

**REVIEW OF POLICIES, LEGISLATION AND PRACTICES RELATING
TO THE MANAGEMENT AND HANDLING, BREEDING, HUNTING
AND TRADE OF ELEPHANT, LION, LEOPARD AND RHINOCEROS**



**National Council
of SPCAs**

SUBMITTED BY:

The National Council of Societies for the Prevention of Cruelty to Animals

**Douglas Wolhuter
National Senior Inspector
Manager - NSPCAs Wildlife Protection Unit**

**Pricilla Stiglingh
Research Officer
NSPCA**

**Jason Page
National Inspector
NSPCAs Wildlife Protection Unit**

**Nicole Venter
National Inspector
NSPCAs Wildlife Protection Unit**

**Annelie De Klerk
National Trainee Inspector
NSPCAs Wildlife Protection Unit**

Tel: 011 – 907 3590



For over 60 years, the NSPCA has been protecting our country's animals.

We prevent cruelty, promote kindness and alleviate the suffering of animals.

Our objective is to serve and protect ALL animals, to uplift their welfare and to ensure that the protection they have under South African law is upheld and respected.

Our **mission** is to prevent cruelty and promote the welfare of all animals, whilst our **vision** is to end animal cruelty in South Africa and engender compassion for all animals.

ABOUT THE WILDLIFE PROTECTION UNIT

In operation since 1987, the Wildlife Protection Unit has gained national recognition for its expertise and sound approach to the welfare of wildlife, often being called upon to assist in the resolution of practical problems.

National issues and problems are addressed through the development of standards for the benefit of animals within the wildlife industry. The Unit is also active in providing welfare input into national and provincial legislation which control wild animal use.

The Unit's activities include – wildlife rescue operations, lobbying to outlaw unethical practices, monitoring of conditions in zoos, sanctuaries and rehabilitation centres, elephant-back safaris, captive predator facilities et al through pro-active inspections and complaint investigations and assisting SPCAs around the country with wildlife issues in their respective areas.

The Unit provides awareness training on the Animal Protection Act and its implications for captive wildlife facilities and wild animal welfare.

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1. IMPROVING WELFARE FOR WILDLIFE

1.1 NSPCA's LITIGATION TRIUMPHS FOR WILD ANIMAL WELFARE

The National Council of Societies for the Prevention of Cruelty to Animals (NSPCA) welcomes this opportunity to provide information and insight on matters pertaining to elephant, lion, leopard and rhinoceros as requested by the Advisory Committee. The NSPCA's submission is made against the following legislative background and litigation history to support the NSPCA's statutory mandate:

The NSPCA is a statutory body established in terms of Section 2 of the Societies for the Prevention of Cruelty to Animals Act No. 169 of 1993 (SPCA Act), with the organisation's main objectives laid out in Section 3 - *"To prevent the ill-treatment of animals by promoting their good treatment by man; to take cognizance of the application of laws affecting animals and to make representations in connection therewith to the appropriate authority; and to do all things reasonably necessary for or incidental to the achievement of these objectives"*. The NSPCA is both obligated and empowered to prevent animal cruelty and promote animal welfare in terms of its statutory mandate and enforces the Animals Protection Act No. 71 of 1962 (APA) throughout South Africa (Republic of South Africa, 1993).

With a team of dedicated NSPCA Wildlife Protection Unit Inspectors, inspections of various captive wildlife facilities, including free-roaming wild animals are predominantly conducted both via routine and complaint based inspections. In pursuit of both the prevention of animal cruelty and promotion of animal welfare, the NSPCAs standard operating procedure generally involves conducting inspections on the principle of education before prosecution, unless the situation is of such a nature that immediate prosecution is warranted or if a person rejects the education provided. Suggestions for improvement to living conditions and diets are provided, whilst warnings are issued when more serious matters are encountered, giving the owner time to rectify the situation within a stipulated timeframe. A follow up inspection is conducted to verify if the owner has rectified the issues laid in the initial warning. In situations where blatant cruelty or deliberate neglect is encountered or a failed attempt arises to educate or negotiate, Inspectors will not hesitate to prosecute.

Section 24 of the Constitution of the Republic of South Africa No. 108 of 1996 states that – *"Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development"* (Republic of South Africa, 1996). To unpack the relevance of the aforementioned, reference is made to the 2016 court ruling of the Constitutional Court (Con Court) of South Africa in the matter between the NSPCA and the Minister of Justice and Constitutional Development and others (Case no. CCT 1/16) (refer to Annexure 1). From paragraph 56 onwards the court highlighted that – *"Animal welfare is connected with the constitutional right to have the environment protected through legislative and other means. 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"*. Furthermore, in the 2017 High Court ruling in the matter between the NSPCA, and the Minister of Environmental Affairs and others (Case No. 86515/2017) (refer to Annexure 2), the court stated from paragraph 67 that the state

is obligated in fulfilling the rights contained in Section 24 of the Constitution by managing, conserving and sustaining South Africa's biodiversity and its components and genetic resources as laid out in Section 3 of the National Environmental Management: Biodiversity Act No. 10 of 2004 (NEMBA). The basis for the case was subject to the lion bone trade, but the ruling also extends to all of South Africa's wildlife, ecosystems and management decisions as NEMBA defines biological diversity as the - *“variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems.”* The Advisory Committee should therefore ensure to incorporate the court rulings within all existing and future policies, legislation and practices relating to the management and handling, breeding, hunting and trade of elephant, lion, leopard and rhinoceros as part of their review process to ensure that animal welfare and conservation are regarded and applied as indisputable intertwined values. This foundational principle should be applicable to each and every individual elephant, lion, leopard and rhinoceros and should not only be incorporated into the management and handling, breeding, hunting and trade of elephant, lion, leopard and rhinoceros, but include all factors that affect these species both for wild and captive populations, as it remains a constitutional and legal obligation that animal welfare issues are included and considered (Republic of South Africa, 2004). Section 3 of NEMBA states – *“In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must (a) manage, conserve and sustain South Africa's biodiversity and its components and genetic resources; and (b) implement the NEMBA Act to achieve the progressive realisation of those rights.”* In light of the court rulings, including the obligations of state, animal welfare should be included into all new and existing national and provincial legislation and bills, regulations, policies, norms and standards, standards and procedures incorporated by legislation or permit conditions, provincial permit conditions, international conventions and treaties, and Biodiversity Management Plans for species in terms of NEMBA, including were relevant.

1.2 SHARED ANIMAL WELFARE CONCERNS FOR WILD ANIMAL WELFARE

The Centre for Environmental Rights (CER), the Endangered Wildlife Trust (EWT), and the Lewis Foundation, published a report that was prompted by a growing concern amongst civil society and NGOs about the absence of welfare considerations in conservation laws and practices. Currently, legal regulation of wild animal welfare in South Africa follows a tradition where a distinction is made between animal welfare and biodiversity, which is regarded as an outdated tradition reflected in relevant legislation. The report entitled - *Fair Game? Improving the Regulation of the Well-being of South African Wildlife* (refer to Annexure 3), highlights various findings of a review process on current regulations on welfare of wild animals in South Africa, outlining major gaps in both legislation and the implementation of those laws, leaving the well-being of wild animals without adequate protection. The report acts as a starting point for a broad consultation process including government, industry bodies, conservation agencies and animal welfare organisations to address a more appropriate legal framework to improve animal welfare for wildlife.

