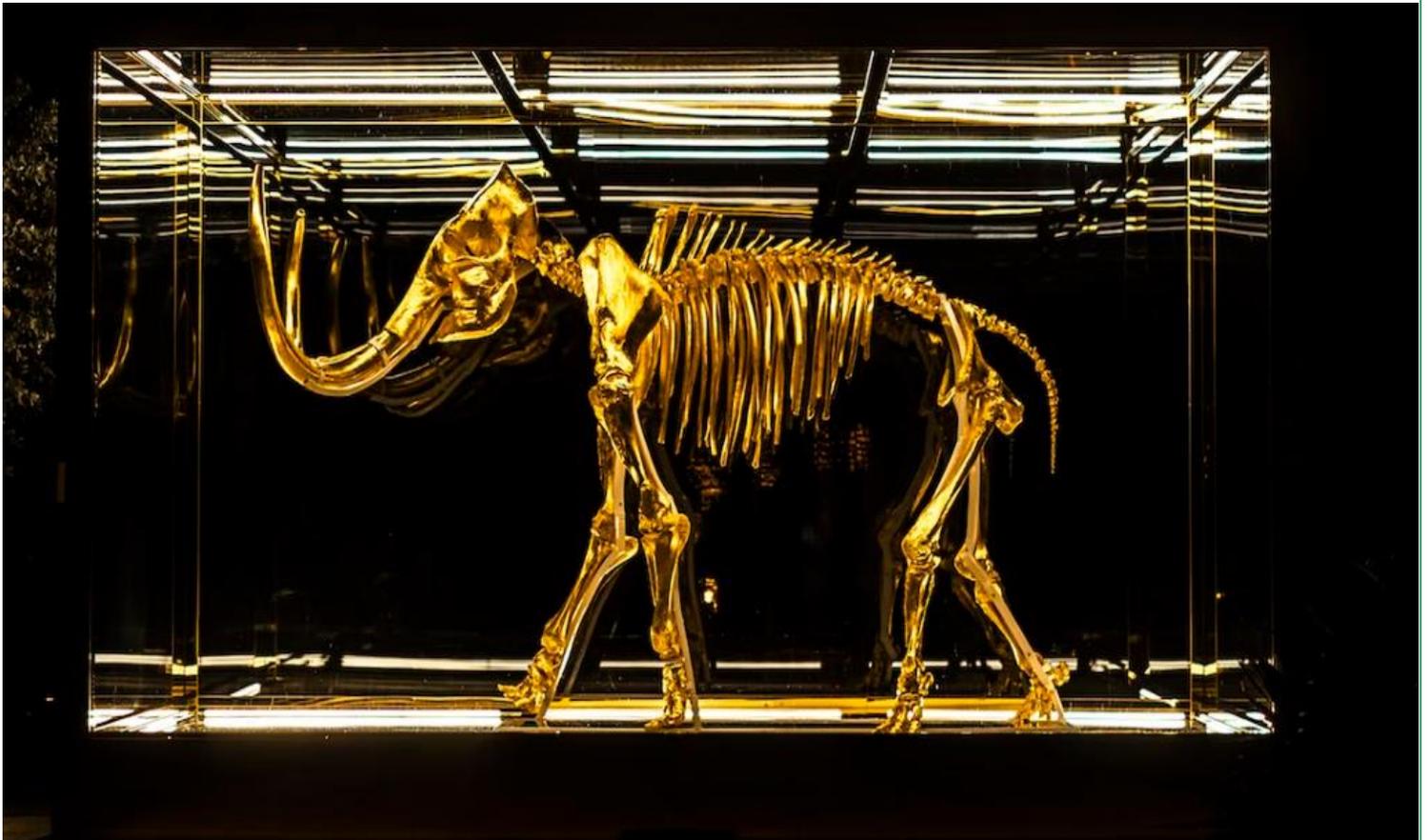




ANIMAL LAW REFORM

SOUTH AFRICA

SUBMISSION IN RESPECT OF THE REVISED DRAFT WHITE PAPER ON THE CONSERVATION AND SUSTAINABLE USE OF SOUTH AFRICA'S BIODIVERSITY



11.11.2022

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To: The Department of Forestry, Fisheries and the Environment
(hereinafter the “**Department**” or “**DFFE**”)

For the Attention of: **Revised Draft White Paper Submission**
Per e-mail: whitepaper@dffe.gov.za

11 November 2022

Dear Honourable Representatives,

RE: SUBMISSION ON THE REVISED DRAFT WHITE PAPER BY ALRSA

Submission

Please find herewith the submission (the “**Submission**”) by Animal Law Reform South Africa (“**ALRSA**”) in respect of the call for submissions published in *Government Gazette* number G 47378 – GoN 2689 of 28 October 2022 in respect of the Revised Draft White Paper on the Conservation and Sustainable Use of Biodiversity in South Africa (the “**Revised Draft White Paper**” or the “**White Paper**” with reference to the final document).

We also reference for purposes of this Submission, the call for submissions published in *Government Gazette* number G 46687 – GoN 2252 of 08 July 2022 in respect of the Draft White Paper on the Conservation and Sustainable Use of Biodiversity in South Africa (the “**Original Draft White Paper**”) and ALRSA’s Submission in respect thereof dated 26 September 2022 (the “**Original Submission**”).¹

Firstly, we strongly support and applaud the progressive elements of the Revised Draft White Paper which represent positive steps forward to protect Nature, animals and human rights, specifically the right to environment as contained in section 24 of the Constitution.

However, while there are certain aspects of the Revised Draft White Paper which are important and welcomed, we note that it is a serious regression from the Original Draft White Paper published in July 2022. In many respects, it appears to be an extremely watered-down version of many potential progressive inclusions and without the explicit incorporation of such inclusions, it cannot hope to achieve the impact statement of “Thriving People and Nature”.

Many inclusions reflect the problematic “old regime approach” to the environment and animals, which includes promoting economic interests in the name of “development” and “use” and treating Nature and animals as mere resources, property and commodities. This fails to recognise both societal and

¹ Accessible here: <https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-White-Paper-Submission-Updated.pdf>

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legal developments which recognise their intrinsic value as individual entities. Such approach can neither be considered to be sustainable nor considered as conservation. The wording of section 24 explicitly requires that any use and development be “ecologically sustainable”, and furthermore, such right needs to be read in light of the remainder of the wording right and with reference to recent developments.

These and other factors which we have elaborated on in this Submission as well as our Original Submission, are not properly reflected in the Revised Draft White Paper. As such, the reflection of this “old regime” and regressive steps are inconsistent with the government’s obligations in terms of section 24. Most notably, these include removal of “intrinsic value” as a guiding principle as well as provisions relating to animal sentience, wellbeing and welfare.

This Submission consists of 57 pages in total and 3 (three) Parts:

1. Part I: Overarching Comments, Concerns and Objections;
2. Part II: Selected and More Specific Objections to, Comments and Proposals on and Issues with the Revised Draft White Paper on the Conservation and Sustainable Use of South Africa’s Biodiversity; and
3. Part III: Additional Comments.

This Submission is non-exhaustive and does not represent all of our comments, responses or objections to the issues covered by the Revised Draft White Paper and matters raised herein. We reserve the right to provide any further or additional information on aspects raised herein or in respect of this Submission and related subjects.

Organisational Background and Declaration of Interest

This Submission is by Animal Law Reform South Africa (“**ALRSA**”)², a non-profit company (Registration Number 2017/330930/08) and a registered NPO (Number 238-234 NPO). We have a substantial interest in the issues raised by the Revised Draft White Paper and other matters within the mandate of the Department. We have, for years, consistently expressed interest in these issues to DFFE, other government departments, NGOs, the South African public and other stakeholders – both privately and within the public domain.

We have furthermore requested engagement with and feedback from the relevant authorities in respect thereof. We have provided various formal submissions, sent letters, emails, and other correspondence, attended presentations and meetings, and otherwise engaged on these matters (where such engagement has been possible). We are interested stakeholders and representatives of vulnerable populations within South Africa, including humans as well as nonhumans – such as animals and natural entities. We have, within our core focus, concepts of social justice and appreciate the need for intersectionality in our approach.

² Animal Law Reform South Africa Website: <https://www.animallawreform.org/>

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ALRSA is composed of compassionate legal professionals and envisages a society and legal system that adequately protects humans, nonhuman animals and the environment. We work on connecting three core focus areas: Animal well-being, Social Justice, and Law. We focus on a few key areas that we believe will bring about the most change. These focus areas include: Legislative and Policy Reform; Litigation and Legal Services and Education and Research.

Endorsements

We wish to endorse the Submissions on the Revised Draft White Paper made by:

- i. South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”), a centre of the University of Johannesburg; dated 11 November 2022; and
- ii. The EMS Foundation and the Wild Law Institute; dated 11 November 2022 including their specific comments on the Revised Draft White Paper,

and incorporate specific suggestions and proposals made in such submissions herein, to the extent that these are not in conflict with our Submission and can be read collaboratively with one another.

Procedural

From a procedural perspective, we wish to reiterate that the time allotted to provide submissions to the Department in respect of the Revised Draft White Paper of 14 days from date of publication is unreasonable and irrational. In particular, it does not provide for a reasonable opportunity to engage critically with a document as significant and important as the Revised Draft White Paper. This is particularly so given the significant amendments since the Original Draft White Paper including major removals of significant aspects in relation to intrinsic value and animal welfare, among others. As such, we request that the Department provide reasons as to why such a significant amended version was provided for public comment and such a short period of time for this Revised Draft White Paper.

Context

At this time, globally, COP27 has taken centre stage, with countries put under a microscope in respect of efforts in relation to climate change. President Cyril Ramaphosa has expressly stated that countries, including South Africa, need to act to address global threats and comply with their international obligations. Biodiversity loss and mass extinction of species represent serious global threats and South Africa must step up to the plate to meet the challenges. The Department must not take backward steps to protect our environment and national heritage, we need to look forward to progressive approaches and take swift, immediate and effective action. The Department has an opportunity to change the problematic paradigm which has dominated our thinking and actions. We hope that you will act accordingly.

We look forward to receiving a response to our Submission and are available to engage on any queries, comments, concerns which you may have in respect of the Submission.

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We welcome the opportunity to make such Submission and look forward to it being properly considered by the Department more broadly. We are also available to engage on any queries or specific input you may require from us.

Kindly confirm receipt of this Submission and address further correspondence to the email address: amywilson@animallawreform.org.

Yours sincerely,



Amy P. Wilson
BCom, LLB, LLM
Executive Director, Co-Founder
Animal Law Reform South Africa
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PART I:

Overarching Comments, Concerns and Objections

This is the submission of Animal Law Reform South Africa (“ALRSA”) in respect of the Revised Draft White Paper; however, it is non-exhaustive. Accordingly, omission to include a comment on a specific item in the Revised Draft White Paper neither constitutes an acceptance or objection in respect thereof. We reserve the right to provide any further or additional information on aspects raised herein or in respect of this submission and related subjects.

I. PROCEDURAL: UNREASONABLE, IRRATIONAL TIMELINE

The time allotted to provide comments and submissions in respect of the Revised Draft White Paper of 14 days by the Department is unreasonable and irrational. It does not provide sufficient time to critically engage with the Revised Draft White Paper and particularly given the vast changes and various removals of significant aspects, including but not limited to, the removal of progressive provisions such as intrinsic value, and animal welfare. Such time period does it allow for meaningful engagement in respect of these changes.

We wish to note that we requested an extension from the Department in terms of an email dated, 2 November 2022, however while our request was acknowledged, it was not confirmed. Despite this, we present our initial and non-exhaustive Submission in respect to what we believe are important issues, gaps, shortfalls, and relevant considerations in respect of the Revised Draft White Paper.

2. PROCEDURAL: CLARIFICATION SOUGHT FROM AND REQUESTS TO THE DEPARTMENT

The Revised Draft White Paper represents a significant change and regression, from the Original Draft White Paper released for public comment on 08 July 2022.³ As mentioned above, significant removals of important concepts such as intrinsic value and other inclusions of animal related concepts have been made or included in a watered-down manner in the Revised Draft White Paper or have been included in a tokenistic manner.

We hereby request that the Department provide reasons as to why such a significant amended version was provided for public comment and such a short period of time for this Revised Draft White Paper.

³ <https://www.gov.za/documents/south-africa%E2%80%99s-biodiversity-2022-consultation-draft-white-paper-conservation-and>

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We further request that the Department provide their Record of Decision in respect of the Original Draft White Paper to the Revised Draft White Paper.

3. PROCEDURAL: REITERATION OF OUR PREVIOUS SUBMISSION

While we have not been able to reiterate and include all of the comments from our Original Submission for purposes of this Submission,⁴ many of them remain valid and we believe should be properly engaged with. This includes providing responses and reasoning for failure to include these in the Revised Draft White Paper.

As such, we further wish to reiterate our position and comments from our Original Submission which has not been included in its entirety herein. Although we provided comments on the Original White Paper, it took a more progressive approach including towards Nature, and animals as well as included to some extent the Constitutional Court rulings in respect of animals, their welfare and well-being, among other issues.

4. SUBSTANTIVE: GENERAL ISSUES OF OLD REGIME AND PURELY ECONOMIC INTERESTS AND MISINTERPRETATIONS AND PROBLEMATIC EMPHASIS ON ‘DEVELOPMENT’ AND ‘USE’

Despite statements of the Department that the White Paper is a “New Deal”, we do not believe the Revised Draft White Paper adequately reflects this, nor do we believe that it achieves “Thriving People and Nature” as currently construed. It now fails to be the promising ground-breaking document with the Original Draft White Paper being closer to and continuing to view Nature and animals as resources for exploitation and use in the name of development.

The Revised Draft White Paper is more reflective of the “old regime” in relation to conservation focusing on an economic perspective of cost/benefit without adequately considering other values or perspectives and justifying exploitation which is not justifiable. It further fails to consider or promote alternatives to such as regime. Accordingly, it does not envisage a truly transformative paradigm which conserves and protects the environment, animals and biodiversity for their own interests and for both present and future generations. It does also not adequately consider future generations and the rights they are guaranteed in terms of section 24.

For too long, there has been a reliance on this “old regime” which is an exploitative and extractive model based on colonial and other westernised ideologies which has benefited very few at the expense of many and which has compromised and infringed on the guaranteed constitutional rights of South

⁴ Accessible here: <https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-White-Paper-Submission-Updated.pdf> and which included additional endorsement of submissions referenced therein.

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Africans, under the guise of conservation and while promoting a limited understanding of property rights at the expense of others. As acknowledged, this problematic model needs to come to an end to ensure the protection of our shared heritage and to secure the rights of present and future generations. There are still numerous instances where the current and problematic “old regime” is evident, and misinterpretations of terms such as “sustainable use” appear in the document and other inconsistencies and conflicts. These can lead to misinterpretation and uncertainty. This is clearly illustrated through a failure to utilise the constitutional wording “ecologically sustainable use” and “ecologically sustainable development” throughout.

It is submitted that such “old regime” provisions and references must be removed or appropriately amended, and the document should be tested against some of the progressive and positive changes and the overall vision and mission.

This anthropocentric thinking is encapsulated in an early White Paper of the Department on the Conservation and Sustainable Use of South Africa’s Biological Diversity, which informs the current Draft White Paper. For example, when speaking of the benefits of conserving biodiversity in a variety of ways, the emphasis is on a range of economic benefits to be gained from ‘biodiversity’: after listing these, the White Paper states:

If such resources are not adequately conserved, we run the risk of losing the economic benefits gleaned from their use, and of foreclosing options for their use for future generations’.

