SUBMISSION

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT 10 OF 2004: DRAFT NATIONAL BIODIVERISTY STRATEGY AND ACTION PLAN 2026-2035



8 SEPTEMBER 2026

ANIMAL LAW REFORM
SOUTH AFRICA

ANIMAL LAW REFORM
SOUTH AFRICA

TO: The Department of Forestry, Fisheries, and the Environment ("**DFFE**" or the "**Department**")
ATT: Ms Malepo Phoshoko
Per e-mail: nbsapcomments@dffe.gov.za

8 September 2026

Dear Honourable Representatives,

RE: SUBMISSION BY ANIMAL LAW REFORM SOUTH AFRICA IN RESPECT OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT 10 OF 2004: DRAFT NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN 2026-2035

Please find herewith the **initial and non-exhaustive** submission by Animal Law Reform South Africa ("**ALRSA**")[1] in response to the DFFE Minister's call for public comments on the Draft National Biodiversity Strategy and Action Plan ("**NBSAP**") 2026–2035 ("**Draft NBSAP**") made in terms of sections 99 and 100 of the National Environmental Management Biodiversity Act 10 of 2004 ("**NEMBA**"), and published in Government Gazette No. 55141, Notice No. 7773 on 5 August 2026.[2]

ALRSA recognises that the transition to a modern, third-generation NBSAP aligned with the Kunming-Montreal Global Biodiversity Framework ("**KMGBF**")[3] is a vital progression toward ecological resilience, sustainable development, and the protection of our country's natural heritage.

This Submission is structured as follows:

- **Part A** sets out ALRSA's general submissions on the Draft NBSAP, including procedural concerns regarding the consultation process; a review of the South African jurisprudence on animal sentience, the environmental right and its connection to animal protection, and others, that must anchor the final NBSAP; and selected legislation and policy instruments that the final NBSAP must reflect.
- **Part B** examines substantive gaps in the Draft NBSAP's domestic implementation of selected KMGBF targets, distinguishing between the KMGBF's 23 global targets, the Draft NBSAP's 12 thematic areas, and the composite South African national target adopted under each thematic area.
- **Part C** addresses two cross-cutting conceptual concerns that run through the Draft NBSAP as a whole: the commodifying terminology used to describe sentient animals, and the need to anchor "sustainable use" and "sustainable development" in the intrinsic value of animal life rather than in economic utility.
- **Part D** consolidates ALRSA's proposed target amendments and indicators into a single implementation matrix for ease of reference.

[1] ALRSA Website: https://www.animallawreform.org/.
[2] Published in Government Gazette No. 55141, Notice No. 7773 on 5 August 2026, accessible at: https://www.dffe.gov.za/sites/default/files/legislations/nemba_nbsap20262035_g55141gon7773.pdf.
[3] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), available at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

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ALRSA maintains that the final NBSAP must align with the National Environmental Management Biodiversity Act 10 of 2004 ("**NEMBA**") as amended by the National Environmental Management Laws Amendment Act ("**NEMLAA**") 2022,[4] which formally elevated the "consideration of the well-being of animals" to a primary objective of our biodiversity law,[5] and the Department's own 2023 White Paper.[6] Without mandatory well-being impact assessments and measurable, scientifically grounded indicators of individual animal welfare, the strategy fails to provide the conceptual transformation required to achieve a society genuinely 'living in harmony with nature.'[7]

ORGANISATIONAL BACKGROUND AND DECLARATION OF INTEREST

This Submission is made by ALRSA, a registered non-profit company and NPO (**Number 238-234 NPO**) acting in the public interest. ALRSA operates through three key Pillars, namely: Animal Flourishing; Social Justice; and the Law.

ALRSA undertakes its work through three main mechanisms, namely: Legislative & Policy Reform; Litigation & Legal Services and Education & Research. Through these mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa which recognises the intrinsic value of animals as sentient beings.

We have a substantial interest in the issues to be considered by the Department, including the Draft NBSAP and any subsequent national targets or strategies set in relation thereto ("**proposed strategy**"). We have, for years, consistently expressed interest in issues involving animals, humans and the environment to the DFFE, other government departments, NGOs, the South African public, and other stakeholders – both privately and within the public domain. We have provided various formal submissions, sent letters, emails, and other correspondence, attended presentations and meetings, and otherwise engaged on these matters (where such engagement has been possible). Among other associations, ALRSA is a founding member of the Wildlife Well-Being Forum ("**WWBF**") initiated by the DFEE and is part of the established task teams. Additionally, I, the Executive Director for ALRSA, have been appointed Chair of the Law and Policy and the Aquaculture & Fisheries task teams respectively for the WWBF.

We are interested stakeholders and representatives of vulnerable populations within South Africa, including human as well as non-human animals. We have, within our core focus, concepts of social

[4] National Environmental Management Laws Amendment Act 2 of 2022, published in Government Gazette No. 46602, Notice No. 1113 on 24 June 2022, accessible at: https://www.gov.za/documents/acts/national-environmental-management-laws-amendment-act-2-2022-english-afrikaans-24-jun

[5] Section 2(a)(iiA) of the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA), as amended by NEMLAA 2 of 2022.

[6] Department of Forestry, Fisheries and the Environment (DFFE), *White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity* (2023), Government Gazette No. 48785, Notice No. 3537 (14 June 2023), at Goal 2 and Policy Objective 1.6, available at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[7] Convention on Biological Diversity (CBD) 2050 Vision, available at: https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-09-en.pdf.

justice and appreciate the need for intersectionality in our approach.

PREVIOUS AND RECENT SUBMISSIONS MADE BY ALRSA (NON-EXHAUSTIVE)

ALRSA has previously provided detailed commentary and raised concerns on related documentation put forward by or relevant to the Department including submissions on the:

1. Flexible Environmental Impact Assessment (EIA) Multi-Stakeholder Consultation (May 2026);[8]
2. Intention to Set and Allocate the 2026 and 2027 Convention on International Trade in Endangered Species of Wild Fauna and Flora Export Quotas for Elephant, Black Rhinoceros and Leopard Hunting Trophies (March 2026);[9]
3. Notice of Intention to set a Zero Export Quota for Trade in Lion Bones sourced from Captive Breeding Operations in South Africa for the 2025 Calendar Year (November 2025);[10]
4. Draft National Coastal Management Programme 2025 (May 2025);[11]
5. Proposals for Consideration During the 20th Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 2025);[12]
6. Draft National Elephant Heritage Strategy 2024-2034 (March 2025);[13]
7. Intention to Set and Allocate Annual Export Quotas for Elephants, Black Rhinoceros and Leopard Hunting Trophies for the 2024 and 2025 Calendar Years (February 2025);[14]
8. Draft Notice Prohibiting Certain Activities Involving African Lion (*Panthera leo*) (December 2024);[15]
9. Non-Detriment Findings for Certain Species Listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (December 2024);[16]
10. Draft National Environmental Management: Biodiversity Bill (July 2024);[17]

[8] ALRSA: https://www.animallawreform.org/wp-content/uploads/2026/06/ALRSA-Submission-Flexible-EIA-System.pdf.
[9] ALRSA: https://www.animallawreform.org/wp-content/uploads/2026/03/ALRSA-Submission-Export-Quotas-on-Elephant-Black-Rhino-and-Leopard-for-2026-and-2027.pdf.
[10] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/12/ALRSA-Submission-.
[11] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/06/ALRSA-Submission-.
[12] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-.
[13] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-.
[14] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-.
[15] ALRSA: http://www.animallawreform.org/wp-content/uploads/2025/02/ALRSA-Submission-
[16] ALRSA http://www.animallawreform.org/wp-content/uploads/2025/02/ALRSA-Submission-.
[17] ALRSA: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-.

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11. Draft National Biodiversity Economy Strategy (April 2024);[18]
12. Draft Aquaculture Development Bill (January 2024); [19]
13. Draft Notice Prohibiting Certain Activities Involving African Lion (*Panthera leo*) (November 2023);[20]
14. Revised Draft White Paper (November 2022);[21]
15. Draft Exemption from the Meat Safety Act (November 2022);[22]
16. Draft Game Meat Strategy (September 2022);[23]
17. Draft White Paper on the Conservation and Ecologically Sustainable Use of South Africa's Biodiversity (September 2022);[24]
18. Draft Climate Change Bill (May 2022);[25]
19. Draft National Biodiversity Offset Guideline (May 2022);[26]
20. Proposed Hunting/Export Quota for Elephant, Rhinoceros and Leopard Hunting Trophies for the 2021 Calendar Year (November 2021);[27]
21. Draft Policy Position on the Conservation and Ecologically Sustainable Use of Elephant, Lion, Leopard, and Rhinoceros (July 2021);[28]
22. Draft National Biodiversity Framework (May 2021);[29]
23. Draft Climate Change Nationally Determined Contribution (April 2021);[30]
24. Proposed amendments in terms of the National Environmental Management Laws Act Amendment Bill (July 2020);[31]
25. High Level Panel Submissions and Presentations (Elephants, Rhinos, Lions and Leopards) (June 2020);[32]

[18] ALRSA: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-.
[19] ALRSA: https://www.animallawreform.org/wp-content/uploads/2024/03/ALRSA-Submission-.
[20] ALRSA: https://www.animallawreform.org/wp-content/uploads/2023/11/ALRSA-Submission-.
[21] ALRSA: https://www.animallawreform.org/wp-content/uploads/2023/01/ALRSA-Submission-.
[22] ALRSA: https://www.animallawreform.org/wp-content/uploads/2023/01/ALRSA-.
[23] ALRSA: https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-Game-Meat-Strategy-.
[24] ALRSA: https://www.animallawreform.org/wp-content/uploads/2022/10/ALRSA-White-Paper-.
[25] ALRSA: https://www.animallawreform.org/wp-content/uploads/2022/06/ALRSA-Climate-.
[26] ALRSA https://www.animallawreform.org/wp-content/uploads/2022/05/ALRSA-Biodiversity-.
[27] ALRSA: https://www.animallawreform.org/wp-content/uploads/2022/05/ALRSA-Objection-.
[28] ALRSA: https://www.animallawreform.org/wp-content/uploads/2021/07/Submission-f.
[29] ALRSA: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-.
[30] ALRSA: https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-.
[31] ALRSA: https://www.animallawreform.org/wp-content/uploads/2021/01/ALRSA-Comments-.
[32] ALRSA https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-.

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26. Assisting with Letter and Nominations to High Level Panel on Wildlife of Department of Environmental Affairs, and including our own nominations (March 2019);[33]
27. Draft Amendments to the Norms and Standards on the Management of Elephants (December 2018);[34]
28. Proposed Amendments to the Regulations affecting Rhinos published in September 2018 by the Department of Environmental Affairs (October 2018);[35]
29. CITES Appendices for the 2019 Conference of the Parties in Sri Lanka, including a written submission and presentation at the 2018 first Public Consultations at SANBI (April 2018);[36]

among others, (collectively, "**ALRSA Submissions**").

We are of the view that in many instances our previous submissions and engagements with the Department on related issues have not been given due and adequate consideration.[37] This is evidenced by the final drafts of many of the aforementioned documents and the failure by the Department to provide detailed documents responding to our comments and submissions.[38] It is further evidenced by the Draft NBSAP's incorporation of the National Biodiversity Economy Strategy as the overarching framework for its sustainable-use and biodiversity-economy thematic area, with the consequent risk of facilitating (and even promoting) intensive wildlife agriculturalisation (i.e. wildlife ranching) and trophy hunting,[39] without providing detailed responses and feedback to previous objections raised.[40] This is a

[33] ALRSA: https://www.animallawreform.org/wp-content/uploads/2019/08/11.-ALRSA-.
[34] ALRSA: https://www.animallawreform.org/wp-content/uploads/2020/07/Comments-.
[35] ALRSA: https://www.animallawreform.org/wp-content/uploads/2019/01/9.-ALR-EMS-BAT-.
[36] ALRSA: https://www.animallawreform.org/wp-content/uploads/2019/01/5.-ALR-EMS-BAT_Comments-.
[37] ALRSA Submission on the Draft National Biodiversity Economy Strategy (8 April 2024) at page 4. Available at: https://animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-NBES-Draft-Strategy.pdf
[38] See ALRSA, *Submission on the Draft National Elephant Heritage Strategy* (3 March 2025) at pages 4–6 (pointing out the Department's failure to provide administrative records, workshop reports, or detailed response matrices regarding civil society objections), accessible at: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-Draft-Elephant-Heritage-Strategy.pdf. See also EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 48 and page 104, accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf
[39] While the explicit terms "intensive wildlife agriculturalization" and "trophy hunting" are not utilised within the text of the Draft NBSAP itself, these commercial practices are actively promoted as core growth sectors under the Department's subordinate *Draft National Biodiversity Economy Strategy* (NBES), accessible at: https://www.dffe.gov.za/sites/default/files/legislations/draftnational_biodiversityeconomystrategy_g50279gon4490.pdf. The Draft NBSAP (2026–2035) links these industries to the NBSAP through Thematic Area 6 (section 5.6, internal pages 73–76; Government Gazette pages 77–80), which identifies the NBES as the overarching framework for that thematic area. This creates a material risk of policy incoherence if NBES economic objectives are implemented without the ecological and animal well-being considerations and constraints required by NEMBA, NEMA, the Constitution, and the 2023 White Paper.
[40] ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at page 14 (omission of risk of cruel practices), page 32 (criticising Goals 2 and 3 for driving the commercial "agriculturalisation" and intensive

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concern not only from our organisation but from other civil society and animal protection organisations acting in the public interest, particularly in light of constitutional and legislative requirements pertaining to participation and engagement with all relevant parties.[41]

Notably, despite specific judicial and policy developments highlighting the unlawfulness of previous consultation processes, the Department has issued the Draft NBSAP in a manner that reproduces many of the same procedural and substantive flaws and deficiencies previously raised, including in our previous submissions on environmental mainstreaming, biodiversity offsets, and commercial development strategies.[42]

The public participation process should not be seen as a box-ticking exercise, but rather a critical engagement with the detailed issues and comments raised by organisations in the process.[43] We urge the Department to pay the utmost regard to the submissions received in respect of the Draft NBSAP, particularly due to the importance of this document in relation to guaranteed constitutional rights, including the right to environment as well as the protection of species included therein.[44]

BACKGROUND AND BASIS OF OUR INTERVENTION

As the primary domestic instrument for implementing the United Nations Convention on Biological Diversity ("**CBD**")[45] and the KMGBF,[46] the final NBSAP 2026–2035 will inform South Africa's conservation priorities, spatial planning, and biodiversity economy targets for the following decade.[47] In accordance with Article 6 of the CBD, all contracting parties are required to develop and implement a NBSAP for the "*conservation and sustainable use of biological diversity*".[48] Moreover, it is designed to establish the high-level ethical, ecological, and constitutional boundaries for the entire country therefore, updating the NBSAP is a critical, generational moment for South Africa.

The Draft NBSAP does not exist in a policy vacuum. On internal Draft page 43 (Government Gazette

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breeding of wild animals), and page 48, accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-NBES-Submission.pdf.

[41] Section 24 of the Constitution of the Republic of South Africa, 1996, read with Section 3 of the Promotion of Administrative Justice Act 3 of 2000.

[42] ALRSA and EMS Foundation *Joint Submission on the Revised Draft National Biodiversity Framework* (May 2021) at Section 2, accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf

[43] *Sustaining the Wild Coast* at para 95, accessible at: https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html.

[44] Section 24 of the Constitution of the Republic of South Africa, 1996.

[45] United Nations Convention on Biological Diversity (1992) ("CBD"), accessible at: https://www.cbd.int/doc/legal/cbd-en.pdf. South Africa ratified the agreement in 1995 and has been a party to the CBD since 1996.

[46] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), available at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[47] Draft NBSAP (2026–2035), at section 1 (Introduction), internal page 6 (Government Gazette page 10), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[48] Draft NBSAP 2026–2035 (August 2026), internal page 2 (Government Gazette page 6), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

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page 47), the Draft NBSAP explicitly states that it "**directly adopts**" the Department's 2023 White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity ("**2023 White Paper**")[49] as its unified policy foundation.[50] Under the administrative law principle of policy coherence, the NBSAP is legally and conceptually obligated to operationalise the progressive, eco-centric policy commitments of the White Paper,[51] most notably:

- The policy directive under **Goal 2** that sustainable use must be "*humane and ensure quality of life within its environment*."[52]
- The explicit policy recognition that "*the conservation of wild animals and their well-being are intertwined values*."[53]
- The mandate to expand the constitutional value of ***Ubuntu*** to include the "*natural and spiritual elements*" of our shared environment.[54]

Furthermore, the final NBSAP must reflect the legislative amendments introduced by NEMLAA[55] which amended, among others, section 2 of NEMBA, to elevate the "*consideration of the well-being of animals*" to a primary objective of the Act.[56] Therefore, a NBSAP committed to upholding the constitutionally protected environmental rights, and the 2023 White Paper's mandate of "*living in harmony with nature*",[57] must set strict ecological and animal protection boundaries *before* any

[49] The White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity (2023), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf ("White Paper").

[50] Draft NBSAP 2026–2035 (August 2026) at section 4, internal pages 41, 43 and 45 (Government Gazette pages 45, 47 and 49), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[51] Under Section 6(2)(e)(iii) of the Promotion of Administrative Justice Act 3 of 2000, administrative action is reviewable if relevant considerations (such as adopted policy baselines) are ignored.

