



TO: Joint Constitutional Review Committee
ATT: Adv P Gwebu
Per e-mail: pgwebu@parliament.gov.za
From: Amy P. Wilson, Animal Law Reform South Africa (amywilson@animallawreform.org)
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06 July 2026

Dear Honourable Representatives,

**RE: WRITTEN SUBMISSION TO THE JOINT CONSTITUTIONAL REVIEW COMMITTEE:
PROPOSAL TO INCLUDE ANIMAL PROTECTION ASPECTS IN THE CONSTITUTION OF
THE REPUBLIC OF SOUTH AFRICA, 1996**

I. Introduction

Please find herewith the Animal Law Project¹ (“ALP”)’s submission to the Joint Constitutional Review Committee in respect of the 2026 call for written submissions² on the annual review of the Constitution of the Republic of South Africa, 1996 (“**Constitution**”) in accordance with section 45(1)(c) of the Constitution.

The ALP is a collaborative project aimed at transforming animal protection legislation in South Africa as a constitutional imperative initiated by Animal Law Reform South Africa (“ALRSA”),³ Humane World for Animals (“**Humane World**”),⁴ (formerly, Humane Society International/Africa), and the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”) (a centre of the University of Johannesburg),⁵ each a registered non-profit organisation in South Africa acting in the public interest. This submission is made by ALRSA and Humane World as part of the ALP.

In June 2024, the ALP published its “*Manifesto for Transforming Animal Protection in South Africa: A Constitutional Imperative*” (“**ALP Manifesto**”),⁶ intended to provide input into the

¹ Animal Law Project (“ALP”): <https://animallawproject.org.za>.

² Parliamentary Monitoring Group: <https://pmg.org.za/call-for-comment/1727/>.

³ Animal Law Reform South Africa (“ALRSA”): <https://www.animallawreform.org/>.

⁴ Humane World for Animals South Africa (“HWfA”): <https://www.humaneworld.org/south-africa/en>.

⁵ South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”) was one of the founders of the ALP, but stepped back from certain aspects of the project in January 2024, due to the appointment of Professor David Bilchitz as an acting Judge of the Constitution Court. SAIFAC remains involved in selected events, submissions and initiatives of the ALP.

⁶ Wilson A.P and Gerrans A, A Manifesto for Transforming Animal Protection in South Africa: A Constitutional Imperative, Draft 1, Animal Law Project, 20 June 2024 (“**ALP Manifesto**”), accessible at: <https://animallawproject.org.za/>.



current process regarding a new Animal Welfare Bill.⁷ The Manifesto identifies critical gaps in South Africa's current animal regulatory framework, including its misalignment with the Constitution, judicial advancements, and other developments, and sets out proposals and recommendations. It has received broad support from hundreds of individuals⁸ and dozens of organisations.⁹

On 5–6 May 2025, the ALP hosted a Colloquium, bringing together over 150 participants to foster legal dialogue and solicit expert input on the proposed Bill, including keynote addresses by Justice Kollapen of the Constitutional Court and Professor David Bilchitz, former acting justice.¹⁰

On 30 May 2025, the ALP, ALRSA and Humane World made a high-level submission to the Joint Constitutional Review Committee in respect of the call for written submissions on the annual review of the Constitution in accordance with section 45(1)(c) of the Constitution (the “**2025 ALP Submission**”). The submission proposed the explicit inclusion of certain animal protection aspects in the Constitution, including practical matters which affirm the consideration and protection of animal interests as a functional area across all spheres of government.

In May of 2026, the ALP published the “Animal Justice Memorandum, A Constitutional Vision for Justice for All Beings”,¹¹ which was read at the “Stand for Justice for Animals”¹² event. The event brought together over 100 activists and members of the public outside Parliament on Saturday 9 May 2026.

We note with concern that the 2025 ALP Submission received no engagement,¹³ and the ALP's submission was not addressed in the Committee's deliberations.¹⁴ The ALP has sent numerous correspondence to the Committee, the latest dated 30 June 2026, setting out our concerns and requesting feedback on the status of the 2025 ALP Submission. Meaningful participation is a constitutional requirement and a process in which a written submission, lawfully invited and properly made, receives no engagement risks falling short of the required constitutional standards, even if done unintentionally.¹⁵

The 2025 ALP Submission identified clear constitutional foundations for reform and proposed targeted, modest amendments to the Constitution. Over a year later, those issues remain unresolved, and the constitutional obligation to address governance gaps in animal protection has become increasingly pressing. As part of this submission, we respectfully but firmly reiterate and expand upon our 2025 proposals. We would welcome the opportunity to

⁷ See Parliamentary Monitoring Group: <https://pmg.org.za/committee-question/31246/>; and <https://pmg.org.za/committee-question/27973/>.

⁸ Animal Law Project: Individual Sign On: <https://animallawproject.org.za/support/>.

⁹ Animal Law Project: Organisational Endorsement: <https://animallawproject.org.za/endorsement/>.

¹⁰ Animal Law Project: <https://animallawproject.org.za/events/>.

¹¹ Animal Law Project Animal Justice Memorandum May 2026: <https://www.animallawreform.org/wp-content/uploads/2026/05/Animal-Justice-Memorandum.pdf>.

¹² Facebook Event https://www.facebook.com/events/951514470951793/?onload_action=open_invite_flow

¹³ The only response received was a confirmation of receipt on 5 June 2025.

¹⁴ See Parliamentary Monitoring Group: <https://pmg.org.za/committee-meeting/42665/> and <https://pmg.org.za/committee-meeting/43236/>; and the 2025 Submission Summary: https://static.pmg.org.za/260320_CONSTITUTIONAL_REVIEW_SUBMISSIONS_2025_fv.pdf.