The anthropocentric view of conservation and sustainable use to the benefit of humans to the exclusion of the intrinsic value, welfare and well-being, and sentience of animals and biodiversity as a whole is apparent throughout the Revised Draft White Paper.

Currently framed, it allows economic interests to trump other factors and doesn’t properly allow for a weighting of different rights and interests and different interpretation. Economic Incentives and Development cannot be prioritised at the expense of the Environment as no other rights in the Constitution, including to livelihoods can exist without an environment on which one can exist.⁵

As included in the recent case of *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55 (1 September 2022)⁶ which referenced *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others*:

⁵ <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> and <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>

⁶ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55 (1 September 2022) <https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html>

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‘... [D]evelopment cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment. Yet the environment cannot be protected if development does not pay attention to the costs of environmental destruction. The environment and development are thus inexorably linked.’

Similar sentiments can be applied in the context of “use” and the provisions of the Revised Draft White Paper. Economic incentives and property rights cannot merely trump all other stakeholders, interests, and rights, particularly in the pursuit of achieving the environmental rights, other constitutional rights, and social and inclusive justice. Other provisions, such as in the problem statement where reference is made to biodiversity in the context of GDP, is problematic and the use of certain terminology (elaborated on in Part III).

Furthermore, there needs to be consideration given to externalised costs. Adequate consideration to different weightings of rights and interests of all stakeholders involved are required to be taken into account, specifically in relation to decision-making and implementation of the White Paper. Similarly, additional focus is required in respect of “alternatives” to the current paradigm as well as less harmful means of achieving goals. Methods which are regenerative should be promoted as far as possible to repair tremendous damage which has been done. Additionally, the concepts of “value” need to be properly considered which are not merely economic. This must be done beyond mere tokenistic inclusion of concepts such as intrinsic value and felt throughout this White Paper.

We propose that the express inclusion of the following be addressed in the Final version of the White Paper:

- 1.1. Externalised costs
- 1.2. Adequate consideration to different weightings of rights and interests of all stakeholders involved including proportionality
- 1.3. Focus on “alternatives” to the current paradigm as well as less harmful means of achieving goals
- 1.4. Methods which are regenerative should be promoted as far as possible to repair tremendous damage which has been done
- 1.5. Concepts of “value” need to be **properly integrated** throughout the Draft White Paper which are not merely economic. This must include the intrinsic value of Nature and animals as individuals as well as other important valuations
- 1.6. Ecological criteria take place over economic criteria in respect of decision—making and implementation
- 1.7. Economic criteria are only one aspect of the calculation and due regard should be placed on the ecological criteria.

Statements to be deleted or amended for example: *“ecologically sustainable use of components of biodiversity drives socio-economic growth, and national GDP”*. This could be amended to rather indicate that other

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constitutional rights may be achieved through due care and respect for Nature including but not limited to livelihoods and development.

Wording from the environmental right should be utilised where possible over purely economic framing and where economic framing is utilised, care should be given to incorporate the environmental component and the interlinked animal welfare and progressive realisation of the environmental right. **Most notably, when socio-economic development is mentioned throughout the White Paper, reference should be included to environmental protection / the protection of Nature.**

5. SUBSTANTIVE: EXCLUSION TO BE INCLUDED: INTRINSIC VALUE OF NATURE AND ANIMALS

Importantly, as an overarching policy document relating to conservation and sustainable use in the country, the Revised Draft White Paper must expressly recognise the intrinsic value of Nature as a basis for conservation and biodiversity protection. Similarly, and in line with Constitutional and other Court rulings (including the 2016 NSPCA Case)⁷, the intrinsic value of animals as individuals must be expressly included. These out of necessity must be included as a Guiding Principle in the White Paper as well as clearly articulated throughout the White Paper as appropriate.

“Intrinsic value” is the value that an entity possesses of itself, for itself, regardless of the interest or utility of others. Intrinsic value of individual organisms manifests itself into distinct, albeit related forms, namely, good-of-its-on and a good-of-its kind.⁸ It is alarming to note that although expressly included and mentioned in this White Paper, the intrinsic value of biodiversity is not supported with actionable provisions, nor expressly recognised as an attainable goal for biodiversity and merely serves as a guiding principle. Although we commend its recognition, this inclusion, we submit, remains tokenistic and problematic in nature.

The Constitutional Court has recognised the importance of intrinsic value and welfare of case biodiversity. The *NSPCA case*⁹ recognised that the rationale behind protecting animal welfare has shifted from the safeguarding of the sensibilities of humans to placing intrinsic value on animals as individuals. In the *Lemthongthai case*¹⁰ it was further held that constitutional values dictate a more caring attitude towards fellow humans, animals, and the environment in general. *Lemthongthai* further

⁷ NSPCA v Minister of Justice and Constitutional Development and Another 2017 (4) BCLR 517 (CC) para 54-7.

⁸ Schaffner, Joan, Value, wild animals, and law in Scholtz, Werner, Animal Welfare, and International Environmental Law: From Conservation to Compassion (2019) at 10.

⁹ NSPCA v Minister of Justice and Constitutional Development and Another 2017 (4) BCLR 517 (CC) para 54-7.

¹⁰ S v Lemthongthai [2014] ZASCA 131 para 20.

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confirmed that animal welfare and section 24(b) of the Constitution are connected and the integrative approach linking the suffering of individual animals to conservation.¹¹

The result of these and other judgments; represents a departure from the position of the Department, which held the view that it does not have the legislative mandate to regulate matters of welfare. The White Paper presents an opportunity for the Department to be guided by and recognise the intrinsic value and welfare considerations of biodiversity beyond tokenistic inclusion.

6. SUBSTANTIVE: EXCLUSION TO BE INCLUDED: ANIMALS

The Revised Draft White Paper is currently not in alignment with Constitutional Court judgments and subsequent court judgement; and animals overtly missing from / inadequately included in key provisions throughout the White Paper.

Further to the point above regarding intrinsic value, while there are some important progressive advancements in respect of animals in the Revised Draft White Paper, most notably the recognition and definition of “animal well-being” (and we commend and support such inclusions), the Revised Draft White Paper does not go far enough in incorporating the recent transformative shift as per Constitutional Court judgments and others from the Supreme Court of Appeal as well as other High Courts. This can be cured through incorporating, expressly, such sentiments throughout the document for which we have made some proposals.

It is also important that, while both people and animals are aspects of Nature, animals be clearly distinguished as separate stakeholders. This is due to their differentiated nature from other environmental elements (for example plants, fungi and water) including due their sentient nature, capacities and other qualities which are worthy of protection and distinct from other natural entities.

These sentiments are rooted in Constitutional jurisprudence and the interpretation of human rights by the highest courts in the country and must be properly encapsulated in the Revised Draft White Paper. This is a constitutional imperative and one which falls squarely within the mandate of the Department and must be clearly articulated in the White Paper.

Another important point is that it should only be wild animals who are included and referenced – reference should be to “animals” more generally. Not only wild animals suffer and are impacted by the right to environment. The 2016 *NSPCA* Constitutional Court (“**CC**”) judgment related to domesticated animals (camels) in the expansion of the environmental right.

Further important statements from the above 2016 Constitutional Court case brought by the *NSPCA*, include reference to and incorporation of the minority *Openshaw* judgment that recognised that ‘*animals*

¹¹ Lemthongthai at para 58.

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are worthy of protection not only because of the reflection that this has on human values, but because animals are sentient beings that are capable of suffering and of experiencing pain.’

The CC also referred in the *Lemthongthai* case that stated “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general”. The CC court explained that ‘*the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value of animals as individuals.*’

The CC held animal welfare is connected with Section 24 and that the integrative approach links the suffering of individual animals to conservation and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts.

The CC held further that “[a]nimal welfare and animal conservation together reflect two intertwined values.” This case was referred to with approval in the North Gauteng High Court. The HC court coined treatment of lions in captivity an environmental issue. They stated that “[e]ven if they are ultimately bred for trophy hunting and for commercial purposes, their suffering, the conditions under which they are kept and the like remain a matter of public concern and are inextricably linked to how we instill respect for animals and the environment of which lions in captivity are an integral part of.”

The advancement of the ‘farming’ or ‘ranching’ of wild animals for non-conservation purposes is fundamentally inconsistent with the interpretation and requirements in the Constitution that use of wildlife must be ecologically sustainable and as well as the other elements of the Constitution and its interpretations.

These judgments make it clear that the DFFE has a welfare mandate and it needs to consider the welfare of animals in decision making. The promotion of the game industry is a misinterpretation of the welfare mandate and welfare is clearly missing from the document.

Animal welfare and wellbeing are critical components to biodiversity and conservation and the achievement of the Right to Environment. Accordingly, existing and future practices and actions impacting on these, need to be tested to determine whether they pass constitutional muster across all aspects of the particular right.

We welcome the inclusion and recognition of animal well-being in the Revised Draft White Paper. We understand this partially stems from the definition included into The National Environmental Management: Biodiversity Act (NEM:BA) Through the abovementioned NEM:LA to mean ‘*the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment*’.

We wish to note that the welfare of wild animals remains hugely problematic in terms of both its content and enforcement throughout the Revised Draft White Paper. Furthermore, the exclusion of

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the term as a guiding principle of the White Paper provides further gaps and loopholes in regard to implementation and enforcement of these imperative concepts.

The Department has responded to the constitutional jurisprudence about welfare being intertwined with conservation (and therefore a relevant consideration in decision-making regarding wild animals) through the further insertion of the amendment of NEM:BA section 2 with the inclusion of *‘the consideration of the well-being of animals in the management, conservation and sustainable use thereof.’*

Furthermore, the insertion of a prohibition of certain activities by providing that *‘[t]he Minister may, by notice in the Gazette and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of an animal’* indicates a more progressive approach in response to welfare considerations of animals.

It is not possible to consider the well-being of an individual animal in any meaningful way when that animal is regarded as a mere “resource”. Terminology of this nature and an anthropocentric view of animals and biodiversity is apparent throughout the Revised Draft White Paper under the guise of conservation and sustainable use. This remains insufficient in consideration of the importance of animal welfare considerations as a response to Constitutional jurisprudence. We propose that the terminology and language used in relation to animals and nature be revised in a more holistic manner. **We therefore propose that “animal sentience, welfare and well-being” be included as Guiding Principles of the White Paper.**

7. SUBSTANTIVE: INTEGRATIVE APPROACH

While we applaud the reference of the integrative approach within the Revised Draft White Paper, the current incorporation appears to misinterpret the original intention as per the work of Professor David Bilchitz.¹²

We propose that a definition of the “integrative approach” be included as a Guiding Principle in the White Paper with reference to the work of Professor David Bilchitz who coined the term, and which has been subsequently adopted by the Constitutional Court. We have also made additional comments in this regard in Part II.

8. SUBSTANTIVE: UBUNTU

We applaud the important inclusion of “Ubuntu” as a concept in the Revised Draft White Paper and one which is critical in carving an inclusive and localised approach going forward.

¹² D Bilchitz ‘Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals’ (2017) South African Law Journal

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While we appreciate this is a difficult concept to define and incorporate, we have made some proposals to assist with given effect to an interpretation of Ubuntu and to assist with the operationalisation thereof. We commend the inclusion of consolidating the human, natural, and spiritual tripartite.

Increasingly, academics are arguing that the notion of ‘ubuntu’ is not confined to relations amongst the human species but characterises a relationship of respect also with the environment in which people live – which includes the relationships with animals.¹³

Furthermore, the courts have advanced the idea of Ubuntu, for example in the case of *King N.O. and Others v De Jager and Others* (2021)¹⁴

“At the heart of ubuntu is the idea that a society based on human dignity must take care of its most vulnerable members and leave no one behind. It emphasises the adage that none of us are free until all of us are free.” (Emphasis added)

Regarding the interpretation of the concept of Ubuntu, we propose also that the term ‘ukama’ should be included in the understanding and interpretation of ubuntu as a guiding principle in the Draft White Paper. Ukama is a broader understanding of ubuntu and is connected to relatedness – that everything in the universe is connected, including nonhuman animals. Ubuntu has been argued to be the concrete form Ukama in the sense that human interrelationship within society is a microcosm of the relationality within the universe.¹⁵

Ubuntu can contribute to an ongoing discourse in environmental philosophy and policy enactment in relation to our moral obligations to non-humans.

The Revised Draft White Paper be revised in alignment with this understanding of Ubuntu throughout its vision, mission, goals, enablers, and subsequent implementation of this policy. Furthermore, the term “Ubuntu” be listed as a guiding principle as done in the Draft White Paper, bearing the abovementioned understanding of the concept in mind. We have also made additional comments in this regard in Part II.

¹³ Mogobe B Ramose ‘Ecology Through Ubuntu’ in Munyaradzi Felix Murove (ed). African Ethics: An Anthology of Comparative and Applied Ethics (2009) at 308-314 and Danford Tafadzwa Chibvongodze ‘Ubuntu is not only about the human! An analysis of the role of African Philosophy and Ethics in Environment Management’ (2016) Journal of Human Ecology 157-158.

¹⁴ *King N.O. and Others v De Jager and Others* (CCT 315/18) [2021] ZACC 4; 2021 (5) BCLR 449 (CC); 2021 (4) SA 1 (CC) (19 February 2021) at para 237.

¹⁵ Murove MF 2009. An African environmental ethic based on the concepts of ukama and ubuntu. In: MF Murove (Ed.): African Ethics: An Anthology of Comparative and Applied Ethics. Pietermaritzburg: University of Kwazulu-Natal Press, pp. 315-331 at 316. See also Swemmer, Sheena An Ubuntu approach to the realisation of animal rights under the South African Constitution July 2022 DOI: 10.13140/RG.2.2.25091.78888

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9. SUBSTANTIVE: TRANSFORMATIVE CONSTITUTIONALISM

We submit that the Revised Draft White Paper takes due consideration and application of the concept of “transformative constitutionalism” that the Constitution in South Africa was not designed simply to entrench the status quo: rather, it was enacted for the purpose of fundamentally transforming society.

More specifically, we refer to the work of Professor David Bilchitz in this regard¹⁶ which asks a critical question as to whether transformative constitutionalism requires the recognition of animal rights as well as the work of Professor Melanie Murcott.¹⁷

Furthermore, the environmental right should, in our view, be understood to include a consideration of the intrinsic value, worth, and rights of nature and nonhuman animals; a broad consideration of the term “conservation” which would include all animals’ well-being and not simply that of humans; and one which would ensure the benefit of this understanding for future generations (rather than simply ensuring that wild animal populations are at a certain level due to practices such as intensive breeding). We have also made additional comments in this regard in Part II.

The “New Deal” envisioned by the Draft White Paper approach should consider the welfare of non-human animals (and nature more generally) as of great importance and seek to avoid egregious abuse and cruelty.

All around the world, countries are starting to change their approach towards animals, as well as the environment more generally. This has been recognised through developing jurisprudence, court decisions, policy and legislative considerations. South Africa has the opportunity to lead the way in this regard in this Revised Draft White Paper.

