

**SUBMISSION IN RESPECT OF THE DRAFT
NOTICE PROHIBITING CERTAIN ACTIVITIES
INVOLVING AFRICAN LION (*Panthera leo*)**



21 November 2023



ANIMAL LAW REFORM

SOUTH AFRICA

To: The Department of Forestry, Fisheries, and the Environment
("DFFE" or the "Department")
ATT: The Director-General: Department of Forestry, Fisheries and the
Environment
Mr Khuthadzo Mahamba
Per e-mail: lionprohibition@dffe.gov.za

21 November 2023

Dear Honourable Representatives,

**RE: SUBMISSION: THE DRAFT NOTICE PROHIBITING CERTAIN
ACTIVITIES INVOLVING AFRICAN LION (*Panthera leo*)**

INTRODUCTION

Please find herewith the submission (the "Submission") by Animal Law Reform South Africa ("ALRSA")¹ in respect of the call for public comments published in *Government Gazette* Notice No. 49383 dated 29 September 2023 in respect of the Draft Notice Prohibiting Certain Activities Involving African Lion (*Panthera leo*)² (the "Draft Notice").

We wish to commend the Department's steps in respect of the publishing the Draft Notice, and the Department's intention to prohibit the establishment or registration of new captive breeding facilities, commercial exhibition facilities, rehabilitation facilities or sanctuaries in respect of the live specimens of African lion.

ALRSA echoes several of the sentiments expressed in the Socio-Economic Impact Assessment System ("SEIAS") on the Draft Prohibition of Certain Activities Involving African Lion (*Panthera leo*)³ including that: "*the captive lion industry threatened South Africa's reputation as a leader in the conservation of wildlife*"; "*the captive lion industry does not contribute to the conservation of wild lions*"; and "*the trade in lion derivatives poses major risks to wild lion populations in South Africa*". We support the view that the prohibition of the establishment of new captive lion facilities will be regarded as one positive step toward the phasing out of the captive lion industry in South Africa,⁴ as well as a shifting ethic in treatment of nonhuman animals. We note however, that there are still various other steps which would need to occur to achieve this, which are outside the scope of this Submission.

¹ <https://www.animallawreform.org/>.

² https://www.dffe.gov.za/sites/default/files/legislation/2023-09/nemba_africanlionprohibitedactivities_g493838gon3926.pdf.

³ Access to a copy of the Draft SEIAS Report obtained by ALRSA upon inquiry directed to Mr Khuthadzo Mahamba at lionprohibition@dffe.gov.za.

⁴ <https://www.dffe.gov.za/node/2075>.



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LEGAL DEVELOPMENTS: THE INTRINSIC VALUE OF ANIMALS, ANIMAL SENTIENCE, THE ENVIRONMENTAL RIGHTS AND ANIMALS

In recent years, there have been some noticeable achievements in judicial pronouncements that relate to animals. These pronouncements illustrate the potential for advancing animal protection in tangible legal action as well as their well-being and flourishing in South Africa. In *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism*⁵ the validity of regulations published by the Minister of Environmental Affairs and Tourism designed to regulate the practice of canned lion hunting, were challenged before the High Court.⁶ The regulations in question listed the African lion as a ‘vulnerable species’. This rendered the ‘breeding, hunting, catching, capturing or killing’ and ‘pursuing, lying in wait for or luring’ of a living African lion, a prohibited practice in South Africa.⁷ Despite not declaring the practice of canned lion hunting unlawful, Justice Rampai acknowledged that the practice is ‘**abhorrent and repulsive**’ due to the suffering of animals, based on the notion of sentience.⁸ Rampai J further emphasised the importance of protecting animals against cruel practices that humans subject them to. The application was dismissed with costs on the basis that the decision in question ‘cannot be said to be irrational or to be a decision that no reasonable decision-maker could take’.⁹ Unfortunately, the decision was overturned by the Supreme Court of Appeal (“SCA”). The SCA found that the decision to list the African lion as a ‘vulnerable species’ was invalid considering administrative procedures that were not followed, in the correct manner. Justice Rampai’s judgment is, however, reflective of adjudication that takes the interests of animals into consideration, and rejects the exploitation and cruelty.