¹⁵ See *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) and *Mogale and Others v Speaker of the National Assembly and Others* [2023] ZACC 14; 2023 (9) BCLR 1099 (CC); 2023 (6) SA 58 (CC).

engage with the Committee directly regarding this submission and the status of our prior correspondence.

The constitutional and legal landscape has continued to evolve. The courts remain required to interpret an outdated and fragmented statutory framework through the lens of a transformative and progressive Constitution, which is increasingly recognising the constitutional significance of animal protection. Government departments at all levels and organs of state continue to exercise public powers that affect billions of animals every day, without clear constitutional mandates regarding animal protection in exercising those powers. The resulting uncertainty has led to inconsistent decision-making, fragmented governance, avoidable litigation, and persistent gaps in accountability. This points to the need for constitutional intervention.

These are not theoretical concerns. They are reflected in litigation presently before the Constitutional Court concerning the constitutional significance of animal well-being,¹⁶ and in numerous decisions over the past decade in which courts have repeatedly been called upon to clarify responsibilities that ought to be evident from the constitutional framework itself. Ten years after the Constitutional Court recognised animal welfare as a constitutional value intimately connection to section 24¹⁷ of the Constitution,¹⁸ meaningful constitutional, legal and institutional reform has yet to follow.

Parliament now has the opportunity to provide the constitutional certainty that has, to date, been supplied only incrementally through judicial interpretation. This submission does not seek to invite judicial innovation or constitutional expansion beyond established principle. It respectfully invites Parliament to codify and give practical constitutional effect to principles already recognised by South African courts, ensuring that all spheres of government and organs of state adequately consider and provide for animal protection whenever exercising powers or performing functions that directly or indirectly affect animals.

Importantly, this submission does not seek to drastically alter existing legislative competences, centralise governmental powers, create new constitutional rights for animals, or fundamentally restructure South Africa's constitutional order. Nor does it propose that animal protection should displace or supersede other constitutional rights and interests. The proposed amendments are deliberately modest, practical and constitutionally restrained. They seek only to ensure that where the government already exercises constitutional powers affecting animals, there is a corresponding constitutional obligation to take animal protection into appropriate account.

This is consistent with South Africa's constitutional commitment to accountable, responsive and open government; the rule of law; cooperative governance; environmental protection; and the protection of vulnerable interests. It is also broader international and comparative constitutional developments, in which an increasing number of jurisdictions have

¹⁶ South African Hunters and Game Conservation Association v Speaker of the National Assembly and Others CCT 270/24 (“**SA Hunters Case**”). We are aware that the issues presently before the Constitutional Court remain *sub-judice*, and we do not comment on the merits. We refer to the litigation only to illustrate that constitutional uncertainty persists.

¹⁷ Section 24 of the Constitution guarantees, amongst other things, the right to an environment that is not harmful to their health or well-being.

¹⁸ National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16) [2016] ZACC 46 (“**2016 NSPCA Case**”).

recognised that animals are sentient beings whose interests warrant constitutional or equivalent legal consideration in the exercise of public power.

Ultimately, this submission is concerned not only with animals, but with constitutional governance itself. Every sphere of government exercises powers that directly or indirectly affect animals, yet nowhere does the Constitution explicitly require that those impacts be considered. In a modern constitutional democracy founded upon dignity, accountability, responsiveness, the rule of law and respect for vulnerable interests, that omission is increasingly difficult to justify.

II. High-Level Problem Statement: Constitutional Governance Gaps

Animals and humans have a “storied relationship”,¹⁹ permeate nearly every aspect of human life and our environment. They exist within families and communities, agricultural systems, conservation landscapes, research institutions, entertainment industries, trade and commerce, public health, biodiversity conservation and municipal governance. All levels of government – national, provincial, and local – and various departments make daily decisions and carry out functions that directly and/or indirectly impact animals.

Despite this reality, the Constitution does not expressly recognise animal protection as a constitutional governance consideration. While it allocates numerous governmental competences that directly affect animals,²⁰ it does not expressly require that animal protection or their interests be considered when exercising those competences.²¹ This omission has produced significant practical and constitutional consequences.

Across all spheres of government, there remains widespread uncertainty about which institutions are responsible for considering animals’ interests when exercising public power. Government departments, and even the private sector, frequently regard animal protection and their regulatory framework as falling exclusively within the mandate of the Department of Agriculture, despite judicial authority recognising that animal welfare considerations extend beyond any single department or statutory mandate.²² Decisions are accordingly taken by environmental authorities, municipalities, provincial departments and other organs of state without meaningful consideration of animal protection, even where the welfare and well-being of animals are plainly relevant to the decision in question.

The consequences are reflected in a fragmented and inconsistent regulatory landscape. Animal protection in South Africa remains dispersed across numerous statutes administered by different departments and spheres of government, often pursuing distinct objectives and under different constitutional assumptions. Animals directly under human care and control – including farmed, companion, entertainment, and wild animals in captivity – fall under the Animals Protection Act 71 of 1962 (“**APA**”) and the Performing Animals Protection Act 24 of 1935 (“**PAPA**”), administered nationally by the Department of Agriculture. Free-roaming and

¹⁹ 2016 NSPCA Case at para 1.

²⁰ For example, agriculture, animal diseases, animal control, environmental management, veterinary services, municipal pounds, dog licensing and public nuisance.

²¹ Schedules 4 and 5 of the Constitution set out the functional areas of legislative competence for national, provincial and local government but make no express reference to animal protection as a functional area or governance consideration.