10. SUBSTANTIVE: PROBLEMATIC DEFINITION: HUMANE

Please note that we have made proposals on specific definitions in Part II hereof and have only dealt in this section with the new definition of “humane” which we believe to be problematic as included in the Revised Draft White Paper. Please refer to Part II for further comments on definitions.

In the Revised Draft White Paper, the term “humane” is defined as:

¹⁶ Bilchitz, David. 2009. “Does Transformative Constitutionalism Require the Recognition of Animal Rights?” Southern African Public Law 25(2): 267-300. Retrieved September 10, 2019 (<https://ssrn.com/abstract=1872936>).

¹⁷ Transformative Environmental Constitutionalism’s Response to the Setting Aside of South Africa’s Moratorium on Rhino Horn Trade. Humanities 2017, 6, 84. <https://doi.org/10.3390/h6040084>;

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“Any activities, methods, or actions involving wild animals that avoid or minimise undue pain, stress, suffering, or distress, and promote their well-being.”

The word “humane”, although used in documents by several international organisations (such as the World Organisation for Animal Health (“**WOAH**”), formerly the OIE and the United Nations Food & Agricultural Organisation “**FAO**”) also appears without being specifically or properly defined. The term “humane” has a long history in the English language but today it is poorly defined, has multiple and conflicting definitions and is therefore used subjectively. There is no scientific or ethical consensus on this nebulous and confusing term. Similar to the old regime interpretation of “sustainable use” it has led to abuse, and if a problematic definition is to be included, this term should rather be avoided. It similarly largely condones practices which are inherently problematic and create oxymoronic statements - such as humane slaughter.

Consistent with the Constitution, the notion should rather reference **intrinsic value/worth**. In many instances, particularly where humans have control over animals, they also have positive duties to ensure animals can live decent lives by their own rights and flourish. The duty is not just to do no harm to them, but it is to also help them to flourish. So individual animals must be treated with respect for their intrinsic worth, and in a way that does not compromise their well-being, and in a way which actively promotes their flourishing.

Furthermore, the current definition as contained in the Revised Draft White Paper is problematic in other respects as it can lead to abuse – such as the use of the words “avoid or minimise”. The first of this is the incorrectly applied NEMA principle. As per s2(4)(a)(i) of NEMA, “sustainable development requires the consideration of all relevant factors including that the disturbance of ecosystems and loss of biological diversity **are avoided or, where they cannot be altogether avoided, are minimised and remedied**”. This must be applied correctly **with the use of the same wording**, as prescribed by NEMA.

In addition to this, this definition contains the term “undue” however provides no threshold, definition or standard of measure. It is further exacerbated by the option seemingly provided by the current definition of “avoid or minimise”. This is highly problematic and in contradiction with Constitutional Jurisprudence in respect of the link between animal welfare and the environmental right. It also can lead to problematic interpretations as similar to the use of “unnecessary suffering” in the Animals Protection Act 61 of 1972 which has been widely criticised both locally¹⁸ and internationally.¹⁹ It should not only apply to wild animals – as per the Constitutional Court judgment in the NSPCA Case as well as the definition of “animal” in the Animals Protection Act 61 of 1962. It

¹⁸ Bilchitz, David, When is Animal Suffering 'Necessary'? (2 May, 2012). 2012 (27) Southern African Public Law 3-27, Available at SSRN: <https://ssrn.com/abstract=2319419>

¹⁹ Fox, Michael Allen. "On the Necessary Suffering of Nonhuman Animals." *Animal L.* 3 (1997): 25.

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must apply to all animals – in this regard, please see our proposed definition of “animal” in this Submission. It must also be properly considered in light of NEMLA and the definition of wellbeing.

As such, this term if included must be properly defined as follows:

Humane: Any activities, methods, or actions involving **or impacting on wild animals, must that recognise their intrinsic value and sentience as individuals, must** avoid **or where it cannot be altogether avoided, must** minimise ~~and~~ **any** pain, stress, suffering, or distress, and **must promote** their well-being.

If the above definition is incorporated, then any activities relating to animals must be required to be humane.

II. EXCLUSION OF CERTAIN ASPECTS OF THE HIGH-LEVEL PANEL REPORT

The Revised Draft White Paper fails to properly incorporate key provisions /observations from the Ministerial High Level Panel Report from December 2020 (“**HLP Report**”) and its influence in the development of the Draft White Paper is wholly omitted throughout the Revised Draft White Paper. This provides for numerous gaps in consistency stemming from the HLP Report throughout the Revised Draft White Paper.

Some examples include the executive summary of the HLP Report providing *outside of state protected areas, wildlife must compete in their value proposition with less conservation-compatible land uses, such as agriculture, mining, and housing, to be a preferred land use option.*

And

*Despite the high reputation of South Africa as a global leader in conservation, especially of the iconic elephant, lion, leopard and rhinoceros, there is, however, public concern as to policies, legislation and practices on matters associated with the management, breeding, hunting, trade and handling of elephant, lion, leopard, and rhinoceros, **especially in terms of animal welfare and well-being.***

And

*Additional issues [identified by the Land-use and wildlife model sub-committee] included: inability to assess the contribution to conservation and bioeconomy targets; hunting quotas; permits, compliance, and **enforcement issues; welfare and ethical concern; reputational risks (including welfare, domestication of wild animals, compromised wildness); poor contribution of captive industry to conservation** (own emphasis added).*

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Additional sections which appear to be omitted is the HLP noted issues of concern relating to South Africa's approach to animal welfare. The Report noted that in relation to wildlife welfare no overarching wildlife policy existed; a lack of understanding of "good" and "bad practices and what is acceptable; the need for government, state and provincial agencies to engage with wildlife welfare; no norms and standards for captive populations and that *"there is no standards, guidelines, or regulations for effective 'rehabilitation of animals into the wild' (an area defined as "wildlife rehabilitation") with specific information on the welfare of wild animals that have been injured and placed in captivity for treatment/rehabilitation often not released"* as well as *"... a general lack of broad regulation pertinent to welfare for all wildlife, including the five iconic species – and activities related to them."*

The HLP Report and the issues listed above are not included within the Revised Draft White Paper or have been merely mentioned within, without proper measures provided to address it. Issues such as enforcement, reputational concerns as well as its competition with less conservation-compatible land uses such as agriculture are not addressed with the urgency or certainty prescribed by the HLP Report. Furthermore, the gap identified in relation to animal welfare and animal well-being by the HLP Report is not properly addressed in the Revised Draft White Paper. The Draft White Paper provided for additional clarity on the interpretation of the definition of well-being in "10.4.3 Placing animal well-being in context". This has been completely removed in the Revised Draft White Paper.

Furthermore, the HLP expressly recognised that *"[d]omestication of wildlife poses a direct risk to the conservation of wildlife and its [abovementioned] value propositions"* and recommended that *"aiming to enhance human well-being, as framed by our Constitutional rights, through ensuring that animal welfare and well-being is sufficiently addressed."* This recommendation too is completely omitted by the Revised Draft White Paper with active removal of provisions from the Draft White Paper related hereto such as "placing animal well-being into context" being removed by the Department.

In respect of welfare and the humane, responsible treatment of wildlife, the HLP provided the following goal: *"standards and practices within the wildlife sector meet the minimum acceptable standards of animal welfare, and well-being based on the One Welfare approach that emphasises the link between animal welfare, human well-being, biodiversity and the environment"* with the key recommendation in achieving this goal being: *"Taking the One Welfare approach, the Minister should immediately initiate a process to engage with welfare and well-being issues across the sector, with a view to including elements within the conservation and sustainable use policy for the sector"* Draft White Paper provided for the "One Welfare" approach with elaboration on the model and further aspects requiring implementation within the sector. This has, also been omitted by the Department and subsequently been completely removed in the Revised Draft White Paper.

As such, the Revised Draft White Paper and subsequent final document must properly incorporate certain aspects of the HLP Report which have not been adequately captured, especially in relation to the findings and recommendations relating to animal well-being and welfare efforts in the HLP Report.

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12. ADDITIONAL THOUGHTS

We wish to record that we welcome a national policy relating to conservation and biodiversity in South Africa. The lack of a uniform standard for conservation and sustainable use has tended to result in the development of inconsistent approaches at local levels, without a set of common rules, specifically in relation to the welfare, both holistically and individual species. We believe that the Revised Draft White Paper, if drafted inclusive of imperative concepts such as intrinsic value, presents an opportunity for a more holistic and inclusive approach to the protection and conservation of biodiversity.

De Beer et al identify the following as pressing environmental problems facing global society generally and southern Africa more specifically: loss of biodiversity, hazardous waste, climate change, ozone depletion, risks associated with nuclear technology, pesticides, overpopulation, urbanization, depletion of natural resources, human health and disease, desertification, deforestation, pollution, and poverty.²⁰

The protection of biodiversity ensures the longevity of sustained life with the supply of oxygen, clean air and water, pollination of plants, pest control and wastewater treatment to name just a few. Consistent evaluation of current measures along with the coordination and alignment of the efforts of various organisations and individuals in the conservation and management of South Africa's biodiversity under the auspices of sustainable development remains a pivotal measure in the protection of biodiversity. To paraphrase a sentiment made in *Chu v The State*²¹

*If we do not take measures... these magnificent creatures would be decimated from earth. Our Flora and Fauna would be poorer for it. South Africa would no longer be the safe home of the 'Big Five', as it is known all over the world.*²²

We welcome the inclusion of the progressive steps made by the National Environmental Management Laws Amendment Act No.2 of 2022 (NEM:LA) most notably the inclusion of “animal wellbeing” and subsequent amendments. We also support of the amendment of section 2 of NEMA which provides for the “*The full participation of previously disadvantaged professionals, with specific emphasis on black professionals and indigenous knowledge practitioners in the environmental management sector, must be recognised and their participation in the sector promoted.*”. Transformation and involvement of previously disadvantaged groups is an important advancement in pursuit of the Constitution.

²⁰ De Beer J, Dreyer J, Loubser C 2014. Environmental issues and risks. In: C Loubser (Ed.): Environmental Education and Education for Sustainability: Some South African Perspectives. 2nd Edition. Pretoria: Van Schaik Publishers, pp. 1-39 at 2-3.

²¹ 2012] ZAGP JHC 204 (13 March 2012).

²² Ibid at para 20.

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We are in support of the inclusion of policy goals, objectives and outcomes which gives direction for the future of the sector and country and believe clear and logical objectives and promote an approach towards a world where all people (as well as well as Nature and animals) have a high quality of life, a voice, and a nurturing Earth supporting them, specifically the insurance of biodiversity as being secured in the long term through the protection and appropriate management of ecosystems and species and the transformation of production and consumption to ensure sustainability.

We are further in support of the recognition of the international commitments South Africa is a signatory in respect of the area of conservation and related commitments.

South Africa has over 95 000 known species, making it the third most biologically diverse country in the world, including three of the 34 global biodiversity hotspots.²³ As South Africa's population grows and human-interest increases, the reliance on more land for development and agricultural use seemingly results in the protection of biodiversity becoming less imperative and the preservation of species becoming merely a means to serve human needs.

The Revised Draft White Paper fails to adequately address this issue. The Problem Statement of the White Paper provides “[a]s a signatory to the Convention on Biological Diversity (CBD), government supports and promotes both consumptive and non-consumptive sustainable use, with important economic activities and employment based on these, including within the ecotourism, hunting, fishing, harvesting, bioprospecting, customary use, and recreation industries. Ecological infrastructure, strategic water source areas, and groundwater aquifers, all provide ecosystem services from which society and the economy benefits. Government therefore intends strengthening this approach while addressing challenges that confront that sector.”

²³ Jenner N and Balmforth Z (September 2015) Biodiversity offsets: Lessons learnt from Policy and Practice Country Summary Report: South Africa Business & Biodiversity Programme Fauna & Flora International available at Biodiversity Offsets: Lessons Learnt from Policy and Practice (accessed on 27 July 2022).

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PART II:

Selected and More Specific Objections to, Comments and Proposals on and Issues with the Revised Draft White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity

For purposes of this Part II, we have included more non-exhaustive and specific comments on the Revised Draft White Paper. We have not reiterated all the considerations from Part I herein as these apply to various portions of the White Paper and should be incorporated throughout as appropriate. Failure or omission to comment on a specific issue does not indicate acceptance or approval of such provision.

Furthermore, we support the specific amendments proposed by the submissions of:

1. South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”), a centre of the University of Johannesburg; dated 11 November 2022; and
 2. The EMS Foundation and the Wild Law Institute; dated 11 November 2022,
- to the extent that these are not in conflict with our Submission and can be read collaboratively with one another.

EXECUTIVE SUMMARY

As stated in the Executive summary:

In this regard, the following challenges that require policy intervention have been identified:

- (1) *Lack of consensus among stakeholders around how to pursue conservation, sustainable use; fair and equitable sharing of benefits from genetic or biological resources;*
- (2) *Lack of transformation in the sector where majority of population are disadvantaged and disenfranchised from contributing to conservation and sustainable use;*
- (3) *Addressing the global challenges of biodiversity loss, climate change; and pollution;*
- (4) *Lack of effective mainstreaming of biodiversity;*
- (5) *Practices within the sector that have brought the country into disrepute, and*
- (6) *Inadequate means of implementation of legislation, including uneven governance, capacity and resources in the management of biodiversity*

These do not represent a complete list of challenges in relation to the conservation and sustainable use of biodiversity in the country. Further emphasis should be placed on the lack of implementation

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to the shift towards increased animal welfare standards for wildlife as confirmed by the Constitutional Court. This should take the form of a stand-alone challenge requiring urgent policy intervention.

Furthermore, the Draft White Paper provides

At a strategic level, the White Paper:

- (a) Provides policy certainty and a strong policy base for biodiversity conservation, equitable growth in the biodiversity economy, and socio-economic development in the biodiversity sector;*
- (b) Advocates for coherent and effective biodiversity conservation practices that protect South Africa's unique biodiversity, for the benefit of current and future generations;*
- (c) Integrates environmental, social, and economic elements to advance sustainable development;*
- (d) Place protected areas and other conservation areas as mechanisms to contribute strongly to ecologically sustainable rural development;*
- (e) Advances process transformation of the sector, with nature-based access and benefit flows for equitable and inclusive socio-economic growth and development; and*
- (f) Enhances South Africa's leadership in biodiversity conservation with a strong international reputation and promoting African coherence and unity.*

We welcome the recognition of the Department's need to address the legislative framework of biodiversity, most notably the effective transformation of the biodiversity sector and clarity on the approach to biodiversity conservation and sustainable use, based on the Constitution, Ubuntu, and prominence to gender equality. These are important developments and aspirations, however, in order to be truly inclusive and transformative, they cannot be purely anthropocentric in nature. This is further evident from the omission of concepts which are to the benefit of stakeholders of biodiversity, including animals, such as welfare and intrinsic value from the abovementioned list of objectives.

Lastly, the executive summary provides:

It is, therefore, considered a new deal to ensure people will not only be living in harmony with nature, but that both people and nature will thrive.

This Revised Draft White Paper speaks to a progressive and ambitious approach and South Africa as a leader in the region and globally. Yet, across the world jurisdictions **are explicitly recognising sentience and legal rights for Nature** - including in their Constitutions and national legislation (see for example Ecuador) as well as in legislation at national, provincial and local levels (See for example Uganda, Bolivia, New Zealand, Bangladesh, Ecuador, Brazil, Colombia and Mexico) **as well as animals including in court cases** (see for example India, Pakistan, Argentina, Ecuador and others). If South Africa truly wants to be progressive and have a "new deal" for Nature, similar sentiments should be included and emphasised on throughout the Revised Draft White Paper.