In *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another*,¹⁰ a full bench of the Constitutional Court recognised that animals are “sentient beings” and that they have “intrinsic value as individuals.” This has since been echoed by various other courts, including the Supreme Court of Appeal.¹¹ Notably, the court held that animal welfare and animal conservation together reflect intertwined values and further related animal welfare to the

⁵ *South African Predator Breeders Association and Others v Minister of Environmental Affairs and Tourism* (1900/2007) [2009] ZAFSHC 68 (*South African Predator Breeders Association*).

⁶ Canned lion hunting is done for selfish reasons. Hunting lions is for the trophy. Lion hunters often sell the bones of the lion they killed to the illegal market where the bones are used for medicine despite it being proven that lion bones have no medicinal value.

⁷ *South African Predator Breeders Association and Others v Minister of Environmental Affairs and Tourism* (72/10) [2010] ZASCA 151; [2011] 2 All SA 529 (SCA) (*South African Predator Breeders Association SCA*) para 14.

⁸ *Ibid* at para 72.

⁹ *Ibid* at para 80.

¹⁰ *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another* [2016] ZACC 46 (NSPCA 2016).

¹¹ *Bool Smuts and Another v Herman Botha* (887/20) [2022] ZASCA 3 (10 January 2022).



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constitutionally protected environmental right (in section 24 of the Constitution).¹² When referencing the Supreme Court of Appeal in *Lemthongthai*, the Constitutional Court further noted that “[constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general]” and the Court concluded further that this obligation was especially pertinent because of our history.¹³ When referencing the “integrative approach” (as coined by Professor David Bilchitz, one of ALRSA’s co-founders and directors) the court noted that such 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.”¹⁴

In referencing the above statements in the case of *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*,¹⁵ the court noted that “[t]hese unambiguous and compelling sentiments require careful consideration in that not only do they provide guidance in terms of the legal conduct that is expected of us but rather that it also speaks to the kind of custodial care we are enjoined to show to the environment for the benefit of this and future generations.” This case related to the export quota of lion bones for 2017 and 2018, which the court ultimately found to be unlawful and constitutionally invalid. One reason therefore was a failure by the then minister of the Department of Environmental Affairs to consider welfare issues relating to lions in captivity when making decisions relevant to them.

Taking the above jurisprudence into consideration, ALRSA recognises the necessity of shutting down cruel and exploitative animal industries, including in this instance, the shutting down of the abhorrent and repulsive captive lion industry. We applaud the acknowledgement of the Department that lions are sentient and social animals and consideration needs to be given to the promotion of their well-being including their physical and mental health, quality of life, and their ability to cope with their environment.¹⁶ This is further supported by countless studies confirming that various land and aquatic animals (including lions) have both positive and negative subjective experiences, such as expressing feelings, emotions, and the ability to perceive, interact with and respond to his/her surrounding environment.¹⁷ As such, we encourage the Department to adopt a similar approach in respect of the protection of all animals, akin to the measures adopted by the Department in respect of lions. For example, ALRSA

¹² Ibid at para 67.

¹³ *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) (*Lemthongthai*) at para 20.

¹⁴ NSPCA Case at para 58.

¹⁵ *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 337; 2020 (1) SA 249 (GP) (6 August 2019)

¹⁶ DFFE: <https://www.dffe.gov.za/node/2075>.

¹⁷

[https://www.researchgate.net/publication/268787765 Cognitive Control Under Social Influence in Baboons](https://www.researchgate.net/publication/268787765_Cognitive_Control_Under_Social_Influence_in_Baboons) and <https://link.springer.com/content/pdf/10.1007/s10071-022-01681-x.pdf>. For illustration purposes



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recommends that the sentience of all relevant animals be included and recognised in all Departmental policies and legislation under its purview. Furthermore, ALRSA recommends that such policies and legislation be brought in alignment with the principle of well-being which has been defined in the National Environmental Management Laws Amendment Act¹⁸ (“NEM:LAA”).

ORGANISATIONAL BACKGROUND AND DECLARATION OF INTEREST

This Submission is by ALRSA, a non-profit company and a registered NPO (Number 238-234 NPO). ALRSA operates through three key Pillars being: Animal Flourishing; Social Justice; the Law. ALRSA undertakes its work through three main mechanisms, namely: Education & Research; Legislative & Policy Reform; Litigation & Legal services.

Through these mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa which recognises the intrinsic worth of animals as sentient beings. Our work is grounded in our understanding that it is critical for a context-sensitive approach to be taken to the furtherance of animal protection in South Africa, and that the impact of our work is enhanced through an intersectional approach to animal wellbeing, social justice, and environmental protection.