The report reiterates as stated above, the undeniable link between the conservation of biodiversity and animal welfare in terms of the Constitution of South Africa, which is regarded as the supreme law of the land. *“The emphasis of the court on section 24(b) of the Constitution indicates the need for the promulgation of wildlife-specific welfare legislation. While welfare was previously considered to be*

unrelated to conservation, the courts have ruled otherwise” (Centre for Environmental Rights, Lewis Foundation and Endangered Wildlife Trust, 2018). It is highly recommended that the Advisory Committee should include this report in its review process, as it systematically indicates how South Africa’s relevant legislation is failing wild animal welfare. Regardless if stakeholders such as government, industry bodies and/or other organisations agree or disagree with the concept of wild animal welfare within the conservation and wildlife industry regime, animal welfare is embedded as a concrete all-encompassing principle and applicable on all fronts relevant to wildlife.

2. CONSERVATION OVERVIEW – ASKING THE RIGHT QUESTIONS

2.1 CONSERVATION CRITERIA

One of the focal areas that the Advisory Committee will review includes the conservation value of certain industries pertaining to elephant, lion, leopard and rhinoceros. However, it is important to take note that each and every form of wildlife utilisation and form of anthropogenic activity, influence and impact needs to be weighed up within the parameters of what constitutes as a bona fide conservation benefit, contribution and role in terms of domestic and international acceptable and recognised standards, especially under the eager false conservation umbrella to justify exploitation of wildlife within certain wildlife industries in South Africa. The aforementioned has reference in terms that certain industries that do exploit wildlife is based solely for profit purposes and does not form part of the conservation regime at all. Seeking and/or considering claims that they do without proper measurable criteria and framed parameters to validate such claims results in industries allowed to thrive on undue credit, making it difficult to discern between genuine conservation operations to those that simply exploit wildlife for profit. Justification should therefore not be based on an empty-shell concept, including ownership should be taken if a certain industry operates on profit alone, *i.e.* calling it what it is. Such conservation criteria should be based on accredited scientific and professional proven fact including but not limited to having a clear and measurable positive benefit towards biodiversity conservation; make meaningful contributions to society, in particular in local communities such as food security, job creation and community development projects; creating reputable financial incentives to conserve wildlife and wildlife-based land use; expand, increase and rehabilitate land use suitable for wildlife; recovery and increase protection for threatened species; contributing towards in situ and ex situ conservation programmes; to overall good management practices of wildlife and the prevention of ecological degradation of habitats and ecosystems. In addition, the action of evidencing should be standard within the set conservation criteria framework, *i.e.* the legitimacy of an industry’s conservation impact should be thoroughly examined and not blindly accepted, including careful consideration should be afforded to such criteria. Each criteria should be afforded a weight factor in terms of its overall contribution to conservation which will assist in differentiating between activities that hold a higher contribution value compared to others. In addition, stricter and increased monitoring and enforcement is required within the legal framework of South Africa to combat fraud for those that make such false claims.

The above stems from concern in terms of the sustainable use principle that on occasion has been misinterpreted to serve human-based interests instead of to the balanced benefit to both humans and wildlife, including future generations as laid out in Section 24 of the Constitution of the Republic of South Africa, 1996. Venturing further back to the basics, NEMBA defines sustainable as the following - *“in relation to the use of a biological resource, means the use of such a resource in a way and at a*

rate that (a) would not lead to its long-term decline; (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and (c) would ensure its continued use to meet the needs and aspirations of present and future generations of people” (Republic of South Africa, 2004). Interrogation into if current use and management of elephant, lion, leopard and rhinoceros proudly adheres to our Constitution and national legislation is required and should be included as part of the conservation criteria.

2.2 OVERLOOKED CONSERVATION CONCERNS

Not to say that the scope of what the Advisory Committee is looking into is not important, but it does raise the concern whether the Advisory Committee is asking the right questions, as it seems only a fraction is being looked at in terms of the focal areas listed in the terms of reference provided, especially when there are other interconnecting issues pertaining to elephant, lion, leopard and rhinoceros that should not be overlooked. For instance, in light of one of the biggest threats species face today, *i.e.* habitat loss and habitat fragmentation, the Advisory Committee should also evaluate existing policies, legislation and practices relating to the management of these species in line with increasing suitable, including conserving, protecting and maintaining current habitat areas. In addition, the management of various habitats and its associated inhabitants are crucial to maintaining balanced ecological processes. Mismanagement and lack thereof, including negligence in the management of natural areas can lead to negative impacts both from a conservation and animal well-being perspective, as animal welfare in general is not only just about whether or not an animal can experience pain or not, but involves the state and attempts of an animal to cope with its environment under captive or wild conditions. Any anthropogenic activity affecting the environment or any species may directly and indirectly impact on the well-being of an animal if it's upper and lower tolerance thresholds leads to compromised animal welfare, thus affecting survivability and ultimately threatens biodiversity.

The respected International Union for Conservation of Nature (IUCN) is recognised as the global authority on the status of the natural world and the measures to safeguard it (International Union for Conservation of Nature, no date). Part of the IUCN's knowledge products consist of the IUCN Red List of Threatened Species which assesses the risk of species extinction. It should be noted that habitat loss, habitat fragmentation and/or other ecosystem stressors are listed as some of the shared threats each of the respective species are facing (refer to Annexure 4-8). According to the Convention on Biological Diversity (CBD, no date), South Africa's natural ecosystems are under threat. The National Spatial Biodiversity Assessment for 2004 revealed that 82% of the main river ecosystems are threatened, with 44% critically endangered, 27% endangered, and 11% vulnerable. Of the country's 440 vegetation types, 5% are critically endangered, 12% are endangered and 16% are vulnerable; 3 of the 13 estuary groups are critically endangered, a further 5 are endangered and 2 are vulnerable; 65% of the 34 marine biozones are threatened, with 12% critically endangered, 15% endangered and 38% vulnerable. In regard to freshwater ecosystems, the assessment revealed that only 29% of the country's main rivers were unmodified, or largely unmodified, and an estimated 50% of South Africa's wetlands have been destroyed. It is evident that the Advisory Committee should include these threats as part of the focal areas listed in the terms of reference provided. The viewpoint is not to state that the current issues being reviewed does not have relevant importance, but creates a notion that justification for keeping wild animals in captivity such as rhino farming, lion farming and keeping

elephant in captivity for instance ranks higher in priority, when space for their wild counterparts are running out, including that current ecosystems and habitats are under serious threat. This is especially concerning against a growing trend in the commercialisation of South Africa's wildlife. In a media article covered by News24 (Wilson-Späth, 2015), it was highlighted that the dominant motivation for preserving wildlife in the past was on the basis of savings species from extinction, compared to a market-based model for conservation resulting in wildlife raised, bought and sold for profit. Basically, the sustainable use principle is moulded and modified within the framework of regulations and legislation to include wildlife conservation alongside provisions that promote commodification. It is apparent that a clearly defined definition is required for the sustainable use principle to safeguard against the dominant continued increasing commodification of South Africa wildlife, as oppose to dictating how natural resources should be utilised under the disguise of the sustainable utilisation principle. The sustainable utilisation of natural resources is not disregarded as it remains a constitutional right, provided it is done lawfully, however there is also the reality that this principle is abused and often based on old world thinking and habits that ignores modern science and warnings against the collective human-caused impacts on the environment. This principle should be re-directed to put conservation first and take a superior role from which sustainable utilisation of natural resources should be managed, instead of the other way around. Take special note that the management and conservation of biological diversity within South Africa is listed first as one of the objectives of the NEMBA Act (Republic of South Africa, 2004) of which the sustainable use of indigenous biological resources occurs thereafter, thus highlighting the flow in priority and logic. In addition, the National Environmental Management Act 107 of 1998 (NEMA) (Republic of South Africa, 2014) reiterates this in line with Section 24 of the Constitution.