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The term ‘harmony with nature’ be aligned with the United Nations first resolution on Harmony with Nature.²⁴ In this resolution, the UN noted that *‘in promoting a holistic approach to achieving sustainable development in harmony with nature, Earth System science plays a significant role’*. It further *‘recognises that protecting and conserving ecosystems and avoiding harmful practices against animals, plants, microorganisms, and non-living environments contributes to the co-existence of humankind in harmony with nature.’*

Lastly, this resolution states *‘that the well-being of humanity depends on the health and integrity of nature and calls upon the international community to consider the COVID-19 recovery as a unique opportunity to build back better towards more sustainable and inclusive economies and societies in harmony with nature.’* This resolution, interpretation, and approach must be evident throughout the Revised Draft White Paper. **This resolution must be expressly included into the international Policy context section of the Revised Draft White Paper.**

1. INTRODUCTION AND BACKGROUND

1.1 POLICY ISSUE IDENTIFICATION

We welcome the identification of the Revised Draft White Paper as the overarching policy on conservation and protection of biodiversity in the country. We further welcome the significance of the White Paper as the guide for future legislative reform and administrative and policy decisions and practices of stakeholders in the sector provided it is properly drafted and informed. Legislative and policy reform with an emphasis on the protection of human rights, the recognition of intrinsic value of both human and nonhumans, the recognition of animal sentience, animal welfare and well-being are long overdue but critical components to be included in the Revised Draft White Paper presents.

The White Paper however is stated to provide the policy framework for the following issues:

- (1) *The conservation of biodiversity;*
- (2) *The sustainable use of the components of biodiversity;*
- (3) *Access to biological or genetic resources and the fair and equitable sharing of benefits arising from their utilization; and*
- (4) *The transformation of the country to ensure redress to previously disadvantaged individuals, equality, and equitable inclusion within the biodiversity-based economy.*

Although we are in support of this, the Revised Draft White Paper fails to address: the interpretation of the right to environment; the inextricable link between conservation and animal welfare; the sentience and intrinsic value of animals; the intrinsic value of Nature; the constitutionally recognised integrative approach and animal welfare and well-being concerns. These must be considered as stand-alone issues and must be addressed with this overarching policy.

²⁴ United Nations General Assembly (2020) Resolution adopted by the General Assembly on 21 December 2020 - A/RES/75/220 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/379/55/PDF/N2037955.pdf?OpenElement> (accessed on 25 August 2022).

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Furthermore, in relation to these four dimensions identified as goals of the Revised Draft White Paper, the Revised Draft White Paper provided that:

Transformation will require conservation and sustainable use that redresses discrimination and unfair disadvantage and enables and capacities previously disadvantaged individuals, such that “people living in harmony with nature” can be achieved... Furthermore, there are key barriers in implementation of conservation and sustainable use of biodiversity: uneven effectiveness in governance and shortages of human, financial and other resources.

This sentiment is highly anthropocentric and problematic. Although reference is made to “nature”, no reference is made to the stakeholders of nature including animals and the need for their individual intrinsic value, sentience, and well-being. These imperatives in relation to biodiversity must be included in this sentiment. Furthermore, transformation should also speak to transforming the current paradigm between human and nonhumans.

1.2 PROBLEM STATEMENT

This problem statement fails to recognise various imperatives in relation to the conservation and sustainable use of biodiversity in South Africa. We believe that the industrial agricultural industry, the express recognition of the marine ecosystem and the recognition that both terrestrial as well as aquatic animal populations are over-exploited. This impacts them and also has immediate and harmful effects on the communities.

The Revised Draft White Paper and subsequent strategies such as the recent Draft Game Meat Strategy should prioritise protecting wildlife, biodiversity and animal welfare needs as part of a global and national pandemic prevention strategy. **This should be recognised and included in the Problem Statement of the Revised Draft White Paper.**

1.3 VISION, MISSION, AND IMPACT STATEMENT

1.3.1 THE VISION

The vision of the Revised Draft White Paper reads as follows:

A society living in harmony with nature, where biodiversity conservation and sustainable use is transformed, ensuring improved benefits from healthy ecosystems, that are fairly and equitably shared for present and future generations.

The vision provided in the Draft White Paper omits the term ‘animal’ and subsequently fails to recognise the obligation on the Department to ‘secure equitable livelihoods and improved well-being’ for the animals contained in nature. The terms ‘harmony with nature’ does not encapsulate animal sentience nor the intrinsic value of biodiversity. This is not in alignment with the obligation placed on the state in respect of the environmental right as interpreted through decided Constitutional Court judgments.

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The express inclusion of the term **“animal”** will remedy this shortcoming of the vision contained in the Revised Draft White Paper.

We propose the following insertion **in red** below:

*‘A society living in harmony with nature, **taking into account their sentience, intrinsic value and welfare considerations**, where biodiversity and sustainable use is transformed, ensuring improved benefits from healthy ecosystems, that ~~are fairly and equitably shared~~ **is conserved** for present and future generations, **and secures equitable livelihoods and improved human and animal well-being.**’*

1.3.2 THE MISSION

As stated by the Revised Draft White Paper:

‘To conserve and manage South Africa’s biodiversity, and ensure healthy ecosystems, ecological integrity and connectivity, with transformative socio-economic benefits to society for current and future generations through justifiable, ecologically sustainable, and socially equitable use of its components.

The term **“justifiable”** as currently drafted still remains vague and unqualified. This has been raised in our submission in respect of the first version of the Draft White Paper. To this effect, justifiable should be provided with mechanism of measure or threshold. **This must be a high threshold in order to ensure that the maintenance or restoration of ecological integrity, the sentience of individual animals and intrinsic value of nature.**

1.3.3 IMPACT STATEMENT

The Impact statement provides inter alia:

Thriving People and Nature.

The inclusion of “nature” without full recognition of the various components of nature such as animals appears tokenistic and lacks meaningful engagement with the concept or the importance in relation to biodiversity and individual animals contained therein. The works of Prof. Bilchitz must be included in this respect for further guidance on the integrative approach in relation to section 24 of the Constitution and animal welfare.

1.5 BACKGROUND

The Background provides

In addition to the wide range of current use of biodiversity, there are additional opportunities to leverage underused, or yet underdeveloped components. Continued investment in managing and conserving biodiversity is essential so that

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biodiversity can be adequately recognised and accounted for in our national accounts including its contribution to livelihoods, the economy and job creation.

This sentiment is highly anthropocentric in nature. This further fails to provide any justification for the conservation of biodiversity in-and-of itself, contradicting the problem statement inclusion of intrinsic value. **The need to address animal welfare, well-being and intrinsic value must be included in the background for the need of a policy such as the Draft White Paper. Furthermore, this constitutional requirement for animal welfare recognition must be addressed throughout the Draft White Paper.**

1.5.1 STATUS OF BIODIVERSITY

The White Paper fails to contextualise the status of biodiversity in South Africa within the global context of a biodiversity crisis and the sixth mass extinction. It does not convey the severity of the loss of life that is currently occurring, the full implications for humanity or the urgent need to respond to this global threat.

We propose the following insertion after the heading “1.5.1 Status of Biodiversity” **in red** below:

“The status of South Africa’s life and biodiversity must be understood in the context of a global an ecological crisis termed the ‘sixth extinction’. Current extinction rates are already at least tens to hundreds of times higher than it has averaged over the past 10 million years and is accelerating. The 2019 IPBES assessments estimates that an average of around 25% of species (approximately 1 million species) in assessed animal and plant groups are threatened with extinction, many within the next few decades. These global patterns are also reflected within South Africa.”

1.5.2 PRESSURES AND DRIVERS

While there are numerous important inclusions in this section, it fails to properly address the core and systemic issues of the pressures and drivers involved. This is, in a nutshell, colonial and neo-liberal, free market, consumptive, exploitative model. One which fails to recognise the intrinsic value of Nature and animals and promotes economic incentives over all others. It also recognises Nature and animals merely as property which is the reason for the status quo. This section also does not get to the core of specific examples of how this manifest.

This can be seen through statements such as: *“Degradation of rangelands lowers the carrying capacity for both livestock and wildlife.”* This fails to properly acknowledge that it is in fact the livestock industry which itself is a driver of biodiversity loss. The animal agricultural industry is one of the most destructive industries on the planet and the way it is encapsulated in the White Paper focuses rather on the reverse – being how biodiversity loss impacts the industry. This warped and backwards inclusion should be

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removed. Furthermore, animal agriculture is directly promoted by the Department through initiatives such as the Draft Game Meat Strategy and Aquaculture Development Bill. These are inconsistent with a “New Deal” for people and Nature as well as the Impact Statement.

While there are some statements indicating negative consequences such as *“Both wildlife ranching and livestock farming are vitally important land uses for both socio-economic development and biodiversity conservation, but can have negative impacts if conducted too intensively, or inappropriately.”* These sentiments do not reflect the devastating, mass scale on which these industries cause harm to the biodiversity of the country.

Furthermore, these sentiments fail to account for the harm these industries cause to the natural environment and resources of South Africa, including vital resources such as land, air quality and water. These resources are instrumental to life on Earth including human, animal, and other life. Without properly recognising and calling out harmful industries (including animal use industries such as animal agriculture and fishing as well as other problematic industries in the energy sector, among others), the White Paper will not be effective at achieving its goals. We have raised these issues in previous submissions with multiple resources and footnotes and have not repeated these herein.

Another key industry is fishing with similarly harmful consequences. We welcome the acknowledgement in the Draft White Paper that: *“Fishing (including commercial, recreational, subsistence, small scale, and illegal fishing) remains the biggest pressure on most inshore and offshore parts of the marine ecosystem, with greater impact on inshore resources than on the deep ocean systems.”*

Such industries also negatively impact on South Africa’s international and national climate change obligations. These must be properly acknowledged in the White Paper and be included in the ‘pressures and drivers’ and ‘national policy and legislative context’ sections of the White Paper respectively

Inclusion of systemic issues behind the Pressures and Drivers and the way of thinking of the paradigm that has led to the current crises including the underlying legal status of Nature and animals as property and the failure to recognise their intrinsic value, and, in the case of animals, their sentience, wellbeing and welfare.

For example, many of the activities that result in habitat loss, climate change and the over-harvesting of wild species are motivated by an insatiable desire to accumulate more money. Some of these activities are currently authorised due to their contribution towards the gross domestic product (“GDP”) of South Africa and may create jobs, while others occur without authorisation (i.e., illegally). Although economic drivers can result in important benefits to humans, they will continue to maintain or increase the pressures on wild species unless appropriate checks and balances implemented to ensure that economic considerations do not take precedence over the overall imperative for humans to co-exist harmoniously within Nature in a manner that does not degrade the natural systems that sustain life.

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In order to bring about the transformative changes necessary to reverse declines in wild populations and biological diversity and to achieve dramatic improvements in ecological health, it is necessary to reorienting the legal, administrative and economic systems that govern how humans relate to wild species. Changing how we make land-use and other decisions that affect other species is particularly important – these must be made primarily on ecological rather than economic criteria.

Some of the measures required to modify these drivers must be taken by organs of State other than the Ministry and Department of Environmental Affairs. However, this White Paper recognised the importance of taking measures to weaken the forces driving the destruction of habitats and the loss of wild species. These may include:

- educational and policy measures to transform how people relate to Nature (and wild species in particular), including elevating traditional African perspectives on how to maintain harmonious relationships with all beings;
- legal reforms to recognise that wild species are subjects, not object or resources, that they have right to be wild, and to prohibit unjustified interferences with their freedom; and restrictions on humans and legal persons; and
- administrative and enforcement measures to protect wild species from harmful economic pressures, including from criminal activities.”

Furthermore, we propose the following insertion at the end of section 1.5.2 **in red** below:

“The pressures identified above occur because of underlying “drivers” that motivate the activities that create these pressures.

Various underlying causes of the abovementioned drivers of the pressures are omitted and require express recognition in this section. These include, **in red** below:

- **an anthropocentric perspective on Nature which informs the (scientifically incorrect) view that humans are separate from, and superior to, Nature which consists of “natural resources” for humans to exploit;**
- **political, legal and economic systems that rank economic objectives and consideration (particularly increasing corporate profits, trade and GDP) over the protection of life;**
- **illegal activities; and**
- **a failure to protect the rights of Nature (including wild species) to exist and to play their roles within the community of life, by imposing appropriate duties on humans and juristic persons not to infringe those rights.**

1.5.3 BENEFITS DERIVED FROM SOUTH AFRICA’S BIODIVERSITY

We welcome the inclusion of the benefits derived from South Africa’s Biodiversity section of the Draft White Paper. We welcome the recognition of the Department that *‘biodiversity forms part of South Africans national identity and heritage.’* We further welcome the recognition that *‘natural ecosystems, plants*

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and animals have also influenced cultural and spiritual development, and are woven into languages, places names, religion, culture, and folklore. These illustrate a more than economic approach and important relationships and values we have with Nature and animals.

Despite this, this section provides:

'Biodiversity, therefore, contributes to the goals of the National Development Plan (2030) by reducing poverty and inequality in South Africa through stimulating the economy, improving employment figures, building an inclusive rural economy, and providing affordable health care, which all rely to some extent on biodiversity, healthy ecosystems, resilient ecological infrastructure, and environmental sustainability. Every decision taken, whether by government or individuals, affects the future of biodiversity. By investing in the restoration, protection, and conservation of biodiversity assets and ecological infrastructure, social and economic development is enhanced, while at the same time contributing to human well-being.'

This section is highly anthropocentric as the focus of the benefits derived from biodiversity is solely calculated according to the impact it has on human livelihoods. Furthermore, the sentiments made by *'every decision taken, whether by government or individuals, affects the future of biodiversity. By investing in the restoration, protection, and conservation of biodiversity assets and ecological infrastructure, social and economic development is enhanced, while at the same time contributing to human well-being'* directly conflicts with the recognition of intrinsic value nor does it highlight the existence value of nature and animals in-and-of itself.

Sentiments of this nature indicate the “old regime” thinking of an economic/resource/property focused approach with respect to biodiversity and the stakeholders thereof, including animals. This sentiment is highly anthropocentric and only focused on the benefit derived to humans from the restoration of biodiversity with no mention made to the intrinsic value of biodiversity. This is in direct conflict with the recognition of this concept in the executive summary as well as this section of the Draft White Paper itself. **If a decision made by the government or an individual affects the right to environment, conservation or biodiversity, this should include all relevant stakeholders and proper attributions of value and true costs (including externalised costs) of these decisions on present and future generations of humans and nonhumans.**

1.6 POLICY AND LEGAL CONTEXT

1.6.1 INTERNATIONAL POLICY CONTEXT

There are a number of international policies and documents which must be included as relevant. These can be categorised appropriately but are relevant to the international policy context. We propose the inclusion and influence of the following international policy documents (non-exhaustive) which include but are not limited **in red** below:

1. Paris Agreement;

2. UN General Assembly Resolution on the Right to Environment;

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3. World Organisations for Animal Health (WOAH formerly OIE) documents and standards;
4. 30 by 30 Initiative;
5. UNEP Resolution – Animal Welfare;
6. UN Harmony with Nature Programme and Resolutions and Documents;
7. Convention on the Conservation of Migratory Species of Wild Animals;
8. Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern African Region; and
9. United Nations Declaration on the Rights of Indigenous Peoples

1.6.2 NATIONAL POLICY AND LEGISLATIVE CONTEXT

We welcome and support the recognition of the various national policies and legislation relating to conservation and sustainable use of biodiversity. Most notably the inclusion of the Animal Protection Act No.71 of 1962; Animal Improvement Act No.62 of 1998; the Performing Animals Protection Act No.24 of 1935; Animal Diseases Act No.35 of 1984 and Meat Safety Act No.40 of 2000. As mentioned in our Original Submission, there are pieces of legislation which are missing from this list, and which must be included.

