

ANIMAL LAW REFORM SOUTH AFRICA ADVANCES ANIMAL WELL-BEING IN AFRICAN PENGUIN CASE

19 March 2025

On 18 March 2025, the High Court handed down an [order](#) in the [litigation](#) between BirdLife South Africa and others against the Minister of Forestry, Fisheries and the Environment and others. The order, which gives effect to a settlement agreement, will promote the protection of African penguins. [Animal Law Reform South Africa](#) (ALRSA) participated in the litigation as a friend of the court (*amicus curiae*). The applicants challenged the (former) Minister's decision to impose 'interim closures' around African penguin breeding colonies alleging (among other issues) that the decision was irrational and unlawful and that the Minister had failed to comply with certain legal duties.

ALRSA was formally admitted as a friend of the court (*amicus curiae*) in the case, after initiating this process in July 2024. ALRSA's intervention introduced novel legal arguments, many of which have not yet been ventilated in South African litigation, particularly concerning the importance of government considering animal well-being in decision-making, in terms of NEMBA, as amended.

ALRSA's friend of the court submissions addressed critical interpretations of South Africa's constitutional environmental right, as read with environmental and biodiversity law, including but not limited to:

- **Considering Well-being of Animals in Decision-Making:** ALRSA argued that the Minister's decision-making process should have explicitly considered the well-being of African penguins, as required by the National Environmental Management: Biodiversity Act ([NEMBA](#)) as amended by National Environmental Management Laws Amendment Act 2022 ([NEMLAA](#)), as well as the White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity 2023 ([White Paper](#)). Specifically, we argued that animals have protectable interests insofar as their "*well-being*" is impacted and that decision-makers have corresponding duties to consider such interests.
- **Sentience and Intrinsic Value of Animals:** ALRSA highlighted the evolving legal recognition of animals (including penguins) as sentient beings with intrinsic value, and how these concepts are intertwined with the environmental right, reinforcing that their protection goes beyond conservation and raises broader issues of legal and environmental ethics.
- **Expanding of *Ubuntu*:** ALRSA drew on existing policy (including the White Paper) that recognises that *Ubuntu* not only applies to humans but extends to our relationships with the more-than-human world, including animals. *Ubuntu* includes elements such as dignity, compassion, cooperation, communalism, sharing and caring, among others.
- **Interconnection Between Environmental Rights and Animal Protection:** ALRSA's submissions demonstrated that the constitutional right to an environment (section 24 of the [Constitution](#) of the Republic of South Africa, 1996), has been interpreted by the [Constitutional Court](#) and [other courts](#), to include the protection of the interests of animals.

These arguments were not fully examined in a hearing or a judgment due to a settlement being made out of court. Nevertheless, the inclusion of submissions of this nature for the first time in South African court records is a significant milestone in the pursuit of animal law reform.

By bringing these arguments formally into papers before the judiciary, ALRSA has taken a crucial step forward and provided a template for the future consideration of animal well-being in terms of NEMBA and other relevant law and policy and highlighted the importance of animal well-being in decision-making.

For access to ALRSA's full legal submissions, please follow the links below:

- ALRSA's [Amicus Application](https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Amicus-Application.pdf) (<https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Amicus-Application.pdf>)
- ALRSA's [Amicus Heads of Argument](https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Amicus-Heads-of-Argument.pdf) (<https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Amicus-Heads-of-Argument.pdf>)
- ALRSA's [Supplementary Heads of Argument](https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Supplementary-HOA-310125.pdf) (<https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Supplementary-HOA-310125.pdf>)

ALRSA hopes that these documents may serve as a resource for policymakers, legal practitioners, researchers and advocates seeking to advance animal, human and environmental protection within South Africa's legal system.

ALRSA remains steadfast in its mission to advocate for the legal protection of animals and will continue to work towards ensuring their sentience, intrinsic value and well-being is a core consideration in all relevant decision-making processes.

We congratulate all parties involved on this achievement, particularly the applicants in the matter, BirdLife South Africa ([BLSA](#)) and Southern African Foundation for the Conservation of Coastal Birds ([SANCCOB](#)) as well as their attorneys, the Biodiversity Law Centre ([BLC](#)). We hope this marks a significant step in efforts to conserve this endangered species (and all species) in the country.

- The court order can be found [here](https://www.animallawreform.org/wp-content/uploads/2025/03/Penguin-Court-Order.pdf) (<https://www.animallawreform.org/wp-content/uploads/2025/03/Penguin-Court-Order.pdf>)

ALRSA would like to extend our gratitude to our legal representatives, who acted pro bono, including our team of attorneys, [Webber Wentzel](#) (Public Interest Department) and our counsel, [Advocate Samantha Martin](#). Thank you also to board members, Amy P. Wilson and Professor Melanie Murcott for their input and efforts in this matter.

For inquiries, please contact: Amy P Wilson, Co-Founder & Acting Executive Director of Animal Law Reform South Africa (ALRSA) amywilson@animallawreform.org and contact@animallawreform.org.

Read more on our website: <https://www.animallawreform.org/>.