[52] The White Pape (2023), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[53] The White Paper (2023), at Goal 2 (Page 21–22), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[54] The White Paper (2023) at Section 1 (Definitions), accessible at: accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf. See also *King N.O. and Others v De Jager and Others* (CCT 315/18) ZACC 4; 2021 (5) BCLR 449 (CC); 2021 (4) SA 1 (CC) (19 February 2021) at para 237, accessible at: https://www.saflii.org/za/cases/ZACC/2021/4.html.

[55] National Environmental Management Laws Amendment Act 2 of 2022, published in Government Gazette No. 46602, Notice No. 1113 on 24 June 2022, accessible at: https://www.gov.za/sites/default/files/gcis_document/202207/4660224natenvmanaglawsamendact2%EF%80%A22022.pdf.

[56] Section 2(a)(iiA) of NEMBA, as amended by NEMLAA 2 of 2022.

[57] The White Paper (2023), at page 18 (establishing the national vision of a society living in harmony with nature) and page 44 (reaffirming the strategic shift toward an eco-centric perspective where human activities are balanced to ensure we co-exist harmoniously within nature), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

commercial activity is allowed in the biodiversity economy.

ALRSA's intervention in this process is focused on ensuring that South Africa's conservation model transitions away from a narrow, extractivist, and anthropocentric paradigm toward an integrative and compassionate framework.[58] The NBSAP should not have to choose between biodiversity conservation and animal well-being. Rather, South Africa must design a biodiversity framework in which ecological integrity, species conservation, "*sustainable use",* individual animal well-being, human well-being, *Ubuntu*, cultural heritage, and indigenous knowledge mutually reinforce one another.[59]

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

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

Yours sincerely,



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

[58] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016), accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html at para 58.

[59] 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) at Section 1 (Executive Summary), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

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(SELECTED) NON-EXHAUSTIVE SUBMISSIONS IN RESPECT OF THE PROPOSED NBSAP 2026-2035

PART A: GENERAL SUBMISSIONS RELATING TO THE PROPOSED NBSAP

I. PRACTICAL AND PROCEDURAL CONCERNS

ALRSA commends the Department's commitment to a "whole-of-society" approach to biodiversity planning and appreciates the opportunity to have participated in the National Stakeholder Consultation held on 3-4 July 2025 at the Premier Hotel in Pretoria. ALRSA submits, however, that the allotted comment period for the Draft NBSAP should be extended to allow for more meaningful engagement and to avoid being regarded as a perfunctory, box-ticking exercise, rather than a genuine, multi-directional public consultation effort.[60]

A. Constrained Consultation Timeframe

The allotted 30-day window for public comment on the Draft NBSAP, although aligned with NEMA, is inadequate to ensure meaningful participation in this consultation process. The Draft NBSAP is a primary national policy instrument intended to govern South Africa's biodiversity conservation, sustainable use, and socio-economic targets for an entire decade.[61] A strategy of this scale requires stakeholders to synthesise hundreds of pages of complex scientific, legal, and economic data.

This compressed timeline makes it challenging for resource-constrained non-profit and civil society organisations to participate in the consultation, as it puts stakeholders in a position where they are required to rush their evaluations. As established by our courts,[62] administrative consultation must be a *"genuine, bona fide substantive two-way process"* designed to identify ecological and ethical impacts before policy is finalised.[63] ALRSA therefore urges the Department to grant a formal extension of the comment period to at least 60 days to allow for comprehensive, public-interest analysis.

B. Strengthening Sector-Specific Engagement

ALRSA further submits that future consultation on the NBSAP and related biodiversity instruments would benefit from more structured, sector-specific engagement with the Department's own established advisory platforms. In particular, the WWBF - a ministerially-initiated platform established

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[60] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022) at para 95, accessible at: https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html.

[61] Draft NBSAP (2026–2035) at section 1 (Introduction), internal page 6 (Government Gazette page 10), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[62] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) ZAECMKHC 55 (1 September 2022), available at: https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html ('*Sustaining the Wild Coast*").

[63] *Sustaining the Wild Coast* at para 95, accessible at: https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html.

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by the Department in 2022, whose Law and Policy and Aquaculture & Fisheries task teams are chaired by ALRSA's Executive Director - is well placed to provide focused technical input on the animal well-being dimensions of national biodiversity planning. ALRSA recommends that the WWBF be formally re-ignited, and recognised as a co-governance and consultative body in the implementation, monitoring, and revision of South Africa's national biodiversity targets going forward.

II. JURISPRUDENTIAL DEVELOPMENTS: ANIMAL SENTIENCE AND THE ENVIRONMENTAL RIGHT

ALRSA submits that the formulation, review, and updating of South Africa's NBSAP must be firmly anchored in South African constitutional, environmental, and related jurisprudence.[64] In recent years, there have been notable, groundbreaking judicial pronouncements by South African courts related to animals, highlighting the urgent need to advance animal protection through tangible legal actions that promote their protection, well-being, and flourishing and align with the transformative nature of the Constitution of the Republic of South Africa, 1996 ("C**onstitution**").[65]

Our courts have moved away from a narrow, tick-box conception of environmental protection which frames animals as mere resources for exploitation, and which follows an "*aggregative approach*,"[66] thereby contradicting both constitutional obligations and established case law, towards an "*integrative approach*"[67] that recognises the intrinsic value and sentience of animals and the protection of their interests as individuals. As has been raised in various submissions to the Department by ALRSA,[68] the Department should be incorporating these precedents into their decision-making and regulatory and strategic instruments, as case law is binding law in South Africa[69] and failure to consider these rulings undermines the integrity of our legal system.

Below contains a non-exhaustive exploration of these judicial pronouncements for consideration by the Department in relation to the Draft NBSAP and its strategic environmental planning and decision-making obligations.[70]

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[64] Section 24 of the Constitution of the Republic of South Africa, 1996.

[65] Section 39(2) of the Constitution of the Republic of South Africa, 1996. See also Murcott M "Transformative Environmental Constitutionalism's Response to the Setting Aside of South Africa's Moratorium on Rhino Horn Trade" (2017) 6 *Humanities* 84, accessible at: https://www.saflii.org/za/journals/HUMANITIES/2017/12.html.

[66] Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740, accessible at: https://ssrn.com/abstract=2942112.

[67] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016), accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html ("*NSPCA 2016*").

[68] ALRSA Submissions Website: https://www.animallawreform.org/submissions/.

[69] Section 165(5) of the Constitution of the Republic of South Africa, 1996. See also *S v Makwanyane and Another* (CCT3/94) ZACC 3; 1995 (3) SA 391; 1995 (6) BCLR 665 (6 June 1995) at para 262, accessible at: https://www.saflii.org/za/cases/ZACC/1995/3.html ("*S v Makwanyane*").

[70] Published under Government Notice No. 7773 in Government Gazette No. 55141 on 5 August 2026.

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A. The Foundational Shift: Recognising Animal Sentience and Intrinsic Value

One of the most important judgments relating to animal protection in South Africa is the unanimous Constitutional Court judgment in ***National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development*** ("***NSPCA 2016***")[71] This case concerned a challenge to the National Prosecuting Authority's refusal to allow the NSPCA to institute private prosecutions for animal cruelty.[72]

In a landmark ruling, Justice Khampepe held that: "***The rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals***".[73]

The Court further affirmed that "***animals are sentient beings that are capable of suffering and of experiencing pain***"[74] and that animal welfare and conservation are "*intertwined values*" directly linked to the environmental right enshrined in section 24 of the Constitution.[75] Given that the apex court acknowledged animal sentience and their protection as constitutionally significant, any action plan that continues to treat individual, sentient beings as mere "*natural resources*" to be managed programmatically becomes inconsistent with the objectives of the Constitution.

This foundational recognition was prefaced by the Supreme Court of Appeal ("**SCA**") in ***S v Lemthongthai***,[76] a matter involving the illegal trade in rhinoceros' horns through the misuse of trophy hunting permits. While primarily a sentencing appeal, the Court provided critical guidance on the ethos of South African environmental protection, stating that: "*The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect.* ***Constitutional values dictate a more caring attitude towards fellow humans, animals and***

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[71] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016), accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html ("*NSPCA 2016*").

[72] Ibid. The judgment resolved a long-standing legal impediment where the NSPCA, as a juristic person, was barred by Section 7(1)(a) of the Criminal Procedure Act 51 of 1977 from instituting private prosecutions. The Court declared that the NSPCA has the statutory power of private prosecution conferred by Section 6(2)(e) of the Societies for the Prevention of Cruelty to Animals Act 169 of 1993 read with Section 8 of the Criminal Procedure Act.

[73] Ibid at para 57. This finding represents a "sea change" in South African law, moving away from the "weak animal welfare" approach established in *R v Moato* 1947 (1) SA 490 (O), which protected animals only to safeguard the "finer feelings" of humans.

[74] Ibid at para 56. In this section, Justice Khampepe expressly endorses the minority judgment of Cameron JA in *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* ZASCA 78; 2008 (5) SA 339 (SCA) at para 38, which first recognized sentience and suffering as the primary rationale for protection.

[75] Ibid at para 58. The Court formally adopted the "Integrative Approach" (developed by Professor David Bilchitz), which holds that showing respect and concern for individual animals reinforces broader conservation efforts and is a mandatory component of the Section 24 environmental right.

[76] *Lemthongthai v S* (849/2013) ZASCA 131; 2015 (1) SACR 353 (SCA) (25 September 2014), accessible at: https://www.saflii.org/za/cases/ZASCA/2014/131.html.

the environment in general".[77]

The Court emphasised that the duty to protect biodiversity is owed to both present and future generations, establishing that a "*caring attitude*" is not a mere aspiration, but a requirement of constitutional compliance. Pursuant to Section 8(1) and Section 165(5) of the Constitution,[78] the Bill of Rights binds the executive, and court decisions bind all organs of state.[79] Therefore, the DFFE is under a strict, non-delegable duty to align its premier ten-year strategy with this judicial mandate, ensuring that animal sentience, intrinsic value, and well-being are not merely mentioned in tokenistic preambles but are actively integrated into national conservation targets.[80]

B. The Integrative Approach: Linking (Individual) Animal Protection to Conservation

A critical outcome of the *NSPCA* 2016 judgment was the Court's formal recognition of the "***integrative approach***"[81] being the preferred approach to environmental protection, stating that it "*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***".[82]

The doctrine traces its origins to the scholarly work of Professor David Bilchitz – a co-founder and non-executive director of ALRSA. He first articulated the concept in a conference paper presented at the Harvard Conference on Animals and the Constitution in 2016, arguing for a connection between the Section 24 environmental rights and the protection of individual animal interests. This approach, as opposed to the traditional "*aggregative approach*,"[83] fundamentally redefines how environmental harm and conservation are understood in South African law.[84] Under the previously dominant aggregative model, conservation focused exclusively on broad collective goals, such as the long-term survival of a species or the health of ecosystems, often allowing for the sacrifice of countless individuals for the sake

[77] Ibid at para 20. This finding was expressly approved by the Constitutional Court in *NSPCA 2015* (note 36 above) at para 57.
[78] Sections 8(1) and 165(5) of the Constitution of the Republic of South Africa, 1996.
[79] Section 8(1) and Section 165(5) of the Constitution of the Republic of South Africa, 1996.
[80] 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) at Section 1 (Executive Summary), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.
[81] The "Integrative Approach" was coined by Professor David Bilchitz (a co-founder of ALRSA) and adopted by the Constitutional Court in *NSPCA 2016*, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html.
[82] *NSPCA 2016* at para 58, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html.
[83] Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740 at 742, accessible at: https://ssrn.com/abstract=2942112.
[84] Under the aggregative view, animals are understood entirely instrumentally, meaning they matter only insofar as they help advance the uses humans may have for them now or in the future.

of the protection of the wider "*resource*".[85] The integrative approach, on the other hand, requires respect for the individuals that make up a species or an ecosystem.

The Constitutional Court's reasoning supports an integrative understanding of environmental protection. Although the Court did not formally establish a free-standing doctrine governing all subsequent environmental legislation, its recognition of the relationship between conservation and individual animal welfare is binding and materially relevant to environmental interpretation and decision-making.[86] Historically, environmental authorities have argued they lack the competence to regulate animal welfare, claiming it is a concern falling under the Department of Agriculture. However, with this development, the separation between "*conservation*" and "*animal welfare*" is no longer legally tenable.[87] The integrative approach recognises that the environment is a holistic system where the well-being of sentient inhabitants is a mandatory relevant consideration for any decision that might affect them.[88] Consequently, the integrative approach establishes that the well-being of individual sentient animals is a mandatory relevant consideration in environmental governance.

The practical application of these values to environmental decision-making was solidified in the ***Lion Bone Case***, formally cited as ***National Council of Societies for the Prevention of Cruelty to Animals v Minister of Environmental Affairs***.[89] In this matter, the High Court set aside the Department's decision to establish annual export quotas for lion bones derived from captive breeding operations because the Minister had failed to consider the welfare of the lions in setting the quotas.[90] The Court remarked that "*it is inconceivable that the State Respondents could have ignored welfare considerations of lions in captivity in setting the annual export quota"* and that "*It is illogical, irrational and against the spirit of Section 24 and how our courts have included animal welfare concerns in the interpretation of Section 24.*"[91] The judgment establishes that animal welfare is a mandatory relevant

[85] Terms such as "natural resources" and "sustainable use" have historically been used as euphemisms to entrench the deep divide between humans and animals and to justify the commodification of sentient beings.

[86] Pursuant to Section 39(2) of the Constitution, courts and officials are enjoined to interpret all legislation (including NEMA and NEMBA) in a manner that promotes the spirit, purport, and objects of the Bill of Rights. In the environmental context, this requires a move away from "tabulated legalism" toward an organic, integrative interpretation.

[87] Additionally, this separation was decisively resolved by NEMLAA, which inserted Section 2(a)(iiA) into NEMBA, mandating the "consideration of the well-being of animals" in all management and conservation decisions.

[88] Section 1 of NEMA defines the environment as a holistic system that includes "animal life" and the "interrelationships among and between" all components of the earth.

[89] *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) ZAGPPHC 337; 2020 (1) SA 249 (GP) (6 August 2019), accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html ("*Lion Bone* case").

[90] Ibid. The case concerned the Minister's determination of export quotas (800 skeletons in 2017 and 1,500 in 2018) for lion bones derived from captive breeding operations. The Department had argued that it was only required to consider "*scientific information*" (population survival) and that it had no legislative mandate to regulate welfare matters, which it claimed resided with the Department of Agriculture.

[91] Ibid at para 74. [91] Under Section 6(2)(e)(iii) of PAJA, an administrative action is reviewable if "*relevant considerations were not considered*". The High Court established that because animal welfare and conservation are "*intertwined values*," animal welfare constitutes a mandatory relevant factor in environmental governance.

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consideration for any decision made under environmental legislation, including NEMBA, to include a new objective and, by extension, NEMA.[92] This precedent is directly relevant to the current reform: if it is legally irrational to set export quotas without considering welfare, it is equally irrational for the DFFE to compile a ten-year NBSAP that regulates wild species trade, culling, and "management" without integrating explicit animal well-being targets and indicators.

This integrative lens has since moved beyond administrative law into horizontal conflicts involving private human interests. In ***Botha v Smuts*** (2024),[93] the Constitutional Court ruled that **human privacy rights cannot be used to shield animal suffering** from public scrutiny – in line with the underlying ethic of the integrative approach. The Court held that the exposure of animal suffering (such as trapping) is a matter of legitimate public interest.[94] This is because animal welfare and conservation are intertwined values protected under the Constitution.[95]

Similarly, in ***Huntrex 305 (Pty) Ltd v Berzack*** (2025),[96] the approach was used to develop the common law principle of *civiliter modo*, finding that absolutist property rights must yield when they pose a disproportionate risk to the safety of sentient beings. Bilchitz AJ, in his judgment, reasoned (echoing the sentiments of the SCA) that constitutional values dictate a "*more caring attitude*"[97] that must accommodate the interests of animals.

Collectively, these judgments demonstrate that the integrative approach now has real legal teeth, ensuring that the holistic well-being of animals is treated as a mandatory core component of the "*sensitivity of the receiving environment*".

C. Rejecting the "Agriculturalisation" of Wild Animals

In ***Endangered Wildlife Trust v Minister of Agriculture, Land Reform and Rural Development*** (2023),[98] the High Court set aside the Minister's decision to amend regulations under the

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[92] The High Court's judicial precedent was formally codified NEMLAA, which amended Section 2 of NEMBA to include a new primary objective: Section 2(a)(iiA), which provides for "the consideration of the well-being of animals in the management, conservation and sustainable use thereof". Since NEMA defines the environment to include "animal life" and serves as the umbrella legislation for all Specific Environmental Management Acts (SEMAs), this statutory duty to consider well-being now informs the core of all environmental and administrative actions.

[93] *Botha v Smuts and Another* (CCT 40/22) [2024] ZACC 22; 2024 (12) BCLR 1477 (CC); 2025 (1) SA 581 (CC) (9 October 2024) accessible at: https://www.saflii.org/za/cases/ZACC/2024/22.html ("*Botha v Smuts*").

[94] *Smuts and Another v Botha* (887/2020) [2022] ZASCA 3; 2022 (2) SA 425 (SCA) (10 January 2022) at para 22 and 23, upheld on further appeal in *Botha v Smuts and Another* (CCT 40/22) [2024] ZACC 22; 2024 (12) BCLR 1477 (CC); 2025 (1) SA 581 (CC) (9 October 2024).