Despite these inclusions, as mentioned in Part I, the Revised Draft White Paper fails to record the HLP Report and its influence in the development of this Draft White Paper is wholly omitted throughout the Revised Draft White Paper. This provides for numerous gaps in consistency stemming from the HLP Report throughout the Revised Draft White Paper. The HLP Report and the issues listed above are not included within the Revised Draft White Paper or have been merely mentioned in this version of the Draft White Paper without proper measures provided to address it. Issues such as enforcement, reputational concerns as well as its competition with less conservation-compatible land uses such as agriculture are not addressed with the urgency or certainty prescribed by the HLP Report.

Furthermore, the gap identified in relation to animal welfare and animal well-being by the HLP Report is not properly addressed in the Revised Draft White Paper. The first version of this Draft White Paper provided for additional clarity on the interpretation of the definition of well-being in “10.4.3 Placing animal well-being in context”. This has been completely removed in the Revised Draft White Paper. **We propose that this inclusion be brought back into the Revised Draft White Paper.**

Furthermore, the Revised Draft White Paper provides:

A draft White Paper on the Conservation and Sustainable Use of South Africa’s Biological Diversity was developed in 1997... While the 1997 Draft White Paper can still be drawn on as a reference document, this White Paper replaces the 1997 draft White Paper in terms of providing policy guidance.

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The Revised Draft White Paper fails to provide a replacement of aspects mentioned in the 1997 Draft White Paper. Most notably, this is regarding two imperative guiding principles. Both have been completely removed from the first version of this Draft White Paper:

1.3.1 **Intrinsic value:** *All life forms and ecological systems have intrinsic value*

1.3.2 **Duty of Care:** *All people and organisations should act with due care to conserve and avoid negative impacts on biodiversity, and to use biological resources sustainably equitably and efficiently.*

These concepts must be addressed in the replacement of the 1997 Draft White Paper, which this Revised Draft White Paper was developed to be. Further fleshing out of intrinsic value as a defined concept and guiding principle of the Revised Draft White Paper must be done in order to fulfil the progressive shift towards animal welfare confirmed by the Constitutional Court and “The New Deal” envisioned for biodiversity by this White Paper.

1.6.3 PROVINCIAL AND MUNICIPAL LAWS AND POLICIES

This section provides:

In terms of the Constitution, the “environment” and “nature conservation” are functional areas of concurrent national and provincial legislative competence. Provinces may, therefore, also pass legislation dealing with the conservation and sustainable use of biodiversity.

As mentioned in the Centre for Environmental Rights (CER) Fair Game Report²⁵, there are substantial issues with the current content of the regulation and enforcement thereof, as same applies to wildlife. These issues must be fully included and addressed within this section. We have included certain of these herein, which is by no means a complete list. These issues include:

1. “entrenched jurisdictional divide, the outdated and at times inadequate laws that are inconsistently applied and enforced, the judicial treatment of animal cruelty cases, and the focus on economic progress, welfare of wild animals is not currently a priority in South Africa.”
2. Specific issues identified with regard to (non-exhaustive):
 - 2.1. Animals Protection Act (offences and potential loopholes; inadequacies of implementation; APA is unsuited to wild animal protection);
 - 2.2. Performing Animals Protection Act;
 - 2.3. NEMA; NEMBA and TOPS;
 - 2.4. Provincial legislation; and
 - 2.5. Self-regulation.

²⁵ Centre for Environmental Rights (2018) “Fair Game? Improving the well-being of South African Wildlife” available at <https://cer.org.za/reports/fair-game>

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They concluded that: “[t]he improvement of animal welfare and their consistent implementation, compliance, monitoring and enforcement is an urgent Constitutional imperative”. We endorse this position and submit that all other issues in relation to the substantial issues with the current content of the regulation and enforcement thereof.

Further, this section provides:

In terms of the Constitution, local government/ municipalities are required to promote a safe and healthy SPLUMA, Local Government/ municipalities are required to take into consideration environmental factors when developing spatial planning instruments, such as spatial development framework and land use schemes, and when taking land development decisions. Furthermore, municipalities also play an important role in supporting provincial and national organs of state to implement initiatives to conserve and use biodiversity.

This provision omits the constitutional jurisprudence in respect of the interlinked concept of animal welfare and the environmental right. This would extend to the mandate of local government and respective municipalities. As such, the express inclusion of this mandate **must** be provided for within this section. More importantly, this must not be done in a tokenistic manner and requires proper implementation and enforcement on a municipal and local level.

2. DEFINITIONS

LIST OF ACRONYMS AND ABBREVIATIONS

There are a number of acronyms that should be included in the document as these are either referenced or should be referenced as relevant to the Revised Draft White Paper.

The following acronyms should be included:

- i. APA – Animals Protection Act [Notably, provision should also be made for the new Animal Welfare Act once promulgated which we understand will be released within the next year for public comment and consultation process]
- ii. AIA – Animals Improvement Act
- iii. DTIC – Department of Trade Industry and Competition
- iv. MSA – Meat Safety Act read with the regulations thereto
- v. NEM:ICMA – National Environmental Management: Integrated Coastal Management Act
- vi. PAPA – Performing Animals Protection Act
- vii. Paris Agreement
- viii. SDGs – Sustainable Development Goals
- ix. UNHwn – United Nations in Harmony with Nature Programme
- x. WOA – World Organisation for Animal Health

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TERM AND DEFINITION OF “BIOLOGICAL RESOURCES”

While notably this term is taken from an existing international treaty, it problematic characterises animals and natures as resources which conflicts with principles of intrinsic value. We propose that the existing definition be adapted (as has been done with other definitions) to provide for a more progressive approach and one which speaks to the overall nature of the Revised Draft White Paper. Such term should be defined and amended throughout the White Paper.

We propose the term **“Biological Entities”** or **“Nature”** or **“Natural Entities”** be utilised which will assist with the transformative shift and replace the term **“biological resources”** which speaks to the old regime.

DEFINITION OF “ANIMAL WELL-BEING”

We propose the words **“and death”** be added to the definition. We propose that the words **“and thrive”** or **“flourish”** be added as coping is not the gold standard for wellbeing.

Our proposals to the existing definition are included **in red** below:

Animal Well-being: The holistic circumstances and conditions of an animal or population of animals which are conducive to its physical, physiological, and mental health and quality of life **and death**, including its ability to cope **with and flourish in his/her its** environment **and circumstances** (modified from the NEMLA Act).

DEFINITION OF “TRADITIONAL OR INDIGENOUS KNOWLEDGE”

“Traditional” and **“Indigenous”** knowledge are distinct and must not be used interchangeably or referred to together.

We propose that the definitions for traditional and indigenous knowledge be aligned with Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019.

DEFINITION OF “COMMUNITY”

The definition of **“Community”** as currently construed is open to abuse by those who are not previously disadvantaged individuals and rather who are the current benefactors of the oppressive systems of the past. It could be used to further perpetuate social and other injustices and be contrary to transformation and equity, among other principles contained in the Revised Draft White Paper. The current definition is not aligned to the referenced legislation being the definitions of the term “community” found in post-apartheid legislation, namely the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA).

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This definition must be changed and aligned to legislation and case law from the post-apartheid era. It is currently not aligned with the definitions of “community” as included in the referenced legislation. For example, in the MPRDA a community means “a group of historically disadvantaged persons with interests or rights in the particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by mining on land occupied by such members or part of the community.” **(Emphasis added).**

Our proposals to the existing definition are included **in red** below:

Community: A group of **historically disadvantaged** persons with interest or rights in land pertaining to **Nature, biodiversity conservation** and sustainable use, and/or a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law, and includes any group of **historically disadvantaged** persons whose rights in land are derived from shared rules determining access to land held in common by such group and includes part of any such group.

DEFINITION OF “CONSERVATION”

The revised definition of conservation provides:

Conservation: *Protection, custodianship, care, maintenance, rehabilitation, restoration, and recovery, of biological diversity and its components, and their intrinsic value, to improve the well-being of people and nature.*

The definition of conservation must include and be linked to animal welfare as per the 2016 NSPCA Judgment: “...*This integrative approach correctly links the suffering of individual animals to conservation and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values.*”²⁶

The definition of conservation as it stands in the Revised Draft White Paper provides an inadequate understanding of what conservation entails, as per the aforementioned court judgment. Furthermore, although included, intrinsic value contains proper definition nor indication of interpretation by the Department. It is further omitted in respect of implementation or the subsequent enablers. This inclusion would arguably be tantamount to tokenistic in nature.

Lastly, the term **“biological diversity and its components”** should be replaced with the term **“Nature”**. We propose including both negative and positive aspects in respect of nature be included implying the need for positive duties and negative ones.

²⁶ 2016 NSPCA Case.

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DEFINITION OF “DOMESTICATION”

We propose that the term “**domestication**” requires further fleshing out by the Department. The current text reads as follows:

Domestication: Sustained, multi-generational processes whereby wildlife populations are subjected to continuous biased selection in order to adapt wild plants and animals for human use, potentially leading to human dependency for survival, usually within controlled environments, by manipulating reproductive, physical, physiological or behavioural characteristics.

We propose the following replacement:

Domestication: [the process of manipulating reproductive, physical, physiological or behavioural characteristics of wild species to adapt them for human use, potentially leading to human dependency for survival, usually within controlled environments].

DEFINITION OF “UBUNTU”

Once again, we applaud this inclusion in the White Paper and into policy making around constitutional rights as a critical development and advancement.

We propose that the concept of Ubuntu should incorporate the work of South African and African academics and particularly the expansion of this term beyond only humans to also include Nature and animals.

We further propose that the term should incorporate recent jurisprudence such as the *King* case in recognising the need to protect vulnerable members of society.

Our proposals to the existing definition are included **in red** below:

Ubuntu: Relational ethics, which prize relationships of interdependence, fellowship, reconciliation, relationality, community friendliness, harmonious relationships and other-regarding actions such as compassion and actions that are likely to be good for others, in which actions are morally right to the extent that they honour the capacity to relate communally, reduce discord or promote friendly and respectful relationships with others, and in which the physical world and spiritual world are fundamentally united. The very essence of Ubuntu hinges on consolidating the human, natural and spiritual tripartite, illustrating that it is not only about the human [footnote 1] and one which protects the most vulnerable members of society. [footnote 2].

[[1] Danford T. Chibvongodze (2016) *Ubuntu is Not Only about the Human! An Analysis of the Role of African Philosophy and Ethics in Environment Management*, *Journal of Human Ecology*, 53:2, 157- 166, DOI: 10.1080/09709274.2016.11906968

<https://www.tandfonline.com/doi/abs/10.1080/09709274.2016.11906968?journalCode=rbue20>

[[2] *King N.O. and Others v De Jager and Others (CCT 315/18) [2021] ZACC 4; 2021 (5) BCLR 449 (CC); 2021 (4) SA 1 (CC) (19 February 2021) at para 237.*

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NEW DEFINITION OF “INTEGRATIVE APPROACH” TO BE INCLUDED

We propose that a definition of the “**integrative approach**” be included with reference to the work of Professor David Bilchitz who coined the term, and which has been subsequently adopted by the Constitutional Court.

D Bilchitz ‘Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals’ (2017) *South African Law Journal* read with *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* [2016] ZACC 46 [<http://www.saflii.org/za/cases/ZACC/2016/46.html>].

NEW DEFINITION OF “NATURE” TO BE INCLUDED

The term “**Nature**” is used throughout the White Paper but not defined. The term should be defined with reference to NEMA’s definition of the “environment” but expanded to include reference to individual animals and to differentiate between different components of the environment.

This is due to the fact that, while for example plants and animals are both part of the environment, animals are sentient beings and have expressly been acknowledged so by the Constitutional Court. Differentiating different aspects of Nature is furthermore important as it relates directly to the duties owed to such entities. The South African courts have acknowledged that animals can suffer and accordingly, humans have a duty to prevent their suffering. This is unlike plants. However, this does not mean that duties are not owed to other natural elements, but rather, that the specific entity receives due regard based on its intrinsic qualities and capacities, and that people, state and private entities have duties to such entities based on same.

The current definition of “environment” as contained in NEMA is included below, and a proposed definition for Nature for purposes of the Revised Draft White Paper expanding on such definition in light of Constitutional jurisprudence is included in the adjacent column. The term “Nature” must be defined to include aspects of the environment and specifically include reference to individual animals. Nature can build off of the NEMA definition with differentiated aspects. Reference to duties and obligations linked to capacities and unique qualities of different biological entities.

Existing definition of environment in NEMA (to be appropriately adapted):

“Environment” means the surroundings within which humans exist and that are made up of— (i) the land, water and atmosphere of the earth: (ii) micro-organisms, plant and animal life: (iii) any part or combination of (i) and (ii) and the interrelationships among and between them: and (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

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DEFINITION OF “HUMANE”

As further detailed in Part I above which has not been repeated herein, we proposed that the definition of “Humane” be:

Humane: Any activities, methods, or actions involving **or impacting on wild animals, must that recognise their intrinsic value and sentience as individuals, must** avoids **or where it cannot be altogether avoided, must** minimises ~~and~~**any** pain, stress, suffering, or distress, and **must promote** their well-being.

If the above definition is incorporated, then any activities relating to animals must be required to be humane.

NEW DEFINITION OF “INTRINSIC VALUE” TO BE INCLUDED

The term **“Intrinsic Value”** appears throughout the Revised Draft White Paper but is not defined beyond footnote 4 stating “independent of people as valuers”. We propose that a definition be included for certainty. We support the proposed definition of the Wild Law Institute and EMS Foundation with additional proposals in square brackets: **“Intrinsic Value: All life [and natural entities] have inherent worth and every species [and individual] has a value and role in [N]ature, and consequently has a right to exist, and [flourish] and must be protected, whether or not it is known to be useful [or beneficial] to humans.”**

NEW DEFINITION OF “TRANSFORMATIVE CONSTITUTIONALISM” TO BE INCLUDED

Given the transformative nature of the Revised Draft White Paper, its basis in section 24 of the Constitution and the importance of the concept of “transformative constitutionalism”, this concept must be defined and included where appropriate in the Revised Draft White Paper.

See for example in this regard:

1. Murcott, M. Transformative Environmental Constitutionalism’s Response to the Setting Aside of South Africa’s Moratorium on Rhino Horn Trade. Humanities 2017, 6, 84. <https://doi.org/10.3390/h6040084>; and
2. Bilchitz, David, Does Transformative Constitutionalism Require the Recognition of Animal Rights? (September 9, 2009). Southern African Public Law Vol 25, No. 2, 2010, Available at SSRN: <https://ssrn.com/abstract=1872936>

We propose that a definition be included for **“Transformative Constitutionalism”** and that this be incorporated as one of the principles and goals of the document and otherwise be included in the White Paper as appropriate, including referencing work of appropriate South African academics.

