Comments on Government Notice under section 9A read with sections 99 and 100 of the National Environmental Management: Biodiversity Act, 2004 (Act No.10 of 2004)

Prohibition of the Establishment or Registration of New Captive Breeding Facilities, Commercial Exhibition Facilities, Rehabilitation Facilities or Sanctuaries for Live Specimens of African Lion (Panthera leo)

To: lionprohibition@dffe.gov.za

21 November 2023
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INTRODUCTION

The Wildlife Animal Protection Forum of South Africa (WAPFSA) is a collaborative network consisting of 30 (thirty) organisations representing the interests of wild animals and the natural environment as a vehicle with which to engage with the South African government on subject matter which includes, amongst other, wild animal protection, ethical and compassionate conservation, welfare, biodiversity loss and climate change.

South Africa is home to the world’s largest commercial lion farming industry. Lions are bred, often in appalling conditions, they are exploited for profit at every stage of their short lives.

At some facilities in South Africa cubs are removed from their mothers within a few days of their birth and are placed in the care of unsuspecting foreign and local volunteers who pay handsomely for the opportunity to look after “orphaned lions and other big cats”. Captive lions and other big cat cubs are also utilised in cub petting and various tourist interaction industries such as “walking with lions”.

When the cubs have reached the desired age and are no longer considered safe to be utilised in the tourist industry some of the lions are hunted for trophies either for the local hunting industry or for trophies that are exported to countries that condone canned lion hunting. Canned lion hunting reserves in South Africa typically have reinforced fences to prevent the lions from escaping during a hunt. Some of the lions are kept in small enclosures so that hunters with minimal skill, energy, patience or time can still successfully kill them.

The Members of WAPFSA are pleased that the Minister and the Department of Forestry, Fisheries and the Environment are finally initiating concrete steps against this distasteful industry. We encourage the South African government to do more to prevent the disturbing practices taking place at these breeding facilities.

WAPFSA members remain concerned about the trade, including live lions, the hunt and consumption of lions and all big cats and they stress the need for a just transition and re-establishment of harmonious coexistence with Nature and the protection of the web of life.

WAPFSA members support the acknowledgement of sentience in this Document and recommend that sentience is included and recognised in all DFFE policies and legislation in relation to wildlife. The inclusion of sentience is in line with the implementation of NEM:BA and the principles of wildlife well-being.

In the Draft prohibition, we noted the mention of the prohibition, of the introduction of live specimens of African lion; this therefore covers the prohibition of breeding and introducing new cubs. WAPFSA members are of the strong opinion that sentience should be referenced in this Prohibition and all the policies in relation to wildlife, underscoring the current efforts to implement principles of animal well-being as stated in NEM:BA and they stress that sentience should for no reason been removed in the finalised version of the document.

WAPFSA members would like the Draft Prohibition to properly address the issue of stockpiling, and implement the abolishment of all big cat bone stockpiles.

The prohibition to breed ALL big cats in South Africa is urgently required as currently there is a lack of effective monitoring and regulation at captive breeding facilities to monitor births, deaths transportation of live cats and the disposal of carcasses. This means that captive breeding facilities can act as a conduit for illegal and illicit trade. Similarly, prohibitions should be urgently promulgated to end the handling of, petting of and interactions with lions by humans for commercial purposes.
Trade in live lions and their derivates, as well as hunting of lions, should also be prohibited.

**SENTIENCE**

WAPFSA supports the acknowledgement of sentience: lions are “sentient and social animals, and as such, more consideration needs to be given to promoting their well-being”.

WAPFSA members recommend that sentience is included and recognised in all DFFE policies and legislation in relation to wildlife. The inclusion of sentience is in line with the implementation of NEM:BA and the principles of wildlife well-being. In the Draft prohibition, we noted the mention of prohibiting, also, the introduction of live specimens of African lion; this therefore covers the prohibition of breeding and introducing new cubs.

In 2012, a prominent international group of cognitive neuroscientists, neuropharmacologists, neurophysiologists, neuroanatomists and computational neuroscientists gathered at the University of Cambridge to reassess the neurobiological substrates of conscious experience and related behaviours in human and non-human animals and signed a declaration which stated that animals (not just vertebrates) have conscious awareness. Supporting the idea that animals are not sentient is indeed at odds with both theoretical and empirical research.

Non-human animals, particularly elephants, birds, primates, land and marine mammals, and various predators, not only have subjective experiences, including emotions, feelings, and the ability to perceive and respond to their surroundings but also display more complex cognitive abilities and social behaviour and problem-solving skills.

