



EMS FOUNDATION PUBLIC STATEMENT

Why Environment Minister Dion George Must Oppose the Application by the South African Hunters and Game Conservation Association to Remove Wildlife Well-Being Clauses from Environmental Legislation

Background

The EMS Foundation is a registered trust, nonprofit and public benefit organisation, established in 2014. It is committed to social and inclusive justice, compassion and the advancement and protection of the dignity, rights and general welfare of vulnerable and marginalised groups and individuals in South Africa, with particular focus on: youth at risk, the elderly and the conservation of wildlife.

An application was recently launched in the Constitutional Court by the South African Hunters and Game Conservation Association (SAHGCA) to declare invalid and strike out various provisions of the National Environmental Management: Biodiversity Act, 10 of 2004 (NEM:BA) relating to wildlife *well-being* including the definition of well-being, which were introduced into NEM:BA by the National Environmental Management Laws Amendment Act, 2 of 2022.

The EMS Foundation is of the firm view that these provisions must not be struck out and that Minister Dion George, who has been cited as a respondent, opposes the application in the public interest.

Concerns about Animal Protection Law in South Africa

The EMS Foundation concerns are focused on the second basis for the application set out in the Founding Affidavit, which is that the well-being provisions are unlawful or irrational. In that regard, the SAHGSA alleges that the new definition of “well-being” introduces a subjective element that is irrational and “unscientific” and also gives unreasonably wide powers to declare activities relating to animals unlawful on the basis that these are adverse to well-being.

The Foundation believes that striking out those provisions would mean that NEM:BA would be inconsistent with the judgments of the Constitutional Court relating to well-being of animals and with current wildlife policy. This means that South Africa’s framework biodiversity Act would not include any requirement that animal wellbeing be considered in the management of biodiversity.

The well-being provisions close a major gap in animal protection law and their striking out will lead to uncertainty in the law and potentially an increase in litigation. Striking out those provisions would be retrogressive and run counter to an accelerating global legal and policy trend.

Moreover, there is no prejudice to SAHGCA if the well-being provisions remain in NEM:BA while the further public participation that SAHGCA alleges is necessary takes place.

The EMS Foundation would not object to Minister George's Department and/or Parliament agreeing to provide further opportunities for public participation and comment on the wording of the well-being provisions if he were to conclude that that was appropriate. Indeed, this process has already commenced, as a consequence of the draft, fully-revised NEM:BA (including well-being provisions) having been published for public comment during June and July 2024.

Animal Well-Being is Consistent with Current Constitutional Jurisprudence

The EMS Foundation's view is that it would be entirely inconsistent with current constitutional jurisprudence regarding the protection of animals and with current policy relating to wild animals if the immediate striking out of the well-being provisions is granted, leaving the South African framework biodiversity legislation devoid of any provision that protects the well-being of non-human animals.

The amendments to NEM:BA were enacted partly as a result of, and are consistent with, long-standing Constitutional, Supreme Court of Appeal and High Court jurisprudence to the effect that animal welfare and animal conservation are "intertwined values for the purposes of the Constitutional right to have the environment protected (section 24) and that considerations of animal well-being are a relevant factor in making decisions about biodiversity".

The Importance of Animal Well Being of was Widely Considered and Recommended by the High-Level Panel of Experts

The importance of providing for animal well-being in our legislation was also the subject of recommendations made in the *Final Report of the High-Level Panel Of Experts For The Review Of Policies, Legislation And Practices On Matters Of Elephant, Lion, Leopard And Rhinoceros Management, Breeding, Hunting, Trade And Handling* commissioned by the Department of Forestry, Fisheries and the Environment in 2020. The Panel consulted widely with stakeholders from all parts of the wildlife sector. One of the principles identified in that process was that the well-being and welfare of wildlife must form an integral part of all wildlife-based practices, recognising that the five species are capable of suffering and of experiencing pain, and that sentence requires a higher level of consideration of the impact of actions on the welfare of animals.

Global Legal Movement to Protect Animals

Over the last decade, Earth jurisprudence can be seen as the fastest growing legal movement of the twenty-first century. The most significant consequence of acknowledging human interconnectedness and inextricability from the rest of the world has been casting the non-human world as a legal subject, with a number of jurisdictions adopting constitutional provisions, legislative initiatives and judicial decisions recognizing Earth's inherent rights.

Well-Being Protects Wild Animals in South African Law

There are substantial gaps in the law relating to the protection of animals. The Animals Protection Act, 1965 is hopelessly outdated and toothless and while the Department of Agriculture, Land Restitution and Rural Development has been reported to be updating it for several years, no draft has yet been published for comment. More importantly, animals in the wild are excluded from the ambit of that Act. If the well-being provisions are struck out of the NEM:BA then animals in the wild in South Africa have no legal protection, statutory or otherwise with respect to their well-being.

END

Monday 28th October 2024