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NEW DEFINITION OF “ANIMAL” TO BE INCLUDED

We propose that a definition be included for **“Animal”**. We propose that within this definition, the department clearly identify that this policy extends to all animals except for human animals. This inclusion would also further serve the understanding of “Animal Well-being” and be aligned with the preservation of biodiversity as well as conservation imperatives.

DEFINITION OF “SUSTAINABLE USE” [“ECOLOGICALLY SUSTAINABLE USE**”]**

We commend the DFFE for its efforts to shift away from the extremely problematic interpretation of “sustainable use” which has dominated the environmental paradigm for too long and to define the term with certainty. There are positive aspects of the proposed definition and there are certain advancements from the version in the Original Draft White Paper which we applaud, and which should be retained. We have made a few proposals to the definition in the adjacent column to bring it in line with the recent jurisprudence (please see above referenced case law). As aforementioned, the word **“ecologically”** must be included in every instance before the term **“sustainable use”** in order for it to be consistent with the wording in section 24 of the Constitution including its interpretation by a number of South African courts including the Constitutional Court.

We propose that both positive and negative elements be included in the definition to illustrate that there are positive and negative duties in respect of this provision.

Our proposals to the existing definition are included **in red** below:

Ecologically Sustainable Use:

The use of any component of biodiversity in a manner that:

- (a) is ecologically, ~~economically and socially~~ sustainable
- (b) does not contribute to its long-term decline in the wild; or disrupt the genetic integrity of the population;
- (c) does not disrupt the ecological integrity of the ecosystem in which it occurs or **other ecosystems**;
- (d) ensures continued benefits to people **and Nature** that are fair, equitable and meet the needs and aspirations of present and future generations; and
- (e) in the case of animals **(or an animal)**, is humane and does not compromise **and rather promotes** their well-being. **In doing so**
 - (i) recognises their sentient nature;**
 - (ii) respects their intrinsic value as individuals; and**
 - (iii) promotes their flourishing.**

*Note that the above proposals may be amended if “humane” is properly defined as proposed above but must include at a minimum the above components.

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NEW DEFINITION OF “REALLOCATION” TO BE INCLUDED

Whilst ‘restoration’ and ‘rehabilitation’ are defined, the definition of ‘reallocation’ is omitted.

A definition of “**reallocation**” must be included.

SUPPORT FOR DEFINITIONS

We generally support the inclusion of definitions in relation to “rehabilitation”; “restoration”; “rewilding”; “revegetation; “systems approach” and “wildness” (non-exhaustive).

We submit that these concepts can be more holistically incorporated into the Revised Draft White Paper – for example through the promotion of alternatives and alternative models including agro-ecology and regenerative farming (among other similar models). **There is insufficient emphasis on these models and too much reliance on harmful practices such as industrialised animal agriculture and fishing.**

3. GUIDING PRINCIPLES

As per the above, we submit that “Intrinsic Value” as well as “Animal Sentience, Welfare and Well-being” should be incorporated as key Guiding Principles in the document.

The guiding principle of Transformation provides:

*(a) **Transformation:** Safeguarding, protecting and promoting the rights, ownership, and responsibilities of all role players in the biodiversity sector to ensure respect for dignity, inclusive participation, and fair and equitable sharing of benefits and growth, particularly for those that were previously disadvantaged. Important considerations should include aspects such as equality and freedom, inclusive economy, indigenous and traditional knowledge and practices; and rights of local and indigenous communities.*

We are in support of the guiding principle of transformation. As mentioned in the HLP Report, “approximately 9,000 privately owned game ranches account for a further 17.7% (20 million hectares) of wildlife habitat in the country.” However as submitted, transformation must also include in relation to our relationship with other natural entities including Nature and animals.

We further support the express recognition of a collective responsibility of all role players in the sector to ensure the sustainable use and conservation of biodiversity. We believe this collective is also obligated to ensure the intrinsic value of biodiversity and sentience of animals living in these ecosystems. We further support the inclusion of those previously disadvantaged and those refused due to gatekeepers in the industry.

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We, however, reiterate that this transformation includes the shifting of the aforementioned “old” paradigm towards a “new” thinking in respect of biodiversity and animals with this desire for transformation being felt throughout the Revised Draft White Paper. It is therefore not only about transformation for humans, but a broader and urgent need to transform our relationship and regulatory regimes (among others) to incorporate Nature and animals within our scope of consideration.

The guiding principle of Sustainable Development provides

*(b) **Sustainable development:** Adopt an integrated approach with a governance system where the economy, socio-political, and ecosystems are embedded within each other.*

This guiding principle contains various issues. The most notable of these is that the term integrated approach has no definition throughout the Revised Draft White Paper. Furthermore, the term “**ecologically**” should be included prior to the term “sustainable development”. This should be done to be aligned with the terminology found in the constitutional environmental right. This inclusion is problematic.

The guiding principle of Good Governance provides

*(c) **Good Governance:** A government that is accessible, responsive, supportive, and accountable where barriers to effective and efficient biodiversity conservation and sustainable use are identified, consulted, and adequately addressed in line with stakeholder needs, including effective, coordinated, and harmonised legislation and meaningful engagement and influence by stakeholders.*

This guiding principle should be aligned with the Constitutional Court decision discussed above, along with emphasis placed on the constitutional mandate for animal welfare by the State as well as the inclusion of *NEM:LA* in respect of the wellbeing of animals.

Furthermore, this guiding principle must identify the specific stakeholders in relation to biodiversity including Non-profit Organisations (NPOs), civil society and the public at large. Further reference should be made to present and future generations of people and nature as stakeholders to biodiversity.

As such, we propose the following amendments **in red** below:

Good Governance: *A government that is accessible, responsive, supportive, and accountable **in respect of its constitutional mandate to protect biodiversity, as well as integrate animal well-being into law and policy in relation thereto**, where barriers to effective and efficient biodiversity conservation and **ecological sustainable use** are identified, consulted, and adequately addressed in line with stakeholder, **including business and industry, non-profit organisations (NPOs), civil society, the public at large, as well as animals in biodiversity, and present and future generations thereof** needs, including effective,*

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*coordinated, and harmonised legislation, **policy and strategy and** meaningful engagement and influence by these stakeholders **and their representatives**.*

Decision-making: This Guiding Principle must take cognisance of Intrinsic Value as well as “Animal Sentience, Welfare and Well-being”. This means that the interests of Nature and Animals must be taken into account and representatives of those interests must be incorporated into decision-making models and platforms.

4. GOALS AND ENABLERS

4.1 GOAL 1: BIODIVERSITY CONSERVATION PROMOTED

Goal 1 provides:

South Africa is home to a major portion of the biodiversity of the world, and still retains much of its biodiversity, and large areas of natural lands that provide for the opportunity to conserve this biodiversity. Such lands provide essential and critical ecosystem services that underpin the livelihoods and well-being of our people.

This is problematic in that it is phrased in an anthropocentric nature including reference to “underpins the livelihoods and well-being of our people”. It fails to account for the intrinsic value of Nature and animals. Although the aspiration is to promote the conservation of biodiversity, the underlying purpose thereof is solely to serve the needs of humans.

The Goal further provides that

In addition to this potential, are massive global change influences that threaten the biodiversity estate and the ecosystem services provided, making South Africa less resilient and more vulnerable to future shocks. These include risks from climate change, as well as invasive species.

This is an incomplete list of influences affecting conservation efforts within South Africa. Further reference should be made to:

- The overuse of resources such as water, air and land space for human development;
- The impact of commercial industries such as industrial animal agriculture on resources such as land space and water resources.

4.2 GOAL 2: SUSTAINABLE USE

As aforementioned, all references to “Sustainable Use” must include “Ecologically Sustainable Use”.

Goal 2 provides

[t]he intention of this goal is to ensure that sustainable use avoids, or minimises and remedies, adverse impacts on biodiversity, and, where possible, enhances thriving landscapes and ecosystems, livelihoods and human well-being.

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This is phrased in an anthropocentric nature. We propose that term “and animals” be included wherever the term “human” is referenced in respect of “well-being”.

Furthermore, this goal provides

Activities which provide socio-economic gains from the use of biological resources and ecosystems often result in the loss of biodiversity, including the impairment of ecosystem functioning.

We propose the inclusion of the terms **“and infringement of the sentience and intrinsic value of individual wild animals”** at the end of this statement.

4.3 GOAL 3: EQUITABLE ACCESS AND BENEFIT SHARING

4.4 GOAL 4: BIODIVERSITY CONSERVATION AND SUSTAINABLE USE IS TRANSFORMATIVE:

The title of this Goal should be amended to “Biodiversity Conservation and Ecological Sustainable Use is Transformative”

Furthermore, this Goal provides:

Preventing harm to human health or well-being, promoting conservation, and securing ecologically sustainable use are three key elements within the Environmental Right.

This is incomplete and omits the abovementioned Constitutional Jurisprudence in respect of the link between animal welfare and the achievement of the environmental right. In this regard, the understanding of a transformative conservation and sustainable use paradigm for this Draft White Paper by the Department is fundamentally flawed. To this effect, we propose that due regard and the inclusion of the concept of intrinsic value and animal well-being be made in respect of the transformation of biodiversity and ecological sustainable use.

Furthermore, the Goal provides:

South Africa has a substantial amount of legislation in place governing the conservation and use of natural resources. However, as is the case for other countries, these “command and control” mechanisms have not been adequate in addressing the underlying forces resulting in the loss of biodiversity.

This is an inaccurate representation of conservation and natural use of resources legislation in South Africa. The country has a largely outdated and fragmented regime in respect of environmental protection and the components related thereto. Most notable examples hereof include the APA which was enacted prior to the constitutional dispensation. This example is noteworthy as it provides protection to animal welfare under human control, an aspect understated in the statement as well as throughout the Revised Draft White Paper.

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4.5 ENABLER 1: INTEGRATED, MAINSTREAMED AND EFFECTIVE BIODIVERSITY CONSERVATION AND SUSTAINABLE USE:

Enabler 1 provides

South Africa is committed to playing its role globally, recognising that the conservation and sustainable use of global biodiversity is a common concern of all nations.

Despite this statement, the Department is actively undertaking the commercialisation of what it refers to as “Game Meat” in the recent Game Meat Strategy. This is furthered with the recent call for the exemption of Game Meat killed outside of an abattoir to be considered viable game meat for human and non-human consumption.

South Africa further seemingly lacks the commitment highlighted above as various nations have taken steps to reduce their consumption of wildlife, including various countries such as China instituting a ban on various types of wildlife imports. Other countries have recognised that true conservation efforts lie in the recognition of animals as having worth in and of themselves and have recognised sentience for animals in their respective constitutions. The first example of this taking place in Africa is when Tanzania recognised animals as sentient beings.

The omission of meaningful engagement of this concept throughout the Draft White Paper is contradictory to the commitment of South Africa to play its role in conservation and ecologically sustainable use.

4.6 ENABLER 2: ENHANCED MEANS OF IMPLEMENTATION

Enabler 2 provides:

The intention of this enabler is to expand and develop implementation mechanisms to conserve biodiversity to manage its use, and to address factors threatening it, in order to meet South Africa’s national priorities and requirements under the CBD.

We propose the following insertion **in red** below:

*The intention of this enabler is to expand and develop implementation mechanisms to conserve biodiversity, **protect its intrinsic value, promote animal well-being,** manage **their ~~its~~** use, and to address both human and environmental factors threatening it, in order to meet South Africa’s national priorities and requirements under the CBD.*

Enabler 2 further provides:

Effective implementation of the White Paper requires implementation support mechanisms commensurate with the ambition set out in the goals and transformative changes required to reach them. These include:

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- (a) Mobilising sufficient and accessible resources required for the transformative, inclusive, and equitable change identified in the goals, across the economy and society*

This point is highly problematic as it continues the use of the problematic language and terminology found throughout the Revised Draft White Paper, as mentioned above. Furthermore, the omission of “the environment” or “nature” is indicative of the lack of inclusion of welfare and well-being being included in this means of effective implementation.

Enabler 2 further provides:

- (b) Capacity development by increasing public awareness and stewardship of the value and importance of biodiversity, and public involvement in its conservation and sustainable use; improving the understanding of biodiversity through conducting research, improving biological inventories, establishing, and maintaining monitoring systems, sharing information, and incorporating traditional knowledge; and strengthening existing management capacity through appropriate training*

Further emphasis should be placed on public awareness in respect of the environmental right and its intertwined link to animal welfare and well-being. Furthermore, recognition, education and training must include international best practices in respect of biodiversity, its imperative components including animals.

Furthermore, (d) of Enabler 2 provides

- (d) New approaches, such as those embraced by the CBD, are increasingly turning towards the use of incentives as instruments and mechanisms by which people can be motivated to conserve and use biodiversity sustainably. Consideration needs to be given to: (1) the need to remove existing incentives that discourage biodiversity conservation (so-called “perverse incentives”); and (2) the need to use an array of different instruments, based upon bioregional and social characteristics, as well as the nature of the threat to biodiversity, to encourage biodiversity conservation in different areas.*

Unlike the first version of the Draft White paper, this fails to address aspects covered such as “Funding”, “Government Funding”, “Private Sector Funding”, “incentives, disincentives, and revenue generation” and “international and donor funding”. These and other measures should be adopted to motivate the conservation and ecologically sustainable use of biodiversity. Furthermore, the gaps, flaws and shortcomings of these and other measures should be properly researched and elaborated on in this or separate sections throughout the Revised Draft White Paper.

5. STRATEGIC LINKAGES AND IMPACT

Section 5 of the Draft White Paper provides

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Global change, including climate change, habitat loss and transformation, invasive species, pollution, overharvesting (and illegal harvesting), results in ongoing loss of our biodiversity, ecological degradation, and decline of the ecosystem services from biodiversity and our ecological infrastructure.

This is an incomplete list of the major pressures and drivers of the loss of biodiversity, ecological degradation and decline of ecosystem services. As mentioned in more depth above when discussing the pressures and drivers, aquaculture and industrial animal agriculture play an immense role in the decline of the country's biodiversity. This must be specifically included when discussing harmful environmental issues related hereto.

Furthermore, this section provides

As such, the White Paper emphasises the importance of people living in harmony with nature, and sets forth the vision: "A prosperous nation, living in harmony with nature, where biodiversity is conserved for present and future generations, and secures equitable livelihoods and improved human well-being.

This vision is in contradiction with the vision mentioned above, however we wish to note that the comments made in relation to the aforementioned vision is applicable here too.

8. IMPLEMENTING THE POLICY

The first paragraph of this section provides:

A high-level implementation plan, as well as a monitoring and evaluation plan are contained within the Socio-Economic Impact Assessment (SEIAs).

To quote the SEIA website:

In South Africa, Cabinet decided on the need for a consistent assessment of the socio-economic impact of policy initiatives, legislation, and regulations.²⁷

This is not in alignment with the environmental right. The environmental right calls for a balancing of economic, social, and environmental factors respectively in order to provide ecological sustainable development. As the abovementioned statement stands, this is not the case regarding the implementation of the Revised Draft White Paper. Furthermore, it fails to account for the mandate of the Department for animal welfare.