[95] *National Society for the Prevention of Cruelty to Animals* v *Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016) at para 58 in reference to *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) at para 20.

[96] *Huntrex 277 (Pty) Ltd v Berzack and Others* ZACC 6, accessible at https://www.saflii.org/za/cases/ZACC/2025/6.html. See para 228 (Judgment of Bilchitz AJ).

[97] Ibid at paras 228-229.

[98] *Endangered Wildlife Trust v Minister of Agriculture, Land Reform and Rural Development and Others* ZAGPPHC 163; Case No. 1138/2022 (3 March 2023), accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2023/163.html.

Animal Improvement Act 62 of 1998 ("**AIA**"), which had attempted to reclassify dozens of wild animal species (including lions, rhinos, and zebras) as "agricultural animals."[99] The court accepted the applicants' argument that subjecting wild animals to intensive agricultural breeding, genetic manipulation, and husbandry practices compromised their evolutionary integrity, ran directly counter to national conservation strategies, and threatened to violate constitutionally protected environmental rights.[100]

This development establishes that the Section 24 environmental right protects wild animals from being genetically manipulated or reduced to commercial agricultural "*stock*". It draws a clear legal line between ecological conservation and commercial agriculture, ruling that "*sustainable use*" cannot be used to justify the industrial commodification of "wild" (or traditionally undomesticated) animal species.

D. The Cultural, Spiritual, and Heritage Dimensions of Multi-Species Ecosystems

In ***Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy*** *(2022)*,[101] the Eastern Cape High Court set aside offshore oil and gas exploration rights, holding that the State failed to consider fundamental matters, including the anticipated harm to marine and bird life and the spiritual, cultural and livelihood interests of coastal communities. The court recognised that communities' relationships with the sea and marine life are constitutionally relevant under the environmental right, and that socio-ecological considerations - including protection of marine species from the impacts of seismic surveys - must inform environmental decision-making.[102]

In ***Chu v S*** *(2012)*,[103] the High Court directly addressed the human role in degrading the Earth, declaring that the State has an active duty to protect wild animals as a matter of public and historical heritage. The court warned that "*If we do not as a society, as a world-wide community, stand united to protect species such as rhinoceros, I believe that there is a huge risk that systematically so much that is precious will be lost and ultimately our own existence as human beings on the earth will be placed in danger*".[104] Similar concerns were raised in ***S v Chu*** (2012): "***if we do not take measures... these magnificent***

[99] Once listed under the AIA, those wild species would have become subject to the AIA's animal-improvement and breeding regime, thus would have provided for a formal legal and regulatory basis for the selective breeding and genetic improvement of wildlife.

[100] *Endangered Wildlife Trust* at paras 38-39 (ruling that defining wild species as agricultural animals under the AIA compromises national conservation strategies, disrupts genetic integrity, and poses severe ecological risks in violation of Section 24 of the Constitution), accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2023/163.html.

[101] *Sustaining the Wild Coast* at para 95 (establishing that environmental decision-making must take into account the anticipated physical harm to marine life alongside the spiritual and cultural rights of communities co-existing with those species.), accessible at: https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html.

[102] Ibid.

[103] *Chu v The State* ZAGPJHC 204 (13 March 2012) at para 12 (recognising wild animals as a core component of South Africa's national heritage and holding that the State has a positive duty to protect sentient fauna from decimation), accessible at: https://sheriahub.com/cases/za/caselaw/chu-v-s-a40711-2012-zagpjhc-204-13-march-2012

[104] *Chu v The State* ZAGPJHC 204 (13 March 2012) at para 12.

creatures would be decimated from earth. Our Flora and Fauna would be poorer for it. South Africa would no longer be the safe home of the 'Big Five'."[105]

This development demonstrates that the environmental rights enshrined in Section 24 of the Constitution extends beyond the physical protection of the environment to recognise the spiritual, cultural and historical relationships between people and animals in South Africa. Animals are therefore not merely an economic resource, but an important and irreplaceable part of South Africa's cultural and national heritage.

E. Vulnerability, Horizontal Responsibility, and the Constitutional Extension of Ubuntu

In ***King N.O. and Others v De Jager and Others*** (2021),[106] the Constitutional Court beautifully articulated the constitutional value of *Ubuntu*, and its legal standard, declaring that "***at the heart of ubuntu is the idea that a society based on human dignity must take care of its most vulnerable members and leave no one behind... none of us are free until all of us are free.***"

Legal scholars, and civil society organisations including ALRSA, have argued that in South Africa's constitutional project, sentient animals represent some of the most "*vulnerable members*" of our multi-species society as they lack direct representation, and are subjected to total human control. Because our Constitution aims to transform society by dismantling historical structures of oppression, the relational ethic of *Ubuntu* must be expanded to protect non-human animals.[107] Furthermore, under Section 8 of the Constitution and NEMA's Section 28 "Duty of Care", this obligation binds private and commercial entities horizontally, ensuring that human and environmental flourishing is recognised as inseparable from animal flourishing.

This development establishes that relational justice (*Ubuntu*) is a core constitutional value that requires protecting the most vulnerable in our society, and that this protective duty has horizontal application (binding private corporations and developers, not just the state).

III. LEGISLATIVE AND POLICY DEVELOPMENTS THAT MUST BE CONSIDERED AND INTEGRATED INTO THE NBSAP

Any South African NBSAP must also align with recent legislative and policy developments, including those discussed below.

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[105] *S v Chu* [2012] ZAGPJHC 204 at para 20.

[106] *King N.O. and Others v De Jager and Others* (CCT 315/18) ZACC 4; 2021 (5) BCLR 449 (CC); 2021 (4) SA 1 (CC) (19 February 2021) at para 237, accessible at: https://www.saflii.org/za/cases/ZACC/2021/4.html

[107] See D. M. Swemmer, *An Ubuntu approach to the realisation of animal rights under the South African Constitution* (2022), accessible at: https://journals.co.za/doi/10.1080/02587203.2025.2466617 ; and Thaddeus Metz, "Animal rights and the interpretation of the South African Constitution" (2010) 25 *Southern African Public Law* 303, accessible at: https://philarchive.org/rec/METARA-2

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A. The DFFE's Well-being Mandate

NEMLAA, which came into effect in June 2023,[108] amending provisions of NEMBA, represents a transformative shift in South African environmental governance by formally integrating the physical and mental health of animals into the strategic context of all environmental decision-making.

Prior to NEMLAA, environmental authorities often argued they lacked the competence to regulate animal well-being/welfare and protection, claiming it was a mandate solely under the Department of Agriculture, rather than an environmental mandate.[109] NEMLAA decisively resolved this lacuna, in theory, by amending Section 2 of NEMBA to include a new objective:

Section 2(a)(iiA): "*The objectives of this Act are...to provide for the consideration of the well-being of animals in the management, conservation and sustainable use thereof*".

By elevating well-being to a primary objective of NEMBA, the legislature has imposed a statutory duty on the Minister and the Department to factor this interest into every administrative action involving the management or "use" of biodiversity. Additionally, NEMLAA introduced a definition into Section 1 of NEMBA that moves South African law away from a narrow, biophysical view of animals toward a recognition of their complex internal lives.

"**Well-being**" is now legally defined in section 1 of NEMBA (as amended by NEMLAA) as: "***The holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment***".[110]

This definition mandates that environmental harm can no longer be measured solely by population numbers or species survival; it must now account for the psychological and mental suffering of individual sentient beings. Additionally, to give effect to this new mandate, NEMLAA inserted Section 9A into NEMBA, which grants the Minister specific proactive powers to prevent harm: "*The Minister may, by notice in the Gazette...prohibit any activity that may negatively impact on the well-being of an animal.*"[111] This provision underscores that the Department's mandate is not merely to "*manage resources*" but to actively protect individual, sentient beings from activities that compromise their legally protected well-being.

Therefore, as NEMA defines the environment to include *"plant and animal life*" and the "*surroundings within which humans exist*,"[112] the NEMBA well-being mandate must inform the environmental

[108] While the NEMLAA was passed in 2022, its primary provisions, including the well-being amendments, came into effect on 30 June 2023.
[109] Historically, environmental authorities denied their mandate for animal welfare, leading to an administrative lacuna that allowed for the proliferation of harmful practices such as captive lion breeding. See the *Lion Bone Case* at para 60, accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html
[110] Section 1 of NEMBA, as amended by Section 1 of NEMLAA 2 of 2022.
[111] Section 9A of NEMBA, as inserted by Section 52 of NEMLAA 2 of 2022.
[112] Section 1(1) of NEMA.

governance framework, translating this primary statutory objective into concrete, national biodiversity targets, indicators, and monitoring frameworks.

B. NEM:ICMA: "*interests of the whole community*"

The National Environmental Management: Integrated Coastal Management Act 24 of 2008 ("**NEM:ICMA**") offers comprehensive consideration of the "*interests of the whole community*" to include human *and* non-human animal interests that are dependent on the coastal environment.[113] This progressive framing should be adopted, or at the very least, be given due consideration, where legislative and policy developments such as the proposed NBSAP affect these protections.

C. The 2023 White Paper on Biodiversity: Intertwined Values and *Ubuntu*

The White Paper[114] marks a significant shift in South Africa's environmental governance framework. It reflects a deliberate move toward what the State itself describes as a more "*caring and compassionate*" approach to environmental management. ***That matters*** because it changes the lens through which environmental harm and sustainability must now be understood.

A core component of this shift is articulated in Goal 2 of the White Paper, which regulates "**Sustainable Use**" and mandates that any such use must ensure a "*duty of care towards all components of biodiversity*".[115] Under the heading of this Goal, the 2023 White Paper explicitly recognises that *"the conservation of wild animals and their well-being are intertwined values*," confirming that the historical separation between animal welfare and protection as a narrow agricultural concern and conservation is no longer policy-compliant. This shift is further reinforced by the policy's expanded definition of "*conservation*,"[116] which now includes the "*care*" of biological diversity for its "*intrinsic and instrumental value*" to improve the well-being of both people and nature.

Additionally, the 2023 White Paper explicitly expands ***Ubuntu*** to include the "*natural and spiritual elements*," establishing a "*relational ethic*" between humans and animals.[117] The policy stresses that this philosophy requires the State to exercise its "*custodial responsibility in guarding the interests of animals*" and ensure that all anthropogenic interventions are "*humane and ensure quality of life within its environment*".[118] This recognition of animals as stakeholders within the interdependent web of life is essential for aligning the NBSAP with the values of a democratic society.

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[113] See Section 1 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 (NEM:ICMA), accessible at: https://www.gov.za/documents/national-environmental-management-integrated-coastal-management-act.

[114] The White Paper (2023), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[115] Ibid at Goal 2. This goal emphasizes the "environmental duty of care principle" and requires that sustainable use activities ensure "human well-being, while a duty of care avoids, minimises, or remedies adverse impacts on biodiversity".

[116] Section 1: Definitions.

[117] Section 1: Definitions.

[118] At Goal 2. The State's "custodial responsibility" is framed as an active duty to protect sentient beings from anthropogenic activities that compromise their "quality of life".

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It must be noted that there is a concerted effort within South African scholarship[119] towards a *relational* interpretation of *Ubuntu,* which seeks to extends the moral community beyond human beings to include the entire "*community of life*". While traditional interpretations of the maxim ***umuntu ngumuntu ngabantu*** ("*a person is a person through other persons*") are often human-centered, this expanded view argues that human humanity is inextricably embedded in a web of relationships with all sentient beings. Under this framework, the "*we*" in "*I am because we are*" is not restricted to the human realm. Scholars like David Bilchitz, Thaddeus Metz, and Kai Horsthemke argue that if our humanity is defined by our relationships with others, and we share our environment and lives with animals, then these animals are also part of our moral community. **A central tenet of this approach is that human flourishing is inseparable from animal flourishing.**

Moreover, former Archbishop Desmond Tutu, advocated for **Eco-Ubuntu**, writing: **"*As we grow in awareness we see how we are linked to all living beings by flows of matter and energy, how we breathe the same air, drink the same water. So shouldn't we extend Ubuntu beyond people to all other living beings?*".**[120]

The South African Constitutional Court's formal adoption of the **integrative approach** is considered a legal expression of this relational *Ubuntu*. By ruling that animal welfare and conservation are "*intertwined values*," the Court effectively recognised that the environment is a holistic system where the well-being of all sentient inhabitants matters.[121]

The 2023 White Paper further establishes a specific "humane" mandate under Policy Objective 1.6, which is dedicated to "*promot[ing] well-being and humane practices, actions, and activities towards wild animals*". The policy provides a rigorous definition for "***humane***", being: any activities, methods, or actions that "***avoid or minimise pain, stress, suffering, or distress, and consider [animal] well-being***".[122] It explicitly directs that "*anthropogenic interventions and activities must consider animal well-being*," which is legally defined as the "*holistic circumstances and conditions of an animal…conducive to its physical, physiological and mental health*".

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[119] K Horsthemke, 'Animal Rights and Environmental Ethics in Africa: From Anthropocentrism to Non-speciesism?' in Munamato Chemhuru (ed), *African Environmental Ethics* (Springer 2019) 242, accessible at: https://philpapers.org/rec/HORARA-3 ; Thaddeus Metz, 'Animal rights and the interpretation of the South African Constitution' (2010) 25 Southern African Public Law 303, 306, accessible at: https://philarchive.org/rec/METARA-2 ; D Bilchitz and AP Wilson, 'Key animal law in South Africa' in Andrew Knight (ed), *Routledge Handbook of Animal Welfare* (Routledge 2022) 426, accessible at: https://www.routledge.com/Routledge-Handbook-of-Animal-Welfare/Knight-Phillips-Sparks/p/book/9781032325750

[120] Ubuntu Society: https://www.ubuntusociety.nl/public/files/Eco-%20Ubuntu%20Desmond%20Tutu.pdf.

[121] *National Society for the Prevention of Cruelty to Animals* v *Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016) at para 58 in reference to *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) at para 20.

[122] The White Paper (2023), at Section 1: Definitions. This definition of "humane" moves beyond agricultural metrics to include the prevention of "distress" and the active consideration of well-being, accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

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Under the principle of policy coherence,[123] the NBSAP cannot claim to adopt the 2023 White Paper as its policy foundation[124] while continuing to manage biodiversity through an anthropocentric, aggregative, commodified lens.[125] The final NBSAP must operationalise these relational and constitutional commitments[126] by embedding the White Paper's "humane"[127] and "duty of care"[128] principles directly into its national targets and action plans.

D. Evolution of South Africa's NBSAP

ALRSA submits that the Draft NBSAP represents a "*business as usual*" approach to biodiversity conservation that fails to recognise that biodiversity is not just "*under pressure*" but in a global crisis of extinction that is part of and interconnected with the climate crisis.[129] The current paradigm has failed us and led to a state of crisis.[130] We must make transformative changes to the way biodiversity is managed in order to address these crises.[131]

A historical and comparative review of South Africa's NBSAPs reveals a persistent strategic vacuum regarding animal protection.[132] While the Draft NBSAP 2026–2035 makes positive rhetorical strides by incorporating "*whole-of-society*"[133] narratives and aligning itself with the post-Covdi-19 pandemic "*One*

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[123] Section 6(2)(e)(iii) of the Promotion of Administrative Justice Act 3 of 2000, accessible at: https://www.justice.gov.za/legislation/acts/2000-003.pdf.

[124] Draft NBSAP (2026–2035), internal page 43 (Government Gazette page 47), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[125] Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740, accessible at: https://ssrn.com/abstract=2942112.

[126] *NSPCA 2016* at para 58, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html.

[127] The White Paper (2023), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[128] The White Paper (2023), at Goal 2, accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[129] EMS Foundation and Animal Law Reform South Africa (ALRSA), *Joint Submission on South Africa's Draft Revised National Biodiversity Framework* (3 May 2021) at page 8, accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf.

[130] IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (2019), Summary for Policymakers, accessible at: https://doi.org/10.5281/zenodo.3831673.

[131] IPBES, *Thematic Assessment Report on the Underlying Causes of Biodiversity Loss and the Determinants of Transformative Change and Options for Achieving the 2050 Vision for Biodiversity* (2024), Chapter 1 at page 12.

[132] See generally South Africa's 2005 NBSAP, South Africa's 2015–2025 NBSAP, and Draft NBSAP 2026–2035, accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[133] See Secretariat of the Convention on Biological Diversity, *Interim Guidance on the Whole-of-Society Approach* (2023) at page 2, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf. See also Draft NBSAP (2026–2035), internal page 29 (Government Gazette page 33) (which formally adopts this framework to integrate the work of sectoral departments and non-state actors), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

Health Approach",[134] its underlying target architecture remains trapped in a colonial, aggregative model that treats sentient living beings as mere economic resources or biophysical units.[135]

To demonstrate that South Africa's conservation planning has historically failed, and continues to fail, to align with its modern statutory well-being commitments,[136] the table below provides a comparison of the three generations of South African NBSAPs:

Focus Area/ Issue	First-Generation NBSAP (2005)	Second-Generation NBSAP (2015–2025)	Draft NBSAP (2026–2035)
Individual Animal Well-being	*Entirely absent.* Animals treated strictly as biophysical numbers in systematic spatial conservation planning.[137]	*Absent.* Nonhuman animals are conceptualised strictly as economic assets.[138]	*Omitted from national targets and indicators. A single action under Thematic Area 6 refers to animal well-being, humane practices, and a duty of care, but no baseline, metric, or time-bound deliverable is supplied.*[139]
Ecologically Sustainable Use	*Not defined.* Framed strictly as the sustainable utilisation of species and ecosystems for human benefit.[140]	*Extractivist & Commercialised.* Promotes the scaling up of consumptive exploitation under the "wildlife economy" without a duty of care threshold.[141]	*Retains a heavily commercialized, extractivist focus* via the National Biodiversity Economy Strategy ("**NBES**"), failing to subject sustainable use to strict animal well-being parameters.[142]

[134] Draft NBSAP (2026–2035), internal page 55 (Government Gazette page 59); see also section 5.1, Mainstreaming Biodiversity, internal pages 53–57 (Government Gazette pages 57–61), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease. Compare with KMGBF (2022), Section C ("Biodiversity and health") at paragraph (r), which explicitly mandates that the global framework "is to be implemented with consideration of the One Health Approach".