In addition, non-human animals should be treated considering their abilities to feel, rather than purely their intelligence. Neurobiological studies have proved, through the comparative approach with non-human animals, that we share with even the more evolutionarily distant species more than we think. Non-human animals have the ability to feel pain, pleasure, and emotions. Observations of non-human animal behaviour, both in the wild and in controlled settings, have revealed a wide range of complex behaviours related to survival, social interactions, and emotional responses.

The understanding of all non-human animal cognition and sentience has important implications for animal welfare and well-being. The notion of sentence appears in South African legislation and is mentioned in the National Norms and Standards for the management of elephants in South Africa 2008.

At the vast majority of lion breeding facilities in South Africa, the lions are bred specifically to supply the international lion bone trade. Therefore, there is no incentive for the breeder to provide the lions with satisfactory enclosures, and keep the lions healthy or in physically good condition. There is also no legislation to regulate the lion slaughterhouses and no mandatory basic welfare protocols, such that would apply to farmed animals.

The bones of the slaughtered lions may also be used to replace tiger bones in fortified tiger wine and Traditional Chinese Medicines. The illegal trade in lion bones continues to be a major ethical and administrative embarrassment for South Africa. South Africa is the largest exporter in the world of lion skeletons, bones and other body parts to countries that are at the nexus of the illegal wildlife trade. The South African lion bone trade has strong links to international criminal networks, and is providing a legal
channel for the trafficking of illegal big cat parts, contributing to the demise of wild big cat populations globally.

There is a constant tsunami of domestic and international criticism of South Africa with many conservation bodies, scientists and academics, NGOs, public figures and even trophy hunting organisations affirming their distaste for an industry that cannot be supported scientifically, or from tourism, economic, conservation, ethical or welfare perspective. South Africa’s lion bone trade continues to damage Brand South Africa’s image and the tourism sector. South Africa continues to face an onslaught of bad publicity because of all the aforementioned negative elements and the ethical considerations involved with the lion bone trade.

The legal export quota of lion (or other big species cat) creates and promotes parallel illegal markets for illegally obtained lion body parts to be laundered through legal markets. The legal export of lion bones from the canned lion industry allows the legal export of illegally killed wild lion bones to continue, it is impossible to differentiate between the body parts of a wild lion from a captive-bred lion. If these practices are allowed to continue upon the insistence on ecologically sustainable development policy, the future viability of the wild lion populations is at risk and as such these practices should be halted with immediate effect.

The stockpiling of lion bones undermines efforts to combat the illegal wildlife trade. Illegally acquired lion bones can be laundered through the legal system, therefore stockpiling is an unsustainable and detrimental use of so-called natural resources. When stockpiled wildlife body parts enter the market, this can lead to legal and illegal trade, locally and internationally, via organized crime and smuggling networks. This makes it difficult to enforce bans.

WAPFSA does not support the trade in lion bones which involves serious human and non-human animal welfare and health issues including the risk of spreading zoonotic diseases that can affect both humans and other animals. According to a 2023 investigative report, big cats are still slaughtered under unclear conditions and their bones are stockpiled in lion farms across South Africa.

WAPFSA members are of the view that the Draft Prohibition must properly address the issue of stockpiling, and implement a ban on the stockpiling of all big cat bones and carcases.

WAPFSA welcomes and supports the Honourable Minister Creecy’s announcement of the consultation process concerning her intention to prohibit the establishment or registration of new captive breeding facilities, commercial exhibition facilities, rehabilitation facilities or sanctuaries and the introduction of new live specimens (therefore breeding for introducing cubs or any other import) in respect of live specimens of African lion (Panthera leo) and the keeping of live specimens of African lion (Panthera leo) in other new controlled environment.

This is an important and necessary first step in the process to stop the growth of the lion breeding industry and lion bone trade in South Africa.

This commentary briefly navigates the history and timeline of the demise of this industry and includes the contribution that members of WAPFSA have made to uncover the truth about South Africa’s captive lion industry and the lion bone trade.

WAPFSA members have, for many years, provided solutions and offered ethical and legal recommendations for the dismantling of the captive lion industry in the best interests of South Africa’s conservation reputation.
DEFINITIONS

WAPFSA members note that most of the definitions included in the proposed Prohibition refer to the new TOPS regulations.

WAPFSA has historically requested a review of the term’s sanctuary and rehabilitation facilities. Such facilities should be licenced through an accreditation system. WAPFSA members support the definitions of

1. rehabilitation facility
2. sanctuary

as provided by the Pro Elephant Network’s team of elephant specialists on the occasion of their submission to the Draft Policy Position on the Conservation and Ecologically Sustainable Use of Elephant, Lion, Leopard, and Rhinoceros, in July 2021.