²² National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others [2019] ZAGPPHC 337 (“**Lion Bone case**”).

captive wild animals are further regulated under environmental laws, including the National Environmental Management: Biodiversity Act 10 of 2004 (“**NEMBA**”), overseen by the national Department of Forestry, Fisheries and the Environment (“**DFEF**”) and provincial authorities. Municipal by-laws, provincial legislation, national agricultural legislation, biodiversity legislation, criminal law and administrative law intersect in ways that routinely create uncertainty as to responsibility, accountability and legal obligation.

This fragmentation has produced regulatory overlap in some areas, regulatory vacuums in others, and a persistent tendency for institutions to defer responsibility for animal protection to another sphere or department. The result is that animal interests are frequently overlooked altogether, even though governmental decisions may profoundly affect the welfare, well-being, and lives of millions of sentient animals. Over 1 billion animals are utilised and killed every year in the country, including over 1.1 billion land farmed animals for food alone,²³ without due regard, sufficient oversight, or accountability.

The problem extends beyond institutional fragmentation. It reflects a broader deficiency in constitutional governance. The Constitution presently allocates governmental powers without expressly recognising that many of those powers inherently affect animals and therefore require appropriate consideration of animal protection. This has required courts to repeatedly read constitutional values into an outdated statutory framework, correcting executive decisions that failed to account for constitutionally relevant animal-welfare considerations. While this jurisprudence has significantly advanced South African animal law, it has also exposed the absence of clear constitutional guidance for legislators, administrators and decision-makers.

Constitutional rights and values are most effective when they provide clear guidance before decisions are made, rather than requiring judicial intervention after unlawful decisions have already occurred. Parliament is uniquely positioned to provide that clarity. This submission therefore proceeds from a simple but important constitutional proposition: because the government exercises constitutional powers that directly or indirectly affect animals, there should be a corresponding constitutional obligation to consider and provide for animal protection in exercising those powers. In that way the proposed amendment would connect the identified governance gap to the constitutional reform sought.

Such an amendment would neither alter existing allocations of legislative competence nor create new governmental functions. It would address the gap identified above by ensuring that the exercise of existing constitutional powers accords with the constitutional values, judicial principles and governance obligations that South African courts have already recognised over the past decade – thereby strengthening legal certainty, coherent decision-making, co-operative government, improved public administration and greater accountability.

²³ The Department of Agriculture, Land Reform and Rural Development: https://www.dalrrd.gov.za/phocadownloadpap/Statistics_and_Economic_Analysis/Statistical_Information/Abstract%20202021.pdf.

III. The Consequences of Fragmentation and Inaction

A. The Cost of Constitutional Inaction

The failure to provide clear constitutional guidance on animal protection is not without consequence. It carries a measurable cost – borne not only by animals, but by the public, the private sector and the state alike.

In the absence of express constitutional obligations, organs of state have repeatedly been brought before the courts to answer for decisions taken without adequate consideration of animal protection. Private parties, civil society organisations and government departments have each expended significant legal, financial and administrative resources in litigation that, in many instances, has done no more than confirm what the courts had already established in earlier decisions. Rather than constitutional obligations being operationalised through legislation and clear institutional mandates – as Parliament is best placed to ensure – they have had to be established and re-established, case by case, through costly and avoidable litigation.

This is a governance failure with practical consequences. The courts have provided repeated and consistent guidance on the constitutional status of animal protection. That guidance has not yet been translated into a clear constitutional framework that would enable decision-makers across all spheres of government to understand and discharge their obligations without recourse to litigation. The proposed constitutional amendments would provide exactly that framework – reducing uncertainty, improving administrative decision-making and relieving the burden on the courts and the public of repetitive proceedings arising from the same unresolved constitutional lacuna. A few, non-exhaustive examples of recent case law are included below.

The first example concerns three elephants – Lammie, Mopane and Ramadiba – housed at the Johannesburg Zoo. An application was lodged in the Gauteng High Court in June 2022 by ALRSA, the EMS Foundation and others, seeking the release of the elephants to a rewilding facility on the basis that the conditions of their captivity fail to meet the state’s constitutional and legal obligations regarding animal well-being.²⁴ The matter was heard in May 2026 and turns, in significant part, on the nature and extent of the constitutional obligations borne by the government (especially local government) when exercising powers that affect the welfare and well-being of individual animals. It is precisely the kind of dispute that clear constitutional obligations – rather than an implied ones – would assist in resolving, and in future preventing.

The second example is of even broader constitutional significance. In May 2026, the Constitutional Court heard an application brought by the South African Hunters and Game Conservation Association (“**SA Hunters**”) challenging the inclusion of the concept of animal “well-being” in the NEMBA.²⁵ SA Hunter’s formal argument is procedural: it contends that the relevant amendments were inserted without adequate public participation and seeks to have them declared invalid. Whatever the procedural merits of that challenge, its practical

²⁴ Application lodged in the High Court of South Africa, Gauteng Division, Pretoria, on 20 June 2022 by ALRSA, the EMS Foundation and Chief Stephen Fritz, represented by Cullinan and Associates, against the Johannesburg City Parks and Zoo and other governmental respondents. See <https://www.animallawreform.org/our-work/>.

²⁵ See SA Hunters Case, the matter was heard in the Constitutional Court on 26 May 2026 and judgment was reserved.

effect, if successful, would be to remove from South Africa's biodiversity legislation the very provision that most clearly bridges conservation governance and the welfare of individual animals. The provision also gives practical effect to the highest court in the country's previous ruling in 2016.

More strikingly, the case illustrates that even a proposition as fundamental as the legal recognition of animals' capacity to suffer – a matter affirmed by the Constitutional Court and reinforced in numerous subsequent decisions over the past decade – remains vulnerable to being excised from the statute book when it has not been given unambiguous constitutional expression. Had Parliament already codified the constitutional significance of animal protection, including well-being, this challenge could not have arisen in its current form, and the considerable public, institutional and legal resources devoted to the litigation would have been unnecessary.