[135] Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740 at 742, accessible at: https://ssrn.com/abstract=2942112.

[136] Under Section 2(a)(iiA) of NEMBA, as amended by 2022 NEMLAA.

[137] NBSAP (2005) (DEAT, 2005), Goal at page 5.

[138] NBSAP (2015 – 2025) (DEA, 2015), Introduction at page 1.

[139] Draft NBSAP (2026–2035), overview of Thematic Areas 4–6 at internal page 46 (Government Gazette page 50), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[140] NBSAP (2005) (DEAT, 2005), Strategic Objective 4 at page 19.

[141] NBSAP (2015 – 2025) (DEA, 2015), Table 2 at page 26 and Outcome 1.3 at page 62.

[142] Draft NBSAP (2026–2035), Thematic Area 6 at internal pages 73–76 (Government Gazette pages 77–80), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

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Focus Area/ Issue	First-Generation NBSAP (2005)	Second-Generation NBSAP (2015–2025)	Draft NBSAP (2026–2035)
Indigenous Knowledge Systems ("IKS")	*Limited inclusion.* Limited to the "equitable sharing of benefits" derived from the commercial and bioprospecting use of biological resources under Strategic Objective 4.[143]	*Recognized* as a foundation for knowledge but compartmentalized and siloed away from actual ecosystem governance.[144]	*Expressly recognised under Thematic Area 12 (KMGBF Targets 21–23), but fails* to connect indigenous eco-centric cosmologies (e.g., Ubuntu) to individual animal protection.[145]
One Health & One Welfare	*Completely absent.* No recognition of zoonotic disease linkages, biosecurity risks, or animal welfare connections.[146]	*Completely Absent*. Siloed approach leaving biosecurity risks associated with intensive breeding and trade unregulated.[147]	*Includes a One Health action under Thematic Area 1 but omits an equivalent, measurable One Welfare framework*, failing to regulate high-risk captive wildlife breeding and live wildlife trade as primary pandemic threat vectors.[148]
Urban Biodiversity & Multi-Species Habitats	*Siloed spatial planning*. Focus strictly on designated protected areas outside of urban development.[149]	Focuses on mainstreaming green open space into Spatial Development Frameworks ("**SDFs**") strictly for human recreational benefits.[150]	Incorporates KMGBF Target 12 within Thematic Area 1 and includes green/blue-space indicators, but fails to adopt progressive multi-species city planning (such as Costa Rica's Curridabat model) which frames pollinators as citizens and plans safer habitats for pollinators, birds, and other urban fauna.[151]

[143] NBSAP (2005) (DEAT, 2005), Strategic Objective 4 at page 19.
[144] NBSAP (2015 – 2025) (DEA, 2015), Outcome 6.3 at page 63.
[145] Draft NBSAP (2026–2035), Thematic Area 12 at internal pages 94–97 (Government Gazette pages 98–101).
[146] See generally NBSAP (2005).
[147] See generally NBSAP (2015- 2025).
[148] Draft NBSAP (2026–2035), Thematic Area 1 at internal pages 53–57 (Government Gazette pages 57–61).
[149] NBSAP (2005) (DEAT, 2005), Strategic Objective 3 at page 18.
[150] NBSAP (2015 – 2025) (DEA, 2015), Strategic Objective 3 at page 45.
[151] Draft NBSAP (2026–2035), Thematic Area 1, incorporating KMGBF Target 12, at internal pages 53–57 (Government Gazette pages 57–61).

The comparison of these three generations of national policy reveals a concerning, self-defeating trajectory:

a. While the DFFE has successfully modernised its biophysical terminology to mirror global frameworks, transitioning from "*managing biological resources*" in 2005 to "*managing biodiversity assets*" in 2015, and finally to "*enhancing nature's contributions to people*" in 2026, the underlying conceptual paradigm has remained static.[152] Wild animals are continuously viewed as passive, tradeable commodities rather than morally considerable individuals with intrinsic value.[153]

b. The Draft NBSAP represents a severe and legally vulnerable regression from the Department's own newly established policy baseline, which it aims to directly adopt.[154] While the 2023 White Paper explicitly mandates under Goal 2 that all "*sustainable use*" must be "*humane*" and ensure animal "*quality of life*," the Draft NBSAP contains a single strategic action requiring sustainable-use practices to consider "animal wellbeing and humane practices to give effect to a duty of care", but does not carry these concepts into the national target, outcomes, measurable indicators, baselines, or time-bound deliverables.[155] By failing to carry the White Paper's well-being and decolonial *Ubuntu* commitments consistently into Thematic Areas 4, 5, and 6, the DFFE has produced a strategy that suffers from fatal policy and administrative incoherence.[156]

c. By maintaining a predominantly aggregative focus on population-level recovery indicators in Thematic Area 4 and economic indicators in Thematic Area 6, the Draft NBSAP operates in a legal vacuum that ignores the welfare, well-being and protection of individual animals.[157] Biophysical counts are structurally incapable of assessing or monitoring the physical,

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[152] See NBSAP (2005), NBSAP (2015 – 2025), and Draft NBSAP 2026–2035, compared in the Draft NBSAP 2026–2035, Evolution Matrix at internal page 37 (Government Gazette page 41), accessible at https://www.dffe.gov.za/mediarelease/nbsap2025.2036draftrelease.

[153] *NSPCA 2016* at para 57, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html. See also Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740, accessible at: https://ssrn.com/abstract=2942112.

[154] Draft NBSAP (2026–2035), at section 4 ("Strategy") at internal page 43 (Government Gazette page 47) (stating that the strategy "directly adopts the vision, mission, goals, enablers and guiding principles" of the 2023 White Paper); section 2.2.3 ("Policies and strategies") at internal page 29 (Government Gazette page 33) (designating the 2023 White Paper as the sector's comprehensive policy baseline); and section 3.3 ("Strategic approach and alignment") at internal page 41 (Government Gazette page 45).

[155] The White Paper (2023), at Goal 2 (Page 21–22), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[156] Draft NBSAP (2026–2035), Thematic Areas 4–6 at internal pages 68–76 (Government Gazette pages 72–80). See also The White Paper (2023), at Section 1 (Definitions of Ubuntu) and Goal 2, accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[157] Draft NBSAP (2026–2035), Thematic Areas 4–6 at internal pages 68–76 (Government Gazette pages 72–80). See also the *Lion Bone Case* at para 75, accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html.

physiological, and mental suffering of wild animals subject to state-sanctioned management or commercial exploitation.[158]

To survive constitutional and administrative scrutiny, the final NBSAP must act as a pioneering global model.[159] It must bridge the historic divide between animal welfare and conservation, demonstrating how the 2050 Vision of "*living in harmony with nature*" can be practically operationalised through concrete, individual-level animal well-being targets and indicators.[160]

PART B: SUBSTANTIVE TARGET GAPS & ACTIONABLE RECOMMENDATIONS

I. SUBSTANTIVE GAPS IN THEMATIC AREAS 4 AND 5 (KMGBF TARGET 4) AND PROPOSED AMENDMENTS

Under Thematic Area 4, Species Conservation (section 5.4; internal Draft pages 68–70, Government Gazette pages 72–74), the Draft NBSAP states:

> *"By 2035, prevent new extinctions, support the recovery of priority threatened species, maintaining their genetic diversity, and improve species protection level by 10%."*[161]

This target represents South Africa's direct domestic contribution toward **Target 4 of the KMGBF**, which mandates urgent, system-wide management actions to halt human-induced extinctions and promote the recovery of threatened species.[162] At its core, the draft target seeks to establish a scientifically sound, data-driven roadmap to stabilise South Africa's highly threatened faunal and floral populations.[163]

When evaluated against South Africa's historical conservation frameworks, Target 4 reflects a deliberate attempt to introduce quantitative rigor and higher strategic ambition. Under the first-generation 2005 NBSAP, species protection was managed through highly fragmented, province-specific spatial plans that lacked centralised, measurable species recovery metrics.[164] While the second-generation 2015–2025 NBSAP made progress by aligning species conservation with the Aichi Biodiversity Targets,[165] it

[158] Section 1 of NEMBA, as amended by 2022 NEMLAA (which defines animal well-being as encompassing physical, physiological, and mental health).
[159] Section 24 of the Constitution of the Republic of South Africa, 1996, read with Section 6(2)(e)(iii) of PAJA.
[160] Convention on Biological Diversity Secretariat, *2050 Vision for Biodiversity: "Living in Harmony with Nature"*, adopted in CBD Decision X/2, accessible at: https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-09-en.pdf.
[161] Draft NBSAP (2026–2035), Thematic Areas 4 and 5 at internal pages 68–72 (Government Gazette pages 72–76).
[162] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), Target 4, available at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.
[163] South African National Biodiversity Institute (SANBI), *National Biodiversity Assessment 2025* (NBA 2025) at page 14, accessible at: https://nba.sanbi.org.za/
[164] NBSAP (2005) (DEAT, 2005) at Table 1 (page 5).
[165] CBD, *Decision X/2: The Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets*, UN Doc. UNEP/CBD/COP/DEC/X/2 (29 October 2010), Annex (establishing twenty global targets across five strategic goals

remained predominantly descriptive, focusing on broad "*species of special concern*" without setting clear, legally auditable improvement percentages.[166]

By introducing a concrete **10% improvement threshold** and establishing a separate Human-Wildlife Coexistence thematic area (Thematic Area 5), the DFFE has sought to modernise South Africa's conservation strategy, aligning national targets with the urgent threat-reversal mandates of the KMGBF.[167]

However, despite these positive quantitative adjustments, Target 4 remains conceptually flawed because it continues to operate within an outdated, aggregative, and species-centric paradigm.[168] By measuring ***conservation success*** exclusively through *collective population numbers*, *genetic distribution metrics*, and *demographic survival rates*, the target ignores the well-being and physical experiences of the individual sentient animals that comprise those populations.[169] In other words, the specific indicators and monitoring frameworks officially designated to track progress focuses entirely on species-scale representation, population demographics, and genome preservation.[170] The specific target indicators listed to measure success under Target 4 are designed to track whether a taxonomic category is likely to decline or go extinct in the wild.

Under this traditional biophysical model, individual wild animals are treated as mere ecological components rather than sentient beings with intrinsic value as individuals.[171] This framing potentially permits extreme forms of physical, physiological, and psychological harm to be inflicted on individual animals during "*management*" interventions (such as invasive translocations, capture, culling, or the containment of "*damage-causing animals*") provided that the broader species population remains

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to address the underlying drivers of global habitat and species loss), accessible on the official CBD portal at: https://www.cbd.int/aichi-targets/.

[166] NBSAP (2015 –2025) (DEA, 2015) at Outcome 1.1 (page 13).

[167] Draft NBSAP (2026–2035), Thematic Areas 4 and 5 at internal pages 68–72 (Government Gazette pages 72–76).

[168] Draft NBSAP (2026–2035), at section 4.5 ("Action Plan Theory of Change") at internal page 46 (Government Gazette page 50), mapping KMGBF Target 4 to Thematic Areas 4 and 5; Section 5.4 ("Species conservation") at pages 72-74 and Section 5.5 ("Human-wildlife coexistence") at pages 75-76. For a detailed critique of this "aggregative approach" to conservation, which instrumentalizes individual lives for collective ecological outcomes, see David Bilchitz, "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740 at 744–745, accessible at: https://ssrn.com/abstract=2942112.

[169] Bilchitz D "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740 at 742, accessible at: https://ssrn.com/abstract=2942112.

[170] Draft NBSAP (2026–2035), at section 5.4 ("Species conservation") at internal pages 69–70 (Government Gazette pages 73–74) (designating Indicator A.3 (Red List Index) and Indicator A.4 (Proportion of populations within species with an effective population size greater than 500) as the primary species-scale monitoring metrics).

[171] EMS Foundation and ALRSA, *Joint Submission on the Revised Draft National Biodiversity Framework* (May 2021) at page 44, accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf

above a calculated demographic threshold.[172] As noted in ALRSA's previous submissions to the Department, biophysical counts and Red List statuses are **structurally incapable** of measuring the welfare or suffering of the individual animals that actually comprise those populations.[173]

Additionally, the language utilised in Target 4 is dominated by **sterile, aggregative, and scientific terminology**. This specific vocabulary serves to disembody and objectify wild animals, framing them as interchangeable ecological "***units***" rather than morally considerable individuals with intrinsic value.[174]

This aggregative, species-focused approach is no longer legally or constitutionally compliant in South Africa. As discussed earlier in this Submission, in ***National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development***, the Constitutional Court's reasoning supports an integrative understanding of environmental protection, recognising that animal welfare and conservation are "*intertwined values*" and that showing respect and concern for individual animals directly reinforces broader environmental protection efforts under Section 24 of the Constitution.[175] This binding judicial reasoning was subsequently codified by the legislature through 2022 NEMLAA, which amended Section 2 of NEMBA to introduce a new primary objective: *"to provide for the consideration of the well-being of animals in the management, conservation and sustainable use thereof."*[176]

Under the NEMBA, animal "well-being" is defined holistically to encompass physical, physiological, and mental health, as well as the individual's quality of life and its ability to cope with its environment.[177]

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[172] Stuurman T *Animal welfare and culling: a legal analysis of South African Biodiversity Law* (LLM Thesis, University of the Western Cape, 2023) at page 18, accessible at: https://uwcscholar.uwc.ac.za/items/e6e65334-a7b7-4df6-a4ea-61f44aac3a64

[173] ALRSA, *Submission on the Proposed Flexible Environmental Impact Assessment (EIA) System* (31 May 2026) at page 21 (pointing out that population-scale databases are structurally incapable of capturing the individual physical, physiological, and psychological suffering that both NEMLAA and the White Paper (2023) require decision-makers to consider), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf. See also the *Lion Bone Case* at para 74, ruling that setting commercial wildlife quotas while treating individual animal well-being as an irrelevant conservation consideration is "illogical, irrational and against the spirit of Section 24".

[174] ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at page 29 (demonstrating how the endless deployment of desensitised, bureaucratic, and scientific terms, such as "faunal biological resources," "specimens," "off-takes," "harvests," "derivatives," and "derived products", serves to sanitise and legitimise the severe physical and psychological trauma inflicted on individual animals), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[175] *NSPCA 2016* at para 58, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html.

[176] Section 2(a)(iiA) of NEMBA, as amended by 2022 NEMLAA, accessible at: https://www.gov.za/sites/default/files/gcis_document/202207/4660224-6-natenvmanaglawsamendact2%EF%80%A22022.pdf.

[177] Section 1 of NEMBA, as amended by 2022 NEMLAA.

Under the administrative law principle of policy coherence,[178] the NBSAP cannot claim to adopt the 2023 White Paper as its "*unified policy foundation*", on internal Draft page 43 (Government Gazette page 47), while failing to incorporate the statutory well-being mandate into the national targets and measurable indicators for Thematic Areas 4 and 5.[179]

If the DFFE is to fulfil its custodial responsibilities in guarding the interests of animals under Goal 2 of the White Paper,[180] the final NBSAP must transition human-wildlife conflict management away from violent, lethal "control" measures toward non-lethal, compassion-based coexistence standards that actively protect individual wild animals from anthropogenic harm.[181]

- **Proposed Text Amendment:** *"By 2035, prevent new extinctions, support the recovery of priority threatened species while actively ensuring their individual well-being and humane treatment, and establish national animal well-being standards for all wildlife management and human-wildlife coexistence interventions."*
- **Proposed National Indicators and Baselines for Thematic Areas 4 and 5:**
  - *Indicator:* Number of provincial and municipal human-wildlife coexistence policies, bylaws, and SOPs formally aligned with national wild animal well-being standards.
  - *Baseline:* Currently, provincial conflict management remains highly fragmented and predominantly reliant on lethal or invasive "*damage-causing animal*" permits without standardised well-being audits.[182]

II. SUBSTANTIVE GAP IN THEMATIC AREA 6 (KMGBF TARGETS 5, 9 AND 16) AND PROPOSED AMENDMENTS

The overview table for Thematic Area 6, Sustainable Use and the Biodiversity Economy (internal Draft page 46; Government Gazette page 50), states:

> *"By 2035, achieve a transformed, inclusive and viable biodiversity economy that ensures use of wild species is **safe**, **legal** and **sustainable**, protecting customary use and traditional knowledge, and providing equitable benefits to all people while enhancing biodiversity conservation."*[183]

[178] Section 6(2)(e)(iii) of PAJA.
[179] Draft NBSAP (2026–2035), section 4 ("Strategy") at internal page 43 (Government Gazette page 47) (asserting that the NBSAP "directly adopts the vision, mission, goals, enablers and guiding principles of the White Paper... to establish a robust, unified policy foundation").
[180] The White Paper (2023), at Goal 2 (defines "sustainable use" and establishes a clear policy threshold requiring that all human use of wild animals be "humane"), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.
[181] ALRSA, *Submission on the Draft National Environmental Management: Biodiversity Bill* (26 July 2024) at page 26.
[182] Centre for Environmental Rights, *Fair Game? Improving the Well-being of South African Wildlife* (2018) at page 18, accessible at: https://cer.org.za/reports/fair-game
[183] Draft NBSAP (2026–2035), Thematic Area 6 at internal pages 73–76 (Government Gazette pages 77–80).