WAPFSA members support, with some additions (in red) the DFFE definition of “rehabilitation facility” as proposed in the Draft TOPS Regulations currently open for public comments:

“Rehabilitation facility” -means a facility equipped for the temporary keeping of a live –

a. Sick, injured or captive specimen suitable for release, for the purpose of providing treatment of and care to such specimen, with the overall intent to rehabilitate and release such specimens, but excludes a veterinarian practice or a veterinary academic hospital, or

b. Young orphan specimen for rearing purposes, with the overall intent to rehabilitate and release such specimens, but excludes a veterinarian’s practice or a veterinary academic hospital.

In relation to sanctuaries, WAPFSA members are cognisant of the proliferation of exploitative facilities in South Africa, which mislead unaware tourists by calling themselves sanctuary, orphanage or rescue centre and then offering commercial and poor-welfare and well-being-related activities instead. WAPFSA cannot support the generic definition of Sanctuary as proposed in the Draft TOPS Regulations unless some elements are included (see below in red):

“Sanctuary” -an accredited, non-commercial facility that -

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

b. provides a safe environment where an animal can express his or her natural physical, social and cognitive behaviour to the maximum extent possible while benefiting from the best possible care.

c. Prevents and excludes breeding, trading, public performances and public tactile activities (walking, riding, touching, feeding).

PERTINENT ISSUES FOR CONSIDERATION

The International Community Import Bans of Lion Trophies from Captive Lions in South Africa

The vast majority of lion hunting trophies imported into the United States of America in the years preceding 2016 were from the captive lion breeding industry in South Africa. President Obama’s forward-thinking environmental conservation efforts extended to landscapes, the ocean, creatures and plants around the United States of America. His efforts brought about the successful recovery of more species of wildlife than
any other US administration to date. A vital tool in ongoing efforts to protect American wildlife and the natural environment is the Endangered Species Act which was signed into law in 1973. In 2015 the US Fish and Wildlife Service classified Panthera leo melanochaita as threatened. The listing gave the agency the authority to regulate lion trophy imports.

Dan Ashe, former Director of U.S. Fish and Wildlife Service, announced on October 20th 2016 that the United States would no longer allow the import of lion trophies from the captive lion industries in South Africa. The protection of lions in terms of the changes made to the Endangered Species Act by President Obama no longer allowed the US to issue such import permits. Clear evidence is required to demonstrate a conservation benefit to the long-term survival of the species in the wild, in the case of lions taken from the captive industry in South Africa the burden of proof could not be met. Many Americans, he said, whether they hunt or not, believe that hunting captive-bred lions is unethical.

Australia banned canned lion trophy hunting in 2015. Between 2008 and 2012 nearly 1500 lion hunting trophies were imported into the European Union with the majority from South Africa where most hunted lions are bred in captivity, as a result in 2015 the European Union imposed stricter hunting trophy imports.

At the 2016 International Union for Conservation of Nature’s World Conservation Congress in Hawaii, the IUCN called on the South African government to terminate the practice of hunting captive-bred lions. Another setback for the captive lion trophy hunting industry occurred in 2018 when Safari Club International adopted a policy that “opposes the hunting of African lions bred in captivity because these types of hunt do not meet the fair chase requirements proudly upheld by the sporting community.”

The Dallas Safari Club has also rejected the practise of breeding lions for captive lion trophy hunting “It is not a practise that is in keeping with its values of ethical and fair chase”. Affiliated hunting associations in South Africa, Namibia and Norway have condemned the captive breeding of lions for hunting.

After several on-site meetings with SAHRA (South African Heritage Resource Agency), the GWLPT first presented to the Council of Provinces in 2008 in Parliament, calling for the White lion to be protected as a...
National Heritage animal of great cultural and conservation importance, and it was gazetted that Parliament supports the case for White Lion protection by legislation (Gov Gazette, 20 Feb 2008).

Between 2008 and 2016 South Africa exported more than 6000 lion skeletons. In order to obtain a clear understanding of the extent of the captive big cat breeding industry in South Africa, and to obtain intricate irrefutable information with verifiable related data concerning international lion bone trade, the WAPFSA EMS Foundation and Ban Animal Trading carried out extensive investigations over an eighteen month period in South Africa and Asia. The culmination of this exhaustive research was published in a Report entitled The Extinction Business: South Africa’s Lion’s Bone Trade this report has been widely acknowledged locally and abroad to critical acclaim.