These two cases, are only a few examples of current issues in front of the courts, and, taken together, demonstrate with particular clarity the institutional and financial cost of leaving constitutional obligations to emerge solely through judicial implication rather than constitutional text.

The ongoing litigations are illustrative of the precise problem this submission seeks to address: the Courts are being compelled to repeatedly re-interpret and apply animal protection values that are already embedded in our constitutional jurisprudence, against a background of a fragmented statutory scheme and the absence of express constitutional recognition. Textual constitutional clarity of the kind proposed in this submission would assist in avoiding costly, protracted litigation and would provide a stable normative foundation for all legislative and executive action affecting animals.

The remarks of members of the Court during the 26 May 2026 hearing are instructive. A member of the Court observed that, since the 2016 NSPCA judgment, any meaning to be ascribed to the term “well-being” of an animal must be consistent with the Court's endorsement of animal sentience and intrinsic value. Another member noted that if a court were called upon to interpret “well-being” without a specific statutory definition, it would likely arrive at a result consistent with the 2016 jurisprudence in any event – precisely because constitutional values already require it.²⁶ This submission invites Parliament to give formal, constitutional expression to what the courts have already recognised.

B. Inconsistent By-Laws and Provincial Legislation

The absence of a clear constitutional anchor for animal protection has produced a regulatory landscape that is, in practical terms, deeply inconsistent. The obligations that apply to animals – and to those responsible for their protection – differ markedly depending on the province, municipality or sphere of government in which a decision falls to be made. A few illustrative examples are included below.

At the local government level, the treatment of companion animals, the operation of municipal pounds, the licensing of animals and the management of animals deemed a public nuisance are governed primarily by municipal by-laws.²⁷ These by-laws vary considerably

²⁶ NSPCA: <https://www.facebook.com/reel/1259715099312839/>.

²⁷ See FOUR PAWS: State of animal welfare Western Cape Municipalities Report; and van As, H.J., 2023. Do Municipalities have the Power to Regulate the Keeping of “Dangerous” Dogs? *Obiter*, 44(4), pp.858–878.

in content, in standard and in the extent to which they recognise animal well-being as a relevant consideration. There is no constitutional requirement that they align with one another, or with the constitutional values that the courts have progressively recognised. Some municipalities operate with reasonably developed frameworks; others have no meaningful provisions at all. The level of protection effectively afforded to animals is, in consequence, largely a function of geography – a situation that sits uneasily with the Constitution’s commitment to coherent, accountable and co-operative government.

A similar picture emerges at the provincial level. Conservation legislation, regulations governing abattoirs and provincial wildlife management frameworks operate on different assumptions, apply different standards and reflect different degrees of engagement with the constitutional jurisprudence on animal protection.²⁸ The result is a patchwork of provincial obligations that creates precisely the conditions in which organs of state can, and regularly do, deflect accountability by pointing to the absence of an express mandate or the existence of an alternative regulatory regime elsewhere in the framework.

The proposed constitutional amendments would not resolve every instance of regulatory inconsistency across a federal system. They would, however, provide the constitutional foundation from which coherent national standards, meaningful inter-governmental co-operation and genuine accountability can be built – and from which the current abdication of responsibility is no longer constitutionally available as a defence.

IV. Impetus: Constitutional and Judicial Groundings

Several important cases have highlighted deficiencies in the existing framework and the need to appropriately develop the Constitution and the law. As indicated above, critically, the matter is now directly and urgently before the Constitutional Court, demonstrating that the absence of textual constitutional clarity continues to generate costly and protracted litigation that could be averted by the proposed amendments.

Constitutional interpretation is purposive, value-based, and responsive to changing social realities; it is not confined to the circumstances existing at the time of the Constitution’s adoption but is capable of responding to contemporary governance challenges and developments. Animal protection represents one such challenge and development. Since 1996, scientific understanding, legal doctrine and societal recognition of animals and humanity’s responsibilities towards them have shifted profoundly – and South African constitutional jurisprudence has evolved in step.

South African constitutional jurisprudence has undergone a remarkable transformation over the past decade. Through a series of carefully reasoned judgments, the courts have progressively recognised that animal protection is no longer merely a statutory concern but a constitutional one.

A. Recognition of Animal Sentience, Intrinsic Value, and Care Towards Animals

In 2016, the Constitutional Court found animal welfare to be a deep principle of the Constitution and connected it to the human right to have the environment protected.²⁹ The Court held that “constitutional values dictate a more caring attitude towards fellow

²⁸ See Wildlife Animal Protection Forum South Africa and Conservation Action Trust reports on provincial government failures.

²⁹ 2016 NSPCA Case at paras 57–58.

humans, animals and the environment in general”. It recognised the sentience of animals and affirmed that the rationale for protecting “animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals”.³⁰ The Court further noted that “our courts now afford increasingly robust protection to animal welfare”.³¹ In so holding, the Court expressly rejected the proposition that animal welfare exists solely for the benefit of humans, recognising instead that animals possess intrinsic value and that cruelty towards them engages constitutional concern in its own right.

These are not isolated observations on statutory interpretation. They establish that animal protection has become a constitutional concern grounded in the Constitution’s own values. If animal welfare is constitutionally connected to section 24, and constitutional values require concern and respect for animals, it follows that organs of state exercising constitutional powers affecting animals should likewise be required to consider those interests when exercising public power. The amendments proposed in this submission simply give institutional expression to that principle.

B. Recognition of Broad Responsibilities to Consider and Protect Animal Interests

The High Court applied this approach directly in the Lion Bone Case, in which it set aside the decision of the Minister of Environmental Affairs to determine an annual export quota for lion skeletons without considering the welfare of captive-bred lions. The Court held that there is a material difference between bearing legal responsibility for a welfare mandate and being obliged to take welfare considerations into account where they are relevant to the decision at hand; relevance, the Court explained, falls to be determined not by rigid jurisdictional formalism but by the connection between the consideration and the decision in question.³² The Minister had erred in concluding that, because the welfare mandate for captive lions did not reside with her department, she was absolved of any obligation to consider welfare issues bearing on the quota.

This judgment is of direct relevance to the present submission. It confirms, as a matter of administrative and constitutional law, that the absence of a formal welfare mandate does not relieve an organ of state of the obligation to consider animal interests where they are relevant to the exercise of its powers. The proposed constitutional amendments would simply make that obligation explicit and consistent across all spheres of government, rather than leaving it to be established, department by department, through litigation.

C. Constitutional Personhood and the Meaning of “Everyone”

The jurisprudential developments outlined above did not emerge in a doctrinal vacuum. In an influential academic argument first advanced by Professor David Bilchitz in 2009 he carefully argues that legal personhood is a legal fact, not a biological one; the capacity to bear duties is not a precondition for being a bearer of rights; animal welfare legislation already implicitly acknowledges animals as bearers of legally protected interests in their own right, not as instruments of human concern.³³ On this foundation, and drawing on a capabilities-based conception of dignity, he contends that the Constitution’s use of the inclusive term

³⁰ 2016 NSPCA Case at para 57.

³¹ 2016 NSPCA Case at para 55.

³² Lion Bone Case at paras 67–70.

³³ Bilchitz, D, Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals (2009) 25 *South African Journal on Human Rights* 38–72.

“everyone” – rather than “every human being” – leaves open a principled, purposive interpretation under which certain rights could extend to non-human animals capable of holding them.³⁴

This submission does not ask Parliament to adopt Bilchitz’s thesis, nor does it require resolution of the deeper philosophical questions his work raises. We refer to it because it illustrates that the constitutional case for taking animal interests seriously rests on more than a single line of judicial authority: it is supported by a sustained body of South African constitutional scholarship, much of which anticipated, and has since been substantially vindicated by, the Constitutional Court’s own recognition of animals’ intrinsic value and entitlement to constitutional concern. The amendments proposed below are considerably more modest than Bilchitz’s thesis. They do not seek to resolve whether animals fall within “everyone”, confer rights upon animals, or alter their legal status. They seek only to ensure that where the government already exercises constitutional power affecting animals, that power is exercised with appropriate regard to their protection – a governance obligation that sits comfortably within, and well short of, the wider constitutional debate Bilchitz’s work has done so much to advance.

D. Animal Protection and The Broader Human Rights Framework

Animal protection is not an interest that exists in isolation from the human rights concerns that lie at the heart of South Africa’s constitutional order. The connection between the two is direct, documented and increasingly recognised in South African legal and policy discourse.

The South African Human Rights Commission (“SAHRC”) is currently conducting a National Investigative Hearing into the Right to Food. As part of this process, submissions were made by various animal protection organisations regarding the treatment and exploitation of animals in South Africa’s food systems, as well as how the right to food could be interpreted to include animal protection.³⁵ Following these submissions, the SAHRC invited ALRSA and Humane World to present orally,³⁶ demonstrating that even Chapter 9 institutions are alert to the importance of animals and animal protection in the constitutional order.³⁷ The SAHRC’s investigation into the right to food and related intersections with animal agriculture further underscores that animal protection is a matter of constitutional governance, touching on fundamental rights. This reinforces the need for explicit constitutional recognition.

In addition, other organisations (including the Centre for Applied Legal Studies) have recently been invited to present evidence to the SAHRC, on the subject of animal rights

³⁴ The argument is developed through an analysis of legal personhood, the relationship between rights and duties, and a capabilities-based conception of dignity, before addressing the interpretation of the term “everyone” in the Bill of Rights. See also Bilchitz, D, What Was Left Unsaid: The Unconstitutionality of the Performing Animals Protection Act in *NSPCA v Minister of Agriculture, Forestry and Fisheries*” (2014) 30 *South African Journal on Human Rights* 183–193.

³⁵ See for example, Animal Law Reform South Africa, Initial Submission: <https://www.animallawreform.org/wp-content/uploads/2026/03/ALRSA-SAHRC-Submission-February-2026.pdf> and Supplementary Submission: <https://www.animallawreform.org/wp-content/uploads/2026/04/ALRSA-SAHRC-Supplementary-Submission-10-April-2026.pdf>.

³⁶ See <https://www.youtube.com/watch?v=8judQzv3wQs&t=1s>.

³⁷ Animal Law Reform South Africa: <https://www.animallawreform.org/wp-content/uploads/2026/03/ALRSA-SAHRC-Submission-February-2026.pdf>. South African Human Rights Commission: <https://www.youtube.com/live/8judQzv3wQs?si=QBkxx66BmERM4a9x>.

within the constitutional framework of South Africa and the broader socio-economic implications arising from animal welfare, regulation, and governance. More particularly, to speak to the intersection between animal welfare and constitutional rights, particularly the rights to dignity, life, environmental protection, and freedom and security of the person.

These interactions reiterate that the governance gaps identified in this submission have consequences that extend beyond the animals directly affected. A constitutional framework that takes animal protection seriously is, by extension, one that takes the protection of all vulnerable beings within its reach seriously.

E. Recognition of the Interconnection Between Human Rights and Animal Interests

The Constitutional Court has affirmed that animal welfare is connected with the constitutional right to have the environment protected, endorsing an “integrative approach” which “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”.³⁸ Courts have also recognised that animal protection intersects with other constitutional rights, including freedom of expression³⁹ and access to information,⁴⁰ particularly in contexts where animal suffering is concealed from public scrutiny. A recent minority judgment in the Constitutional Court noted that in the context of companion animals, the family “have a constitutionally protected interest in choosing to form and sustain relationships with companion animals and to ensure that they are not harmed and that they are adequately provided for.”⁴¹

In several instances, executive decisions have been declared unlawful and constitutionally invalid for failing to consider animal welfare.⁴²

Various other constitutional values, rights, and freedoms are implicated by animal treatment and by government functions, including but not limited to the right to freedom from violence,⁴³ human dignity,⁴⁴ and aspects of human and environmental health, including zoonotic diseases.⁴⁵ Accordingly, the protection of animal interests is a matter of public interest, and including a corresponding requirement for the adequate consideration and provision of this protection in the Constitution when exercising governmental functions is critical.

³⁸ 2016 NSPCA Case at para 57-58.

³⁹ *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3.

⁴⁰ *Smuts N.O. and Others v Member of the Executive Council: Eastern Cape Department of Economic Development Environmental Affairs and Tourism and Others* (1199/2021) [2022] ZAECKMHC 42.

⁴¹ *Huntrex 277 (Pty) Ltd v Berzack and Others* (CCT 69/23) [2025] ZACC 6; 2025 (7) BCLR 802 (CC); 2025 (4) SA 347 (CC) (30 April 2025).

⁴² See, *inter alia*, *National Council of the SPCA v Minister of Environmental Affairs* [2019] ZAGPPHC 337; *Sustaining the Wild Coast NPC v Minister of Mineral Resources* [2022] ZAECKMHC 55; *Humane Society International Africa Trust v Minister of Forestry, Fisheries and the Environment* [2022] ZAWCHC 55.

⁴³ Section 12 of the Bill of Rights.

⁴⁴ See Bilchitz D, *Moving beyond arbitrariness: The legal personhood and dignity of non-human animals*, *South African Journal on Human Rights*, 25, no. 1, 2009, 38-72.

⁴⁵ For more on these intersections, see Wilson, Amy P, (Non) Human(imal) Rights: Dismantling the Separateness in Law and Policy (December 1, 2019). *Society Register* Vol. 3 No. 3 (2019).

F. Ubuntu, Vulnerability, and the Principle of Precaution

The proposed amendments are further grounded in foundational constitutional values. The value of *Ubuntu* – which encompasses care, compassion, respect, responsibility, and relational existence – is centrally implicated in how South Africa treats the most vulnerable beings affected by the exercise of public power.

Animals are among the most vulnerable beings affected by human activity and state power. They are unable to protect their own interests, cannot vote or advocate for themselves, and are entirely reliant on human and institutional protection. The principle of precaution, well-established in environmental jurisprudence and in international law, further requires that where there is uncertainty about the impact of a decision or action on sentient beings, the state ought to favour their protection. These values collectively support the case for explicit constitutional recognition.

Despite the important judicial pronouncements described above, nearly a decade has passed without adequate corresponding constitutional, legal, or institutional reform to embed this constitutional ethos within the structures of government. The current legal framework remains fragmented and inconsistent, and animal protection continues to be treated as a non-essential, peripheral concern rather than a constitutional imperative. We accordingly propose an explicit codification of what the courts have already affirmed, but that the executive at various levels and legislatures routinely fail to implement adequately.

V. GLOBAL AND COMPARATIVE CONTEXT: SOUTH AFRICA IS FALLING BEHIND

South Africa is increasingly an outlier in failing to accord explicit constitutional recognition to animal protection. A growing number of jurisdictions, across both the Global North and the Global South, have moved to constitutionalise animal rights, protection or sentience in various forms. This proposal does not stand apart from international trends; if anything, it is a comparatively modest expression of them.

Over the past three decades, animal protection has moved from the periphery of environmental and criminal law into the constitutional domain in a growing number of jurisdictions. Article 20a of the German Basic Law obliges the state to protect “the natural foundations of life and animals” and has been interpreted as imposing a binding state objective that requires all branches of government to integrate animal protection into administrative decision-making. Article 13 of the Treaty on the Functioning of the European Union recognises animals as sentient beings and requires EU institutions and Member States to pay full regard to animal welfare requirements when formulating and implementing policy across agriculture, transport, trade and research.⁴⁶ In Switzerland, the constitutional and statutory framework requires consideration of animal dignity in contexts such as genetic modification and industrial farming,⁴⁷ while Germany and Austria have each amended their civil codes to provide that animals are not to be treated as mere things.⁴⁸

Brazil’s Constitution prohibits cruelty to animals.⁴⁹ Columbia formally recognises animals as sentient beings, and its courts have developed a constitutional doctrine grounded in environmental rights and biodiversity protection, under which, in certain contexts, animals

⁴⁶ Article 13 of the Treaty on the Functioning of the European Union.

⁴⁷ Swiss Constitution, Article 80 and 120.

⁴⁸ See German Civil Code, Section 90a; Austrian Civil Code, Section 285a; and Swiss Civil Code, Article 641a, which recognises animals as sentient beings.

⁴⁹ Constitution of the Federative Republic of Brazil, 1988, Article 225(1)(VII).

have been recognised as subjects of protection.⁵⁰ Ecuador's Constitution has created justiciable constitutional rights by enshrining the rights of Nature, which have been expanded by the highest court to recognise the rights of individual wild animals.⁵¹ In Pakistan, the Islamabad High Court recognised natural and constitutional rights for animals.⁵² In India, the Supreme Court has held that animals are entitled to live with intrinsic dignity and freedom from unnecessary suffering, reading these entitlements into the constitutional right to life.⁵³

Despite these global developments, South Africa's Constitution contains no explicit reference to animal sentience,⁵⁴ animal welfare, or animal protection as a governance function or value. In this context, the proposed amendments are rather conservative. They do not make animal rights a constitutional right, grant animals legal personhood, define animal dignity as a constitutional right, or change the status of animals as property. The proposals are procedural, similar to environmental impact assessment obligations. They represent, at most, a minimum governance-alignment measure ensuring that South Africa does not lag behind an accelerating global trend toward the institutional integration of animal welfare considerations in public decision-making.

VI. Proposals

To address the current legal and administrative gaps and ensure that all levels of government explicitly consider animal interests and protection in the exercise of their constitutional functions, we propose the following amendments to the Constitution. The proposals are listed in order of priority, and we are happy to expand on these as required.

A. Amendments to Schedule 4 (Primary Proposal)

We propose the inclusion of animal protection aspects as a listed functional area in Part A and Part B of Schedule 4 as follows [proposed amendment indicated in red]:

- Schedule 4A: The inclusion of "*Animal Protection*" and
- Schedule 4B: The inclusion of "*Animal Protection*"

This would formally recognise that all levels of government – national, provincial, and local – are required to consider and provide for animal protection when performing their functions within their competencies that directly and/or indirectly affect animals.

⁵⁰ Republic of Colombia, Law 1774 of 2016.

⁵¹ Constitution of the Republic of Ecuador, 2008, Articles 71–74 (Rights of Nature). See *In re Rights of Nature: Estrellita*, Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Judgement No. 253–20–JH/22, (27 January 2022), in which the Constitutional Court held that wild animals are subjects of constitutional protection and that the removal of Estrellita, a woolly monkey, from her human household and her subsequent death in captivity violated her constitutionally protected.

⁵² *Islamabad Wildlife Management Board through its Chairman v Metropolitan Corporation Islamabad through its Mayor and 4 Others*, Islamabad High Court, W.P. No. 1399/2019 (21 May 2020). Kaavan, an Asian elephant, had been held in solitary confinement at the Marghazar Zoo, Islamabad for approximately 35 years. The Court recognised his natural and constitutional rights, ordered his relocation to a sanctuary.

⁵³ *Animal Welfare Board of India v A. Nagaraja and Others* (2014) 7 SCC 547 (Supreme Court of India), holding that animals have a right to live with dignity, fair treatment and freedom from unnecessary suffering, derived from Article 21 of the Constitution of India, 1950; see also *Karnail Singh and Others v State of Haryana* CRR–533–2013 (31 May 2019) Punjab and Haryana High Court (recognising animals as legal persons for purposes of rights and duties in law).

⁵⁴ Except for elephants in the 2008 Norms and Standards.

Importantly, this proposal does not centralise the functions or remove any sphere's existing competence. Rather, it ensures that wherever a sphere of government already exercises a competence that implicates animals, that sphere is constitutionally required to factor animal protection into how it exercises that competence.

B. Amendment to Section 41(1): Principles of Cooperative Government

Amend Section 41(1): Principles of Cooperative Government to add a new paragraph (i) under section 41(1), which currently outlines principles binding all spheres of government, as follows [proposed amendment indicated in red]:

“All spheres of government and all organs of state within each sphere must –

(i) exercise their powers and perform their functions in a manner that adequately considers and provides for animal protection”

This amendment gives direct constitutional expression to the principle affirmed by the High Court in the Lion Bone Case. It would make decisions taken without due regard for animal protection reviewable under the Promotion of Administrative Justice Act, and would affect quota settings, procurement, and licensing across all spheres and organs of state. Significantly, it achieves a great deal without creating a new right, which may reduce resistance from those concerned about expanding the Bill of Rights.

C. Amendment to Section 152(1): Objects of Local Government

Amend section 152(1)(d) **Objects of Local Government**, as follows [proposed amendment indicated in red]:

“To promote a safe and healthy environment, with due regard to animal protection.”

This would clarify that local government must consider animal protection in areas such as pounds, licensing, nuisance management, and other local functions that affect animals, including those related to the environment. We note that a previous submission to amend section 152 was classified by the Committee as addressable in existing legislation.⁵⁵ Our proposal differs in that it secures a constitutional rather than merely statutory obligation, ensuring durability and normative clarity that cannot be undermined by inconsistent or inadequate local by-laws.

D. Amendment to Section 195(1): Principles Governing Public Administration

Amend section 195(1) **Principles Governing Public Administration**, as follows [proposed amendment indicated in red]:

“Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (j) public administration must exercise its powers and perform its functions with due regard to the protection of animals.”

This amendment would ensure that any administrative act or decision that fails to take animal protection into account is susceptible to review under administrative law, including under the Promotion of Administrative Justice Act. The Lion Bone Case confirmed this

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https://static.pmg.org.za/260320_CONSTITUTIONAL_REVIEW_SUBMISSIONS_2025_fv.pdf.

obligation as a matter of common law and constitutional interpretation; this amendment would codify it expressly. It would have a significant practical impact including on matters such as quota-setting, procurement decisions, licensing, and permit conditions (among others) across all national and provincial departments.

We have had regard to the legal opinion requested by the Committee on a different submission.⁵⁶ We note that it suggests that the values and principles contemplated by section 195 of the Constitution, read with section 197, already provide a sufficient constitutional foundation for the governance obligations and that the appropriate mechanism for giving practical effect to those obligations is the development of executive policy under national legislation rather than constitutional amendment. With respect, that opinion does not engage with the central difficulty this submission identifies. The problem is not that the Constitution lacks values capable of informing a more coherent approach to animal protection; it is that those values have not been operationalised, and that the existing constitutional framework contains no express obligation to do so.