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Thematic Area 6 clusters KMGBF Targets 5, 9, and 16, which seek to ensure that the "harvesting", trade, and "use" of wild species are *sustainable*, *legal*, and *safe* to prevent zoonotic disease outbreaks while protecting customary local use.[184] Domestically, the Department intends for this thematic area to implement the National Biodiversity Economy Strategy ("**NBES**"), boosting commercial wildlife farming, tourism, and the game meat trade.[185] In fact, **Section 5.6.1** states that the updated NBES provides the overarching framework for this thematic area.[186] The Draft therefore expressly links the national action plan for Thematic Area 6 to the NBES.

The concern is not a reversal of a formal legal hierarchy, but a risk of policy incoherence. The NBSAP is South Africa's principal national instrument for implementing the CBD; it is not legally "supreme" over every biodiversity policy.[187] The NBES is a sector-specific economic strategy that should operate consistently with the NBSAP, NEMBA, NEMA, the Constitution, and the 2023 White Paper (among other relevant governance). The NBSAP should set clear ecological and animal well-being boundaries for the implementation of sector-specific strategies. The Draft instead adopts the NBES as the overarching framework for Thematic Area 6 without clearly testing its commercial objectives against measurable animal well-being safeguards and constitutional developments.[188] This creates a material risk that the NBSAP will facilitate, rather than adequately constrain, potentially harmful commercial practices promoted through the NBES.[189] The final NBSAP should therefore make clear that implementation of the NBES remains subject to the NBSAP's conservation objectives and binding

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[184] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), Targets 5, 9, and 16 (addressing sustainable, legal and safe use, benefits from customary sustainable use, and responsible consumption) available at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf. See also *CoP15 Global Biodiversity Framework — Eurogroup for Animals* (2022) at page 1.

[185] *Draft NBSAP (2026 – 2035) at section 5.6 ("Sustainable use and the biodiversity economy"), internal pages 73–76 (Government Gazette pages 77–80), which adopts the National Biodiversity Economy Strategy (NBES) as the overarching framework* to scale up and transform the "wildlife, bioprospecting and marine and freshwater resources value chains"); see also Section 2.2.2 ("National legal context") at Table 3, page 30 (which defines the NBES's statutory scope).

[186] *Draft NBSAP (2026 – 2035)* at section 5.6.1 ("Rationale" under Thematic Area 6: Sustainable Use and the Biodiversity Economy), internal page 73 (Government Gazette page 77) (explicitly positioning the National Biodiversity Economy Strategy (NBES) as the "overarching framework for this thematic area" to coordinate the sustainable harvesting, use, and trade of wild species).

[187] Article 6 of the *CBD* (1992), which legally binds contracting parties to develop national strategies that serve as the principal national instruments to translate global ambitions into concrete, domestic actions. See also DFFE, Draft NBSAP (2026–2035), section 1.1 at internal page 2 (Government Gazette page 6) (reaffirming the NBSAP's status as the "primary instrument for implementing the CBD at a national level").

[188] *Draft NBES* (2024), accessible at: https://www.dffe.gov.za/sites/default/files/legislations/nemba_draftbiodiversityeconomystrategy_g50279gon4492.pdf. See also ALRSA, *Submission on the Draft National Elephant Heritage Strategy* (3 March 2025) at page 20 (criticising the misplaced and premature reliance on the unadopted NBES), accessible at: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-Draft-National-Elephant-Heritage-Strategy.pdf.

[189] See ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at pages 21–24 (detailing how the draft NBES relies on heavily biased, industry-influenced research and excludes public-interest animal protection considerations), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

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constitutional and statutory duties. This is particularly important in relation to NBES proposals concerning intensive agriculturalisation of wildlife (through wildlife ranching and farming), game-meat production, and trophy hunting.[190]

Because Thematic Area 6 relies on the NBES as its overarching framework, the highly controversial economic targets of the wildlife industry / wildlife use and exploitation sectors (such as game ranching and hunting lobbies) risk being imported into South Africa's national conservation planning without adequate independent scrutiny.[191]

For example:

- The NBES proposes scaling up commercial game-meat production from R4.6 billion to R27.6 billion; this is not, however, stated as an accepted baseline in the Draft NBSAP.[192]
- The NBES also contains proposals concerning land and high-end trophy-hunting offerings. The Draft NBSAP does not expressly "grandfather" these proposals into its action plan, but its adoption of the NBES as the overarching framework creates a risk that they will be implemented without adequate safeguards.[193]

The Draft also notes that wildlife ranches could potentially contribute to other effective area-based conservation measures (OECMs), while acknowledging that qualifying sites have not yet been defined, verified, or measured. Commercial operations should not be recognised as conservation measures or

[190] See *Draft NBES* (2024), Goal 2 ("Sustainable consumption and beneficiation of Game from extensive wildlife systems at scale that drives transformation and expanded sustainable conservation compatible land-use") which promotes the scaling up of commercial game meat harvesting (Action 2.3) and the expansion of "high-end trophy hunting packages" (Goal 2 rationale, explicitly seeking to "sustainably harvest animals to provide for a larger number of high-end trophy hunting packages"). For a detailed critique of the "agriculturalisation of wildlife," see ALRSA, *NBES Submission* (8 April 2024) at page 47, accessible at: https://www.dffe.gov.za/sites/default/files/legislations/nemba_draftbiodiversityeconomystrategy_g50279gon4492.pdf. See also ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at pages 11 and 15-16 (critiquing the environmental, welfare, and biosecurity harms of applying industrial agricultural models to sentient wild species).

[191] *Draft NBSAP (2026–2035)*, at Section 5.6.1 ("Rationale" under Thematic Area 6: Sustainable Use and the Biodiversity Economy) at page 77 (explicitly positioning the National Biodiversity Economy Strategy (NBES) as the "overarching framework for this thematic area" to coordinate the sustainable harvesting, use, and trade of wild species). See also ALRSA, *Submission on the Draft National Elephant Heritage Strategy* (3 March 2025) at page 20 (criticising the DFFE's premature and misplaced reliance on the unadopted NBES), accessible at: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-Draft-National-Elephant-Heritage-Strategy.pdf.

[192] *Draft NBES*, Goal 2 (promoting large-scale game meat harvesting enterprises to increase industry GDP contribution from R4.6 billion to R27.6 billion). Read with DFFE, *Draft NBSAP 2026–2035* (August 2026) at section 2.2.3, internal page 29 (Government Gazette page 33).

[193] *Draft NBES*, Goal 5 (Action 5.1 at page 49), proposing the expansion of land under conservation use specifically to facilitate a larger number of high-end trophy hunting packages. This commercial growth model is further illustrated in the DFFE's official NBES Consultation Presentation (Slide 19), which seeks to grow the population of wild animals from 20 million to 26 million to support "sustainable fair-chase harvesting" and expand game meat production.

biodiversity stewardship without independently verified biodiversity and animal well-being outcomes.[194]

Thematic Area 6 risks commercial capture by shifting the legal definition of "*sustainable use*", as well as its definition in the 2023 White Paper,[195] away from its constitutional meaning.[196] The environmental right in Section 24 of the Constitution requires that use be ***ecologically*** sustainable.[197] However, within Thematic Area 6, sustainability is operationalised largely through the management, harvest, use, and trade of wild species. The terms "faunal biological resources", "commodities", and "specimens" occur in the wider regulatory and policy framework but are not the Draft NBSAP's principal terminology.[198] This (narrow, economic) framing risks treating economic viability and population-level sustainability as sufficient without a separate, measurable assessment of individual animal well-being.[199] By reducing sentient individuals to mere commercial assets, this framing may facilitate the systemic exploitation of wildlife under the guise of conservation.[200]

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[194] See ALRSA, *Submission on the National Environmental Management: Biodiversity Bill* (26 July 2024) at page 33 (pointing out that the Draft Bill's broad definition of "conservation areas" allows commercial game farms and other animal-exploitative operations to benefit from conservation-related incentives and policies while prioritizing profit over animal welfare and ecosystem health), accessible at: https://animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-NEMBA-Bill-26-July-2024.pdf

[195] The definition of "sustainable use" in the 2023 White Paper is defined as follows: "*The use of any component of biodiversity in a manner that: is ecologically, economically, and socially sustainable; does not contribute to its long-term decline in the wild or disrupt the genetic integrity of the population; does not disrupt the ecological integrity of the ecosystem in which it occurs ensures continued benefits to people in a manner that is fair, equitable, and meet the needs and aspirations of present and future generations; and ensures a duty of care towards all components of biodiversity for thriving people and nature*."

[196] EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 44 (detailing how the concept of "sustainable use" has historically been co-opted to justify rampant and harmful animal exploitation while ignoring individual animal welfare and ecosystem health), accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf.

[197] Section 24(b)(iii) of the Constitution of the Republic of South Africa, 1996. See also ALRSA, *Submission on the Proposed Flexible Environmental Impact Assessment (EIA) System* (31 May 2026) at page 2 (emphasising that constitutional sustainable development requires a balanced integration of economic, social, and environmental factors, rather than allowing commercial interests to trump animal protection), accessible at: https://www.dffe.gov.za/flexible_eia_consultation#introduction.

[198] *Draft NBES* at Section 4; read with ALRSA, *Submission on the Draft NBES* (8 April 2024) at page 29 (demonstrating how the endless deployment of desensitised, bureaucratic, and scientific terms—such as "faunal biological resources," "specimens," "off-takes," "harvests," "derivatives," and "derived products"—serves to sanitise and legitimise the severe physical and psychological trauma inflicted on individual animals), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[199] See David Bilchitz, "Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals" (2017) 134 *South African Law Journal* 740 at 744–745 (defining the "aggregative approach" as a narrow, population-only conservation model that treats individual animals as interchangeable units of production), accessible at: https://ssrn.com/abstract=2942112.

[200] See EMS Foundation and ALRSA, *Joint Submission on the Draft National Biodiversity Framework* (2021) at pages 58–59 (showing how the commodification of wild animals under "sustainable use" policies serves as a legal cover for raw

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Under South African law, animal well-being is a primary statutory objective of biodiversity management.[201] Furthermore, Goal 2 of the DFFE's 2023 White Paper explicitly mandates that all sustainable use of wild animals must be "*humane*".[202] The Draft does not entirely omit this mandate: its action plan requires sustainable-use practices to consider animal well-being and humane practices as part of a duty of care.[203] Nevertheless, the national target and indicators focus principally on sustainability, safety, legality, trade, participation, benefits, and economic contribution, without specifying a measurable animal well-being standard.

- **The Draft does not define how "safe" use will be assessed or how safety will incorporate animal well-being and One Health considerations. "Safe"** is treated purely as a basic biosecurity check to prevent disease spread.[204]
- **Nor does it explain whether "legal" use requires substantive compliance with NEMBA's animal well-being objective beyond possession of the applicable permit.** [205]

The absence of defined, measurable animal well-being criteria creates a problematic implementation gap. It may allow the Department to authorise inherently cruel, low-welfare practices (such as intensive wild animal farming) because they have basic disease controls and a permit was signed, even though they flagrantly violate the statutory well-being requirements of NEMBA as amended by NEMLAA.[206]

To close this loophole and stop commercial interests from capturing national conservation policy, the final NBSAP must perform its coordinating and standard-setting role. First, the national target for Thematic Area 6 must be amended to require that all wild animal use be safe, legal, and "*strictly humane*," carrying the 2023 White Paper's definition of sustainable use and NEMBA's well-being

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commercialism and private profit at the expense of South Africa's shared natural heritage), accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf

[201] Section 2 of NEMBA, as amended by Section 45 of 2022 NEMLAA.

[202] The White Paper (2023), Goal 2 at pages 21–22 ("In accordance with our custodial responsibilities in guarding the interests of animals, any conservation and sustainable use activities, methods, or actions should be humane and ensure quality of life within its environment"), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[203] The Draft NBSAP includes a single action referring to animal well-being, humane practices, and a duty of care, but omits measurable animal well-being standards, indicators, baselines, and time-bound deliverables, creating a material implementation gap when compared with the White Paper (2023).

[204] See Werner Scholtz, "Ethical and Humane Use, Intrinsic Value and the Convention on Biological Diversity: Towards the Reconfiguration of Sustainable Development and Use" (2021) 30 *RECIEL* 73 at 75–78 (explaining that "safe" use is a limited, biological pathogen-control concept that must be expanded to include "humane" use.), accessible at: https://doi.org/10.1111/reel.12360.

[205] See Chapter 4 of NEMBA, read with the Threatened or Protected Species (TOPS) Regulations, 2007, which regulate restricted activities (such as hunting or trade) through a basic permit-issuing system.

[206] See ALRSA, *Submission on the Proposed Flexible Environmental Impact Assessment (EIA) System* (31 May 2026) at page 21 (detailing how the Draft Regulations on Live Export by Sea (2025) represent an attempt to formalise a practice that is inherently cruel, low-welfare, and incapable of preventing severe physical and psychological suffering), accessible at: https://www.dffe.gov.za/flexible_eia_consultation#introduction.

commitments directly into our national targets. Second, the final NBSAP must explicitly mandate the **5-Dimensional Sustainability Assessment Framework** ("**5DSAF**") as a standardised national audit protocol for all commercial wildlife trade, hunting, and farming.[207]

Developed by an international group of experts (including the International Institute for Environment and Development, TRAFFIC, and the IUCN), the 5DSAF expands traditional sustainability models by adding **"animal welfare"** and **"human health"** as non-negotiable, equal dimensions of sustainability. This framework has already been successfully tested in South Africa's game meat sector, showing that we can measure and protect both ecological health and individual animal welfare at the same time.[208] It should, however, be understood that the framework is the floor and not the ceiling in respect of promoting the well-being of wild animals in South Africa.

- **Proposed Text Amendment to the Thematic Area 6 National Target:** *"By 2035, achieve an ecologically sustainable, transformed, and inclusive biodiversity sector that ensures the ecologically sustainable use of wild species, including non-human animals, is safe, legal, and strictly humane, subjecting all commercial utilisation of animals to the 5-Dimensional Sustainability Assessment Framework as a standardised national audit protocol that prevents suffering, and phasing out high-risk, low-welfare practices including captive predator breeding and live wildlife exports by sea."*
- **Proposed National Indicators and Baselines for Thematic Area 6:**
  - *Indicator:* Set percentage of commercial wildlife facilities, ranching permits, and trade allocations audited and cleared under the 5DSAF.
  - *Baseline: The Draft does not establish an animal-welfare or One Health baseline for TOPS and CITES permitting systems. Existing frameworks should be independently assessed to determine the extent to which they incorporate species-conservation, animal well-being, and zoonotic spillover criteria.* [209]

[207] Anastasiya Timoshyna et al., "Safe, sustainable, legal use and trade in wild species: testing a new five-dimensional sustainability assessment" (2025) 35 *Environmental Science & Policy* 112 at 113–115 (detailing the development of the 5DSAF by IIED, TRAFFIC, and IUCN, and its successful pilot testing in South Africa and Tanzania), accessible at: https://www.sciencedirect.com/science/article/pii/S2352771425002812.

[208] Anastasiya Timoshyna et al., "Safe, sustainable, legal use and trade in wild species - testing a new five-dimensional sustainability assessment" (2025) 35 *Environmental Science & Policy* 112 at 113–115 (detailing the development of the 5DSAF by IIED, TRAFFIC, and IUCN, and its successful pilot testing in South Africa and Tanzania), accessible at: https://www.sciencedirect.com/science/article/pii/S2352771425002812.

[209] Ethel Meryl Theron, "A critical legal analysis of elephant welfare and management considerations in South Africa's environmental law and policy framework" (LLM Thesis, University of the Western Cape, 2024), at page 44-45 (discussing how CITES and NEMBA licensing systems historically exclude animal welfare), accessible at: https://uwcscholar.uwc.ac.za/items/b07560fc-03a8-4ff4-ab1d-8e80525ea07a.

III. SUBSTANTIVE GAP IN THEMATIC AREA 1 (KMGBF TARGET 12) AND PROPOSED AMENDMENTS

KMGBF Target 12, which the Draft NBSAP incorporates within Thematic Area 1, Mainstreaming Biodiversity (section 5.1), provides in relevant part:

> *"By 2035, significantly increase the area, quality, and connectivity of, access to, and benefits from green and blue spaces in urban and densely populated areas sustainably... ensure biodiversity-inclusive urban planning, enhancing native biodiversity... improving human health and well-being and connection to nature."*[210]

The Draft incorporates KMGBF Target 12 within Thematic Area 1, which requires countries to significantly increase the area, quality, and connectivity of green and blue spaces[211] in urban areas, mainstreaming the conservation and sustainable use of biodiversity into urban planning to enhance native biodiversity, ecological integrity, and human physical and mental well-being.[212] This component of the thematic-area target seeks to catalyse a nationwide greening of South Africa's rapidly expanding municipal areas, ensuring that urban development does not occur at the expense of local ecological infrastructure.[213]

The incorporation of KMGBF Target 12 represents a major, progressive milestone in the evolution of South Africa's biodiversity strategy. Historically, the 2005 and 2015–2025 NBSAPs gave considerably less explicit attention to biodiversity-inclusive urban planning than the present Draft.[214] By actively mainstreaming biodiversity into municipal Spatial Development Frameworks ("**SDFs**") and recognising urban green/blue corridors as essential ecological assets, the Draft's incorporation of KMGBF Target 12 attempts to dismantle this artificial divide, bringing conservation planning directly into the daily lives of urban citizens.[215]

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[210] Draft NBSAP (2026–2035), Thematic Area 1, incorporating KMGBF Target 12, at internal pages 53–57 (Government Gazette pages 57–61).