The recommendations after the investigation were concluded, which were published in the Report in 2018, included the following:

1. Place a zero-export quota for lion and other big cat body parts for commercial purposes, including from captive sources.
2. Undertake a forensic investigation into the financial affairs of all lion breeders and ‘lion’ bone traders.
3. Restrict the keeping and breeding of big cats.
4. Review and improve animal protection and welfare legislation.
5. Ensure that animal protection, welfare, care and respect are included in the appropriate environmental legislation, particularly in relation to the issuing of permits for the keeping, sale, hunting and exporting of wild animals and body parts.
6. Convene a stakeholder meeting to discuss the dismantling of the captive big cat industry, including experts from the fields of animal welfare, sanctuary management and forensics, as well as NGOs.
7. Undertake targeted intelligence-led enforcement operations in cooperation with China, Laos, Thailand and Vietnam in order to dismantle the criminal networks involved in the transnational lion and tiger trade.
8. Ensure transparency and assist monitoring by placing copies of CITES permits in the public domain so that NGOs monitoring the wild animal trade have access to permit applications so that they can object if and when appropriate and where there is non-compliance.
9. Address any CITES legal oversights and amend the relevant gaps in regulation by strengthening national legislation, and the enforcement thereof.

**Parliamentary Portfolio Committee Colloquium on Captive Lion Breeding for Hunting and the Bone Trade**

One of the recommendations of the Extinction Business Report was for the South African government to convene a stakeholder meeting to discuss the dismantling of the captive big cat industry, including experts from the fields of animal welfare, sanctuary management and forensics, as well as NGOs.

A month after the release of the Extinction Business Report, the Portfolio Committee of Environmental Affairs conducted a two-day colloquium on the Captive Breeding of Lions for Hunting and the Lion Bone Trade on the 21st and 22nd of August 2018 in the Parliament of South Africa.

The EMS Foundation and Ban Animal Trading presented the outcomes of their eighteen-month investigation into South Africa’s role in the international lion bone trade which was summarized in their report titled *The Extinction Business: South Africa’s Lion Bone Trade at the Colloquium*.

At the Colloquium, it was requested that the honourable members of the Port Committee of Environmental Affairs undertake the following:

a. Place an immediate ban on the lion and other Big Cat bone trade for commercial purposes, including from captive sources. This needs to be applied nationally and provincially (Provinces need to be instructed not to issue any CITES export permits for lion bones or skeletons. Included in this ban should be the destruction of all Big Cat bone stockpiles.

b. Bring the criminal aspects of this trade to the attention of other relevant Parliamentary Committees and authorities to ensure that a forensic investigation and financial tracking of the industry is undertaken.
c. Urgently ensure that animal protection, welfare, care and respect are included in the appropriate environmental legislation, particularly in relation to the issuing of permits for the keeping, sale, hunting and exporting of wild animals and their body parts.
d. Close down the rogue Big Cat captive industry.
e. Instruct DEA as a matter of urgency to provide a complete and audited list of all Big Cat breeding and keeping facilities nationally, and to make this list publicly available.
f. Instruct DEA to convene stakeholder meetings to discuss the dismantling of the captive Big Cat industry, including experts from the fields of animal welfare, sanctuary management and forensics, as well as NGOs.
g. Convene a Colloquium on “sustainable use”.

Adoption by National Assembly of Portfolio Committee Report
On the 6th of December 2018, The Portfolio Committee on Environmental Affairs welcomed the adoption of the Report of the Colloquium on the Captive Lion Breeding for Hunting in South Africa: Harming or Promoting the Conservation Image of South Africa in the National Assembly.

There was an overwhelming consensus from the local and international stakeholders who participated in the colloquium that South Africa must bring an end to the controversial practice that this threatening to harm the proud conservation image of the country and Brand South Africa. The committee unanimously made certain pertinent observations and resolutions to restore the image of a pioneering conservation nation, with positive socio-economic spin-offs for all South Africans that far outweigh what the Captive Lion Industry generates.

The Parliamentary Portfolio Committee concluded that the captive lion breeding industry offered no conservation value and called on the Department of Forestry Fisheries and the Environment, as a matter of urgency to initiate a policy and legislative review of the captive breeding of lions for hunting and the lion bone trade with a view to putting an end to this practice.

A high level panel of experts would be appointed to conduct a policy review on Captive Breeding of Lions for Hunting and for the Lion Bone Trade. Minister Creecy explained in a speech that “given that there were a number of other burning issues related to other iconic species such as rhino, elephant, leopard the department decided to include these in the terms of reference of the Panel in order to get a holistic view of the pertinent issues.”

Gauteng High Court Judgement
On the 26th of June 2019, Judge Kollapen delivered a Judgement in the matter between the Applicant the National Council for the Society for the Prevention of Cruelty to Animals and the Respondent the Minister of Environmental Affairs in relation to export decisions in June 2017 and June 2018 for Setting the Quota for the Trade in Lion Bone Derived from the Captive Breeding Operations.