An ecosystem is only as healthy as the mechanisms that keep it going, *i.e.* the variability among living organisms, ecological complexes of which they are part and diversity within species, between species, and of ecosystems. The human race is dependent on all of the various ecosystem services provided by the environment, thus by jeopardising the environment, inevitably jeopardises both humans and wildlife dependant on it to survive. Sustainable utilisation of natural resources in essence involves primarily conserving and protecting the environment and biodiversity, followed by in instances where the utilisation of natural resources does occur, that it should be done in a sustainable manner. If this concept was applied in its true meaning and purpose, there would have been a steering incentive that would have resulted in more land protected under private ownership and governmental management. Instead, certain industries are allowed to flourish in an uncontrolled manner, such as the captive lion industry, resulting in more than double the amount of lions kept in captivity than found in the wild, *i.e.* approximately 7000 captive lions compared to 3000 lions in the wild.

On the 28th of February 2020, the Minister of Agriculture, Land Reform and Rural Development (DALRRD) requested for public comment on a proposed update to Schedule 1, as provided for Section 1(2) of the Meat Safety Act No. 40 of 2000 (Meat Safety Act), listing the animals to which the act applies. Apart from animals listed, the notice further states that the act applies to all other species not mentioned, including birds, fish and reptiles that may be slaughtered as food for human and animal consumption (Republic of South Africa, 2000). Furthermore the proposed schedule includes animals that may be listed as threatened species in accordance with relevant conservation legislation and regulations. The purpose of the list seems futile, if it applies to all other animals not listed, everything is made available in a sense. The necessity and importance of the purpose of the act is not being disputed, *i.e.* to provide for measures to promote meat safety and the safety of animal products

among other things, but the fact that it may irresponsibly promote wildlife exploitation under a different guise of what the sustainable utilisation principle is supposed to stand for is placed under question. It may result in an increasing number of wildlife being farmed in an unlimited and uncontrolled manner, as seen with the captive lion industry, ultimately resulting in more land converted to farm wildlife and wildlife kept in intensive farming systems such as those animals bred for colour morphs and hybrids with no bona fide conservation value. Section 11(1) (h) of the Meat Safety Act does state that – “*an animal presented for slaughter at an abattoir must be handled humanely during loading, transportation, off-loading, housing, immobilising and killing as prescribed in accordance with the requirements of the Animals Protection Act, 1962 (Act No. 71 of 1962)*”. So on the one hand and from an animal welfare perspective it is good to see that wildlife is recognised to be slaughtered in accordance with regulations, but the NSPCAs is also well aware that animal cruelty will still occur as seen with domestic farmed animals. In addition, legislation and regulations are only as effective under strict and regular monitoring and enforcement. The inclusion of wildlife into the Meat Safety Act does not necessarily mean cruelty free animals and still poses numerous challenges and compromised animal welfare is still guaranteed. Some will argue that some regulation is better than none, but if you bring the abused and irresponsible utilisation of South Africa’s natural resources back into the equation, then it becomes highly questioned again.

Relevant authorities are bound by their mandate and relevant legislation to uphold their functions and should be held accountable if they allow for the irresponsible management of South Africa’s environment and wildlife, including decisions that result in detrimental consequences. Allowing for wildlife to be bred, kept and/or farmed in captivity as currently experienced occurs independently from the true meaning of the sustainable utilisation principle, especially under NEMA’s definition of the best practical environmental option to mean – “*the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term*”. In essence, can government confidently illustrate that it is primarily doing everything in its power to conserve the natural environment and protecting its wildlife in light of the numerous threats species are facing, including increasing and rehabilitating suitable habitats and protecting and managing current habitats to prevent deterioration prior to stating that a specific activity with a wild animal such as lion, elephant, leopard and rhinoceros is sustainable, otherwise how one can state that the utilisation of a biological resource is sustainable if the very thing threatening its survival, *i.e.* habitats loss, habitat fragmentation and deterioration, is under immense pressure from human-induced activities. It is illogical to manage and utilise biological resources in this manner.

Full transparency is therefore required and requested from the Advisory Committee in terms of how the review was carried out and decisions reached to ensure that it was conducted in a manner that is objective, not bias and based on accredited scientific research; based on consultation from experts in the field; based on the work of bona fide conservationist and scientists. Care should be taken to ensure that the review is not dominantly influenced by those with a vested interest to push for wildlife activities that further commodifies and commercially exploits South Africa’s wildlife under a false conservation umbrella veil, continuing to abuse the sustainable use principle to fulfil self-interests, continuing to ignore the warnings voiced by those that do hold a higher credibility in terms of environmental and species-related conservation issues and matters, including societal influences of morally and ethically expectable practices. Conservation of South Africa’s natural environment and biodiversity should supersede in priority, instead of exploiting it for profit at the expense of wildlife.

The Advisory Committee and the Department of Environmental Affairs, Forestry & Fisheries (DEFF) would need to ensure that this review will result in all involved to substantiate the outcome in a manner backed by both respected science and conscience, *i.e.* does South Africa want to be known and respected with regards to how we manage and conserve our wildlife or is government willing to risk South Africa reputation on both domestic and international platforms.

3. LOCAL AND INTERNATIONAL PERSPECTIVES

Care should be taken by policymakers and relevant authorities not to evade the issue that various local and international platforms and markets regard certain wildlife industries in South Africa as either unethical, cruel, socially unjustifiable and/or of no conservation value. This is a reality that cannot afford further avoidance due to its harmful economic, social and environmental impacts.

The tourism industry is a major contributor to the South African economy and employment of citizens. In 2016, tourism accounted for 2.9% of South Africa's GDP (South African Government, no date). A positive external image is essential for attracting more tourists of which South Africa's rich culture and biodiversity have served to be popular over the years, but in recent years South Africa has been subject to international criticism with regards to cruel, inhumane and unethical practices within the wildlife industry especially certain wildlife interaction opportunities contributing to damaging Brand South Africa. The voice against tourism experiences that include animal interactions have increased and has impacted how South Africa is being perceived as a tourism destination, including that global trends of responsible tourism are moving away from exploitative wildlife interactions.

South Africa's wildlife industry includes a sector that involves captive wildlife facilities that offer public wildlife interaction opportunities. Opportunities with wildlife include but are not limited to animal-petting, selfie opportunities, elephant back safaris, walking with lions, walking with cheetah, interactions with juvenile animals, cage diving with captive crocodiles, hand-raising orphaned wildlife, photographic opportunities and interactions with animals such as snakes, elephants, lions and birds of prey, including encounters with captive marine life.