[211] In both the KMGBF and South Africa's Draft NBSAP (2026–2035), green and blue spaces represent natural and semi-natural areas located specifically within urban, built-up, and densely populated environments.

[212] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), Target 12, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[213] Draft NBSAP (2026–2035) at Section 5.1 ("Mainstreaming biodiversity") at pages 57-61 (detailing the strategic integration of biodiversity considerations into municipal spatial planning and urban development); see also the Thematic Area 1 target, indicators and actions at internal pages 55–57 (Government Gazette pages 59–61).

[214] See NBSAP (2005) (DEAT, 2005), Strategic Objective 3 at page 18, and NBSAP (2015 – 2015) (DEA, 2015), Strategic Objective 3 at page 45.

[215] *Submission of National Targets towards the Implementation of the Kunming-Montreal Global Biodiversity Framework* (2024), National Target 1 (mandating that "100% of Spatial Development Frameworks (SDFs), Marine Spatial Planning (MSP) and Estuarine Management Plans incorporate systematic biodiversity plans" and requiring national, provincial, and municipal spatial plans to adequately incorporate biodiversity considerations by 2030), accessible at the CBD Online Reporting Tool: https://ort.cbd.int.

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While the greening of urban spaces is highly commendable, the Draft's treatment of KMGBF Target 12 remains structurally limited by a deeply anthropocentric and utilitarian framing.[216] The target treats urban nature primarily as a provider of ecosystem services designed to improve human access, health, well-being, and connection to nature.[217] It fails to conceptualise South Africa's rapidly expanding cities as shared, **multi-species habitats** where non-human animals have an active, legally protected claim to safe and non-toxic environments.[218]

Although the Draft's separate pollution thematic area recognises pesticide impacts on insects and pollinators, the mainstreaming thematic area does not establish sufficiently specific actions and indicators to protect urban fauna (such as native pollinators, birds, bats, and small mammals) from routine, devastating anthropogenic harms.[219] These include widespread, cosmetic chemical pesticide spraying in public parks, lethal light pollution that disrupts avian and insect navigation, noise pollution that fractures animal communication, and architectural designs that lead to catastrophic bird-window collisions.[220]

Under Section 24 of the Constitution,[221] and Section 1 of NEMA,[222] the right to an environment that is not harmful to health or well-being must encompass the holistic system of "*animal life*" co-inhabiting our urban spaces.[223] True decolonised transformation requires our legal and planning systems to move *away* from a mindset of domination and eradication toward one of harmonious coexistence.[224] This is consistent with the 2023 White Paper which is said to provide the foundation for the Draft NBSAP.

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[216] ALRSA, *Submission on the National Biodiversity Offset Guideline* (26 May 2022) at page 18.

[217] NBSAP (2015–2025) (DEA, 2015), Strategic Objective 3 at page 45. See also ALRSA, *Submission on the National Biodiversity Offset Guideline* (26 May 2022) at page 18, accessible at https://www.animallawreform.org/wp-content/uploads/2022/05/ALRSA-Biodiversity-Offsets-Submission.pdf.

[218] 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) at Section 4 (noting the municipal duty to mitigate pesticide exposure and urban hazards for wild animals), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

[219] EMS Foundation and ALRSA, *Joint Submission on the Revised Draft National Biodiversity Framework* (May 2021) at page 12, accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf

[220] 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) at Section 4 (noting the municipal duty to mitigate pesticide exposure and urban hazards for wild animals), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

[221] Section 24 of the Constitution of the Republic of South Africa, 1996. See also *NSPCA 2016* at para 58, accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html.

[222] Section 1(1) of NEMA.

[223] Section 1 of NEMA, which defines the "environment" as encompassing animal life and their interrelationships. See also the *Lion Bone Case* at para 75, accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html.

[224] The White Paper (2023), Vision at page 23, accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

South Africa should draw inspiration from progressive global models, most notably **Costa Rica's Curridabat "Ciudad Dulce" (Sweet City)** framework,[225] which formally integrated biodiversity into municipal urban planning by framing pollinators as "citizens" and integrating their habitats, together with those of birds and plants, into municipal planning.[226]

By incorporating Ecological Performance Standards ("**EPS**")[227] and biomimicry-based designs,[228] our municipal SDFs can actively enhance both human and non-human well-being,[229] ensuring that cities function as contiguous, pesticide-free, and wildlife-friendly sanctuaries.[230]

- **Proposed Text Amendment to the Relevant Thematic Area 1 Target and Actions (KMGBF Target 12):** *"By 2035, increase the area, quality, and connectivity of urban green and blue spaces, ensuring biodiversity-inclusive multi-species urban planning that protects native pollinators and urban fauna and flora through the phasing out of cosmetic chemical pesticides and the integration of Ecological Performance Standards in municipal spatial frameworks".*

[225] See P Greenfield, '"Sweet City": The Costa Rica suburb that gave citizenship to bees, plants and trees', *The Guardian* (29 April 2020), available at: https://www.theguardian.com/environment/2020/apr/29/sweet-city-the-costa-rica-suburb-that-gave-citizenship-to-bees-plants-and-trees-aoe.

[226] See P Hubbard and A Brooks, 'Animals and urban gentrification: Displacement and injustice in the trans-species city' (2021) 45(6) *Progress in Human Geography* 1490-1511, available at: https://doi.org/10.1177/0309132520986221.

[227] See SANBI, *Compendium of Benefits of Biodiversity* (2019), Chapter 5.4 at page 89, accessible at: http://hdl.handle.net/20.500.12143/6491. EPS represent a progressive urban planning framework that sets the performance of a healthy local "reference habitat" (such as a native forest or wetland) as the mandatory environmental baseline for new built developments. Under this standard, rather than just meeting basic green checklists, a built environment must prove that its green infrastructure can process water, hold back soil, capture carbon, and filter pollutants at the exact same rates as the wild ecosystem that originally existed on that site.

[228] See C Janisch, "Biomimicry – copying nature" (Chapter 5.4) in South African National Biodiversity Institute (SANBI), *National Biodiversity Assessment 2018 Supplementary Material: Compendium of Benefits of Biodiversity*, compiled by Carol J. Poole (SANBI 2019), accessible at: http://hdl.handle.net/20.500.12143/6491. Biomimicry is the practice of copying functional designs, forms, and ecological processes found in nature to solve human engineering and urban planning challenges. A notable domestic example is the "Genius of SPACE" project in the Langrug informal settlement (Western Cape), where designers copied the natural cleansing systems of wild wetlands to build a functional greywater filtration network using native plants and soil.

[229] Section 2(a)(iiA) of NEMBA, read with the White Paper (2023), at Goal 2 (which mandates local governments and municipalities to consider animal well-being in spatial instruments), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[230] 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) at Section 4 (noting the municipal duty to mitigate pesticide exposure and urban hazards for wild animals), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

- **Proposed National Indicators and Baselines for the KMGBF Target 12 Component of Thematic Area 1:**
  - *Indicator:* Number of metropolitan municipalities with integrated spatial development frameworks that adopt biomimicry-based Ecological Performance Standards and designate pesticide-free multi-species urban corridors.
  - *Baseline: Not established in the Draft. The Draft states that relevant urban green-and-blue-space data are fragmented or not currently measured; a national baseline study should therefore be undertaken.*[231]

IV. SUBSTANTIVE GAP IN THEMATIC AREA 1 (KMGBF TARGET 14) AND PROPOSED AMENDMENTS

KMGBF Target 14, which the Draft NBSAP incorporates within Thematic Area 1, Mainstreaming Biodiversity (section 5.1), provides in relevant part:

> *"By 2035, biodiversity and its multiple values are fully integrated into the policies, planning, development processes, poverty eradication strategies, and strategic environmental assessments and environmental impact assessments across all levels of government and sectors."*[232]

The Draft incorporates KMGBF Target 14 within its composite national target and action plan for Thematic Area 1, which mandates the full integration of biodiversity and its multiple values into policies, regulations, planning and development processes, poverty eradication strategies, ***strategic environmental assessments*** ("**SEAs**"), and ***environmental impact assessments*** ("**EIAs**") across all levels of government and all sectors, progressively aligning all public and private activities and financial flows with the goals and targets of the framework.[233] The draft target aims to dismantle the historical siloing of environmental management, forcing non-environmental sectors (such as mining, agriculture, energy, and infrastructure) to account for biodiversity loss in their primary operational pipelines.[234]

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[231] ALRSA, *Submission in Respect of the Revised Draft White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity* (11 November 2022) at page 31 (Section 1.6.3: Provincial and Municipal Laws and Policies - pointing out that existing municipal frameworks under SPLUMA systematically omit the constitutional jurisprudence linking animal welfare to the Section 24 environmental right), accessible at: https://www.animallawreform.org/wp-content/uploads/2023/01/ALRSA-Submission-on-Revised-Draft-White-Paper.pdf.

[232] Draft NBSAP (2026–2035), overview table at internal page 46 (Government Gazette page 50), and section 5.1, Thematic Area 1, at internal pages 53–57 (Government Gazette pages 57–61), which incorporates KMGBF Target 14.

[233] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), Target 14, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[234] Section 2(4)(b) of NEMA, which mandates integrated environmental management to acknowledge that all elements of the environment are linked. See also South Africa's 2015–2025 NBSAP (DEA, 2015), Strategic Objective 3 at page 45.

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When compared to South Africa's previous biodiversity strategies, the incorporation of KMGBF Target 14 reflects a major, much-needed effort to elevate the regulatory status of environmental planning.[235] Under both the 2005 and 2015–2025 NBSAPs, mainstreaming was treated as a voluntary, "*cooperative governance*" exercise, relying on non-binding guidelines and inter-departmental workshops that commercial sectors routinely ignored.[236] Although KMGBF Target 14 expressly refers to SEAs and EIAs, the Draft's composite national target does not repeat those terms or establish them as mandatory new legal vehicles. The Draft's mainstreaming framework nevertheless seeks to strengthen cross-sectoral screening that prevents destructive developmental approvals before they occur.[237]

However, despite its progressive procedural ambitions, the Draft's implementation of KMGBF Target 14 contains a fatal substantive vacuum. While the DFFE is currently proposing a "***Flexible EIA System***" to streamline development authorisations,[238] South Africa's existing EIA Regulations currently omit individual animal well-being and welfare impact assessments as specialist criteria.[239] This administrative gap allows high-impact, intensive animal-use projects (such as massive industrial feedlots, commercial aquaculture facilities, captive predator breeding yards, and wildlife slaughterhouses) to be authorised without any evaluation of the acute physical, physiological, and psychological harm and trauma inflicted on the sentient animals involved.[240]

Because the legislature has elevated animal well-being to a primary statutory objective under Section 2 of NEMBA,[241] **animal well-being constitutes a mandatory relevant consideration where a decision taken under biodiversity or environmental legislation may affect animals and/or biodiversity** under Section 6(2)(e)(iii) of the PAJA.[242] ALRSA submits that an environmental authorisation issued for an activity materially affecting sentient animals, without adequate consideration of well-being and, where necessary, a specialist assessment, may be irrational and susceptible to review, depending on the statutory context and the impacts concerned (as established in

[235] Draft NBSAP (2026–2035), section 5.1 ("Mainstreaming biodiversity") at internal pages 53–57 (Government Gazette pages 57–61), including the indicators mapped to KMGBF Target 14 at internal page 55 (Government Gazette page 59).

[236] See South Africa's 2005 NBSAP (DEAT, 2005) at Strategic Objective 3 (page 18), and South Africa's 2015–2025 NBSAP (DEA, 2015) at Strategic Objective 3 (page 45).

[237] Section 24 of the NEMA, read with the Environmental Impact Assessment Regulations, 2014, published under Government Notice R982 in Government Gazette No. 38282 on 4 December 2014, accessible at: https://cer.org.za/wp-content/uploads/1999/01/NEMA-EIA-Regulations-2014-as-amended.pdf.

[238] Department of Forestry, Fisheries and the Environment, *Consultation on the Proposed Flexible EIA System* (2026), accessible at: https://www.dffe.gov.za/flexible_eia_consultation#introduction.

[239] *Environmental Impact Assessment Regulations*, 2014, published under Government Notice R982 in Government Gazette No. 38282 on 4 December 2014, Appendix 6 (Specialist Reports), accessible at: https://cer.org.za/wp-content/uploads/1999/01/NEMA-EIA-Regulations-2014-as-amended.pdf. See also ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at page 10.

[240] ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at pages 29–30 and page 36.

[241] Section 2(a)(iiA) of NEMBA, as amended by 2022 NEMLAA.

[242] Section 6(2)(e)(iii) of PAJA, which provides that administrative action is reviewable if relevant considerations were ignored. See also *Lion Bone Case* at para 74, accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html.

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the landmark ***Lion Bone Case***[243]). Furthermore, developers are bound by NEMA's Section 28 statutory **duty of care** to prevent significant environmental degradation, which legally encompasses preventing significant harm to animal life.[244]

This regulatory vacuum also impacts vulnerable human populations, specifically children.[245] Under Paragraph 35 of **UN General Comment No. 26 (2023) on Children's Rights and the Environment**, children have a fundamental right to be protected from *exposure to violence, including violence inflicted on animals*.[246] The UN Committee on the Rights of the Child explicitly identifies environmental degradation and animal exploitation as forms of **"structural violence"** against children,[247] declaring that:

> *"Children must be protected from all forms of physical and psychological violence and from exposure to **violence**, such as domestic violence or **violence inflicted on animals**."*[248]

Psychological and sociological research confirms that the environmental and animal violence inherent in intensive captive breeding, live exports, and slaughterhouses causes severe, localised trauma to nearby communities.[249] Therefore, there exists an immediate public interest mandate to prevent and regulate high-impact, intensive, and violent animal-use industries within the Draft NBSAP (2026 – 2035).

Giving domestic effect to KMGBF Target 14 through Thematic Area 1 therefore requires that mandatory **Wild Animal Well-being Impact Assessments** ("**AWWIAs**")[250] and **Children's**

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[243] *Lion Bone Case*, accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html.

[244] Section 28(1) of the NEMA, read with Section 1(1) which defines "environment" as encompassing animal life and their interrelationships.

[245] 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) at Section 4 (noting the psychological vulnerability of children to systemic environmental and animal exploitation), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

[246] UN Committee on the Rights of the Child, *General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change* (22 August 2023), UN Doc. CRC/C/GC/26 at para 35, accessible at: https://childrightsenvironment.org/wp-content/uploads/2023/08/General-Comment-No.-261.pdf.

[247] UN General Comment No. 26 (2023) at para 35 (defining ecological destruction and community-level disruption as structural harm), accessible at: https://childrightsenvironment.org/wp-content/uploads/2023/08/General-Comment-No.-261.pdf.

[248] UN General Comment No. 26 (2023) at para 35 (defining ecological destruction and community-level disruption as structural harm), accessible at: https://childrightsenvironment.org/wp-content/uploads/2023/08/General-Comment-No.-261.pdf. See also Swemmer S, "International law, domestic violence, and the intersection with non-human animal abuse" (2019) 27 *Society & Animals* 1 at pages 1–19, accessible at: https://doi.org/10.1163/15685306-12341589.

[249] 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) at Section 4, accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

[250] ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at page 10 (outlining the necessity of standalone specialist wildlife welfare assessments), accessible at: https://www.animallawreform.org/wp-content/uploads/2026/06/ALRSA-Submission-Flexible-EIA-System.pdf. Unlike traditional biodiversity assessments, which focus on whether a species population will survive or whether a habitat is conserved, an AWWIA is a dedicated

Rights Impact Assessments ("**CRIAs**")[251] be integrated directly into NEMA Listing Notices and screening criteria, ensuring that no commercial animal exploitation facility or practice can be legally authorised near human settlements.

- **Proposed Text Amendment to the Relevant Thematic Area 1 Target and Actions (KMGBF Target 14):** *"By 2035, ensure biodiversity and its multiple values, including individual animal well-being and the rights of the child, are fully integrated into strategic environmental assessments and environmental impact assessments, mandating (at least) specialist Wild Animal Well-being Impact Assessments for all activities impacting sentient animals, including activities requiring environmental authorisation under the South African environmental law framework."*[252]

- **Proposed National Indicators and Baselines for the KMGBF Target 14 Component of Thematic Area 1:**

  - *Indicator:* Percentage of environmental authorisations involving animal populations or intensive animal-use activities that are subjected to mandatory, specialist AWWIAs prior to approval.