This judgement determined that South Africa’s 2017 and 2018 lion export skeleton quotas were unlawful and constitutionally invalid, although the exports under those quotas have already been made. The judgment also strongly rejected the view that “adaptive management” of wild animals can arbitrarily be divorced from ethics.

The Judge noted that the way in which the 2017 and 2018 quotas were set had ongoing implications for how conservation decisions were taken. He ruled that the treatment of lions in captivity was an environmental issue and its relationship with the commercial activities that arise from its operations (lion bone exports) was
“inextricably linked to the constitutional issue of what may constitute the elements of the right to an environment and the right to have it protected for the benefit of this and future generations that Section 24 of the Constitution articulates”.

Kollapen referenced the 2016 judgment in the NSPCA case against the Minister of Justice and Constitutional Development, which stated 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”.

In this respect, the canned hunting of lions was unanimously seen as “abhorrent and repulsive” due to the animals’ suffering. Given the integrative nature of welfare and conservation, Judge Kollapen ruled that while the minister may technically be right that the welfare mandate for lions in captivity resides substantially with the Department of Agriculture, this was different to the obligation to consider welfare issues in conservation decisions. The latter resides in the minister of environment, especially as lions in captivity constitute part of the country’s biodiversity challenge.

The judge further noted that it was “inconceivable that the State Respondents could have ignored welfare considerations of lions in captivity in setting the annual export quota”. It was “illogical, irrational and against the spirit of Section 24 and how our courts have included animal welfare concerns in the interpretation of Section 24” to signal that South Africa endorses a legal lion bone trade but ignores the conditions under which lions are kept. He, therefore, declared that the decision to enact a quota in 2017 and 2018 was “unlawful and unconstitutional”.

Pivotal to the judgement was that it places the onus on the department to take the animals’ welfare into consideration when making decisions concerning them.

It was declared that the Minister’s decision to set the quota for the exportation of lion bone of 800 skeletons which was established on the 28th June 2017, was unlawful and constitutionally invalid. Thereafter, it was declared that the Minister’s decision to set the quota for the exportation of lion bone of 1500 skeletons which was determined on the 7th of June 2018 and publicly announced on the 16th of July 2018 was “unlawful and constitutionally invalid.”

**High Level Panel of Experts Policy Review**

The Parliamentary Environment Portfolio Committee concluded that the captive lion breeding industry offered no conservation value and called on the Department of Forestry Fisheries and the Environment, as a matter of urgency, to initiate a policy and legislative review of captive breeding of lions for hunting and the lion bone trade with a view to putting an end to this practice.

The first step to initiate a policy and legislative review of the captive breeding of lions and the lion bone trade occurred a year later, in October 2019, when Minister Barbara Creecy, appointed a High Level Panel of Experts to Review the Policies, Legislation and Management Regarding the Breeding, Hunting, Trade and General Handling of Elephants, Rhinos and Leopards.

The EMS Foundation and Animal Law Reform prepared a joint submission to the High Level Panel of experts. The authors of this submission reminded the members of the High-Level Panel that as of 6 August 2019, the government is legally obliged to consider animal welfare in all its wildlife conservation decisions. The submission laid out key problematic issues that the Minister and DFFE could potentially face in relation to the lion bone trade:

1. Jurisdictional issues
i. between the DEFF and the Department of Agriculture, Rural Development and Land Reform (DARDLR) respectively;

ii. between national Government and provincial government; and

iii. between the provinces themselves.

2. Industry self-regulation
3. Enforcement
4. Permitting requirements
5. Lack of requirements to start a business
6. Failure to consider statements of the court
7. Failure to follow PCEA recommendations
8. Infringement on public rights and other constitutional rights and interests
9. Facilitation of criminality by a government department
10. Workers and safety concerns
11. Slaughter, Safety and Health Requirements
12. International obligations (and international relations)
13. Court judgments
14. Cruelty
15. Failure to consult all the relevant animal protection stakeholders
16. Attempting to sidestep the department’s welfare responsibilities by outsourcing welfare to an under-resourced NGO that does not have the legal authority to effectively police the captive lion industry.

In addition to their submission, the two organisations also provided written answers to questions posed to them, including:

Question 7
Reference on page 19 was made to “Exploitative and cruel practices such as captive lion breeding for human interaction, canned hunting and the lion bone trade have been rationalized under the banner of ‘sustainable use’. Currently the mantra of ‘sustainable use’ is repeated constantly and goes unquestioned in the context of sustainable development, which includes the international trade in endangered species. The question as to whether the ‘use’ is actually sustainable under real-world conditions is never asked. This needs to change and it needs to change urgently, given the extraordinary threats to biodiversity”.