We have a substantial interest in the issues to be considered by the Department, including in the Draft Notice. 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. ALRSA is a member of the Wildlife Well-being Forum initiated by the Department. We have 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 human as well as animals. We have, within our core focus, concepts of social justice and appreciate the need for intersectionality in our approach.

Below contains our comments in respect of the specific provisions contained within the Draft Notice. Please note that this Submission is **non-exhaustive** and does not represent all the responses or objections to or comments on the issues 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.

¹⁸ No 02 of 2022.



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We note that the Department currently has 3 (three) important documents open for submission including in relation to the Draft Policy Position for Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros as well as the the Threatened or Protected Species Regulations (TOPS Regulations) and Species Lists (in addition to the Draft Notice). Due to limited capacity as a small NGO, we are unfortunatly not able to make submissions on all relevant documentation at this time, despite having a major interest in these issues and the need to provide input on these matters. We request that the Department consider extending the submission dates for these documents and avoid releasing multiple complex regulatory documents for public comment simultaneously.

We welcome the opportunity to make such Submission and look forward to it being properly considered by the Department. 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.

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

Yours sincerely,



Amy P. Wilson

BCom, LLB, LLM, LLD Candidate
Director, Co-Founder
Animal Law Reform South Africa
amywilson@animallawreform.org



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SUBMISSION REGARDING THE DRAFT NOTICE PROHIBITING CERTAIN ACTIVITIES INVOLVING AFRICAN LION (*Panthera leo*)

I. SECTION 1: DEFINITIONS

While we note that several definitions in this notice have been adopted from the TOPS Regulations (currently open for public comment as at the date of this Submission), including “rehabilitation facility” and “sanctuary”. ALRSA notes that the Draft Notice presents an opportunity for the Department to further advance animal well-being, as included in NEMLAA. At present, both definitions could be improved upon as they currently are open to interpretation and potential abuse, contrary to the well-being of lions (and the public interest). For example, there are various ‘rehabilitation facilities’ and so-called ‘sanctuary facilities’ that are exploitative towards animals and do not adequately consider their best interests or well-being and mislead members of the public as well as volunteers.

As such, ALRSA proposes that the definition of “rehabilitation facility” and “sanctuary,” be included in the Draft Notice (and TOPS Regulations as appropriate), with the following amendments (in red):

“Rehabilitation Facility”

“rehabilitation facility” means a *bona fide* facility equipped for the temporary keeping of a live-

- (a) sick or injured specimen for the purpose of providing treatment of and care to such specimen; or
- (b) young orphan specimen for rearing purposes; and

with the overall intent to release such a specimen, but excludes a veterinarian’s practice or veterinary academic hospital and provided that such facility is not a captive breeding facility; nor commercial exhibition facility nor established for commercial purposes”.

“Sanctuary”

“Sanctuary” – means a facility that -

- a. provides permanent care to a specimen of a *listed threatened or protected* species, that would be unable to sustain *him or herself* if released in an environment other than a control environment, irrespective of the reason for such inability *but provided that*



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- such facility is not a captive breeding facility; nor commercial exhibition facility nor established for commercial purposes; and*
- b. provides a safe environment, suitable for an animal to express his or her natural physical, social, and cognitive behaviour to the maximum extent possible while benefiting from the best possible care; and*
 - c. prevents and excludes any potentially exploitive and/or harmful activities, including but not limited to breeding, trading, public performances, and public tactile activities (walking, riding, touching, feeding); and*
 - d. is a bona fide sanctuary accredited by the Global Federation of Animal Sanctuaries.”*

II. SECTION 2: PROHIBITIONS

The following proposals of ALRSA are included **in red** below:

Section 2(1)

*“(1) A person may not, in respect of a live specimen of African lion (*Panthera leo*), establish or register a new [or expand on, renew or any other way amend any license or permit for] -*

- (a) captive breeding facility and/or commercial exhibition facility for any reason whatsoever; or*
- (b) ~~commercial exhibition facility~~, bona fide rehabilitation facility or bona fide sanctuary, unless the facility provides a public function or operates on a non-profit basis.”*

Commercial exhibition facilities should be included in the same category as captive breeding facilities (sub paragraph (a)) as these are commercial enterprises in the same manner, that captive breeding facilities are. The latter two facilities (sanctuaries and rehabilitation facilities) must be differentiated as these provide services for animals as opposed to human economic interests. Failure to include commercial exhibition facilities in paragraph (a) perpetuates the commercial breeding and use of lions in terms of the captive lion industry.