According to Southern Africa Tourism Services Association (SATSA, 2019), many tourism businesses are feeling the impact of the amplifying call to end animal interactions, irrespective of how ethical their approach to animal interactions may be. SATSA was tasked by their members to develop guidelines for South Africa's tourism industry in response to a growing sentiment and trend against tourism involving animal interactions both domestically and internationally. A year-long study conducted by SATSA aimed to develop ethical guidelines for all animal interactions in tourism. SATSA's toolkit helps to identify ethical practices within the wildlife industry. Tourism activities involving captive wildlife that are classified as unacceptable and should not be supported by tourists or tourism trade includes the following as outlined by SATSA (2019)(Annexure 9):

➤ ***Performing animals of any species:***

- *“In order to perform in a public show or display, the animal would have undergone training of some form. Training techniques employed frequently involve corporal punishment,*

tethering and/or food deprivation. All are contrary to the animals' natural behaviour, may be physically and/or mentally damaging to the animals involved and does not consider the best interests of the individual animal".

- *"The tricks or acts that the animal is required to perform are, in the main, contrary to the natural behaviour of the species and would not be in the best interests of the animal".*
- *"The animals do not have freedom of choice to be involved in the performance".*
- *"There is no educational or conservation value in watching animals perform unnaturally in public performances".*

➤ **Tactile interactions with all infant wild animals:**

- *"Wild animals are naturally fearful of humans and any tactile interaction between an infant wild animal and a human is an unnatural behaviour".*
- *"In most cases the animals do not have a choice to be involved in this activity and it is not an activity that the infant animal would naturally initiate".*
- *"Tourists' touching or petting of a wild infant animal, requires the infant be removed from its mother. This is extremely stressful and unnatural for both the mother and the infant. Both are negatively affected by the activity and it is not in the best interests of the infant to be removed prematurely or to be touched/handled by humans".*
- *"There is no proven conservation or education value in touching an infant wild animal".*
- *"The infants may be injured during the interaction".*

➤ **Walking with predators or elephants:**

- *"Elephants and predators would need to be trained to walk alongside humans as this is an unnatural activity for these animals".*
- *"The training and handling techniques employed are frequently harmful to the animal".*
- *"The animals do not have freedom of choice to be involved in the activity and it is not an activity that the animal would naturally initiate".*
- *"There is no education or conservation value in walking with predators or elephants that cannot be achieved through other means".*

➤ **Tactile interactions with predators or cetaceans:**

- *"Predators are dangerous animals that can inflict serious damage to humans, whom they may view as prey".*
- *"It is unnatural for predators and cetaceans to be in close proximity to humans and thus it could be extremely stressful for these animals to be touched by a human".*
- *"In order for predators and cetaceans to be touched, they would need to be trained and handled, sometimes using harmful and negative techniques".*
- *"The training and handling techniques as well as the unnatural relationship between a prey-species (humans) indicate that tactile interactions are not in the best interest of the individual animals involved".*
- *"There is no education or conservation value in tactile interactions with predators or cetaceans that cannot be achieved better by other means".*

- *“Being in captivity will interfere with the natural behaviour of large predators and cetaceans”.*
- *“The predator/cetaceans do not have freedom of choice to be involved in the activity”.*

➤ **Riding of wild animals:**

- *“For any wild animal, having a human ride or sit on it, is contrary to natural behaviour and would not be in the best interests of the animal”.*
- *“In many cases the animal would need to be trained to accept humans on their backs. These training techniques frequently involve negative reinforcement that is harmful to the animal”.*
- *“It is likely that the animal may be injured or damaged from having a human ride it or sit on it at some point in its training or tourism duties”.*
- *“The animals do not have freedom of choice to be involved in the activity, with animals often being forced to accept humans on their backs”.*
- *“It is not an activity that wild animals would naturally initiate”.*
- *“There is no educational or conservation value in riding or sitting on a wild animal that cannot be achieved better by another means”.*

ABTA, the UK’s largest travel association representing travel agents and tour operators, also operate within a framework of welfare requirements and unacceptable practices such as the following (ABTA, no date):

- Animal breeding or commercial trade in sanctuaries and orphanages;
- Any tourist holding of, or photo opportunity with, wild animals where the animal does not have the choice of terminating the interaction or moving away;
- Performances or tourist interactions involving wild animals where training involves punishment or food deprivation, causes the animal fear, injury or distress, or the tasks are not based on normal behaviour;
- Tourist contact or feeding elephants without a barrier;
- Elephant shows or performances for tourists;
- Tourist contact, feeding of and “walking with” wild cats; and
- Canned hunting.

From the above it is clear that wildlife interactions that involve elephant, lion, leopard and rhinoceros in any activity pertaining to performing, riding, walking or tactile interactions with infants and adults for commercial purposes within the tourist sector is not recognised as having any conservation or educational value and holds various animal welfare concerns.

Furthermore, the captive lion industry is predominantly regarded as unethical, abhorrent and cruel. Within the world of wildlife hunting, the United States, Australia, France and the Netherlands have all banned the importation of lion trophies derived from captive hunting (Portfolio Committee on Environmental Affairs, 2018). Safari Club International and Dallas Safari Club both rejected the practice. Several affiliate hunting bodies, including the South African Hunters and Game Conservation Association, Operators and Professional Hunting Associations of South Africa, the Namibia

Professional Hunting Association, Boone and Crockett Club, and the Nordic Safari Club condemned the captive breeding of lions for hunting. The IUCN's 2016 World Conservation Congress in Hawaii resulted in the request for the South African government to end the practice of hunting captive-bred lions. The Professional Hunter's Association of South Africa (PHASA) and the National Confederation of Hunters Associations of South Africa (CHASA) lost their membership to the International Council for Game and Wildlife Conservation (CIC) in 2018 due to PHASA's and CHASA's support to captive lion hunting.

A report of the Portfolio Committee on Environmental Affairs on the Colloquium on Captive Lion Breeding for Hunting in South Africa: harming or promoting the conservation image of the country, held on 21 and 22 August 2018 (Portfolio Committee on Environmental Affairs, 2018), finally put the matter if the captive lion industry serves a conservation role or not to bed, stating that – “*There is generally no conservation value in the captive lion breeding industry in South Africa*”. The report further stated that South Africa's conservation reputation is being compromised, especially as it does not contribute towards conservation and undermines South Africa's tourism brand value. The South African conservation reputation is continually being challenged for the captive lion industry.

As previously stated, the Advisory Committee will be reviewing a number of practices related to elephant, lion, leopard and rhinoceros, including but not limited to the keeping and exhibition of elephant, lion, leopard and rhinoceros in captivity; hunting of lions in captivity; tourism related activities; wildlife interactions; farming practices; trade; and zoos. The reality is that all four species is subject to specific wildlife practices that are considered as unacceptable both locally and internationally such as elephant interactions, elephant back safaris, lion petting, lions walks, keeping of wild animals in captive environments, exhibition and trade for profit. The Advisory Committee would need to reflect and interrogate all relevant activities, as subsequent closure of certain wildlife activities seems evident to protect Brand South Africa. The Advisory Committee's review needs to include if South Africa will be regarded as a destination known for its biodiversity, wildlife, cultural attractions, breath-taking scenery and conservation efforts, or be labelled as a country that exploits and cages its national treasures for profit.