What solutions do EMS and ALR have in terms of the captive-bred lion industry and the thousands of lions they have? If it is closed, what proposals do EMS and ALR have on how this should be done? In this process, how are the individual property rights weighed up against the described interpretation of section 24 as provided? This applies to other calls in the submission to close certain practices.

Answer:
The question of whether we can immediately close practices that are in violation of the Constitution raises the issue of transitioning from past exploitative practices, which as a country we have undertaken to do.

A few pertinent principles are relevant to this question:

i. The government must make policy that is in line with the Constitution, constitutional values, Constitutional Court (and other South African Court) judgements and Parliamentary instructions.

ii. Section 24 of the Constitution states that South Africans have the right to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures.

iii. The government should not perpetually allow practices in violation of the Constitution and other aforementioned considerations.
iv. The government is entitled (and obliged) to regulate and ban certain practices and products. Such regulation may impact personal rights to property (and other personal rights). Such regulation must be in line with the Constitution and done in terms of the relevant legal processes.

v. The government is entitled to make policy decisions in relation to contentious and damaging practices.

vi. The government is entitled and should make policy decisions that are in the public interest.

vii. The government should not prioritise the economic benefits of a handful of people over the public good, public opinion, the public heritage and the public future.

viii. No rights in the Constitution are absolute. The property right is not absolute. The right to property does not trump other constitutional rights, nor does it trump other laws and regulations. These rights are limited by various factors - reasonableness, law of general application, section 36 of the Constitution, and various other factors.

ix. Industries come and go all the time and often disappear due to government intervention.

x. The decision to farm, breed and kill (inter alia) lions for profit is an inherently highly risky and highly controversial business decision.

xi. If this was in the non-animal context: Would a polluter be entitled to seek compensation? And if so—why? Would a landmine manufacturer seek compensation when countries decide to no longer produce landmines? And if so—why?

xii. If compensation is a consideration—will the captive big cat industry compensate for the loss and potential economic, reputational and other harm caused to the country by their activities?

xiii. The government is entitled to issue permits, decline permits or put conditions on permits. Government can accordingly phase out commercial lion farming in a constitutionally compliant and lawful manner, without expropriation, and without paying any compensation.

xiv. NEM:BA also allows for permits to be cancelled if the carrying out of the activities in question “has a detrimental impact on the species”. Sufficient evidence of detrimental impact exists to justify cancelling the permits immediately without paying compensation, and we are advised that doing so would not constitute an arbitrary deprivation, or expropriation, of private property.

The EMS Foundation and Animal Law Reform South Africa offered examples of some immediate actions that could be undertaken by the Government with respect to the captive lion industry:

1. announcing that no new permits to keep captive lions will be issued and existing permits will not be renewed;
2. amending the conditions in existing permits to protect the welfare of captive lions;
3. amending the conditions in existing permits to require the sterilization of all captive lions;
4. setting a zero quota for the export of lion bones in terms of CITES in order to remove the financial incentive to circumvent the law. Allowing the industry to continue to kill lions for the trade in lion bones as a means of limiting the number of lions while the government is closing down the industry should not be considered as this will be endorsing criminality and supporting the illegal wildlife trade. Research has clearly shown that the legal trade of lion bones is part of the illegal trade.
5. conducting an independent forensic audit of all lions in captive breeding facilities and the industry as a whole;
6. develop a comprehensive national plan for dealing with the current captive lion population in a way that is humane and promotes both the conservation of the species as a whole as well as the well-being of those animals as far as possible. It should be done in such a way that regulates people to create infrastructure for true sanctuaries, repurposes jobs and reskils workers. Government must collaborate with animal welfare and protection organisations, civil society and other stakeholders who have the skills to deal with animal welfare matters and repercussions.
**Release of HLP Report**

On 2 May 2021, Minister Barbara Creecy released the High Level Panel Report. “In terms of the captive lion industry, the Panel identified that the captive lion industry poses risks to the sustainability of wild lion conservation resulting from the negative impact on ecotourism which funds lion conservation and conservation more broadly, the negative impact on the authentic wild hunting industry, and the risk that trade in lion parts poses to stimulating poaching and the illegal trade. The panel recommends that South Africa does not keep lions in captivity, or use captive lions or their derivatives commercially. I have requested the department to act accordingly and ensure that the necessary consultation for implementation is conducted.”

The progressive recommendations made by the members of the High Level Panel about the South African captive lion industry are commendable.