Furthermore, this section provides:

The following activities will be undertaken in developing the implementation roadmap:

²⁷

<https://www.dpme.gov.za/keyfocusareas/Socio%20Economic%20Impact%20Assessment%20System/Pages/default.aspx>

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1. *The development of a detailed implementation roadmap based on engagement with key relevant stakeholders to development the programme of work. To this end, the following activities will be undertaken:*
 - 1.1. *Identification of key stakeholders*
 - 1.2. *Engagement with relevant stakeholders*
 - 1.3. *Intergovernmental consultation to discuss implementation modalities*
 - 1.4. *Develop a program of work*
 - 1.5. *Costing of the implementation roadmap*
 - 1.6. *Finalise and adopt the implementation roadmap*
 - 1.7. *Implement the roadmap*
 - 1.8. *Mainstream the roadmap across spheres of government*

We propose the following amendments **in red** below:

1. The development of a detailed implementation roadmap based on engagement with **all-key** relevant stakeholders to development the programme of work. To this end, the following activities will be undertaken:
 - 1.1. Identification of all key stakeholders. This includes:**
 - 1.1.1. Business and Industry;**
 - 1.1.2. Wildlife Protection Organisations;**
 - 1.1.3. Non-Profit Organisations (NPOs);**
 - 1.1.4. Civil Society; and**
 - 1.1.5. Public at large**
 - 1.2. Engagement with **all** relevant stakeholders
 - 1.3. Investigation into international best practices and implementation modalities with due regard to the importance of biodiversity to both human and non-human life**
 - 1.4. Intergovernmental consultation to discuss implementation modalities
 - 1.5. Develop a program of work **based on influence from stakeholders; international best practices and intergovernmental consultation with due regard to the importance of biodiversity to human and non-human sustainability**
 - 1.6. Costing of the implementation roadmap
 - 1.7. Sourcing of financial means for the implementation roadmap. This could include**
 - 1.7.1. Funding,**
 - 1.7.2. Government Funding;**
 - 1.7.3. Private Sector Funding;**
 - 1.7.4. Revenue generation; and**
 - 1.7.5. International and donor funding.**
 - 1.8. Finalise and adopt the implementation roadmap
 - 1.9. Implement the roadmap
 - 1.10. Mainstream the roadmap across spheres of government **and country.**

Furthermore, this section provides:

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2. *The implementation roadmap will be monitored and evaluated on an annual basis in partnership with stakeholders, while the outcomes of such monitoring and evaluation will be used to update the programme of work as necessary. Consequently, the implementation plan will require or enable the following:*
 - 2.1. *Review and reform of key legislation and strategies to align with the goals and objectives of the White Paper;*
 - 2.2. *Improved co-operative governance and reduced inefficiencies across implementing authorities in line with goals and objectives, building on current initiatives underway within the environmental sphere of government;*
 - 2.3. *Development and implementation of cooperative governance tools such as Memoranda of Understanding with organs of states and key strategic partners on policy support and implementation mechanisms.*
 - 2.4. *Development of a sector Transformation Framework*
 - 2.5. *The review and reallocation of financial and human resources to cover identified gaps, and new areas of operation required for implementation; and*
 - 2.6. *Development of a South African model for conservation management strategy which will lay down a protocol for efficient and effective governance.*

We propose the following insertions **in red** below:

2. The implementation roadmap will be monitored and evaluated on an annual basis in partnership with stakeholders, while the outcomes of such monitoring and evaluation will be used to update the programme of work as necessary. Consequently, the implementation plan will require or enable the following:
 - 2.1. **Urgent** review, reform **and amendment** of key legislation, **policies** and strategies to align with the goals and objectives of the White Paper;
 - 2.2. Improved co-operative governance and reduced inefficiencies across implementing authorities in line with goals and objectives, **critically analysing and assessing current draft and existing initiatives against this White Paper and removing those inconsistent with it, and to the extent that they are in line with this White Paper,** building on current initiatives underway within the environmental sphere of government;
 - 2.3. Development and implementation of cooperative governance tools such as Memoranda of Understanding with organs of states and key strategic partners on policy support and implementation mechanisms.
 - 2.4. Development of a sector Transformation Framework **with due regard to the transformation of historically disadvantaged groups, communities, women, and youth as well as the recognition of the intrinsic value of animals;**
 - 2.5. The review, ~~and~~-reallocation **and additional sourcing** of financial and human resources to cover identified gaps, and new areas of operation required for implementation; and
 - 2.6. Development of a South African model for conservation management strategy which will lay down a protocol for efficient and effective governance.

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PART III: Additional Comments

We as ALRSA, have previously made various submissions to the Department where we have consistently raised certain issues we believe are critical to aspects covered by the Revised Draft White Paper. A selected list of these submissions include most recently, but are not limited to:

- i. ALRSA's Submission in respect of the Original Draft White Paper (September 2022);²⁸
- ii. ALRSA's Submission in respect of the Draft Game Meat Strategy (September 2022);²⁹
- iii. ALRSA's Submission in respect of the Draft Climate Change Bill (May 2022);³⁰
- iv. ALRSA's Submission in Respect of the Draft National Biodiversity Offset Guideline (May 2022);³¹
- v. ALRSA's Submission in Objection to the Proposed Hunting/Export Quota for Elephant, Rhinoceros and Leopard Hunting Trophies for the 2021 Calendar Year (November 2021);³²
- vi. ALRSA's Submission on the Draft Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhino (July 2021);³³
- vii. ALRSA's and the EMS Foundation's Submission in Respect of the Revised Draft National Biodiversity Framework (May 2021);³⁴
- viii. ALRSA's and the Environmental Law Association of South Africa's Proposed Updated Nationally Determined Contribution in terms of the UNFCCC and the Paris Agreement (April 2021);³⁵
- ix. ALRSA's and the EMS Foundation's Submission in respect of the High Level Panel (June 2020);³⁶ and

²⁸ <https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-White-Paper-Submission-Updated.pdf>

²⁹ <https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-Game-Meat-Strategy-Submission-Updated.pdf>

³⁰ <https://www.animallawreform.org/wp-content/uploads/2022/06/ALRSA-Climate-Change-Bill-Submission.pdf>

³¹ <https://www.animallawreform.org/wp-content/uploads/2022/05/ALRSA-Biodiversity-Offsets-Submission.pdf>

³² <https://www.animallawreform.org/wp-content/uploads/2022/05/ALRSA-Objection-to-Export-Hunting-Quotas-for-the-2021-Calendar-Year.pdf>

³³ <https://www.animallawreform.org/wp-content/uploads/2021/07/Submission-on-the-DFFE-Draft-Policy-Position.pdf>

³⁴ <https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf>

³⁵ <https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-ALRSA-and-ELA.pdf>

³⁶ <https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf>

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- x. ALRSA's and the EMS Foundation's Answers to Questions Received On 20 October 2020.³⁷

With regard to the above and other submissions and correspondence, below contains further broader comments relating to aspects which we are of the view are problematic in terms of the Revised Draft are understated, omitted and incorrect interpretations thereof found in the Revised Draft White Paper and other aspects related thereto. Kindly note that our comments in this Part III are non-exhaustive. We further reserve the right to make subsequent submissions, should more time be afforded to provide submissions hereto.

1. THE EXPRESS INCLUSION OF / INSUFFICIENT EMPHASIS ON AND ACKNOWLEDGEMENT HIGHLY SIGNIFICANT SECTORS IN RELATION TO PRESSURES AND DRIVERS

1.1 INDUSTRIAL ANIMAL AGRICULTURE

Animal use industries such as animal agriculture and fishing must be properly provided for as key drivers of biodiversity loss as well as key threats and risk to biodiversity (in addition to other problematic industries in the energy sector, among others). They must be properly provided for as such with specific application provisions contained within the White Paper.

Animal agriculture³⁸ (terrestrial and aquatic) as well as fishing have major impacts on biodiversity, from indirect impacts such as to their habitat, and driving climate change, to direct killing of wildlife. These industries and activities must be expressly provided for in the Draft White Paper. This can be done through further emphasis of livestock farming as a threat to biodiversity beyond merely providing that the industry is *vitaly important [land uses] for both socio-economic development and biodiversity conservation, but can have negative impacts if conducted too intensively, or inappropriately.*

Biodiversity forms the foundation of agriculture, as it is the source of all variety in our crops and livestock. The CBD states that globally agriculture produces an average of 23.7 million tons of food per day and provides livelihoods for 2.5 billion people.³⁹ Despite the benefits of the agriculture industry, agriculture poses an unprecedented threat to biodiversity worldwide. The current practices of the agriculture industry cause tremendous environmental impact through the conversion of natural habitats to monocultures, soil degradation, unsustainable consumption of water, and unsustainable use of pesticides and fertilizers.

³⁷ https://www.animallawreform.org/wp-content/uploads/2021/01/ALRSA-EMS-Answers-to-HLP-20-October-questions_Final.pdf

³⁸ For purposes of this Submission, animal agriculture includes both terrestrial animal agriculture and aquaculture. Emphasis is on industrialised and intensive systems rather than smaller extensive animal agriculture.

³⁹ CBD (2019) Agriculture must be part of the solution, not the problem <https://www.cbd.int/article/food-2019-12-11-16-49-46>

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With the recognition of South Africa being one of the smaller countries hosting more than two thirds of the world's biodiversity while only having a landmass of 1.21 million km² and 1.1 million km² of surrounding seas,⁴⁰ the increased clearing of biodiversity to facilitate animal agriculture, factory farming and agricultural activities presents a tremendous threat towards the conservation of biodiversity.

Apart from direct impacts on biodiversity, we wish to point out the extreme and undeniable negative, environmental impacts which animal agriculture more broadly has on the environment,⁴¹ which indirectly impacts biodiversity. These have been well documented and include but are not limited to huge amounts of resources required (including water and land); soil pollution, reduction in quality and contamination; water pollution and contamination; air pollution and contamination; greenhouse gas emissions; environmental justice issues; harmful chemicals and antibiotics; and various others.

While other countries in the world are looking at reducing their reliance on animal agriculture and investing in alternatives – including plant-based agriculture, South Africa is actively promoting and attempting to increase it. Reports indicate that “meat, aquaculture, eggs, and dairy use ~83% of the world's farmland and contribute 56-58% of food's different emissions, despite providing only 37% of our protein and 18% of our calories”.⁴²

Current animal agricultural farming systems have a major and harsh impact on the environment.⁴³ Studies show that a further consequence of the intensive farming of animals is the huge amount of greenhouse gas emissions associated therewith.⁴⁴ As the association of increased greenhouse gas emissions impacts climate change and environment.

The Revised White Paper fails to adequately address this as an imperative threat towards the conservation and sustainable use of South African biodiversity. We believe that the industrial

⁴⁰ Department of Environmental Affairs National Biodiversity Assessment (2018)
http://opus.sanbi.org/bitstream/20.500.12143/6376/3/NBA2018_Vol7_GeneticDiversity.pdf.

⁴¹ Some examples (non-exhaustive) of this include:
<https://www.sciencedirect.com/science/article/pii/B9780128052471000253> and
<https://www.humanesociety.org/sites/default/files/docs/hsus-report-agriculture-global-warming-and-climatechange.pdf>
and <https://www.nationalgeographic.com/environment/2019/01/commission-report-great-food-transformation-plant-diet-climate-change/>.

⁴² Poore, Joseph and Thomas Nemecek. 2018. “Reducing food's environmental impacts through producers and consumers” *Science* 360 (6392): 987-992. DOI: 10.1126/science.aag0216.

⁴³ Clark, Michael and David Tilman. 2017. “Comparative analysis of environmental impacts of agricultural production systems, agricultural input efficiency, and food choice.” *Environmental Research Letters* 12(6): 1-11. Retrieved July 20, 2019 (<https://iopscience.iop.org/article/10.1088/1748-9326/aa6cd5/meta>).

⁴⁴ Poore, Joseph and Thomas Nemecek. 2018. “Reducing food's environmental impacts through producers and consumers” *Science* 360 (6392): 987-992. DOI: 10.1126/science.aag0216.

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agricultural industry and its impacts be expressly included in the Pressures and Drivers section and Problem Statement respectively. The Memorandum of Understanding (MOU) between the DFFE and DALRD in relation to the conservation and sustainable use of biodiversity and impacts of Industrial Animal Agriculture be made available to ALRSA and other protection organisations to understand the Departments strategy in addressing this and other threats to biodiversity.

1.2 INDUSTRIAL AQUACULTURE

The CBD states that biodiversity underpins all fishing and aquaculture activities, as well as other species harvested for food and medicines. With 5 million fish being slaughtered every minute, fish continues to be the most traded food commodities worldwide.⁴⁵

Human activities are a tremendous threat to aquaculture and threat seas and coast through activities including overfishing, destructive fishing practices, pollution and waste disposal, agricultural runoff and habitat destruction. Global climate change further adds pressure to marine biodiversity by raising the sea level, increasing water temperature and being the catalyst for more storms and other natural disasters.⁴⁶

Internationally, a global initiative has taken shape. In the United States specifically, this is known as the 30 x 30 initiative.⁴⁷ The 30x30 campaign is a science-based initiative to conserve 30 percent of America's lands and waters by 2030 to fight climate change and reverse the destruction of wildlife, water sources and natural places.⁴⁸ According to the NRDC, the 30 x 30 is an initiative taken to protect at least fully and highly 30 percent of our oceans by 2030 to help safeguard marine ecosystems and fisheries that provide food, jobs, and cultural sustenance to the global community.⁴⁹ The 30x30 initiative contains three key priorities namely the protection of biodiversity, the mitigation of climate change and the reduction of major environmental threats.⁵⁰

As a member of the CBD, South Africa is said to be addressing the various challenges to the conservation and sustainable use of marine and coastal biodiversity through the application of

⁴⁵ Convention on Biological Diversity <https://www.cbd.int/article/waterforbiodiversity>

⁴⁶ Convention on Biological Diversity <https://www.cbd.int/article/oceanscontainawealthofbiodiversity>

⁴⁷ 30x30 Toolkit: Protecting 30 percent of America's Lands and Waters by 2030

https://www.google.com/url?sa=t&source=web&rct=j&url=https://static1.squarespace.com/static/589e56be46c3c44d745ac992/t/5eced9ffbd69a776fa88d63b/1590614527724/30x30%2BToolkit.pdf&ved=2ahUKEwi_rYPVm5_wAhWj_onEKHf7sBD8QFjABegQIAxAG&usq=AOvVaw32l_LDRCL099NMbcmdmjr2j&csid=1619554249253

⁴⁸ Science Advances *A Global Deal for Nature: Guiding principles, milestones and targets 19 April 2019 Vol 5 no 4*

<https://advances.sciencemag.org/content/5/4/eaav2869>

⁴⁹ 30X30:NRDC'S Commitment to protect nature and life on Earth <https://www.nrdc.org/30x30-nrdcs-commitment-protect-nature-and-life-earth>

⁵⁰ Science Advances *A Global Deal for Nature: Guiding principles, milestones and targets 19 April 2019 Vol 5 no 4*

<https://advances.sciencemag.org/content/5/4/eaav2869>

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precautionary and ecosystem approaches respectively.⁵¹ Furthermore, South Africa must take heed of the international 30x30 initiative in relation to both land and aquaculture in its conservation efforts.

The Revised White Paper fails to adequately address this as an imperative threat towards the conservation and sustainable use of South African biodiversity. We believe that the industrial agricultural aquaculture and its impacts be expressly included and elaborated on in the Pressures and Drivers section and Problem Statement of the Revised Draft White Paper respectively.