  - *Baseline: Not established in the Draft. DFFE should audit existing EIA screening tools, specialist protocols, and authorisation practices to determine the extent to which animal welfare and well-being impacts are presently assessed.*[253]

V. SUBSTANTIVE GAP IN THEMATIC AREA 12 (KMGBF TARGETS 21, 22 AND 23) AND PROPOSED AMENDMENTS

Under Thematic Area 12, Knowledge, Participation and Inclusion (section 5.12; internal Draft pages 94–97, Government Gazette pages 98–101), the Draft NBSAP states:

> *"By 2035, ensure access to scientific and traditional knowledge, with free, prior and informed consent of knowledge holders, to empower women, youth, previously disadvantaged individuals, persons with disabilities and indigenous peoples and local communities to participate*

inquiry into the physical, physiological, and psychological well-being of individual sentient animals. It is designed to ensure that animal welfare is treated as a core component when determining the "sensitivity of the receiving environment" in developmental and spatial planning

[251] UN General Comment No. 26 (2023) at para 75 (mandates "vigorous children's rights impact assessments" for all proposed environment-related legislation, projects, and decisions), accessible at: https://childrightsenvironment.org/wp-content/uploads/2023/08/General-Comment-No.-261.pdf.

[252] Suggested amendment above to the Thematic Area 1 national target and actions insofar as they give effect to KMGBF Target 14.

[253] ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at page 38, pointing out that existing NEMA Listed Activities and screening tools omit individual animal well-being or welfare metrics.

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meaningfully and access justice, thereby advancing transformation in biodiversity conservation and sustainable use."[254]

This composite national target gives domestic effect to KMGBF Targets 21, 22, and 23.[255] Globally, these targets require governments to make the best environmental data and traditional knowledge fully accessible to decision-makers and the public.[256] This open access approach is the foundation for fair governance.[257] At the same time, the framework mandates the full, equal, and active participation of indigenous peoples, local communities, women, youth, and persons with disabilities in all environmental decisions. Crucially, it also secures their direct access to justice and information. Thus, the draft target seeks to democratise South Africa's conservation efforts.[258] It aims to transform historically marginalised communities from passive bystanders into active leaders of environmental policy.

Moreover, the formulation of the Thematic Area 12 national target represents a significant, progressive departure from the technocratic, elite-led conservation structures of the past. Under both the 2005 and 2015–2025 NBSAPs, community engagement was treated as a paternalistic, top-down consultation exercise, where local communities were brought in only after major spatial and economic decisions had already been finalised.[259] By explicitly anchoring the target in the legal standard of **Free, Prior and Informed Consent** ("**FPIC**")[260] and establishing a direct right of access to justice for previously

[254] Draft NBSAP (2026-2035) section 5.12 ("Knowledge, participation and inclusion") at internal page 96 (Government Gazette page 100) (setting out the target's indicators and lead responsibilities) and Section 4.5 ("Action Plan Theory of Change") in Table 6 at page 51.

[255] Kunming-Montreal Global Biodiversity Framework, CBD Decision XV/4 (2022), Targets 21, 22 and 23, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[256] *Kunming-Montreal Global Biodiversity Framework*, CBD COP Decision XV/4 (December 2022) at Target 21, establishing global standards for accessible biodiversity data and traditional knowledge to guide equitable governance, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[257] *Kunming-Montreal Global Biodiversity Framework*, CBD COP Decision XV/4 (December 2022) at Target 22, mandating gender-responsive representation, public participation, and access to justice, accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

[258] United Nations Development Programme, *Interim Guidance on the Whole of Society Approach* (2023) at page 5, accessible at: https://www.undp.org/publications/what-does-it-mean-leave-no-one-behind.

[259] NBSAP (2005) (DEAT, 2005) at Goal 2 (page 5), and NBSAP (2015-2025) (DEA, 2015), Outcome 6.3 at page 63. See also EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 68, pointing out that historical state frameworks compartmentalised traditional knowledge rather than facilitating genuine local co-management, accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf

[260] Kunming-Montreal Global Biodiversity Framework (2022), Section C (Paragraph 7(a)). See also CBD Secretariat, *Interim Guide on Undertaking Rapid Assessment of Existing NBSAPs* (2023) at page 5, which defines FPIC as the tripartite standard of "prior and informed consent", "free, prior and informed consent", or "approval and involvement", accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

disadvantaged individuals, the Thematic Area 12 national target attempts to decolonise South Africa's conservation model, creating a rights-based framework for inclusive governance.[261]

However, despite its progressive participatory rhetoric, the implementation framework for Thematic Area 12 nevertheless remains conceptually limited because it risks treating indigenous knowledge systems ("**IKSs**") and customary practices purely as historical databases or as a paternalistic "right to exploit" biological resources.[262] The Draft uses the National Indigenous Knowledge Management System (NIKMAS) to record and verify indigenous-knowledge claims; it does not expressly establish a new digital traditional-knowledge registry.[263] Without stronger safeguards, such systems risk treating sacred wisdom as a static library of facts to be archived, stored, and mined for commercial bioprospecting.[264] The framework may prioritise knowledge that can inform conservation, sustainable use, and bioprospecting without giving equivalent weight to relational and ethical knowledge.[265] This risks overlooking the fact that indigenous philosophies are active, living guides on how humans should relate to Nature today.[266] This approach treats the IKSs like a museum exhibit rather than living practices.

[261] Draft NBSAP (2026–2035), Thematic Area 12 at internal page 95 (Government Gazette page 99).

[262] Draft NBSAP (2026–2035), Thematic Area 12 action plan at internal page 97 (Government Gazette page 101) (which confines the strategic monitoring of IKS to the number of "indigenous knowledge claims successfully recorded and verified within NIKMAS to inform conservation and sustainable use"); and section 5.9 ("Access and benefit sharing") at internal pages 85–87 (Government Gazette pages 89–91) (which prioritises the formalisation of bioprospecting and benefit-sharing agreements to regulate the commercial and industrial exploitation of indigenous biological and genetic resources).

[263] Draft NBSAP (2026–2035), section 5.9 ("Access and benefit sharing") at internal page 87 (Government Gazette page 91) (which directs the Department of Science and Innovation (DSI) and supporting partners to "Enhance the National Indigenous Knowledge Management System (NIKMAS) to record and curate indigenous knowledge and support the protection of associated rights and interests")).

[264] Section 2(a)(iii) of NEMBA (which frames the state's statutory role regarding traditional knowledge through the narrow lens of "bioprospecting involving indigenous biological resources" and benefit-sharing). See also Melanie Murcott, "Transformative Environmental Constitutionalism's Response to the Setting Aside of South Africa's Moratorium on Rhino Horn Trade" (2017) 6 *Journal of Human Rights and the Environment* 84 at 89-91 (detailing the utilitarian and extractivist focus of NEMBA), accessible at: https://www.mdpi.com/2076-0787/6/4/84

[265] See South African National Biodiversity Institute (SANBI), *National Biodiversity Assessment 2018 Supplementary Material: Compendium of Benefits of Biodiversity*, compiled by Carol J. Poole (SANBI 2019), Chapter 5.1 (Bioprospecting) at pages 66-72 (showing how traditional remedies are systematically screened for commercial pharmaceutical and cosmetic applications), accessible at: http://hdl.handle.net/20.500.12143/6491. See also Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd ed, 2011) at page 146 (criticising how bioprospecting benefit-sharing agreements monetize and commercialize traditional relationships with nature).

[266] See MC Kgari-Masondo, "Sotho-Tswana mythic animals: Stratagem for environmental conservation" (2014) 71 *New Contree* 115 at 134 (arguing that indigenous knowledge is a dynamic, living practice wrapping up ideas of humanness and nature into active ethical systems, rather than a resource to be passively extracted or documented), available at: https://newcontree.org.za/index.php/nc/article/view/195.

Additionally, the Department's current model potentially assumes that the only way to help previously marginalised communities is to give them a financial cut of commercial wildlife industries.[267] Under Thematic Area 6 and the NBES, transformation is substantially framed through participation in biodiversity-economy value chains, which may include trophy hunting, game-meat harvesting, or intensive wildlife breeding.[268] This framing risks implying that local communities principally value animals as commercial commodities.[269] If customary rights are framed predominantly through extraction and monetisation, the state risks imposing a western, colonial, and capitalistic mindset onto traditional lands,[270] and ignores the spiritual and relational duties that define traditional African worldviews.[271]

Thus, despite the Draft NBSAP's "whole-of-society" approach, it fails to recognise that South Africa's **IKSs provide, among others, the oldest, most culturally grounded, and highly sophisticated frameworks for individual animal protection and ecological care**.[272] The draft target fails to connect traditional knowledge to the actual day-to-day protection of individual animal lives. Although the Draft provides for FPIC, legal support, grievance mechanisms, co-management, and participation, it does not expressly connect these measures to relational duties toward individual animals. Instead, it views customary rights strictly as a license to exploit and monetise natural resources. **This is a deeply colonial mindset.** It reduces sacred, age-old relationships of ecological care into simple commercial transactions.[273] Furthermore, when the Draft NBSAP refers to the concept of ***Ubuntu***, it relies on a

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[267] ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at pages 21-24 (critiquing the narrow focus on "inclusion" as purely financial and commercial participation in animal-intensive industries), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[268] *Draft NBES* (2024) Goal 6 (Action 6.2 at page 25, seeking to alleviate barriers of entry into trophy hunting, game meat harvesting, and ecotourism) and Enabler 4 (Action 10.2 at page 20, embedding communities along trophy and recreational hunting value chains). See also DFFE NBES Consultation Presentation, slide 12, linking community participation to beneficiary roles within these economic activities.

[269] ALRSA, *Submission on the Draft NBES* (8 April 2024) at page 29, accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[270] See Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd ed, 2011) at pages 85-86 (explaining how Western property laws and extractive models dispossess nature of its inherent value and impose capitalistic frameworks onto traditional territories), accessible at: https://www.bloomsbury.com/uk/wild-law-9780857840295/.

[271] See Mogobe B. Ramose, "Ecology Through Ubuntu" (2009) in M.F. Murove (ed), *African Ethics: An Anthology of Comparative and Applied Ethics* (University of KwaZulu-Natal Press) at page 308-309 (explaining that the relational ethics of Ubuntu encompass humans and nature in a web of mutual care and spiritual duty), accessible at: https://books.google.com/books/about/African_Ethics.html?id=FxtPAQAAIAAJ.

[272] EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 68 (pointing out that indigenous and local communities play a key role as custodians of biological diversity and take responsibilities for the well-being and sustainability of sacred animals), accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf.

[273] A 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) at Section 4, accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/Animal-Law-Project-Manifesto-2024.pdf.

limited, anthropocentric interpretation that restricts moral duties of care solely to human relationships, ignoring the deep African philosophical understanding that human humanity is inextricably embedded in an interdependent relationship with the entire community of life.[274]

Customary African philosophies do not draw the same sharp distinction between humans and Nature that is common in Western thought.[275] Humans and wild animals are not separate; they are family. This is the heart of ***Ubuntu*** and ***Ukama*** (cosmic relatedness). In practice, customary law already has built-in systems to protect individual animal lives out of reverence, not profit. This relational ethic is beautifully encapsulated in Sotho-Tswana cosmology (*bana bathari entsho*), which holds that Modimo (God) brought humans and animals out of the Earth simultaneously from a sacred emergence site (*Ga-Ditshweni* or *Ga-Loowe*), establishing an original communal unity and kinship.[276] Under this cosmology, a human being only achieves true personhood (*motho*) by participating in respectful, harmonious relationships with other sentient co-inhabitants of the land, all of whom possess *seriti*, meaning active life force or aura.[277]

This relational understanding is operationalised through the ancient customary practice of totemism (*liboko/seboko*), where surnames and clan emblems (*seano/diano*) connect human identity directly to wild animal species, such as the Crocodile (*Kwena*), Elephant (*Tlou*), Lion (*Tau*), or Baboon (*Tshwene*).[278] Customary law strictly prohibits members of a clan from killing, harming, or consuming

[274] The White Paper (2023), at Section 1 (Definitions of Ubuntu), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf. See also Ramose MB, "Ecology Through Ubuntu" (2009) in Murove MF (ed), *African Ethics: An Anthology of Comparative and Applied Ethics* (University of KwaZulu-Natal Press) at page 308, accessible at: https://philpapers.org/rec/RAMETU.

[275] The White Paper (2023), at Section 1 (Definitions of Ubuntu), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf. See also Mogobe B. Ramose, "Ecology Through Ubuntu" (2009) in Murove M.F. (ed), *African Ethics: An Anthology of Comparative and Applied Ethics* (University of KwaZulu-Natal Press) at page 308, accessible at: https://books.google.com/books/about/African_Ethics.html?id=FxtPAQAAIAAJ.

[276] Kgari-Masondo MC, "Sotho-Tswana mythic animals: Stratagem for environmental conservation" (2014) 71 *New Contree* 115 at pages 116–120, accessible at: https://www.researchgate.net/publication/340352839_Sotho-Tswana_mythic_animals_Stratagem_for_environmental_conservation.

[277] Kgari-Masondo MC, "Sotho-Tswana mythic animals: Stratagem for environmental conservation" (2014) 71 *New Contree* 115 at page 127. See also Setiloane GM, *African Theology: An Introduction* (1986) at page 13, accessible at: https://www.researchgate.net/publication/340352839_Sotho-Tswana_mythic_animals_Stratagem_for_environmental_conservation.

[278] Kgari-Masondo MC, "Sotho-Tswana mythic animals: Stratagem for environmental conservation" (2014) 71 *New Contree* 115 at page 128, accessible at: https://www.researchgate.net/publication/340352839_Sotho-Tswana_mythic_animals_Stratagem_for_environmental_conservation. See also Phaka et al., "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192, accessible at: https://doi.org/10.1080/21564574.2023.2261021.

their totem animal, requiring that individual animals be treated with the same care and respect due to a family member.[279]

Similarly, Xhosa religious beliefs recognise the thicket forest (*ihlathi lesiXhosa*) as a sacred space where ancestral spirits (*izinyanya*) communicate with the living using individual animal messengers (*izithunywa*), which include swallows (*iinkonjane*), wagtails (*iicelo*), or brown mole snakes (*amajola*).[280] Customary taboos (*go hlompa*) protect these individual animals and their nesting sites from harm, functioning exactly like NEMA's statutory precautionary principle based on cultural reverence and respect.[281]

Although the Draft includes FPIC, co-management, representation, and legal-support mechanisms, it does not meaningfully leverage a powerful, community-led conservation mechanism that has protected individual animal life for millennia.[282] Decolonising our conservation model requires the DFFE to formally integrate these relational African philosophies, which encompass totemism, *Ukama*, and the late Archbishop Desmond Tutu's concept of "*Eco-Ubuntu*",[283] into national targets, ensuring that customary conservation practices are legally protected and supported by provincial environmental ordinances. Rather than treating these philosophies as decorative preamble text, the final NBSAP must empower traditional councils under customary law to co-manage biodiversity, integrating sacred and

[279] Kgari-Masondo MC, "Sotho-Tswana mythic animals: Stratagem for environmental conservation" (2014) 71 *New Contree* 115 at page 129, accessible at: https://www.researchgate.net/publication/340352839_Sotho-Tswana_mythic_animals_Stratagem_for_environmental_conservation. See also Phaka et al., "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192, accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[280] Cocks ML, Dold T, and Vetter S, "'God is my forest' – Xhosa cultural values provide untapped opportunities for conservation" (2012) 108 *South African Journal of Science* 145 at page 145, accessible at: http://dx.doi.org/10.4102/sajs.v108i5/6.880. See also ALRSA, *Submission on the Draft National Elephant Heritage Strategy* (May 2024) at page 27, accessible at: https://www.animallawreform.org/wp-content/uploads/2025/03/ALRSA-Submission-Draft-National-Elephant-Heritage-Strategy.pdf.

[281] Phaka et al., "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192 (describing how local customary rules and taboos parallel the precautionary principle in modern environmental law), accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[282] MS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 68, accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf. See also Phaka et al., "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192, accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[283] Tutu D, *Eco-Ubuntu*, accessible at: http://www.enviropaedia.com/topic/default.php?topic_id=336. See also Murove MF, "An African environmental ethic based on the concepts of ukama and ubuntu" (2009) in Murove MF (ed), *African Ethics: An Anthology of Comparative and Applied Ethics* (University of KwaZulu-Natal Press) 315 at page 316, accessible at: https://philpapers.org/rec/MURAAE

totemic species protections directly into provincial environmental ordinances and conservation targets.[284]

- **Proposed Text Amendment to the Thematic Area 12 National Target:** "*By 2035, ensure the full, equitable, and inclusive representation of indigenous peoples and local communities, including their knowledge systems, in biodiversity decision-making, formally integrating customary ecological laws - including totemic protections, relational Ubuntu, and indigenous animal stewardship systems - into national, provincial, and local biodiversity co-management frameworks.*"[285]
- **Proposed National Indicators and Baselines for Thematic Area 12:**
  - *Indicator:* Number of collaborative biodiversity co-management agreements between provincial environmental authorities and traditional councils that formally integrate and legally enforce totemic and customary species protections.
  - *Baseline: Not established in the Draft. DFFE should undertake a baseline assessment of existing statutory recognition of customary conservation laws, totemic systems, traditional councils, and community co-management arrangements.*[286]

PART C: (SELECTED) OTHER SUBSTANTIVE SUBMISSIONS RELATING TO THE DRAFT NBSAP

I. TERMINOLOGY REFORM AND DEFINING "INTRINSIC VALUE"

South Africa's environmental legislation and policy have historically been formulated through an archaic, anthropocentric lens that reduces sentient animal life to "*property*".[287] Living beings are treated

[284] Sections 211 and 212 of the Constitution of the Republic of South Africa, 1996, which establish the legal recognition and status of customary law and traditional authorities. See also Phaka et al. "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192 (detailing how South Africa's customary law provisions afford local traditional councils the legal authority to govern, monitor, and protect totemic species and their habitats), accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[285] Suggested amendment above to the Thematic Area 12 national target, which gives effect to KMGBF Targets 21–23.