4. FACTORS FAILING WILD ANIMALS

4.1 INDIGENOUS AND EXOTIC WILD SPECIES

There is an inadequacy in national and provincial legislation to adequately protect both indigenous and exotic wild species in terms of conservation and animal welfare. As stated by the Centre for Environmental Rights *et al.* (2018), NEMBA is South Africa's national biodiversity statute, whilst the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004): Threatened or Protected Species Regulations (TOPS), provides protection with regards to restricted activities in relation to only those indigenous wild animals listed in TOPS due to their endangered, threatened or protected status (Republic of South Africa, 2007). All the other wild animals not listed in TOPS that are not provided national protection may be protected under provincial legislation due to their perceived biodiversity value or status in the jurisdiction of their province, whilst all other animals that are common, or those not indigenous to South Africa, do not enjoy any special legislative protection unless they are catered for under provincial legislation for other reasons. All animals, including exotic wild species are afforded some protection in terms of the APA which aims to prevent animal cruelty and

the Performing Animals Protection Amendment Act 4 of 2016 (PAPA Act) where all wild animal interaction and exhibition facilities are subject to PAPA compliance. In addition to the concerns extended to facilities that house elephant, lion, leopard and rhinoceros, the same concerns are shared for all the other indigenous and exotic species held captive at the same facilities for tourism-related, exhibition, breeding and trade purposes. For example, the sheer number of exotic species found at captive lion facilities alone is extensive including but not limited to brown bears, coatis, mountain lions, bobcats, jaguars, Siberian tigers, Bengal tigers, raccoons, blue-and-scarlet macaws, African Grey parrots, alligators, Iguanas, Bearded dragons, European wild boars, yellow anacondas, green anacondas, various venomous and non-venomous species of snakes, sugar gliders, marmosets, capuchin monkeys, hamadryas baboons, pygmy hippos, Canadian timber wolves, Arctic fox, fennec fox, chimpanzees, howler monkeys, cotton-top tamarins, Red-handed tamarins, western purple faced langur, squirrel monkeys, chinchilla and ring tailed lemurs.

As stated by the Centre for Environmental Rights, *et al.* (2018), nationally prescribed standard permit conditions should include all species, whether indigenous or exotic, as there is no justification for discriminating between species and should incorporate mandatory species-specific welfare provisions, including conservation related matters regardless if the animal is not native to South Africa. For instance, current wildlife exploitation activities such as tourism-related, breeding, trade and exhibition of exotics in South Africa either as a primary commercial purpose or as a secondary and indirect consequence of captive facilities housing elephant, lion, leopard and rhinoceros could be jeopardising conservation efforts for their wild counterparts. The Advisory Committee should therefore take caution not to review matters pertaining to elephant, lion, leopard and rhinoceros only, but include associated wildlife activities as a by-product of these industries and interrogate if exploitation of exotic species in South Africa is one of the threatening factors felt in other parts of the world and dampening conservation efforts for wild populations.

4.2 CONTINGENCY PLANS

Relevant issuing authorities should ensure that permit conditions and/or management plans include contingency plans in the event of insolvency, liquidation, confiscations, prosecutions, death, or any other event that impairs the ability of the owner or the responsible person to care for the animals and to ensure that the animals are not negatively affected by such events, but guarantees their continued care that does not result in compromised animal welfare, especially where a dispute of ownership occurs. In addition, there are no state facilities available to care for animals in the event that removal and relocation is required.

Take for example ██████ from ██████ in 2019. He was the land owner, but the permits for keeping indigenous animals expired in 2017 and were in the name of ██████. Additionally, there were animal welfare issues which resulted in a joint inspection conducted by both the NSPCA and the Limpopo Department of Economic Development, Environment and Tourism (LEDET). LEDET acknowledged that ██████ was not a lawful citizen of South Africa and when queried why the animals were not removed, LEDET stated that they had nowhere to take the animals in question, as no state facilities for confiscated wildlife exist. On a similar note ██████ was placed under liquidation in 2020. As a result, 84 lions had nowhere to be removed to due to a lack of clarity over ownership and an absence of state

facilities. Due to animal welfare issues criminal charges against [REDACTED] is in progress. This is just another example of a dispute over ownership with nowhere to move the animals to.

In the event where the NSPCA is pursuing a criminal case, only those animals in the most dire of condition will be removed as there are no facilities available to remove all of the animals to. There are approximately 7000 lions in captivity, thus the onus should rest on the issuing authorities that issue the permits to ensure that there are adequate care facilities for confiscations and prosecutions. The same reality can be extended to the state themselves, as they have nowhere to move wild animals in the event of prosecutions for contraventions in terms of NEMBA and TOPS, including relevant provincial legislation and regulations. Further to this, the state should be providing for a speedy prosecution process when it comes to especially wildlife crimes due to the cost factor in keeping, housing, veterinary care and possible euthanasia.

4.3 ALL-INCLUSIVE LEGISLATION

Elephants, lions, leopard and rhinoceros are all listed as threatened and protected species under TOPS Regulations. All permit applications in terms of restricted activities are made to the relevant provincial issuing authorities. Section 17(1) of TOPS Regulations state that the consideration of a permit application must be consistent will all applicable legal requirements. Section 88 of NEMBA outlines measures for permit applications which also state under Section 3 that the decision of the issuing authority to issue or refuse a permit is subject to conditions and must be consistent with - *(b) the national environmental management principles; (c) the national biodiversity framework; and (e) any applicable international agreements binding on the Republic.* This has far reaching implications as the management of both captive and wild elephant; lion; leopard and rhinoceros, including other direct and indirect wildlife activities associated with these industries should be afforded with all the necessary legal protection and effective management which would include extension to include all other legal requirements of relevance such as animal welfare; possible detrimental impacts on the environment; prevention of zoonotic diseases; animal health; trade impacts; etc. In essence, various legislation is applicable which includes but is not limited to NEMBA; TOPS Regulations; NEMA; APA; PAPA; SPCA Act; Meat Safety Act; Animal Health Act, 7 of 2007; Veterinary and Para-Veterinary Professions Act, 19 of 1982; Medicines and Related Substances Act, 101 of 1965; Animals Diseases Act, 35 of 1984; Animal Improvement Act, 62 of 1988; Animal Identifications Act, 6 of 2002; Occupational Health and Safety Act, 85 of 1993; National Water Act 36 of 1998; Fencing Act, 31 of 1963; National Environmental Management Protected Areas Act, 2003, 57 of 2003; Animal Matters Amendment Act, 42 of 1993; Free State Nature Conservation Ordinance, 8 of 1969; Transvaal Nature Conservation Ordinance 12 of 1983; Cape Nature Conservation Ordinance 19 of 1974; Limpopo Environmental Management Act 7 of 2003; KwaZulu Nature Conservation Act 29 of 1992; Mpumalanga Nature Conservation Act 10 of 1998; and the Nature Conservation Ordinance, 19 of 1974; including national norms and standards, and legal commitments as a signatory member to international conventions and treaties. South Africa is legally obligated in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to ensure that international trade in specimens of wild animals and plants does not threaten their survival, which requires international cooperation to safeguard certain species from overexploitation, not just indigenous species, but including exotic wild species (CITES, 2020). South Africa is a party member to the International Convention on Biological Diversity (CBD) with three main objectives, *i.e. "the*

conservation of biological diversity; the sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources” (Convention on Biological Diversity, 2012). Furthermore, as a member state to the Southern African Development Community (SADC), South Africa is bound through regional integration to contribute towards the objectives of SADC, i.e. to “*achieve sustainable utilisation of natural resources and effective protection of the environment”* (Southern African Development Community, 2012) among other things. Therefore, interrogation by the Advisory Committee is required to ensure that the review process includes that both captive and wild elephant, lion, leopard and rhinoceros, including direct and indirect wildlife activities as a result of these industries are being managed in a manner that can be described as all-inclusive pertaining to relevant legislation, regulations, policies, international treaties, including a collaborative mode of operation between government, industry bodies, conservation agencies and animal welfare organisations.

4.4 FRAGMENTED WILDLIFE MANAGEMENT

In light of the above, concern is raised with regards to what can only be described as a silo-type and fragmented means of wildlife management in South Africa that requires more cohesive and integrated measures to ensure increased collaborations between governmental bodies and other stakeholders. For instance, one of the several parliamentary questions raised by the Democratic Alliance (DA) to the current Minister of DEFF included the decision taken by the current Minister of DALRRD by publishing a draft amendment to add wildlife species to Schedule 1 of the Meat Safety Act for purposes of legalising their slaughter and consumption of various wildlife species, including threatened, protected and endangered species (Winkler, 2020). According to the DA, this was all done without consultation with the Minister of DEFF, which is irrational as DEFF is legally obligated to honour their role as custodians over South Africa’s biodiversity, whilst DALRRD is attempting to legalise activities of a commercial nature with possible devastating impacts. Furthermore, the previous Minister of the old Department of Agriculture, Forestry and Fisheries (DAFF) enacted an amendment to the Animal Improvement Act, 62 of 1988, reclassifying 33 wild mammal species under Table 7 of the regulations as livestock (Winkler, 2020). According to IUCN, the white rhino (*Ceratotherium simum*) is listed as Near Threatened (Emslie, 2020a); the black rhino (*Diceros bicornis*) is listed as Critically Endangered (Emslie, 2020b); African lion (*Panthera leo*) is listed as Vulnerable (Bauer, H., Packer, C., Funston, P.F., Henschel, P. & Nowell, 2016); the African elephant (*Loxodonta africana*) is listed as Vulnerable (Blanc, 2008); and leopard (*Panthera pardus*) is listed as vulnerable (Stein, A.B., Athreya, V., Gerngross, P., Balme, G., Henschel, P., Karanth, U., Miquelle, D., Rostro-Garcia, S., Kamler, J.F., Laguardia, A., Khorozyan, I. & Ghoddousi, 2020). Justification for concern over irresponsible and irrational management over South Africa’s wildlife is warranted.

4.5 AUDITING, MONITORING AND ENFORCEMENT

Section 22 of the TOPS Regulations deals with the validity period of all permits and the renewal of a permit is subject to the type of permit such as a standing permit, possession permit, game farm hunting permit, translocations, etc. Chapter 3 deals with the responsibility afforded to the relevant issuing authority for the registration of a captive breeding operation, commercial exhibition facility,

nursery, scientific institution, sanctuary, rehabilitation facility or act as a wildlife trader involving specimens of any listed threatened or protected species. Chapter 4 deals with the renewal, amendment and cancellations of permits and registration certificates.

Section 46(1) states that the issuing authority may consider renewing a permit or registration certificate if:

- (a) all conditions subject to which the permit or registration was issued were complied with;*
- (b) there is no evidence that the permit holder or the operation, facility, game farm or institution is managed in a manner which is detrimental to the species kept by the permit holder or at the operation, facility, game farm or institution; and*
- (c) the conservation status of the species has been maintained or has improved, or the legislation that affects the continuation of the permit or registration has not changed.*

Section 47(1) of the TOPS Regulations state that - *an issuing authority may cancel a permit in the circumstances specified in section 93 of NEMBA, i.e. an issuing authority which issued a permit may cancel the permit if:*

- (a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant;*
- (b) the applicant or permit holder has contravened or failed to comply with*
 - (i) any condition of the permit;*
 - (ii) any provision of this Act or other law governing the permitted activity; or*
 - (iii) any foreign law governing the permitted activity.*
- (c) the applicant or permit holder has been convicted of an offence in terms of this Act; or*
- (d) the carrying out of the restricted activity has a detrimental impact on the species.*

Section 47(2) of the TOPS Regulations state that - *The issuing authority may cancel the permit or registration of a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or a wildlife trader if:*

- (a) the permit or registration certificate holder has breached a condition subject to which the permit was issued or registration was registered;*
- (b) the operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary or rehabilitation facility is managed, or a wildlife trader is operating, in a manner which is –*
 - (i) detrimental to the specimens being bred, reared, propagated, or kept at such operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or wildlife trading premises; not in accordance with any information provided to the issuing authority or*
 - (ii) there is a change in the conservation status of the relevant species being bred, propagated or kept by a permit holder or at such facility that affects the continuation of the permit or registration.*

Permits are issued at provincial level and a review of current permit system operations is required to ensure that the percentage of permits issued per province and renewal thereof actually involves an initial inspection, followed by frequent inspections to ensure the applicant is compliant with all permit conditions and applicable legislation. The wildlife industry is quite extensive of which limited

monitoring and enforcement is ineffective to protect wild animals. Legislation is only as effective as sufficient monitoring and enforcement. Another factor of concern is allowing the continued registration and subsequent growth of various facilities, whilst monitoring and enforcement is limited. Increased monitoring, enforcement and capacity should be a priority item. As stated by the Centre for Environmental Rights *et al.* (2018) – *“Designing a regulatory system without providing for the means and capacity to monitor and enforce compliance is entirely self-defeating. An infusion of the necessary funds into DEA and the provincial conservation authorities in order to enable these departments to fulfil their public mandates is essential. Necessary additional funding can quickly be obtained by increasing the permit application fees (currently R500) for different types of permits – for example, linking it to the risk posed by the permitted activities to the wild animals in question, and members of the public, and to the turnover of the particular enterprise. For example, game ranchers, auctioneers, predator breeders, wildlife interaction facilities and other businesses that profit from the exploitation of wild animals should necessarily pay larger application fees for each of their permits so that permit condition and welfare enforcement are included in the cost of doing business. Another potential source of funding is from criminal fines collected for NEMBA crime convictions, or from administrative penalties for violations – potentially in significantly higher amounts than criminal penalties.”*

Specific reference is made to Section 47(2)(b)(i) of the TOPS regulations that state that the issuing authority may cancel a permit if the registered operation and/or facility is managed in a manner which is detrimental to the specimens being bred, reared, propagated, or kept. Detrimental refers to causing harm, whilst specimen in this regard refers to an individual animal. In essence, an issuing authority should therefore cancel a permit under circumstances where animal well-being is compromised and is detrimental to the individual animal.

4.6 FACTORS FAILING LIONS

To date, the captive lion industry has been allowed to operate within a framework that can only be described as unlimited and uncontrolled, with no norms and standards to effectively manage the industry. The overwhelming disregard for animal welfare considerations for the captive lion industry has resulted in continued numerous animal welfare issues. Section 9 of NEMBA makes provision for the Minister to issue norms and standards with regards to the achievement of the objectives of the act as laid out in Section 2, which includes the management and conservation of South Africa’s biological diversity, of which provision for welfare should be included due to the recognition provided by the ConCourt. If the review process by the Advisory Committee does not result in subsequent closure of the captive lion industry and/or phasing out of certain activities, norms and standards are desperately needed and should incorporate stricter monitoring and enforcement to ensure its effectiveness, otherwise it only serves as a window dressing tool and just another regulation signed into law without action.