**The Vicious Cycle Campaign Launched by WAPFSA Member Four Paws**

The exploitation of big cats in captivity in South Africa, in particular of lions has been well documented over the past decade. Though the industry has grown in its infamy, it continues to prove lucrative and now targets species that are not native to South Africa and hybrid animals, which are not covered by protective legislation from the government. Four Paws report titled *The Vicious Cycle* is a review of the exploitation of South Africa’s captive big cats and its people. Four Paws specifically investigated the exploitation of indigenous species like lions, exotic species such as tigers, and ligers a hybrid between lions and tigers. 2023 marks two years since the South African Government announced its intention to ban the captive lion industry and since the Four Paws campaign to ban the commercial trade of all big cats in South Africa was launched. There are an estimated 12,000 lions and an unknown number of tigers and other big cats still in captivity. Four Paws has worked tirelessly since 2021 to become part of the solution and will continue to do so.

**Ministerial Task Team - Voluntary Exit Options and Pathways from the Captive Lion Industry**

On the 12th of August 2022, Minister Creecy gave notice of her intention to appoint an eight-member Ministerial Task Team following the recommendations made by the high-level panel on the management, breeding, hunting, trade and handling of elephant, lion, leopard and rhino.

Lion owners were encouraged to register their interest in potential voluntary exit on a fully confidential basis and without any obligations by 21 July 2023, while the MTT remained open to further inputs on viable and pragmatic proposals for voluntary exit options. According to Kamalasen Chetty some captive lion owners are interested in voluntarily leaving the commercial captive lion industry. He said there are 519 facilities and about 7400 lions in captivity.

**A Basic Framework for the Resolution of Issues Relating to the Commercial Captive Breeding of Lions and Other Big Cats**

The question of whether South Africa can immediately close practices that are in violation of the Constitution raises the issue of transitioning from past exploitative practices, which as a country we have undertaken to do. Canned lion hunting and breeding of Big Cats is one such issue.

A few pertinent principles are relevant to this question:

i. The government must make policy that is in line with the Constitution, constitutional values, Constitutional Court (and other High Court) judgements and Parliamentary instructions.

ii. The government should not perpetually allow practices in violation of the Constitution and other aforementioned considerations.

iii. The government is entitled (and obliged) to regulate. Such regulation may impact on personal rights to property. Such regulation must be in line with the Constitution.
iv. The government is entitled to make policy decisions in relation to contentious and damaging practices.

v. The government is entitled and should make policy decisions that are in the public interest.

vi. The government should not prioritise the economic benefits of a handful of people over the public good and public opinion.

vii. No rights in the Constitution are absolute. The property right is not absolute. The right to property does not trump other constitutional rights, nor does it trump other laws and regulations. These rights are limited by various factors - reasonableness, law of general application, section 36 of the Constitution, and various other factors.

viii. Industries come and go all the time and often disappear due to government intervention.

ix. The decision to farm, breed and kill lions for profit is an inherently highly risky and highly controversial business decision.

x. Why would a polluter be entitled to seek compensation? Why would a landmine manufacturer seek compensation when countries make the decision to no longer produce landmines? Will the captive big cat industry compensate for the loss and potential economic and reputational harm caused to the country by their activity?

xi. Government is entitled to issue permits, decline permits or put conditions on permits. Government can phase out commercial lion farming in a constitutionally-compliant and lawful manner, without expropriation, and without paying any compensation. NEM:BA also allows for permits to be cancelled if the carrying out of the activities in question “has a detrimental impact on the species”. Sufficient evidence of detrimental impact exists to justify cancelling the permits immediately without paying compensation, and we are advised that doing so would not constitute an arbitrary deprivation, or expropriation, of private property.

RECOMMENDATIONS
Implications of the changes to NEM:BA effected by the National Environmental Management Laws Amendment Act.

In brief a summary of changes to the NEM:BA are as follows:

1. the insertion of a new definition of “well-being” in s1 as follows: “wellbeing means the holistic circumstances 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”

2. the insertion of a new object to the Act in s2 as follows: “2. Objectives of Act. -The objectives of this Act are- ...within the framework of the National Environmental Management Act, to provide for - ... the consideration of the well-being of animals in the management, conservation and sustainable use thereof”

3. an entirely new section 9A empowering the DFFE Minister to prohibit certain activities: 9A. Prohibition of certain activities.-The Minister may, by notice in the Gazette and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of an animal.”

4. An amendment to section97 allowing the Minister to make regulations relating to “(aA) the well-being of an animal”

5. The creation of a new offence relating to non-compliance with a section 9A prohibition notice: 101. Offences.-(1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of - ... a notice published in terms of section 9A; and

6. Additional technical changes giving MECs the same powers as the national Minister in some cases (including relating to public participation processes).
It is clear that well-being now falls within DFFE and the Minister’s legal mandate. It also reflects the approach taken by the Gauteng High Court in the second NSPCA case (2019) where it was held that the welfare of captive lions was a relevant factor which the Minister ought to have considered in setting the lion bone quota. The Court said in paragraph 74 of its judgment that “at the very least our constitutional and legal obligations that arise from Section 24, NEMBA and the [Biodiversity Management Plan for Lion] require the consideration of animal welfare issues.”

In addition, the amendment to section 2 makes it necessary for well-being to be specifically considered when biodiversity policies and laws are made. Well-being is now clearly a relevant factor to consider when decisions are taken which affect biodiversity, for example, the decision to grant permits for keeping, killing, hunting or trade in wild animals or to set quotas for hunting, export, etc. These are decisions that constitute the “management, conservation and sustainable use” of animals.

Section 9A uses the wording “that may have a negative impact” which means that the Minister is not required to provide absolute proof of a negative impact before making a prohibition. The Minister is also empowered to use a precautionary approach, in line with the NEMA principles. The prohibition is given some teeth by making contravention of a section 9A notice a criminal offence carrying a maximum penalty of a fine of R10 000 000- or ten years imprisonment or both.

Given these changes to NEMBA, it is competent for the Honourable Minister to:

1. prohibit specific activities involving animals under section 9A on the basis that there is already evidence that the activities impact negatively on well-being; and or
2. publish a notice under section 9A prohibiting specific activities if there is reasonable evidence to support the view that this may have a negative effect on well-being;
3. make regulations relating to the wellbeing of animals under section 97; and/or challenge decisions of conservation officials which constitute administrative action (such as permitting decisions or the setting of quotas) on the basis that wellbeing is a relevant factor and has not been considered or on the basis that the decision would have a negative impact on wellbeing of an animal or animals.
4. challenge decisions of conservation officials which constitute administrative action (such as permitting decisions or the setting of quotas) on the basis that wellbeing is a relevant factor and has not been considered or on the basis that the decision would have a negative impact on the wellbeing of an animal or animals.

The following are examples of some immediate actions by the Government that can be undertaken, further to announce that no new permits to keep captive lions will be issued:

1. announcing that existing permits will not be renewed;
2. amending the conditions in existing permits to protect the welfare of captive lions and to require the sterilization of all captive lions; and
3. setting a zero quota for the export of lion bones in order to remove the financial incentive to circumvent the law. Allowing the industry to continue to kill lions for the trade in lion bones as a means of limiting the number of lions while the government is closing down the industry should NOT be considered as this will be endorsing criminality and supporting the illegal wildlife trade. Research has clearly shown that the legal trade of lion bones is part of the illegal trade.
4. conducting an independent forensic audit of all lions in captive breeding facilities and the industry as a whole; and
5. developing a comprehensive national plan for dealing with the current captive lion population in a way that is humane and promotes both the conservation of the species as a whole as well as the well-being of those animals as far as possible. It should be done in such a way that regulates people to create infrastructure for true sanctuaries, repurposes jobs and reskills workers. Government must collaborate with animal welfare and protection organisations, civil society and other stakeholders who have the skills to deal with animal welfare matters and repercussions. We already have a starting point. In 2009 NGO Alliance Grouping (including the NSPCA) sent a proposal document to the Department outlining how to resolve the issues relating to this industry. This document was revisited adapted and sent to the High Level Panel and the Minister as a basic roadmap in 2020.

None of the above actions by the Government involves the arbitrary deprivation of property nor unjustifiably infringes any individual’s right to property.

Most wildlife captive facilities in South Africa are commercial entities and zoos are merely marked as a sanctuary. There is currently no legal definition within South Africa of what constitutes a sanctuary, and therefore anyone can claim to be operating one. International accreditation can be obtained by genuine sanctuaries through the Global Federation of Animal Sanctuaries (GFAS) accreditation process; however, members of WAPFSA are unsure as to how many lion/big cat sanctuaries in South Africa have legitimate sanctuary accreditation.

Thank you for the opportunity to comment,

Kind regards,

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Animal Talk Africa
Ban Animal Trading
Beauty Without Cruelty -South Africa
Betty’s Bay Baboon Action Group
Centre for Animal Rehabilitation and Education
Community Led Animal Welfare
Co-Operative and Policy Alternative Center
Dzomo La Mupo
EMS Foundation
Four Paws - South Africa
Future 4 Wildlife
Gifted for Good

Global White Lion Protection Trust
Green Group Simonstown
Institute for Critical Animal Studies (Africa)
Kogelberg Villages Environmental Trustees
Monkey Helpline
Ocean Not Oil
Panthera Africa Big Cat Sanctuary

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Founder
Director
Chairperson
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