Rehabilitation facilities are temporary holdings for animals as they recover / recuperate and sanctuaries are long-term homes for animals not subject to commercial use or exploitation. Sanctuaries should be those accredited in terms of GFAS (the Global Federation of Animal Sanctuaries) and neither of the facilities in 2(1)(b) should allow for interaction between lions and members of the public / any persons other than qualified veterinarians or other qualified and accredited personnel.

“New”



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We appreciate that the Draft Notice applies to new facilities, however the current provision remains silent in addressing the concern of existing facilities of this nature. Although the SEIAS states that the proposed prohibition “*will ensure that, while a broader policy and legislative process is underway that is intended to achieve similar behavioural changes in respect of the existing captive lion industry, the industry is prevented from further expansion*”, this Draft Notice presents an opportunity to commence with the phasing out of existing captive facilities. ALRSA submits that this prohibition should address the phasing out of existing facilities including any renewals and/or expansions of / amendments to existing licenses / permits for such facilities. There should be a moratorium on the renewal of any such permits or licenses. This would support the view expressed in the background information of this Draft Notice which states “*one of the recommendations of the Portfolio Committee [for Environmental Affairs] was that a policy and legislative review of captive breeding of lions for hunting and lion bone trade, should be initiated as a matter of urgency, with a view of putting an end to this practice*”,¹⁹ the High-Level Panel Panel’s (“HLP”) recommendation “*that South Africa does not captive breed lions, keep lions in captivity, or use captive lions or their derivatives commercially*” and the SEIAS which states “*the continuation of keeping and breeding of lion in controlled environments will continue to affect the well-being of captive lions and will continue to enable the practices that have affected South Africa’s conservation reputation, such as hunting of captive-bred lion, commercial exploitation of live lion and their derivatives, and tourists activities such as cub-petting*”.

According to the SEIAS, “*the captive lion industry in South Africa makes a relatively negligible contribution to the country’s economy and transformative efforts*” therefore the prohibition of existing captive facilities could potentially amount to limited economic and transformative impacts.

“Public Function”

The term “public function” remains undefined within the Draft Notice which could lead to potential abuse. This could facilitate the establishment and/or registration of commercial exhibition facilities, rehabilitation facilities and/or sanctuaries, under the auspices of serving a ‘public function.’

According to the SCA, “*a body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.*”²⁰ Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This

¹⁹ <https://www.dffe.gov.za/node/2075>.

²⁰ *Mittalsteel South Africa Ltd. v Hlatsbrwayo* (326/05) [2006] ZASCA 93; [2007] 1 All SA 1 (SCA); 2007 (1) SA 66 (SCA); 2007 (4) BCLR 386 (SCA) (31 August 2006), para 20.



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may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education, and personal social services, from funds raised by taxation."²¹

ALRSA asserts that "public function" be clearly defined and properly qualified within the abovementioned prohibition, to avoid any potential loopholes by the industry in making allegations that they are performing same. A public function does not include for entertainment, or economic purposes. Furthermore, as provided for above, the qualification of "public function" should only apply to *bona fide* rehabilitation facilities and *bona fide* sanctuaries and not to commercial exhibition facilities, captive breeding facilities or other facilities undertaking a commercial purpose.

"Non-profit basis"

Furthermore, the term "non-profit basis" is not defined, and remains unqualified within this provision. ALRSA submits that this term be further elaborated and defined with explicit prerequisites to be accepted as "non-profit basis." Among these requirements, ALRSA submits that "non-profit basis" expressly and exclusively be afforded to non-profit organisations that are *bona fide* non-profit organisations who are registered in terms of the Non-Profit Organisations Act and have a documented history and reputation of being a non-profit organisation.

Section 2(2)

"(2) A person may not:

- (a) introduce, have in possession, or exercise physical control over a live [or other] specimen of African lion in any other new controlled environment that is not a facility referred to in subparagraph (1)."*
- (b) have in their possession any derivatives stemming from a live specimen of an African lion including lion bone in any facility referred to in subparagraph (1)."*

"Live specimen"

While ALRSA commends the efforts of the Department in protecting live specimens of African lion in the country, the exclusive prohibition of only live specimen of these species provides a potential gap in adequately addressing issues relating to other specimens (such as lion body parts) associated with the captive lion industry.

Over the past decade, the trade in lion body parts, and especially the trade in lion bones from Africa to Asia, has raised global concerns. The African lion is categorised as a

²¹ *Mittalsteel South Africa Ltd. v Hlatsbwayo* (326/05) [2006] ZASCA 93; [2007] 1 All SA 1 (SCA); 2007 (1) SA 66 (SCA); 2007 (4) BCLR 386 (SCA) (31 August 2006), para 20.



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‘vulnerable’ species by the IUCN Red List.²² However, owing to its listing under Appendix II of CITES, the body parts and bones of African lions – wild and captive – are legally allowed to be traded on an international scale.²³ At the 17th Conference of the Parties to CITES (CoP 17), it was proposed that the African lion be uplisted to Appendix I in order for the trade of body parts and bones of wild African lions to be prohibited as the trade could result in the species becoming extinct. The Draft Notice provides an opportunity to further enhance the Departments goal of ending the abhorrent captive lion industry.

According to a recent investigative report by National Geographic, big cats are slaughtered under unclear conditions and their bones are stockpiled in lion farms across the country.²⁴ The omission of the Draft Notice to address existing facilities, coupled with the omission to address derivatives stemming from the African lion including lion bone and body parts, conflicts with aforementioned SEIAS sentiment that “*the captive lion industry threatened South Africa’s reputation as a leader in the conservation of wildlife*” and “*the trade in lion derivatives poses major risks to wild lion populations in South Africa*”. As such, ALRSA recommends that the Draft Notice applies to any specimen further expressly provides for the prohibition of stockpiling lion bone on existing facilities. Furthermore, ALRSA recommends that the above include specific reference to lion bone, as follows:

III. SECTION 3: EXCLUSIONS FROM PROHIBITION

Section 3

~~“The prohibition referred to in paragraph 2 does not apply in exceptional cases where change of ownership is unavoidable, including but not limited to, in the case of a deceased estate or bankruptcy of the original owner”.~~

The exclusions and this entire section should be removed. In the case of death or bankruptcy, it should not be the case that the notice does not apply (as the notice strictly relates to new facilities). It is illogical to assume that a new facility would be registered or established in the case of death or bankruptcy. The word “unavoidable” is also unclear and open to abuse in its interpretation. In the case of any bankruptcy or death, any lions should be dealt with appropriately with due regard to their well-being including being transferred to a bona fide rehabilitation facility or bona fide sanctuary facility, controlled

²² Bauer, H., Packer, C., Funston, P.F., Henschel, P. & Nowell, K. 2016. Panthera leo. The IUCN Red List of Threatened Species 2016: e.T15951A115130419. <http://dx.doi.org/10.2305/IUCN.UK.2016-3.RLTS.T15951A107265605.en>

²³ <https://cites.org/sites/default/files/eng/app/2021/E-Appendices-2021-02-14.pdf>.

²⁴ <https://www.nationalgeographic.com/animals/article/who-buys-lion-bones-inside-south-africas-skeleton-trade>.



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by a non-profit organization or entity meeting the revised definition and requirements of a “non-profit basis” or revised definition and requirements of “public function”.

IV. SECTION 4: COMMENCEMENT OF THE PROHIBITIONS

Given that thousands of lions are currently implicated in the cruel and abhorrent captive lion industry, this Draft Notice should come into force and effect as soon as possible to avoid and limit further suffering and cruelty. In addition, the phasing out of existing facilities must be addressed and dealt with as a matter of urgency.

V. SECTION 5: BACKGROUND INFORMATION

As aforementioned, while we applaud the recognition of lions as sentient and social animals, the narrative that “...and as such more consideration needs to be given to promoting their wellbeing, compared to that of less sentient species. These considerations include their physical and mental health, quality of life, and their ability to cope with their environment.” The science of sentience is evolving and illustrating that more animals are sentient than previously understood. There is no need to mention that certain animals are deserving of more consideration than other animals, in this context and the Department should recognise and adopt a more inclusive approach to the animals under its custodianship and protection mandate.

As aforementioned, we applaud the steps by the Department to prohibit new facilities relating to the captive lion industry and we look forward to expanded actions for lions (including in relation to existing facilities), as well as other animals whose well-being is impacted in wildlife use and exploitative industries in South Africa.

----- END -----