Looking at past NSPCA inspections as far back as 2005, predominant animal welfare issues include compromised psychological well-being and stereotypical behaviour; lack of and inadequate enrichment; barren enclosures; lack of and inadequate shelter; lack of, inadequate and unhygienic water provision; inadequate and unhygienic food preparation and storage areas; unhygienic enclosure conditions such as accumulated faeces, rotten bones and meat; lack of veterinary care; lack of and insufficient parasite treatment and control resulting in mange, fly bites and tick infestations; lack of

separate management camps; lack of and inadequate biosecurity measures for zoonotic diseases; malnutrition and inadequate diets; feeding of live prey; overcrowding; confinement to small enclosures; solitary confinement of social cats; incorrect social groups placed in enclosure together; different species housed together such as puma and leopard; predators housed next to prey species; lack of enclosure maintenance that results in injury; broken enclosure furniture; inadequate fencing; lack of electric fencing; lack of contingency plans; lack in anti-poaching protocols; incorrect handling of lions such as dragging by the hind limbs; lack of adequate drainage of water in enclosures; no valid permits; and expired permits. Other concerns include but are not limited to forced animal interactions such as cub-petting; early cub removal from mothers to facilitate cub petting by tourists and subsequent abuse of increasing breeding to induce oestrus cycles; transportation of animals; lack of physical inspections of captive lions to be hunted in terms if they are self-sustaining and if their condition has deteriorated post release.

In response to an annual quota-setting process for lion bone exports, South Africa's Scientific Authority initiated an interdisciplinary research project on the captive lion industry. Surveys were conducted and the results indicated that the impact of the USA trophy import bans from captive bred lions in South Africa resulted in industry players now resorting to exporting lion bones as a primary product, instead of the historic by-product of the captive lion industry (Williams and Sas-Rolfes, 2019). This means lions are now being bred for lion bone export purposes. It raises various concerns in terms of how all captive lions that have not died of natural causes, hunted or had to be euthanased due to associated health reasons, are being killed for stockpiling lion bone skeletons for export purposes, as no regulations exist for the euthanasia of lions in this regard. In addition, records of all lions, including births and deaths should be reported to the issuing authorities, of which an audit is required to verify the reasons and justifications provided for all lion deaths in terms of issuing euthanasia permits and veterinarian reports. Section 35 of TOPS Regulations state that registered facilities are subject to the condition to prevent inbreeding of lions, but inbreeding of captive lions is a well-known factor for the captive lion industry, which is concerning, as this could be a possible loophole for lion euthanasia as a means to stockpile lion bones. Trade in bones and other body parts for traditional medicine in Africa and Asia is regarded as an emerging threat as recognised by the IUCN (Bauer, H., Packer, C., Funston, P.F., Henschel, P. & Nowell, 2016). Therefore, the Minister of DEFF, DEFF as Management Authority and the South African National Biodiversity Institute (SANBI), as Scientific Authority, are not only responsible for the management of this industry and possible subsequent detrimental impacts to captive and wild lions populations in South Africa, but as a CITES, CBD and SADC member, also responsible to ensure that trade in lion bones does not cause detrimental impacts to wild lion populations in all other range states. A collaborative multi-national accredited and scientific research initiative is required to understand trade markets, subsequent impacts not just for lions, but for other species directly and indirectly affected by such trade, including the increasing risk of zoonosis with its associated social, economic and environmental impacts.

4.7 FACTORS FAILING ELEPHANTS

One of the various purposes of the National Norms and Standards for the Management of Elephants in South Africa (Republic of South Africa, 2008) is to ensure that elephants are managed in a way that is ethical and humane; recognises their sentient nature, highly organised social structure and ability to communicate. The norms and standards provides guiding principles relating to any person

executing a function or exercising a power or carrying out an activity that relates directly or indirectly, to any elephant, which includes the fact that elephants are intelligent, have strong family bonds and operate within highly socialised groups and unnecessary disruption of these groups by human intervention should be minimised, including that every effort must be made to safeguard elephants from abuse and neglect, among other things. Furthermore, a management plan for captive facilities must include a description of activities, training methods and tools used; a description of provisions to minimise stress and trauma to the elephants; and a description of provisions to cater for the social structure of the elephants. In addition, duty of care involves that the responsible person is obligated not to neglect or allow any neglect or abuse of any elephant.

However, both domestic and international platforms are increasingly moving away and not supporting elephants in captivity due to increased recognition that it is cruel to keep elephants in captivity. This raises the question if industry can confidently defend whether the current captive elephant industry is compliant with the above legislative command in safeguarding elephants from abuse and neglect, among other things, if the very act of keeping them in captivity is detrimental to their well-being and considered as animal cruelty. In addition, the use of abusive training methods for captive elephants remains a concern, especially as it involves the use of various methods with the intent to goad, maim, beat, torture and terrify an elephant with the intent to cause injury, pain, suffering and distress for the overall goal to brutally enforce the elephant into submission. Methods would include the use of bull hooks; electrical prodders; food, water and sleep deprivation; use of chains and rope to force an elephant into unnatural positions and for extended periods of time and in conditions or in a manner that causes pain and unnecessary suffering. Other animal welfare concerns include but is not limited to a lack of and inadequate biosecurity measures for zoonotic diseases; inadequate and unhygienic water provision; lack of mud wallows and pools for bathing; lack of veterinary care; inadequate diets; inadequate shelter; working without rest; lack of bedding; unnecessary and prolonged chaining of elephants; solitary confinement of elephants; lack of enrichment and adequate stimulation; inadequate enclosure substrates; etc.

Another area of concern is the fact that DEFF has always reiterated that animal welfare falls under the then DAFF, but the National Norms and Standards for the Management of Elephants in South Africa is published and mandated under DEFF. In addition, Section 22(2) of the National Norms and Standards for the Management of Elephants in South Africa state that – *“The Minister shall within 12 months of these Norms and Standards coming into effect, publish an Annexure VII that provides Minimum Standards for the management of captive elephants, and compliance with these Minimum Standards shall be a requirement of the Management Plan and a condition of permits for keeping of elephants in captivity”* (Republic of South Africa, 2008). However, the draft norms and standards were never passed into law.

Adding further accredited weight to the subject matter involves the recommendations and conclusions that come out of a discussion held on the 6th of September 2019, where the EMS Foundation convened an international Indaba and Panel Discussion with national and international elephant behavioural specialists in Hermanus, Western Cape, South Africa, to discuss the issue of elephants in captivity and to develop a framework as well as policy guidelines for dealing with elephants in captivity (EMS Foundation, 2019). Summary conclusions and recommendations made by elephant specialists included the following:

- *“Elephants are a keystone species and are an essential component of ecosystems. If one takes the keystone out of an arch it collapses. They are ecological engineers upon which many other species depend. Without elephants, the integrity of a dynamic ecosystem disintegrates. Elephants engineer proper functionality in the wild. Elephants also help to mitigate climate change, so the protection of their wild spaces is ever more urgent”.*
- *“Elephants are sentient beings who live socially complex lives through relationships which radiate out from a mother-offspring bond through families, clans, and sub populations. Independent males form long-term friendships. ‘Elephants communicate through more than 300 gestures, complex speech and glandular secretions. They contemplate, negotiate, collaborate, plan and are aware of death. They care about their lives”.*
- *“Elephants are big eaters and need an eclectic diet. In nature they roam across long distances and different habitats and spend almost three-quarters of their lives acquiring necessary and different nutrients. The physical activity and mental stimulation involved in the search for food items across large landscapes constitutes the very core of an elephant’s interest and survival”.*
- *“Elephants share with humans the same brain, same consciousness and the same vulnerability to trauma. They can experience psychological and social breakdown. Trauma spreads from parent to child, neighbour to neighbour. Symptoms include depression, fear, panic, flashbacks, nightmares, aggression, infanticide and violence against others and self. Trauma also profoundly undermines their immune system and physiological functions”.*
- *“Human activity, from fencing, noise, to capture, confinement and cruel training is having an increasingly negative effect on the welfare of elephants”.*
- *“In confinement, captive elephants lack the very foundation of elephant life”.*
- *“Holding elephants in captivity causes them enormous stress and constitutes cruelty”.*
- *“The capture of baby and young elephants causes post-traumatic stress (PTSD) that can last decades”.*
- *“Capturing wild elephants and removing them from their families is totally unacceptable”.*
- *“In captivity elephants are less aware, move slowly and droop. Those who have worked with elephants have noted depression and sadness”.*
- *“There is an epidemic of PTSD among elephants in captivity”.*
- *“Confinement even in the best facilities constitutes extreme cruelty”.*
- *“Captivity is simply unsuitable for elephants”.*