Section 195(3) places the duty to promote the listed values upon national legislation – legislation which, in the area of animal protection, remains fragmented, inconsistent and inadequate, as the litigation discussed above demonstrates. However, **animal protection** is not a listed value. Further, to suggest that submitters should seek to influence executive policy-making through existing legislative frameworks is, with respect, to describe precisely the process that has been attempted and that has repeatedly proven insufficient.⁵⁷

The ALP does not propose constitutional amendment instead of legislative and policy reform; it proposes constitutional amendment because, without an express constitutional anchor, legislative and policy reform in this area has demonstrably failed to follow.

The opinion's reasoning, if accepted, would immunise any constitutional governance gap from amendment on the basis that national legislation could theoretically be enacted to address it – a proposition that, taken to its logical conclusion, would render much of the amendment process contemplated by section 74 of the Constitution unnecessary.

E. Amendment to Constitutional Index: Optional Complementary Proposal

We propose the addition of the term “**Animals**” to the Constitutional Index, cross-referenced to the proposed amendments to the Schedules and the other sections referenced above.

This would improve accessibility and signal the constitutional salience of animal protection for practitioners, officials, and the public.

VII. Responses to Potential Objections

A. The Proposals Seek Only Codification, Not Expansion

The most important point to emphasise is that these proposals do not seek to create new law. They seek to codify what the Constitutional Court, and various other courts have already recognised: that animal protection is a constitutional value; that animals are sentient beings with intrinsic value as individuals; that protecting the interests of animals is linked to various

⁵⁶ Parliamentary Monitoring Group: https://static.png.org.za/260605_CRC_2_OF_2025_Martin_Mogakala_4526_qc_returned_4626.pdf.

⁵⁷ For various examples of submissions on animal protection issues over the years, please refer to the ALRSA website: <https://www.animallawreform.org/our-work/>.

constitutional rights; that any government decision affecting animals must take their protection into account; and that the failure to do so renders executive decisions unlawful and invalid. Parliament would merely be giving express constitutional form to what the courts have already held.

B. The Proposals are Not Addressed by Existing Legislation

We note that the Committee previously considered the classification of certain submissions as appropriate for amendment to existing legislation. Even the promulgation of a new Animal Welfare Bill would not resolve the constitutional governance problem. The fragmentation identified in this submission arises precisely because there is no constitutional obligation compelling all spheres and organs of state to consider animal protection when exercising their respective functions. A sectoral welfare statute, however well-drafted, cannot compel the various national Departments or municipalities to consider animal welfare in their decisions. Only a constitutional amendment can achieve this.

C. Constitutional Governance, Not Constitutional Rights

It bears emphasis that this submission does not ask Parliament to resolve difficult questions of animals as direct rights holders, or legal personhood of animals of the kind addressed in academic debate. The proposed amendments concern constitutional governance.

The Constitution routinely recognises governmental responsibilities in areas affecting vulnerable interests – environmental protection, co-operative governance, public administration and local government, among them – without conferring independent constitutional rights upon every affected interest.

The amendments proposed here operate in precisely the same manner: they ensure that, whenever the government exercises constitutional powers affecting animals, those powers are exercised consistently with constitutional values and with appropriate regard to animal protection. Their focus is on improving governance, accountability and constitutional coherence, not on altering the legal status of animals or expanding the catalogue of constitutional rights.

VIII. Conclusion

The recognition of animal protection as a constitutional imperative is both necessary and long overdue. As highlighted in this submission, animals are profoundly affected by government functions and decisions, yet they remain systematically marginalised in law and policy. By amending the Constitution to ensure that their interests are adequately considered and provided for in all government functions affecting them – directly or indirectly – South Africa can affirm its commitment to social justice, the protection of vulnerable interests, and accountable governance.

The case for constitutional reform in this area is grounded in a sustained body of constitutional jurisprudence, extensive public engagement and considered legal analysis spanning more than a decade. It is not a peripheral academic debate.

South Africa's highest court has not treated this as a peripheral matter. The Constitutional Court has expressly recognised that animal welfare is a constitutional value connected to the environmental right in section 24; that constitutional values require a more caring attitude towards animals; and that the rationale for protecting animal welfare has shifted from the protection of human moral sensibilities to the recognition of animals as individuals of

intrinsic value. These are findings of the apex court, and they have been affirmed and applied in numerous subsequent decisions.

The Constitutional Court is currently deliberating on a case that illustrates, with precision, what happens when constitutional animal welfare values are not given textual constitutional expression: protracted, costly litigation; regulatory uncertainty; fragmented statutory schemes that courts must strain to interpret; and continued animal suffering in the interim. The proposed amendments would provide the clarity and stability that the constitutional order requires.

The practical urgency of reform is equally clear. The two recent cases described above (albeit only a few of various examples) have attracted significant public, media and institutional attention.

The ALP's 2025 Colloquium, which examined these issues in depth, brought together over 150 participants and was addressed by a sitting Justice of the Constitutional Court. The South African Human Rights Commission has received submissions on the intersection of animal protection and human rights. Dozens of civil society organisations across the conservation, agriculture, environmental, and animal protection sectors have engaged with these questions through litigation, legislative submissions, and public advocacy. The proposed amendments are the product of that sustained and serious engagement. This is a mainstream constitutional governance concern – and Parliament is now well-placed to address it.

We thank the Committee for this opportunity and respectfully urge you to consider these recommendations in the spirit of a more equitable, compassionate, and constitutionally coherent order. We would welcome the opportunity to make oral presentations to further elaborate on and support these proposals, and are available to engage on any queries, comments, or concerns in respect of this document.

Kindly confirm receipt of our Submission.

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