1.3 CLIMATE CHANGE

South Africa's climate change obligations must be properly acknowledged in the White Paper and the express recognition of climate change, legislation dealing with this global threat and regulations be included in the 'pressures and drivers' and 'national policy and legislative context' sections of the White Paper respectively. Activities that have significant climate change impacts (including activities such as animal agriculture, aquaculture, fishing, destruction of natural habitats, etc) should also be listed as pressures and drivers to the conservation and sustainable use of South African biodiversity.

Environmental degradation and the impacts on sustained life for all on Earth has become a global concern. Climate change is one of the Anthropocene effects on continued life for both humans and non-humans. Climate change is having a detrimental impact on the biodiversity and structure of global ecosystems.⁵²

The cumulative effects of climate change have already begun to take hold in Africa. Various international and national assessments and research papers have stated that South Africa is likely to be vulnerable to the adverse effects of climate change.⁵³

South Africa remains committed to making a fair contribution towards addressing GHG emissions however this is done subject to its developmental objectives considering poverty elimination and the eradication of inequality.⁵⁴

⁵¹ Convention on Biological Diversity <https://www.cbd.int/article/oceanscontainawealthofbiodiversity>

⁵² Imbert J et al, Synergies between Climate Change, Biodiversity, Ecosystem function and Services, Indirect Drivers of Change and Human Well-being in forests (2020). Retrieved from www.link.springer.com/chapter/10.1007/978-981-15-7301-9_12.

⁵³ Midgley G 'Scientific Aspects of Climate Change and their Impacts in South Africa' in Humby et al 'Climate Change, Law and Governance in South Africa' (2016) 2-1.

⁵⁴ South Africa's Intended Nationally Determined Contribution 2. Also see Kotze L et al 'Climate Change Law and Governance in South Africa – Setting the Scene' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 1-24.

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South Africa has announced that it would act voluntarily to reduce domestic GHG emissions.⁵⁵ This is evident from the statement that the country will contribute its fair share towards the common responsibility for the future and commit itself to having its actions be measurable, reportable, and verifiable.⁵⁶

Climate change seriously threatens to undermine many of the ecological sustainable development advances being made in South Africa.⁵⁷ The state has expressed its vulnerability to the impacts of climate change, particularly in respect of water and food security as well as health, human settlements, infrastructure, and ecosystem services.⁵⁸

South Africa has stated that the key challenge for the country is to drive, at an economy-wide scale, financing of and investing in the transition to a low carbon and climate resilient economy and society.⁵⁹ The strengthening of domestic institutions in developing countries is imperative towards addressing climate change and its effects.⁶⁰

Considering the urgency in addressing climate change as well as the legislative measures, both nationally and internationally, climate change be regarded as an urgent pressure in relation to South Africa's biodiversity. All the relevant climate change legislation, obligations and policies must be included in these guidelines – including the Nationally Determined Contribution (NDC).

If we are to halt the sixth mass extinction, we require at least half of the world's land to be conserved under protected areas. Ecological recovery is remarkable if natural systems are protected from extraction. The biggest threats to most wildlife species at present are habitat destruction and fragmentation.

Although the inclusion of the expansion of biodiversity, expansion of protected areas and protection of biodiversity for present and future generations is included in both the Revised Draft White Paper and the referenced National Biodiversity Framework, the exclusion of the threat of climate change

⁵⁵ Statement by South Africa to the UNFCCC COP 13 Plenary, 12 December 2007 available at www.environment.gov.za accessed (07 March 2020).

⁵⁶ Official letter to the UNFCCC dated 29 January 2010 available at https://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/southafricacphaccord_app2.pdf accessed (26 July 2022). Also see Brown DA, Glider A & Kotze L. 'South Africa and Climate Change Ethics' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 7-6.

⁵⁷ Midgley G 'Scientific Aspects of Climate Change and their Impacts in South Africa' in Humby et al 'Climate Change, Law and Governance in South Africa' (2016) 2-12.

⁵⁸ South Africa Intended National Contribution to the UNFCCC p1 available at <https://www4.unfccc.int> (accessed 25 July 2022)

⁵⁹ South Africa Intended National Contribution to the UNFCCC p8 available at <https://www4.unfccc.int> (accessed 25 July 2022)

⁶⁰ Wang X et al 'Research and scholarship on climate change law in developing countries' in Farber DA and Peeters M (eds.) 'Climate Change Law' (2016) 122.

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undermines these inclusions. Ultimately, we submit that climate change should be seen as the threat to biodiversity. Action is required in dealing with it to ensure the conservation and sustainable use of biodiversity for present and future generations for animal and people's well-being.

2. COVID-19, ZOO NOTIC DISEASES AND HEALTH

Zoonoses are diseases transmissible between animals (domestic and wildlife) and humans. Around 75% of emerging infectious diseases are zoonotic (Taylor et al., 2001; Woolhouse and Gowtage-Sequeria, 2005). In aggregate, zoonoses have high impacts on human health, livelihoods, animals and ecosystems.⁶¹

Of particular relevance and importance in respect of biodiversity is that the COVID-19 pandemic is largely believed to have been caused as a result of the consumption of wildlife. Despite this, this aspect is not addressed in the Revised Draft White Paper, with the focus remaining in favour of use.

The current global health crisis makes it clear that we are all inter-connected and that zoonotic spillovers are a result of human actions towards non-human animals and the way we interact with them. The exploitation of wildlife by humans through hunting, trade, habitat degradation and close contact between the two, increases the risk of virus spillover.⁶²

According to infectious disease experts, the emergence of infectious zoonotic disease outbreaks have increased dramatically in the last 30 years and the most likely causes are anthropogenic commercialisation drivers such as: increased number of farmed animals – including wild animals; increased hunting, increased trade in and transport of wild and domestic animals and increased agricultural activities and expansion of agricultural land⁶³ with consequent degradation of eco-systems.

Reducing the risk of zoonotic spillover events from wild animals to people requires maintaining wild animals in secure and intact wild habitats and minimizing wild animal human interaction, including by severely limiting the use and trade of wild animals, particularly for sale as luxury meats in large urban wildlife markets.

We define wild animals as non-domesticated species captured from the wild or bred in captivity; a particular focus is required for mammals and birds as these have been the sources of past zoonotic outbreaks. We define the wild animal trade as the legal and illegal commerce of such live wild animals,

⁶¹ Grace, D., Infectious Diseases in Agriculture, in *Encyclopedia of Food Security and Sustainability*, Volume 3, 2019, Pages 439-447, 2019, <https://doi.org/10.1016/B978-0-08-100596-5.21570-9>

⁶² <https://royalsocietypublishing.org/doi/10.1098/rspb.2019.2736>

⁶³ Professor Thijs Kuiken, Comparative Pathology at the Department of Viroscience of the Erasmus University Medical Centre in Rotterdam, The Netherlands and Di Marco et al. Moreno Di Marco et. al., Sustainable development must account for pandemic risk, PNAS February 25, 2020, 117 (8) 3888-3892; <https://doi.org/10.1073/pnas.200165511>

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as well as of their parts and derivatives. We are not advocating for restrictions on the movement of animals for non-commercial trade (e.g., conservation, sanctuaries).

It is internationally recognised that all species react to unsuitable conditions and when stressed and immune-compromised they become a vehicle for pathogens and the ideal environment for the emergence and spread of infectious diseases which can then be transmitted to humans. Good welfare conditions are not possible for commercially farmed wild animals. Poor welfare among groups of animals increases the risk of disease, and therefore zoonosis.

More worryingly, animal farming is a system which allows the same or better production at lower costs; therefore, welfare and wildlife farming are contradictory concepts. In terms of welfare, the more controlled the environment is, the more the physiology of the animal stresses.⁶⁴ We will never be able to predict how the transmission will cross a species. So, whenever we try to farm domestic or wild animals for economic benefits, we expose humanity to pathogens that are and can be extremely dangerous for humans.⁶⁵

Wildlife farms can also contribute to the spread of infections and diseases to domestic farmed animals, to humans and to other wildlife. This is a threat to conservation and to traditional cattle farming and consequently also to those communities relying on a few animals for food. Farmed wildlife has shown to be carrying ticks, a carrier of the Borrelia bacteria; several skin diseases are caused by farmed animals, both domestic and wild. Of additional concern is Tuberculosis, which affects a large number of humans and nonhumans, and it is currently affecting those in South Africa and in countries where we export wildlife to. TB, for example, is the first cause of human death in China.

In the case of the big cat breeding industry, the slaughter of animals and export of bones involves serious food health and safety violations. Individual lion ‘slaughterhouses’ are operating outside of South African law and are not compliant with food safety law and/or occupational health legislation especially given that many lions might be affected by bovine Tuberculosis.

The number of farmed animals should be reduced, not increased, as part of transformative changes for sustainability.⁶⁶ This would mean lower risk of zoonosis, efficient land use, less harm to climate, improved biodiversity and cleaner land, water, and air. Ultimately, it would mean initiating that transformative process to honour the Sustainable Development Goals.⁶⁷ South Africa committed to.

⁶⁴ European Parliament's Committee on Petitions commissioned study on Animal Welfare in the European Union, 2017, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)583114](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)583114)

⁶⁵ Professor Lu Jia Hai, Epidemiology, University of Guangzhou, Webinar; Zoonotic Risks in Wildlife Farming, 28 April 2020

⁶⁶ Professor Lu Jia Hai, Epidemiology, University of Guangzhou, Webinar; Zoonotic Risks in Wildlife Farming, 28 April 2020

⁶⁷ <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

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The Minister should support measures to implement the above changes in the interest of the environment and the people.

Global and national action to curb the wildlife trade is one of the most effective strategies to prevent future pandemics and is necessary to reduce animal suffering and protect biodiversity.⁶⁸ We therefore call upon South Africa to support and champion a permanent ban on wild animal markets that could become sources for future pandemics and to commit to end the international trade in wild animals and their products could aid in the spread of zoonotic diseases.

To fulfil South Africa's commitment and demonstrate that this is a global problem requiring a global solution, we further urge South Africa to develop a national plan to ensure that our own contributions to the wild animal trade do not contribute to this global problem. The Revised Draft White Paper and subsequent strategies such as the recent Draft Game Meat Strategy should prioritize protecting wildlife, biodiversity and animal welfare needs as part of a global and national pandemic prevention strategy. This should be recognised and included in the Problem Statement of the Revised Draft White Paper.

3. PRESUMPTION OF USE AND AVAILABLE ALTERNATIVES

Throughout the current biodiversity legislation and policy framework, a presumption in favour of the use of nature exists. Apart from direct impacts on biodiversity, we wish to point out the extreme and undeniable negative environmental impacts which the use of biodiversity more broadly has on the environment, which undermines the sentience and recognition of intrinsic value of animals and nature.

These have been well document and include but are not limited to huge amounts of resources required (including water and land); soil pollution, reduction in quality and contamination; water pollution and contamination; air pollution and contamination; greenhouse gas emissions; environmental justice issues; harmful chemicals and antibiotics; and various others.

This presumption of use is contained throughout the Revised Draft White Paper with none of its now four goals and two enablers providing for the recognition, promotion, transition to or otherwise interest in alternatives to use of nature. This is further apparent from the continued adoption of subsequent strategies which promote the use of animals, most notably the recent Draft Game Meat Strategy made available for public comment.

⁶⁸ Wishart, David. Commentary: Four states to help avoid the next pandemic. Folio. May 28 2020
www.folio.ca/commentary--four-strategies-to-help-avoid-the-next-pandemic/

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The use of alternatives to animal protein for example is halted by the Department of Agriculture Land Reform and Rural Development (“**DALRRD**”) issuing a Communiqué⁶⁹ about the “illicit use” of product names in respect of names exclusively prescribed for processed meat products, such as “vegan or veggie biltong”, “mushroom biltong”, “plant-based meatballs”, “vegan nuggets”, “vegan BBQ ribs”, “plant-based bratwurst”, “chorizo & red pepper vegetarian sausages” and “plant-based chicken-style strips”, etc. This document states that it is an offence to use product names prescribed or reserved for processed meat in the sale of analogues and further indicates that the Food Safety Agency (Pty) Ltd will seize any meat analogue products using the product names prescribed for processed meat products.

While other countries in the world are looking at reducing their reliance on animal as a source of protein; and investing in alternatives to use – including plant-based agriculture, South Africa is actively promoting and attempting to increase it.

4. INAPPROPRIATE LANGUAGE/TERMINOLOGY USED BY THE DEPARTMENT AND GOVERNMENT AGENCIES AND AUTHORITIES

The type of language and terminology used across various policy documents, legislation, regulations, documents and other statements produced by Department, the Ministry, their representatives and the provinces in relation to animals and biodiversity is unacceptable, insensitive and needs to urgently change to reflect: a much more caring position which indicates a duty of care and recognition of sentience; Constitutional Court judgments; and the overwhelming knowledge that humans have on the sentience of nonhuman animals.

Specific examples of this can be seen in the Revised Draft White Paper including “biodiversity estate”; “resources” (natural as well as biological / faunal, etc.); “wildlife estate”; and “components of biodiversity”.

The current terminology compels that if an animal is not economically valuable as a resource, then the well-being of that animal does not matter. Such a legislated situation is abhorrent and not justifiable. Conservation, all-round biodiversity, and healthy welfare are independent from and inescapably precede any economic use.

The kind of terminology used by the Department takes place against the backdrop of the commodification of wild animals (who usually “pay their way” with their lives) and a deeply ingrained marginalization of “the Other”. Animal suffering seems, therefore, not to be on their agenda and

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<https://www.foodfocus.co.za/assets/documents/Communiqué%20to%20the%20stakeholders%20of%20meat%20analogues%20-%202022%20June%202022.pdf>

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indeed, through its use of terminology it is advocating endless exploitation of animals, concealing ethical issues and real suffering behind its raw commercialism.

The specific use of desensitized and detached language and terminology serves to codify, objectify, control, convert, erase, and disembody living beings. It plays an important role in legitimizing and sanitizing the unspeakable so that there is a deliberate collective forgetfulness about the main actors—who is being traded, where they come from—and the devastation that is being unleashed on wild animals through trade and commercial activities. Hence, sterile scientific terminology such as “game,” “wildlife products,” “wildlife production,” “off-takes,” “quotas,” “harvest,” “high value natural resource,” “damage causing,” “wild sourced inputs,” “specimens,” “derivatives,” and “derived products” are endlessly used when referring to sentient living beings. The White Paper fails in this regard as it uses similar terminology including ‘stock’ when referring to fish; ‘use of biological resources’ when referring to human activities relating to biodiversity; ‘use of animal population’ and ‘underused or as yet underdeveloped’ when referring to biodiversity components not used by humans.

Given that DFFE’s primary mandate is conservation, it is obliged, first and foremost, to holistically protect our natural heritage and healthy biodiverse environment before any economic development can ever be considered.

The words “faunal biological resources”- supposedly to allay our concerns in relation to welfare and to address the recent court jurisprudence on the importance of animal welfare, do not reflect the intrinsic value or sentience of wild animals and are in contradiction with the need to protect or consider their welfare and protection – the very *raison d’être* of the amendments to NEM:BA.

This kind of utilitarian language does not reflect the values of the South African Constitution nor sentiment expressed by the Constitutional Court on this matter.

-----**END**-----

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