- *“There are currently 1 770 elephants worldwide in captive facilities, of which 84% are in zoos. Most of these are in the United States, followed by China, Germany and Japan. Just under 100 facilities hold a single elephant”.*
- *“There is no conservation-education value to the use of elephants in zoos”.*
- *“The law has a duty to protect elephants in zoos and in captivity because there are serious welfare concerns”.*
- *“The way ‘sustainable use’ of wildlife is used in the SADC region is to focus on the species as a whole and allow for the sacrifice of many individuals. This allows individuals to be objectified and exploited rather than respected and well stewarded”.*
- *“Conservation decisions cannot be divorced from welfare considerations”.*
- *“An integrative approach needs to be employed in policies and legislation to properly interpret ecological sustainability and the use of natural ‘resources.’ This kind of approach will integrate respect for individuals and the whole species thereby advancing their conservation”.*
- *“Respect for elephants will ensure their long-term survival”.*
- *“Policies and legislation must be developed that are good for both humans and elephants”.*
- *“There are already several projects in Africa that are rehabilitating and reintegrating elephants, including captive elephants, back into the wild. Effective and verified protocols and procedures have been developed. These programmes need to be urgently supported and expanded”.*
- *“Keeping elephants in captivity and reducing them to mere objects is eroding our own humanity”.*

Furthermore, an overwhelming consensus from panellists and delegates included that scientific knowledge and understanding of elephants is adequate enough to state that it can no longer be acceptable to allow elephants to be kept in captivity, that no new elephants should be placed in captivity; and those elephants currently in captivity should be reintegrated into the wild wherever possible or, if not, be placed in as free and natural environment as possible.

4.8 FACTORS FAILING RHINO

Captive rhino, farmed rhino and the rescue, rehabilitation and release of orphaned and displaced calves’ remains inadequately regulated resulting in compromised animal welfare. Whilst norms and standards, including regulations exists around matters pertaining to trophy hunting, trade in rhino horn and marking of rhino horn, alarmingly the same priority is not extended to animal welfare matters pertaining to the very act of keeping the animal in captivity, including dehorning for harvesting and anti-poaching purposes and other factors connected thereof. This is especially concerning when looking at the sheer number of rhino poaching events and ensuring that adequate and regulated measures are in place to ensure that rescued and displaced calves receive the best care possible for

rehabilitation purposes in light of their threatened and endangered conservation status for the respective separate species of rhino.

Animal welfare concerns regarding captive rhino and calves include but is not limited to unnecessarily rough and inappropriate mishandling of calves; incorrect and inappropriate diets such as the provision of poor quality or mouldy lucerne or teff; dilution of milk formulas of calves; unhygienic enclosure conditions; provision of unhygienic water; lack of shelter; lack of mud wallows; overcrowding, especially at feeding points leading to food aggression; inadequate drainage; inadequate security to prevent poaching; inadequate veterinary care and compromised animals not attended to in a timely manner; lack of enrichment; lack of exercise; solitary confinement of younger calves needing companionship; and overexposure of calves to human contact and unhealthy imprinting of rhinos which eventually causes habituation which increases their chances of getting poached upon release.

On the 03rd of June 2020, National Regulations Relating to Trade in Rhinoceros Horn were published (Republic of South Africa, 2020). It provides for regulations relating to trade in rhinoceros horn, namely the selling or otherwise trading in, giving, donating, buying, receiving, accepting as a gift or donation, or in any way disposing or acquiring, and the export and re-export from the Republic of South Africa, of rhinoceros horn, or a part, product or derivative of such rhinoceros horn, belonging to the species black rhinoceros (*Diceros bicornis bicornis*, *Diceros bicornis minor* and *Diceros bicornis michaeli*) and white rhinoceros (*Ceratotherium simum simum*). Clarification is required for Chapter 4 of the regulations which subsequently allows for export or re-export of rhino horn, but the CITES rhino horn trade ban still remains force since 1977, including DEFF is exempted from the prohibition to export or re-export rhinoceros horn less than 5 cm in length. Section 16(1) further states that where DEFF is excluded from any prohibition contemplated in the regulations, as DEFF may give, donate, accept as a gift or donation, export or re-export rhino horn, only to the extent necessary to for official performance of its functions. The short and long term objective for allowing domestic and international rhino horn trade in the interest of the species and the purposes thereof, including why DEFF is allowed to trade and their functions in this regard requires urgent clarification and transparency.

5. CONCLUSION

South Africa has one of the largest and most commercialised wildlife industries in the world with a major issue being that captive wildlife facilities of exploitive practices have been allowed to flourish. One of the biggest challenges involves national and provincial legislation, including regulations not adequately incorporating animal welfare for both free-roaming and captive wildlife. This is further aggravated between governmental departments and concurrent national and provincial jurisdiction because of a statutory regime unintended and unsuited in addressing the issue of wild animal welfare. However, the High Court ruling for Case No. 86515/2017 states that regardless if animal welfare does not form part of a governmental department's mandate, the government is now legally obligated to consider animal welfare in all its conservation decisions, otherwise it goes against the spirit of Section 24 of the Constitution of the Republic of South Africa, 1996. This precedent-setting judgement has broader implications and extends not just to wildlife kept in captivity, but to the management of all of South Africa's wildlife.

Overall, the NSPCA is opposed to the keeping and/or breeding of indigenous and exotic wild species in captivity for reasons other than for bona fide conservation purposes, or for rehabilitation and/or sanctuary purposes in facilities approved by the NSPCA. Furthermore, the NSPCA supports ecotourism and nature-based tourism activities that does not result in compromised animal welfare to any animal; involves the responsible travel to natural areas that conserves, ideally develops awareness and results in minimal impact on the environment; and where wild animals can be observed in their natural habitat, instead of being kept and bred in captivity for commercialised and trade purposes. The NSPCA, serving as a public body and in the interest of society, would like to witness a remarkable shift in increasing conservation and animal welfare efforts by government, shifting back to the legitimate fundamentals of conservation, which ultimately involves conserving South Africa's natural rich biodiversity, natural areas and habitats, instead of seeing South Africa landscapes dominantly making more space for activities of a exploitative nature such as wildlife farming, wildlife interactions and keeping of wild animals in captivity. The complex nature of each of the topics under review by the Advisor Committee as provided in the terms of reference is simplified by the fact that if would be both irresponsible and reckless if humanity continues on the current trajectory, ignoring the collective warnings and threats caused to the natural environment and the species dependant on it for survival.

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