[286] EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 105 (criticizing the compartmentalized and isolated state management that excludes indigenous ecological co-management), accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf. See also Phaka et al. "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192 (noting that customary laws currently lack formal, statutory recognition within mainstream provincial environmental planning), accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[287] See ALRSA, *Submission on the Draft National Environmental Management: Biodiversity Bill* (26 July 2024) at pages 22-23 (noting that the Department's terminology continues to perpetuate an outdated, colonial paradigm that views nature strictly as a commercial resource), accessible at: https://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NEMBA-Bill-26-July-2024.pdf. See also EMS Foundation and

as assets. Within the Draft NBSAP's sustainable-use framework, wild animals are principally discussed through the management, harvest, use, and trade of wild species, without consistent recognition of individual sentience or intrinsic value. Across the wider biodiversity regulatory and policy framework, the Department also employs sterile, detached descriptors such as "game," "specimens," "off-takes," "quotas," "harvests," "stocks," and "derivatives" when referring to living creatures.[288] This language sanitises suffering.[289] It objectifies and disembodies individual animals, fostering a deliberate collective forgetfulness about who is being traded, where they are taken from, and the severe physical and psychological trauma inflicted by commercial markets. It codifies exploitation.

Terms such as "faunal biological resources" and "faunal biodiversity", where used in the wider regulatory and policy framework, also fail on their own to reflect animal sentience. Although these expressions do not appear to be the Draft NBSAP's principal terminology, their wider use may reinforce an instrumental framing unless accompanied by express, measurable recognition of animal sentience, well-being and intrinsic value.[290][291]

The use of terms like "control" and "use" in departmental frameworks remains highly problematic. This terminology implies a utilitarian approach that prioritises human convenience over the inherent value of other species. It reflects a mindset of domination. Under South Africa's current regulatory framing, if an animal is not economically valuable as a resource, its well-being and life are treated as though they do not matter. This perspective must be addressed and corrected. The principles of conservation, biodiversity, and ethical treatment stand independently of, and must take precedence over, any economic considerations.[292]

ALRSA, *Joint Submission on the Draft National Biodiversity Framework* (May 2021) at pages 49-50, accessible at: https://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf.

[288] See Section 1 of NEMBA, read with the Threatened or Protected Species (TOPS) Regulations, 2007, which endlessly apply terms like "specimen" and "restricted activity" to living, sentient animals.

[289] See ALRSA, *Submission on the Draft National Biodiversity Economy Strategy (NBES)* (8 April 2024) at page 29, accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[290] See ALRSA, *Submission on the Revised Draft White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity* (11 November 2022) at page 57 (detailing how the term "faunal biological resources" was introduced as a compromised, half-measure that fails to legally acknowledge animal sentience or respect their intrinsic worth as individuals), accessible at: https://www.animallawreform.org/wp-content/uploads/2023/01/ALRSA-Submission-on-Revised-Draft-White-Paper.pdf.

[291] Section 2(a)(iiA) of NEMBA, as amended by Section 45 of 2022 NEMLAA.

[292] See *NSPCA 2016* at para 57 (where the Constitutional Court held that the rationale for animal protection has shifted away from human sensibilities to placing "intrinsic value on animals as individuals."), accessible at: https://www.saflii.org/za/cases/ZACC/2016/46.html. Read with the *Lion Bone Case* at para 74 (confirming that animal welfare and conservation are intertwined values that cannot be arbitrarily separated in environmental decision-making), accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html .

To resolve these systemic contradictions and establish legal certainty, the final NBSAP must formally define the term "***intrinsic value***". Although the term appears in national policy, it remains dangerously undefined, allowing commercial actors to interpret conservation through a purely extractive lens. True conservation precedes economic use. Aligning the NBSAP with the eco-centric developments in South African jurisprudence requires a clear, statutory definition of this core principle.

We therefore propose the following definition for inclusion in the NBSAP's glossary:

> *"intrinsic value" means and recognises that all life and natural entities, including individual animals, have inherent worth. Every species and individual has a value and role in nature, and consequently has a right to exist and flourish, and must be protected, whether or not such entity is known to be useful or beneficial to humans.*[293]

II. RETHINKING "SUSTAINABLE DEVELOPMENT" AND "SUSTAINABLE USE"

In Section 4.4, the Draft NBSAP adopts the core guiding principle of "*Sustainable Development*", defining it as the integration of social, economic, and environmental factors to ensure that development serves present and future generations.[294] While this definition appears balanced, environmental management authorities have historically interpreted Section 24 of the Constitution through a heavily compromised, anthropocentric lens.[295] Ecological integrity is routinely subjugated to short-term economic maximisation.[296] This utilitarian model treats non-human sentient life as mere "natural resources," "biological assets," or "specimens" to be conserved collectively only to serve as a resource base for human development.[297]

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[293] See ALRSA, *Submission on the Draft Biodiversity Bill* (26 July 2024) at page 24. This definition is adapted from ALRSA's previous submissions on the Revised White Paper (11 November 2022) at page 36, and is grounded in the eco-centric scholarship of Joan E. Schaffner, "Value, wild animals and law" in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar 2019) at page 10, accessible at: https://www.e-elgar.com/shop/gbp/animal-welfare-and-international-environmental-law-9781788113939.html

[294] *Draft NBSAP (2026–2035), section 4.4 (Principles) at internal page 45 (Government Gazette page 49).*

[295] See Melanie Murcott, "Transformative Environmental Constitutionalism's Response to the Setting Aside of South Africa's Moratorium on Rhino Horn Trade" (2017) 6 *Journal of Human Rights and the Environment* 84 at 89-91 (detailing the historically anthropocentric orientation of South South African environmental authorities), accessible at: https://www.mdpi.com/2076-0787/6/4/84.

[296] See ALRSA, *Submission on the Draft National Biodiversity Economy Strategy (NBES)* (8 April 2024) at pages 21-24 (critiquing the narrow focus on "inclusion" as purely commercial and consumptive participation in animal-intensive industries), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[297] See EMS Foundation and ALRSA, *Joint Submission on the draft National Biodiversity Framework* (May 2021) at pages 49-50 (illustrating how terms such as "natural resources" and "sustainable use" function as euphemisms to entrench the commodification of sentient beings), accessible at: ttps://www.animallawreform.org/wp-content/uploads/2021/05/EMS-ALRSA-Biodiversity-Framework-Submission-Final.pdf

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By continuing this legacy, the Draft NBSAP operates in a conceptual silo.[298] It ignores the complex reality of wild animal sentience and reduces living ecosystems to financial portfolios. For South Africa's new environmental paradigm to succeed, individual well-being must be recognised as a core, mandatory component under the environmental element of sustainable development.[299]

Animal protection is not an optional concern.[300] It is a constitutional necessity that must be integrated directly into the primary balancing of ecological, social, and economic factors under Section 24.[301]

An overly economic interpretation and application of sustainable use remains structurally limited. It systematically excludes non-instrumental, existence, and intrinsic values.[302] This is a fatal strategic flaw. Values drive conservation behaviour. Human animals protect that which we value, and the level of legal protection we afford is a direct function of the type and measure of value we assign.[303]

If the Draft NBSAP continues to portray animals solely as commodities, property, or tradeable assets under the "biodiversity economy", the law will fail to protect them from the systemic exploitation and habitat degradation that raw commercialism inevitably unleashes.[304]

This necessary reconfiguration is strongly supported by the international and domestic evolution of biodiversity law. The parent treaty of South Africa's biodiversity framework, the CBD, begins its Preamble by declaring itself *"Conscious of the **intrinsic value** of biological diversity..."*.[305] The intrinsic

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[298] See ALRSA, *Draft Submission on the Draft NBSAP (2026-2035)* at page 18 (noting that the target architecture remains trapped in a colonial, aggregative model that treats sentient living beings as mere economic resources or biophysical units), accessible at: http://www.animallawreform.org/wp-content/uploads/2024/07/ALRSA-Submission-NBES-Draft-Strategy.pdf.

[299] See Werner Scholtz, "'Ethical and humane use', intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use" (2020) 30 *Review of European, Comparative & International Environmental Law* 349 at 355 (arguing that the recognition of intrinsic value ensures wildlife welfare deserves consideration under the environmental element of sustainable development), accessible at: https://doi.org/10.1111/reel.12360.

[300] The White Paper (2023), Goal 2 (Goal on Sustainable Use, stating that "the conservation of wild animals and their well-being are intertwined values"), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[301] See the *Lion Bone Case* at para 41 (confirming that animal welfare is a relevant consideration forming part of the environmental pillar of sustainable development under Section 24 of the Constitution), accessible at: https://www.saflii.org/za/cases/ZAGPPHC/2019/337.html

[302] See Werner Scholtz, "'Ethical and humane use', intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use" (2020) 30 *Review of European, Comparative & International Environmental Law* 349 at 356, accessible at:

[303] See Werner Scholtz, "'Ethical and humane use', intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use" (2020) 30 *Review of European, Comparative & International Environmental Law* 349 at 356, accessible at: https://doi.org/10.1111/reel.12360.

[304] ALRSA, *Draft Submission on the Draft NBSAP (2026-2035)* at page 12.

[305] Preamble of the Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993), available at: https://www.cbd.int/doc/legal/cbd-en.pdf.

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worth of life precedes its market utility. Furthermore, under Practical Principle 11 of the CBD's Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, state parties are explicitly required to *"promote more efficient, ethical and humane use of components of biodiversity."*[306]

By pairing this international treaty mandate with South Africa's domestic NEMBA well-being amendments, and Constitutional Court jurisprudence acknowledging the sentience and intrinsic value of animals, we can establish a binding legal standard.[307] ***Ecologically*** sustainable use under South African law is conditional upon that use being "humane".[308]

To be clear, this does not imply that all forms of pain and suffering of individual wild animals can or must be prevented in all instances, nor does it justify human intervention in natural wilderness processes.[309] Humans are not causally responsible for natural suffering within self-regulating ecosystems.[310] It does, however, dictate that wildlife cannot be used merely as a means to satisfy human interest.[311] Under the Draft NBSAP, any proposed anthropogenic harm or commercial exploitation must carry a strict, legally enforceable burden of proof placed on the proposer of the harm. The proposer must prove a compelling socio-ecological justification and demonstrate that their methods are strictly humane.

PART D: CONCLUSION & (SELECTED) RECOMMENDATIONS

To assist the DFFE and the NBSAP Directorate with practical implementation, ALRSA has consolidated suggested target text amendments and new indicators into a standardised monitoring blueprint, which may be directly imported into the final NBSAP National Action Plan.

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[306] Conference of the Parties to the Convention on Biological Diversity, Decision VII/12, *Sustainable Use (Article 10)*: Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, Practical Principle 11, Operational Guidelines.

[307] Section 2(a)(iiA) of NEMBA, as amended by Section 45 2022 NEMLAA.

[308] ALRSA, *Draft Submission on the Draft NBSAP (2026-2035)* at page 18.

[309] The White Paper (2023), Goal 2 (stating that a humane duty of care "does not imply that natural processes such as predation or competition should be prevented or interfered with"), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/202309/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[310] See Werner Scholtz, "'Ethical and humane use', intrinsic value and the Convention on Biological Diversity: Towards the reconfiguration of sustainable development and use" (2020) 30 *Review of European, Comparative & International Environmental Law* 349 at 359 (noting that humans are not causally responsible for natural suffering within self-regulating ecosystems), accessible at: https://doi.org/10.1111/reel.12360.

[311] Scholtz (2020) 30 *RECIEL* 349 at 359, accessible at: https://doi.org/10.1111/reel.12360.

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NBSAP Target Block	Proposed Action / Text Amendment	Proposed National Indicator
Thematic Areas 4 and 5: KMGBF Target 4	Develop and publish national norms and standards for the ethical and humane management of human-wildlife coexistence, with specific emphasis on non-lethal, compassion-based conflict mitigation and the formal protection of individual animal well-being.[312]	Number of provincial and municipal human-wildlife conflict policies and bylaws aligned with national wild animal well-being standards.[313]
Thematic Area 6: KMGBF Targets 5, 9 and 16	Phase out highly exploitative, low-welfare practices that pose severe biosecurity and ecological risks, including captive lion breeding, intensive wildlife domestication, and live animal exports by sea, while mandating the 5-Dimensional Sustainability Assessment Framework (5DSAF) as a national standardized audit protocol for all commercial wildlife ranching.[314]	Reduction in the number of active permit holders for captive predator breeding and a zero-quota on commercial live wildlife exports by sea.[315]

[312] The White Paper (2023), at Goal 2 (which recognises animal well-being as an intertwined conservation value. This proposed standard carries forward the statutory well-being definition under Section 1 of NEMBA, as amended by the 2022 NEMLAA), accessible at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/sab_whitepaper.biodiversitysustainableuse_g48785gon3537.pdf.

[313] *Submission of National Targets towards the Implementation of the Kunming-Montreal Global Biodiversity Framework* (2024), National Target 4 (establishing the binding mandate to "develop and implement a national policy for human-wildlife conflict that identifies areas and species involved in human-wildlife conflict and sets forward effective actions to reduce human-wildlife conflict in a participatory manner with impacted communities" by 2030), accessible at the CBD Online Reporting Tool: https://ort.cbd.int.

[314] For the underlying policy and scientific mandate of the 5-Dimensional Sustainability Assessment Framework (5DSAF), see D. Roe et al., *Five-Dimensional Sustainability Assessment: a Tool for Assessing if Wild Species Use Is Sustainable, Legal and Safe*, IIED, London (2025), accessible at: https://www.iied.org/22609iied. See also ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at page 15, criticizing the ecological and animal welfare threats of captive breeding and sea trade.

[315] ALRSA, *Submission on the Draft National Biodiversity Economy Strategy* (8 April 2024) at page 54, highlighting live export by sea as an unsustainable and inhumane commercial practice.

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NBSAP Target Block	Proposed Action / Text Amendment	Proposed National Indicator
Thematic Area 1: KMGBF Target 12	Amend urban planning guidelines to mandate multi-species habitat connectivity, officially designating pollinators and other urban fauna (including indigenous bees, bats, and sunbirds) as protected co-inhabitants and phasing out cosmetic chemical pesticides in urban blue/green spaces, drawing inspiration from Curridabat's 'Ciudad Dulce' model.[316]	Number of metropolitan municipalities with integrated biodiversity-inclusive urban planning frameworks adopting Ecological Performance Standards (EPS).[317]
Thematic Area 1: KMGBF Target 14	Amend the EIA Regulations under NEMA to establish mandatory Wild Animal Well-being Impact Assessments (AWWIAs) as threshold specialist criteria for all development authorisations, screening decisions, and NEMA listed activities that directly impact sentient animal populations.[318]	Percentage of EIA applications impacting faunal biodiversity where a specialist animal well-being impact assessment was conducted prior to authorisation.[319]

[316] See P Greenfield, '"Sweet City": The Costa Rica suburb that gave citizenship to bees, plants and trees', *The Guardian* (29 April 2020), available at: https://www.theguardian.com/environment/2020/apr/29/sweet-city-the-costa-rica-suburb-that-gave-citizenship-to-bees-plants-and-trees-aoe.

[317] See Durban Northern Spatial Development Plan Northern spatial planning guidelines (April 2015), implementing biomimicry-based Ecological Performance Standards (EPS). See also National targets -FINALAPPROVED (1).docx, Target 12, requiring open space management to enhance mainstreaming and connection to nature.

[318] Section 2(a)(iiA) of NEMA, as amended by NEMLAA 2 of 2022, which makes animal well-being a primary objective of biodiversity management. Standalone welfare assessments are required to satisfy the "mandatory relevant consideration" threshold under Section 6(2)(e)(iii) of PAJA. See also ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at page 10, accessible at: https://www.animallawreform.org/wp-content/uploads/2026/05/ALRSA-Submission-Flexible-EIA-System.pdf.

[319] ALRSA, *Submission on the Proposed Flexible EIA System* (May 2026) at page 38 (pointing out that existing NEMA Listed Activities and screening tools omit individual animal well-being parameters), accessible at: https://www.animallawreform.org/wp-content/uploads/2026/05/ALRSA-Submission-Flexible-EIA-System.pdf.

NBSAP Target Block	Proposed Action / Text Amendment	Proposed National Indicator
Thematic Area 12: KMGBF Targets 21, 22 and 23	Formally empower local traditional councils under customary law to regulate, monitor, and enforce the protection of sacred, totemic, or culturally significant individual animals within communal lands, aligning local customary conservation with provincial environmental ordinances.[320]	Number of collaborative co-management agreements between traditional councils and provincial conservation authorities that formally integrate and legally enforce totemic and cultural species protections.[321]

Thank you for considering our Submission.

Please do not hesitate to reach out should you have any questions.

[320] See Sections 211 and 212 of the Constitution of the Republic of South Africa, 1996, which establish the legal recognition and status of customary law. See also Phaka FM, et al., "Frog and reptile conservation through the lens of South Africa's nature-based cultural practices" (2023) 72 *African Journal of Herpetology* 190 at page 192, accessible at: https://doi.org/10.1080/21564574.2023.2261021.

[321] EMS Foundation and ALRSA, *Joint Submission on the High-Level Panel on the Management of Elephants, Lions, Leopards and Rhinoceros* (June 2020) at page 68 (pointing out that local traditional authorities play a key role as custodians of biodiversity and take responsibility for totemic animal protections), accessible at: https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf