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2022

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THE CONSTITUTIONALITY OF TROPHY HUNTING OF THREATENED OR PROTECTED LISTED SPECIES IN SOUTH AFRICA

by

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Submitted in partial fulfilment of the requirements for the degree of
Master of Laws by Coursework and Research Report
at the University of the Witwatersrand, Johannesburg

Date: 27 OCTOBER 2022

ABSTRACT

Whilst South Africa continues to grapple with its radical levels of social and economic inequality within the country, the lucrativeness of natural resources forming part of the environment as a tool to bringing about redress to such inequalities becomes an ever-increasing consideration. Although there is merit in the statement that the use of natural resources may seek to alleviate social and economic inequality, our courts have already held that the provisions of section 24(b)(iii) of the Constitution of the Republic of South Africa (the "**Constitution**") are required to link and intertwine the concepts of conservation with sustainable use and development, for unfettered use of natural resources may not be regarded as sustainable, and will ultimately lead to the decline of ecological conservation and biodiversity.

This has, however, contributed to the increase in human-wildlife conflict and the increase in consumptive and extractive use practices in relation to the natural resources of the environment, and the consideration of trophy hunting, and in particular the trophy hunting of Threatened and Protected Species ("**TOPS Species**") is not separate nor excluded from this consideration and the ultimate impact such has on biodiversity loss and ecological degradation.

The continued race to the bottom of species both locally and globally, coupled with the vested financial gains sought to be obtained from the increased rarity of species subjected to trophy

hunts, seeks to bring into question whether the engaging or permitting of the trophy hunting of TOPS Species may fall foul of the provisions of section 24 of the Constitution.

Accordingly, this research report seeks to consider the constitutionality of the trophy hunting of TOPS Species and how this practice is required to be viewed through the constitutional lens under which it takes place.

Table of Contents

1. INTRODUCTION: 6

1.1. Problem Statement 6

1.2. Research Question and Objective 8

2. CONTEXTUALISING THE LEGISLATIVE FRAMEWORK GIVING EFFECT TO THE PRACTICE OF TROPHY HUNTING OF TOPS SPECIES 9

2.1. The Provisions of Section 24 of the Constitution 9

2.2. The National Environmental Management Act, 107 of 1998 10

2.2.1. The Co-Operative Governance Principle 11

2.2.2. The Openness and Transparency Principle 12

2.2.3. The Flagged Ecosystem Principle 12

2.2.4. The Assessment Principle 13

2.2.5. The Responsiveness Principle 13

2.2.6. The Public Participation Principle 14

2.2.7. The Cradle to the Grave Principle 14

2.2.8. The Anthropocentric Principle 14

2.3. The National Environmental Management: Biodiversity Act, 10 of 2004 and the Threatened and Protected Species Regulations of 2007 16

2.4. The Distinction Between Issuing a Trophy Hunting Quota and An Export Quota in Relation to TOPS Species 19

3. SOUTH AFRICA'S IMPERILLED STATE OF BIODIVERSITY 21

3.1. The 2018 National Biodiversity Assessment: 21

3.2. The Recent State of the Environment Update: 22

3.3. The Alarming Poaching Statistics and Forms of Illegal Offtake of Animals: 23

4. THE IMPORTANCE OF THE CURRENT STATE OF BIODIVERSITY BECOMES GREATER WHEN DEALING WITH TOPS SPECIES 23

5. THE OBLIGATION TO CONSIDER ANIMAL WELFARE UNDER SECTION 24 OF THE CONSTITUTION 26

5.1. The Position Pre-1996 Constitution 26

5.2. Post-1996 Constitution 27

6. CONTEXTUALISING TROPHY HUNTING 29

6.1. The Ultimate Objective of Trophy Hunting 29

6.2. Comparing Trophy Hunting and Subsistence Hunting 30

6.3. The Essential Elements Of Trophy Hunting 31

6.4. The Role of Trophy Hunting in the "Biodiversity Economy" 32

6.5. The Role of Game Ranching in Trophy Hunting: 34

7. CONSIDERING WHETHER THE ENABLING LEGISLATION PERMITTING TROPHY HUNTING ACCORDS WITH THE PROVISIONS OF SECTION 24 OF THE CONSTITUTION 35

7.1. The Interpretation to Be Afforded to the Provisions of Section 24 of the Constitution ... 35

7.2. The Manner in Which the Justifiability Element Must be Discharged: 39

7.3. The Constitutionality of Trophy Hunting of TOPS Species and Its Enabling Legislation 41

7.3.1. Whether the Trophy Hunting of TOPS Species Accords with the NEMA Principles 42

7.3.2. The Trophy Hunting of TOPS Species Is Not Premised on Conservation and Can Not Result in a Non-Detriment Finding 44

7.3.3. Subjecting Animals to Trophy Hunts Serves to Commodify Them, which is Out of Touch with Recognising Sentience and Welfare: 47

7.3.4. Continuing to Permit the Trophy Hunting of TOPS Species is Out of Touch With the Change in International Landscapes 49

7.3.5. The Permitting of Trophy Hunting Fails to Give Effect to the Constitutional Court Decision of Fuel Retailers 50

7.3.6. Trophy Hunting Perpetuates Inequality 51

8. HAVE THE COURTS ALREADY SOUGHT TO OPEN THE GATES TO A CONSTITUTIONAL CHALLENGE OF THE TROPHY HUNTING OF TOPS SPECIES .. 53

9. CONCLUSION 55

National Council of Societies for the Prevention of Cruelty to Animals v Openshaw **(462/07) 2008 (5) SA 339 (SCA) (30 May 2008)** 57

1. INTRODUCTION:

1.1. Problem Statement

South Africa is often hailed as being one of the most biodiverse countries in the world and, according to the Biodiversity Finance Initiative, is ranked as the third most biodiverse country globally being home to over 95,000 known species and a diverse range of biomes.[1]

At the same time, however, South Africa is regarded as the most unequal society in the world by the World Bank, ranking first among 164 countries in the World Bank's global poverty database.[2] According to the World Bank's report, at least one-fifth of inequality within South Africa is explained by inherited circumstances, and furthermore inequality in land ownership contributes to perpetuating the historically high levels of income inequality within the country.[3]

The large levels of inequality within the country and the urgent and dire need to rectify the social inequality present has resulted in the need for the State to consider and turn to a variety of sources of revenue generation.[4] As such, this has seen unprecedented increases in the use of South Africa's natural resources, in leveraging off the richness of South

[1] <https://www.biofin,org/south-africa>; ,https://www.imf.org/en/news/articles/2020/01/29/na0128206six-charts-on-South-Africas-persistent-and-multi-faceted-inequality>. The Biodiversity Finance Initiative is a United Nations Development Program, which exists to demonstrate the manner in which nature-positive economies can work for people and the planet. It was commenced around 10 years ago at a conference of the parties for the Convention on Biodiversity. See also Ivan Turok "Worlds Apart: Spatial Inequalities in South Africa" (chapter in Smith, M.N (ed.) (2018) Confronting Inequality, Johannesburg: Jacana Media (2018).

[2] The World Bank *Inequality in Southern Africa: An Assessment of the Southern African Customs Union* 2022.

[3] Ibid.

[4] D. Cingano "Trends in Income Inequality and its Impact on Economic Growth*", OECD Social, Employment and Migration Working Papers*, No. 163, OECD Publishing, 6.

Africa's biodiversity, in an attempt to restore some balance to the tilted scales of inequality in the country.[5]

The focus of extractive processes of South Africa's natural resources has, however, placed various pressures on the environment, which have in turn resulted in the unprecedented rates at which biodiversity loss has occurred, and which continues to occur, which is also coupled with the significant increases in ecological degradation.[6]

These pressures are mainly attributable to human impacts on the environment, including climate change, pollution, and over-harvesting of resources forming the environment.[7] Included in these extractive practices lies the practice of trophy hunting, and of particular importance to this research report, the trophy hunting of Threatened and Protected Species ("**TOPS Species**").[8]

Proponents for the trophy hunting of TOPS Species have sought to justify the practice on the basis that it, *inter alia*, serves to assist in the rectification of the inequality within the country, through the social and economic development the trade yields.[9]

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[5] United Nations Educational, Scientific and Cultural Organisation World Social Science Report 2016 Inequality and Natural Resources in Africa James C. Murombedzi, 1 – 3.

[6] The Department of Forestry, Fisheries and the Environment's Draft White Paper on the Conservation and Sustainable of South Africa's Biodiversity (2022); The IPBES Global Assessment Report on Biodiversity and Ecosystem Services 2019; The Report by 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 (2020) 5 and 34- 58.

[7] Ibid.

[8] Ibid. TOPS Species being those Species so identified under the provisions of the Threatened and Protected Species Regulations, 2007 issued under the National Environmental Management: Biodiversity Act, 10 of 2004.

[9] The Economic Impact of Trophy Hunting in the South African Wildlife Industry, Melville Saayman, Petrus van der Merwe, Andrea Saayman Global Ecology and Conservation Volume 16 October 2018.

This remains of particular importance as the provisions enshrining the right to the environment, as contained within section 24 of the Constitution of the Republic of South Africa, 1996, only makes one reference to the use of natural resources.[10] This reference is contained within the provisions of section 24(b)(iii) of the Constitution, which too makes reference to the need to ensure social and economic development arising out of the use of such natural resources.[11]

Accordingly, the problem statement of this research report therefore becomes that the use of natural resources, in this case the trophy hunting of TOPS Species, must be counter-balanced with the need to bring about social and economic development in seeking to rectify the imbalances created by South Africa's unequal past, whilst at the same time being required to give effect to other countervailing requirements of section 24 of the Constitution.[12]

1.2. **Research Question and Objective**

In light of the factual backdrop under which this research report has been compiled, the research question therefore becomes whether the trophy hunting of TOPS Species, in light of the current state of South Africa's biodiversity, is a practice which is capable of

[10] Section 24 of the Constitution of Republic of South Africa,1996.
[11] Section 24(b)(iii) of the Constitution.
[12] Section 24(b) of the Constitution.

surviving constitutional muster and scrutiny when viewed in light of the provisions of section 24 of the Constitution.

Put differently, this research report seeks to consider whether the practice of trophy hunting of TOPS Species may be regarded as being unconstitutional despite yielding alleged social and economic benefits from the practice.

2. CONTEXTUALISING THE LEGISLATIVE FRAMEWORK GIVING EFFECT TO THE PRACTICE OF TROPHY HUNTING OF TOPS SPECIES

Overall, the legislative framework which gives effect to the trophy hunting of TOPS Species is multi-faceted and which finds its origin in both section 24 of the Constitution[13] and the enabling legislation enacted thereunder, each of which have been dealt with below.[14]

2.1. The Provisions of Section 24 of the Constitution

Section 24 of the Constitution provides the environmental right within South Africa's Bill of Rights. To this end, section 24 of the Constitution provides:

"*24. Everyone has the right*

[13] Section 24 of the Constitution.
[14] JG Nel and R Alberts (Environmental Management and Environmental Law in South Africa: An Introduction) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 1 – 4.

(a) To an environment that is not harmful to their health or wellbeing; and

(b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

i. Prevent pollution and ecological degradation;

ii. Promote conservation; and

iii. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."[15]

Of particular importance is that the provisions of section 24 of the Constitution only seek to provide for the use of natural resources once, and this is in section 24(b)(iii) of the Constitution.[16]

2.2. The National Environmental Management Act, 107 of 1998

The National Environmental Management Act[17] is South Africa's principal environmental management legislation, forming the overarching enabling legislation under section 24 of the Constitution.[18] To this end, all other environmental management legislation, including

[15] Ibid; Section 24 of the Constitution.
[16] Ibid.
[17] National Environmental Management Act, 107 of 1998 (Henceforth referred to as NEMA).
[18] The Preamble of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 125 – 127.

the provisions of the National Environmental Management: Biodiversity Act,[19] are required to adhere to and comply with the provisions of NEMA.[20]

As its preamble, NEMA provides for, *inter alia*, (i) recognises internationally accepted concepts and soft law principles to promote sustainable environmental practices, (ii) enhances co-operative environmental governance between different ministries and spheres of government within South Africa, (iii) provides a vehicle for, *inter alia*, coordinated and sustainable protection of the environment, and (iv) recognises the need for precautionary measures in relation to socio-economic impacts within the context of environmental decision-making.[21]

To this end, the provisions of section 2 of NEMA establish a number of guiding principles which are required to be utilised in guiding the making of decisions relating to environmental management, these principles have been set out below.[22]

2.2.1. The Co-Operative Governance Principle

[19] National Environmental Management: Biodiversity Act, 10 of 2004.
[20] The Preamble of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.
[21] Preamble of NEMA.
[22] Section 2 of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

The Co-Operative Governance principle contained within section 2(4)(l) of NEMA requires that there be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.[23]

2.2.2. The Openness and Transparency Principle

The Openness and Transparency Principle contained in section 2(4)(k) of NEMA requires that environmental management decisions must be taken in an open and transparent manner, and that access to information must be provided in accordance with the law.[24] To this end, the legitimacy and rationality of decisions are required to be justified by the information so provided.[25]

2.2.3. The Flagged Ecosystem Principle

The Flagged Ecosystem Principle contained in section 2(4)(r) of NEMA requires that certain sensitive, vulnerable, highly dynamic and/or stressed ecosystems require specific attention in management and planning procedures, especially

[23] Section 2(4)(l) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.
[24] Section 2(4)(k) of NEMA.
[25] Section 2(4)(k) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

where they are subject to significant human resource usage and development pressure.[26]

2.2.4. The Assessment Principle

The Assessment Principle contained within section 2(4)(i) of NEMA requires that the social, economic and environmental impacts of activities, including disadvantages and benefits must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.[27]

2.2.5. The Responsiveness Principle

The Responsiveness Principle contained in section 2(4)(g) of NEMA requires that decisions must take into account the interests, needs and values of all interests and affected parties, and this includes recognizing all forms of knowledge, including traditional and ordinary knowledge.[28]

[26] Section 2(4)(r) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

[27] Section 2(4)(i) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

[28] Section 2(4)(g) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

2.2.6. The Public Participation Principle

The Public Participation Principle contained in section 2(4)(f) of NEMA [29]calls for the promotion of the participation of all interested and affected parties in environmental governance, and that all persons must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation and that participation by vulnerable and disadvantaged persons must be ensured.[30]

2.2.7. The Cradle to the Grave Principle

The Cradle to the Grave Principle contained in section 2(4)(e) of NEMA requires that decision maker be held to account for the adverse environmental health and safety consequences caused by policy and/or activity.[31]

2.2.8. The Anthropocentric Principle

One of the overarching features of the drafting of NEMA is that it is centred around the anthropocentric principle, requiring a public first approach to environmental

[29] Section 2(4)(f) of NEMA.
[30] Ibid; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.
[31] Section 2(4)(e) of NEMA; M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.

conservation and management.[32] This principle is contained in the provisions of section 2(2) of NEMA and provides:

"*Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably*."[33]

That being said, although it is a welcomed fact that short-term interests, particularly the pursuits of profit, are required in order to bring about social and economic development and rectify inequality within the country,[34] what must be borne in mind is that the medium to long-term impacts of activities utilising the resources of the environment must be considered and counter-balanced with this need.[35]

It is essential that persons have a healthy and functioning ecosystem, which are critical to survival.[36] To this end, if the short-term expediencies are permitted to impinge upon the sustainability of the environment as a whole, the very essence of section 24 of the Constitution would be lost.[37]

[32] M. Oosthuizen, M. van der Linde and E. Basson (National Environmental Management Act, 107 of 1998 (NEMA)) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 138 – 145.
[33] Section 2(2) of NEMA.
[34] https://www.esi-africa.com/regional-news/africa/a-pursuit-of-profit-over-our-environment/
[35] *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC).
[36] Ibid.
[37] Ibid.

2.3. The National Environmental Management: Biodiversity Act, 10 of 2004 and the Threatened and Protected Species Regulations of 2007

The National Environmental Management: Biodiversity Act 10 of 2004 (**NEMBA**) is South Africa's enabling environmental management legislation dealing with biodiversity.[38] To this end, the provisions of section 56(1) of NEMBA provides that certain species, which due to the decline in their population sizes, their conservational value and/or national importance, are in greater need of national protection, and are referred to as TOPS Species.[39]

As per the provisions of section 56(1) of NEMBA, these TOPS species are categorised as follows, in their order of vulnerability and need of protection, namely:

(i) Critically endangered species, which are those indigenous species facing an extremely high risk of extinction in the wild in the immediate future;[40]

(ii) Endangered species, which are those indigenous species facing a high risk of extinction in the wild in the near future, although they are not critically endangered;[41]

[38] A Paterson (Biological Diversity) in Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018, 540 – 560; Preamble to NEMBA
[39] Section 56(1) of NEMBA.
[40] Ibid.
[41] Ibid.

(iii) Vulnerable species, which are those indigenous species facing an extremely high risk of extinction in the wild in the medium-term future, although they are not a critically endangered species or an endangered species;[42]

(iv) Protected species, which are any species which are of a high conservation value or national importance or require regulation in order to ensure that the species are managed in an ecologically sustainable manner.[43]

Due to the need for the protection of these TOPS listed species, section 57 of NEMBA creates restricted activities[44] involving such listed species and provides that a person is not permitted to carry out a restricted activity involving a listed or protected TOPS species, without a permit being issued in terms of Chapter 7 of NEMBA.[45]

Furthermore, the provisions of section 57(2) of NEMBA provides that a person is not permitted to import, export, re-export or introduce from the sea, a specimen of a listed TOPS species in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, without a permit being issued under Chapter 7 of NEMBA.[46]

[42] Ibid.
[43] Ibid.
[44] Section 57 of NEMBA.
[45] Ibid.
[46] Section 57(2) of NEMBA.

To this end, a restricted activity is defined in section 1 of NEMBA[47] as including, *inter alia*:

(i) Hunting, catching, capturing or killing any live specimen of a listed threatened and protected species, by any means, method of device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;[48]

(ii) Having in possession or exercising physical control over any specimen of a listed threatened and protected species;[49] and

(iii) Growing, breeding or in any other way, propagating any specimen of a listed threatened and protected species or causing it to multiply.[50]

Furthermore, the provisions of section 97(1) of NEMBA provide that the Minister is empowered to make regulations relating to[51], *inter alia*, the carrying out of a Restricted Activity involving a TOPS Species[52] and the ecologically sustainable utilisation of biodiversity including limiting the number of permits for a Restricted Activity.[53]

[47] Section 1 of NEMBA.
[48] Section 1(a)(i) of NEMBA.
[49] Section 1(a)(vi) of NEMBA.
[50] Section 1(a)(vii) of NEMBA.
[51] Section 97(1) of NEMBA.
[52] Section 97(1)(b)(iii) of NEMBA.
[53] Section 97(1)(b)(viii) of NEMBA.

Accordingly, the trophy hunting of TOPS Species is one which is regarded as a Restricted Activity under NEMBA.[54] Tops species include Black rhino, lion, elephant, leopard, black wildebeest.[55]

Moreover, the provisions of regulation 72 of the TOPS Regulations require the setting of an "annual hunting off-take limit" prior to the issuing of a quota for the trophy hunting of TOPS Species.[56]

2.4. The Distinction Between Issuing a Trophy Hunting Quota and An Export Quota in Relation to TOPS Species

Of significant importance is that each of actions of issuing a trophy hunting quota and issuing an export quota are separate decisions taken under separate empowering provisions under NEMBA,[57] and each having their own legal regulatory framework applicable to them. To this end, the issuing of a trophy hunting export quota only becomes a relevant factor when the trophy in question is to be exported outside the Republic of South Africa.[58]

[54] Section 57(1) of NEMBA.
[55] The Threatened and Protected Species Regulations GN R151 in GG 29657 of 23 February 2007 as amended.
[56] Regulation 72 of the TOPS Regulations.
[57] Section 88 of NEMBA.
[58] Section 1 of NEMBA.

To this end, the provisions of the Convention on the International Trade in Endangered Fauna and Flora Species (the "**CITES Convention**") must be adhered to, and which regulate the trade in listed endangered fauna and flora species.[59]

As such, where the trophy hunting of a species is to occur, two considerations are required to be borne in mind. The first is whether the species is listed as a TOPS Species, whereby the respective legal framework set out above is required to be adhered to as a preliminary point.[60]

The second consideration is where the species in question is listed on Appendixes I, II or III of the CITES Convention, and the specimen is to be exported, that the provisions of the CITES Convention must also be complied with prior to engaging of the export of the specimen concerned.[61]

Put differently, not all instances of trophy hunting of TOPS Species would result in the exportation of the said trophy outside of South Africa, and as such, all instances of trophy exports of TOPS Species require, as a prerequisite, an export quota.[62]

[59] The Convention on the International Trade in Endangered Fauna and Flora Species.
[60] Section 59 of NEMBA.
[61] Appendixes I, II and III of CITES.
[62] Section 57(1A) of NEMBA.

To this end, South Africa is a member state to the CITES Convention and its provisions have been localised through the provisions of NEMBA, and given effect to under the CITES Regulations promulgated under NEMA.[63]

As such, the provisions of regulation 6 of the CITES Regulations prescribes that an export permit (and quota) may only be granted if, in the case of a specimen of species listed in Appendixes I or II, the Scientific Authority has made a non-detriment finding, which CITES defines as a finding by the Scientific Authority that a proposed export of a species from Appendixes I or II will not be detrimental to the survival of that species.[64]

3. SOUTH AFRICA'S IMPERILLED STATE OF BIODIVERSITY

Overall, and as will be demonstrated below, South Africa's state of biodiversity is one which is imperiled and which continues to be in decline.[65] The decline in South Africa's biodiversity is attributable to multiple factors[66], however, what remains clear is that the main contributing factor to the decline of the country's biodiversity is hunting, poaching and illegal offtake.[67]

3.1. The 2018 National Biodiversity Assessment:

[63] Section 62 of NEMBA; The Convention on International Trade in Endangered Species Regulations GN R 629 in GG 33002 of 5 March 2010 (the "**CITES Regulations**").
[64] Regulation 6 of CITES Regulations; section 62 of NEMBA
[65] 2018 National Biodiversity Assessment issued by the Department of Forestry, Fisheries and the Environment; 2021 State of the Environment Update, the Department of Forestry, Fisheries and the Environment.
[66] Ibid.
[67] Ibid.

The 2018 National Biodiversity Assessment (the "**NBA**"), as compiled by the Director-General of the Department of Forestry, Fisheries and the Environment depicts a grim picture of the current state of biodiversity within South Africa.[68]

To this end, the NBA highlights that across all 9 provinces throughout the country, there are threats to biodiversity, with many of the provinces of the Eastern Cape, Kwa-Zulu Natal, Limpopo and Mpumalanga being reported as vulnerable to biodiversity degradation as a result of, *inter alia*, hunting.[69]

3.2. <u>The Recent State of the Environment Update:</u>

Moreover, in the Recent State of the Environment Update,[70] the Department of Forestry, Fisheries and the Environment states that "*South Africa has a well-developed suite of policy and legislation for the management, conservation and sustainable use of biodiversity.*", yet proceeds to note that the loss of biodiversity is an issue of global concern.[71]

Moreover, the Recent State of the Environment Update states:

> "*Protecting species and ecosystems requires conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the*

[68] Ibid.
[69] Ibid.
[70] Recent State of the Environment Update, the Department of Forestry, Fisheries and the Environment, 2022.
[71] Ibid.

benefits arising from the utilisation of genetic resources. Species and ecosystems are most effectively safeguarded through the conservation of natural habitats and there is clear evidence that conservation can help to reduce biodiversity loss. Implementation, management and representative coverage of different ecosystems within protected areas remains insufficient. Less than 15 per cent of terrestrial habitats, including inland waters, and less than 16 per cent of coastal and marine areas within national jurisdiction are protected areas."[72]

3.3. The Alarming Poaching Statistics and Forms of Illegal Offtake of Animals:

Poaching is a natural contributor to biodiversity loss.[73] On 8 February 2022, the Department of Forestry, Fisheries and the Environment published a media statement detailing that a total of 451 Rhino were poached in South Africa during the 2021 calendar year.[74] These poaching statistics are also coupled with the ever-increasing rate by which illegal offtake of animals, and in particular TOPS Species is occurring, which furthermore contributes to biodiversity decline.[75]

4. THE IMPORTANCE OF THE CURRENT STATE OF BIODIVERSITY BECOMES GREATER WHEN DEALING WITH TOPS SPECIES

[72] Ibid.
[73] https://www.britannica.com/explore/savingearth/poaching
[74] https://www.iol.co.za/dailynews/news/451-rhinos-were-poached-in-2021-says-the-department-of-forestry-fisheries-and-the-environment-47f33e23-6d5e-4541-8f28-2a3d116e1b17
[75] International Union for Conservation of Nature annual report, 2021; The IPBES assessment report on land degradation and restoration. Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services,2021.

Of particular importance, the starting point for any consideration on the engagement of Restricted Activities in relations to TOPS species is that the provisions of NEMBA have created the default position that the conducting of such restricted activities are not permitted and accordingly, the permissibility of undertaking such Restricted Activities is the exception as opposed to the norm.[76]

This default position seeks to emphasise the precise fragility that the engaging in of Restricted Activities would have on the survival of such TOPS Species and the overarching need to protect such TOPS Species in order to preserve, maintain and advance biodiversity.[77]

Moreover, and in line with the cautious approach contemplated in section 2 of the provisions of NEMA[78], when exercising a power or duty contemplated under environmental management legislation (such as the permissibility of engaging in the Restricted Activity of trophy hunting of TOPS Species), considerations relating to biodiversity require a greater emphasis on the need to conserve TOPS Species, as opposed to non-TOPS Species.[79] Hence, further considerations of alternatives prior to engaging in the trophy hunting of TOPS Species must be considered.[80]

As such, when dealing with TOPS Species, it is a prerequisite to acknowledge that the mere fact that the species in question is listed as a TOPS Species, brings with it the implication that the species' survival is already at risk. Accordingly, the removal of one or more specimens of

[76] Section 1 of NEMBA; https://conservationaction.co.za/media-articles/protecting-south-africas-biodiversity/
[77] https://conservationaction.co.za/media-articles/protecting-south-africas-biodiversity/
[78] Section 2 of NEMA.
[79] Ibid.
[80] Section 2 of NEMA.

the species in question poses a larger risk to the continued survival of the species due to their mere listing as TOPS Species.[81]

Furthermore, the permitting of the engagement in the Restricted Activity of trophy hunting of TOPS Species serves to act as a contradiction to their listing as TOPS Species in the first place, as it implies the surplus of specimens of the species in question. To suggest that there exists a surplus of specimens of TOPS Species not only suggests that there exists a level of comfort in having the species continue being a TOPS Species,[82] but moreover, fails to consider the true constitutional mandate imposed upon the Department of Forestry, Fisheries and the Environment, and that is to protect the environment for the benefit of present and future generations.[83]

The mandate of the Department of Forestry, Fisheries and the Environment should, accordingly, be one seeking to protect and conserve the environment and, as it pertains to TOPS Species, attaining the eventual de-listing of such species as TOPS Species.[84]

Accordingly, and as mandated under the cautious approach of NEMA, alternatives to trophy hunting of TOPS Species are required to be considered prior to permitting the Restricted Activity in question.[85] It is, therefore, submitted that the permitting of trophy hunting of TOPS Species should, at all times, be a course of last and not first resort.

[81] https://www.livescience.com/41421-animals-threatened-with-extinction.html
[82] https://wildtrust.co.za/arguments-for-and-against-trophy-hunting-in-south-africa/
[83] Section 24(b) of the Constitution.
[84] Section 24 of the Constitution.
[85] Sections 2(3) and (4) of NEMA.

5. THE OBLIGATION TO CONSIDER ANIMAL WELFARE UNDER SECTION 24 OF THE CONSTITUTION

5.1. The Position Pre-1996 Constitution

Prior to the enactment of section 24 of the Constitution, the protections afforded to animals were predominantly contained in provincial ordinances as well as the provisions of the Animals Protection Act.[86] Unfortunately, the provisions of the APA had their own shortcomings as a criminal statute requiring successful prosecutions for contraventions of its provisions to occur with the discharging of evidence beyond a reasonable doubt.[87]

Moreover, fragmented provincial ordinances and by-laws resulted in a variety of practices across the various provinces within the country.[88] This is by no means to state that the provisions of the Constitution have sought to do away with the fragmented nature of environmental legislation including protections afforded to animals as many of these ordinances and by-laws continue to remain in place.[89]

That being said, however, no constitutional protections were afforded to animals until the enactment of the provisions of section 24 of the Constitution and subsequently the

[86] Animals Protection Act 71 of 1962. (hereforth referred to as APA)
[87] Section 2 of the APA.
[88] For example,
[89] Ibid.

enactment of NEMA which, through section 1, included animals within the definition of "environment".[90]

5.2. Post-1996 Constitution

The shift to a Constitutional Democracy in South Africa brought about an overhaul of law including the recognition of socio-economic and civil and political rights for all, something once denied to the majority of South Africa's population, based on the colour of one's skin.[91]

Moreover, the shift towards a constitutional democracy also brought about the recognition of environmental rights[92] and rights pertaining to property,[93] for example. Prior to the enactment of the Constitution and the enabling legislation under environmental rights,[94] there was little recognition and protection of threatened and protected species let alone a constitutional imperative requiring their protection.

In terms of section 2 of the Constitution, such now provides that:

[90] Section 24 of the Constitution; Section 1 of NEMA.
[91] Section 2 of the Constitution.
[92] Section 24 of the Constitution.
[93] Section 25 of the Constitution.
[94] Section 24(b) of the Constitution provides for the enactment of enabling legislation.

> *"This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."*[95]

That being said; however, the consideration becomes whether animal welfare is a consideration which is contemplated under the provisions of section 24 of the Constitution. Simply put, the answer to this enquiry is undeniably yes.

In *NSPCA v Minister of Justice and Constitutional Development*,[96] which dealt with the consideration of the right of the NPSCA to prosecute offenders of the APA privately, the Constitutional Court ruled that a statutory power of private prosecution is conferred upon the NSPCA[97] and found that animal welfare is connected with the constitutional right to have the environment protected for the benefit of present and future generations, through legislative and other means.[98]

Moreover, the High Court in *NSPCA v Minister of Environmental Affairs* found that the constitutional and legal obligations that arise from section 24 of the Constitution and NEMBA require the consideration of animal welfare.[99]

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[95] Section 2 of the Constitution.
[96] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (1) SACR 284 (CC).
[97] Referred to as the NSPCA, but being the National Council of Societies for the Prevention of Cruelty to Animals.
[98] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (1) SACR 284 (CC)., para 58.
[99] *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA).

Furthermore, the Supreme Court of Appeal in *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*[100] has already held that "*animals are worthy of protection not only because of the reflection this has on human value, but because "animals are sentient beings that are capable of suffering and of experiencing pain".*[101]

6. CONTEXTUALISING TROPHY HUNTING

6.1. The Ultimate Objective of Trophy Hunting

Trophy hunting as a practice is premised on the primary objective or aim of the acquisition of parts of the animal, such as their skins, heads, horns, teeth or the like, and is not intended to kill the animal in question in order to consume their meat.[102]

Moreover, trophy hunting is regarded for the most part as a leisurely activity showcasing or demonstrating the wealth of the individual concerned.[103] Trophy hunters retain the trophy of the animal with the ultimate intention of showcasing same. With many trophy hunters seeking to compete with one another to kill animals with the largest trophies and have their kills recorded in the record books.[104] Incentives and rewards for those who have sought to kill the most animals for a specified species is also a feature of trophy hunting.[105]

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[100] Ibid, para 38.
[101] Ibid.
[102] https://www.macmillandictionary.com/dictionary/british/trophy-hunting
[103] Cloete, P. C.; Taljaard, P. R.; Grové, B. (April 2007). "A comparative economic case study of switching from cattle farming to game ranching in the Northern Cape Province". *South African Journal of Wildlife Research* 37 (1): 71–78.
[104] Ibid.
[105] Ibid.

This is not to say that all instances of trophy hunting are isolated from the consumption of the meat derived from the animal concerned, but rather it is not the focal point of engaging in the hunt for trophy hunting purposes.[106]

6.2. Comparing Trophy Hunting and Subsistence Hunting

Subsistence hunting is different to trophy hunting[107] as it is not premised on the derivation of parts of the animal, such as their head, horns, skins or the like, but is rather concerned with the consumption of their meat for subsistence purposes.[108]

In essence, subsistence hunting is the extraction of wild fauna for self-consumption and local trade without the influence of an external market to make it a lucrative activity.[109] Although, it is arguable that the derivation of the animals' parts may, in fact, be secondary to this in the subsistence hunting process.[110]

It should be noted that the distinction between subsistence hunting and trophy hunting may soon be blurred, by the recent publication of the DFFE's Draft Game Meat

[106] Ibid.
[107] https://www.nrahlf.org/articles/2019/2/6/there-is-no-difference-between-trophy-hunting-and-hunting/
[108] https://www.poachingfacts.com/faces-of-the-poachers/subsistence-poachers-farmers/
[109] Ibid.
[110] Ibid.

Strategy,[111] which at the time of authoring this, is currently in the process of public comment.[112]

6.3. The Essential Elements Of Trophy Hunting

In light of the comparison between subsistence and trophy hunting, in order for trophy hunting to be regarded as "effective", it is required to be premised on the lucrative external market and hence the commercial realisation of the trophies in question.[113]

Put differently, trophy hunting is premised on the hunting of an animal for the extraction of its trophy (as its primary objective)[114], which trophy is in demand and is of value, which demand and value are determined by an external market, resulting in the lucrative commercialisation of the trophy in question.[115]

Accordingly, it becomes apparent that the more lucrative or rare the trophy in question is, the more value will be associated to the trophy. For this reason, the value of a trophy hunt of a leopard or black rhino is considerably higher than a trophy hunt of an impala for example.[116]

[111] Draft Game Meat Strategy: Government Gazette Notice 47024, dated 18 July 2022.
[112] In terms of the Draft Game Meat Strategy, such seeks to increase the production of game meat in South Africa inversing the order of priority of trophy hunting as a primary outcome with harvesting of meat as secondary, to the primary outcome being harvesting and the secondary being trophy hunting.
[113] https://www.macmillandictionary.com/dictionary/british/trophy-hunting
[114] https://en.wikipedia.org/wiki/Trophy_hunting
[115] https://rhinoreview.org/value-of-trophy-hunting-to-conservation-massively-overstated-report/
[116] Ibid.

As such, the more lucrative a species becomes, the more lucrative too becomes their trophy and naturally the more the trophy hunter is prepared to pay for the trophy in question.[117] It is for this reason, that when considering trophy hunting in light of the species being subjected to the hunt being listed as TOPS species, that due regard is to be had due to their very listing being brought about by the risk of their extinction in the wild.

In other words, until such time as the species concerned is no longer regarded as a TOPS species, in terms of empirical data evidencing the surplus base of the species so concerned eradicating the concern of the species survival in the wild no longer being at risk, how it is justifiable that such species may be subjected to trophy hunting.

What stands at odds to this statement is how subjecting the animals concerned to trophy hunts,[118] as opposed to rewilding or relocating the animals, gives effect to the provisions of section 24 of the Constitution[119] and in particular, the provisions of section 2(4)(a)(i) of NEMA[120], which requires that sustainable development requires that the disturbance of ecosystems and loss of biological diversity are avoided, or where this cannot be altogether avoided, that it is minimised and remedied.[121]

6.4. The Role of Trophy Hunting in the "Biodiversity Economy"

[117] Ibid.
[118] Draft Game Meat Strategy: Government Gazette Notice 47024.
[119] Section 24 of the Constitution.
[120] Section 2(4)(a)(i) of NEMA.
[121] Section 2(4)(a)(i) of NEMA; Section 24 of the Constitution.

It is often regarded that biodiversity serves as a cornerstone for economic growth and sustainable development within South Africa[122] and is utilised as a mechanism through which unemployment, poverty and inequality are addressed within the country.[123]

As such, proponents for trophy hunting utilise the practices' role within the biodiversity economy as one of the key justifications seeking to continue the practice. To this end, the biodiversity economy encompasses the businesses and the economic activities that directly depend on the biodiversity for the core business function or that are, argued, to contribute to conservation through their activities.[124] Strictly speaking, trophy hunting would be regarded as the wildlife economy, which is a sub-sector of the biodiversity economy.[125]

As has already been noted, "effective" trophy hunting is premised on the hunting of an animal for the extraction of its trophy (as its primary objective), which trophy is in demand and is of value, which demand and value is determined by an external market, resulting in the lucrative commercialisation of the trophy in question.[126]

This naturally will seek to contribute revenue to the country, and may, if properly implemented, seek to address and give effect to other rights contemplated within the Constitution, and hence trophy hunting plays a role in the biodiversity economy.[127]

[122] https://www.dffe.gov.za/projectsprogrammes/biodiversityeconomy
[123] https://www.dffe.gov.za/event/deptactivity/3rdbiodiversity_economyindaba
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] Ibid.

The key consideration, however, is that practices regardless of the revenue they are capable of generating,[128] may not be permitted to continue by the mere justification that they serve to provide the economic basis through which other rights may be realised in the Constitution.[129] Rather, the practice must be viewed in its own right through the lens of the Constitution to determine whether it is capable of surviving constitutional muster.

6.5. The Role of Game Ranching in Trophy Hunting:

As previously noted, trophy hunting is arguably a sub-sector of the biodiversity economy operating within the wildlife economy. However, the current trophy hunting industry in South Africa is underlined by the engagement in game ranching, a practice whereby animals that will be subjected to trophy hunts are bred in captivity for their ultimate demise through a trophy hunt.[130]

Game ranching therefore forms one of the key elements of trophy hunting and hence trophy hunting may be defined as the hunting of an animal, most commonly bred in captivity, for the extraction of its trophy (as its primary objective), which trophy is in demand and is of value, which demand and value is determined by an external market, resulting in the lucrative commercialisation of the trophy in question. [131]

[128] Ibid.
[129] Arguably, such a line of thinking may be utilised to seek to legalise the drug trade for example, which is a high revenue generating practice, regardless of the damage it provides to society, which revenue may seek to address other rights in the Constitution.
[130] Draft Game Meat Strategy: Government Gazette Notice 47024, dated 18 July 2022.
[131] https://gameandhuntdaily.co.za/tga-trophy-hunting/

It bears mentioning at this juncture, that our courts have already pronounced on the abhorrent nature of permitting captive bred lions to be subjected to canned trophy hunts in the Constitutional Court decision of *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*[132] where the court held that "*[a] unanimous Full Bench found that canned hunting of lions is "abhorrent and repulsive" due to the animals' suffering. On appeal, the Supreme Court of Appeal did not dispute this finding.*".[133]

It therefore begins to illustrate that the trophy hunting practice, predominantly premised on game ranching, is one which is not in tune with the societal mores of the community nor is it one which the values of our Constitution seek to uphold,[134] each of these being turned to further below in this research report.

7. CONSIDERING WHETHER THE ENABLING LEGISLATION PERMITTING TROPHY HUNTING ACCORDS WITH THE PROVISIONS OF SECTION 24 OF THE CONSTITUTION

7.1. The Interpretation to Be Afforded to the Provisions of Section 24 of the Constitution

[132] *National Society For The Prevention Of Cruelty To Animals v Minister of Justice and Constitutional Development and Another* (29677/2013) 2017 (4) BCLR 517 (CC).
[133] Ibid para 56.
[134] https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/03/Trophy-Hunting-Working-paper.pdf

In the Supreme Court of Appeal decision of *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment*,[135] the Supreme Court of Appeal noted that:

"Our Constitution, by including environmental rights as fundamental and justifiable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative process in our country." [136]

The DFFE would appear to be of the view that section 24(b)(iii) of the Constitution in providing "*secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development*" seeks to provide the basis for justifying consumptive use and extractive practices in an attempt to bring about social and economic development within the country.[137]

This position is further evidenced by the recent publishing, for public comment, of the Draft White Paper Sustainable Use of Natural Resources by Minister of Forestry, Fisheries and the Environment which seeks to state as its focal point the following vision:

[135] *Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others* [1999] 2 All SA 381 (A).
[136] Ibid.
[137] This is clear from the Department of Forestry, Fisheries and the Environment Annual Report 2020/21, published on 29 October 2021, RP358/2021; Department of Forestry, Fisheries and the Environment Draft White Paper, on the Conservation and Sustainable Use of South Africa's Biodiversity Government: Gazette Notice 46687, dated 8 July 2022; 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 – For Submission to The Minister Of Environment, Forestry And Fisheries, dated 15 December 2020.

"*A prosperous nation, living in harmony with nature, where biodiversity is conserved for present and future generations, and secures equitable livelihoods and improved human well-being*".[138] [own emphasis]

That being said, however, in reflecting on how our courts have dealt with the interpretations to section 24(b), the Constitutional Court in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province*,[139] noted that:

"*The Constitution recognises the interrelationship between the environment and development; indeed it recognises the need for the protection of the environment while at the same time it recognises the need for social and economic development. It contemplates the integration of environmental protection and socio-economic development. It envisages that environmental considerations will be balanced with socio-economic considerations through the ideal of sustainable development. This is apparent from section 24(b)(iii) which provides that the environment will be protected by securing 'ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'. Sustainable development and sustainable use and exploitation of natural resources are at the core of the protection of the environment."*[140]

[138] Department of Forestry, Fisheries and the Environment Draft White Paper, on the Conservation and Sustainable Use of South Africa's Biodiversity Government: Gazette Notice 46687, dated 8 July 2022.
[139] *Fuel Retailers Association of SA (Pty) Ltd v Director-General, Environmental Management, Mpumalanga, and Others* [2007] ZACC 13.
[140] Ibid at para 45.

Furthermore, the Constitutional Court in Fuel Retailers noted:

"[*D*]*evelopment cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment. Yet the environment cannot be protected if development does not pay attention to the costs of environmental destruction. The environment and development are thus inexorably linked.*"[141]

In light of the above, it is submitted that the correct interpretation to be afforded to section 24(b)(iii) of the Constitution is that the use of natural resources must (i) secure ecologically sustainable development and (ii) the use of natural resources must too be ecologically sustainable, while the use of the natural resources must promote justifiable economic and social development.

As such, the above interpretation is one which obliges the standard of ecological sustainability to be applied in a cross-cutting manner, which requires that the decision arrived at must be one which:

(i) Secures ecologically sustainable development;

(ii) Secures ecologically sustainable use of natural resources; and

[141] Ibid at para 44.

(iii) Whilst at the same time balancing the use of the natural resources with economic and social development which is justifiable.

Due to the simultaneous obligation to balance the securing of ecologically sustainable (i) development and (ii) use of natural resources, with the justifiable economic and social development, it becomes apparent that the economic and social development must not only be justifiable (i.e. lawful) but must also be ecologically sustainable.

7.2. The Manner in Which the Justifiability Element Must be Discharged:

The justifiability element contemplated in the provisions of section 24(b)(iii) of the Constitution[142] is one which must be applied to all facets of the provisions of section 24(b)(iii) of the Constitution, in that the economic and social development (which economic and social development must be ecologically sustainable), which would be yielded from the use of natural resources (which use must be ecologically sustainable) must be justifiable (i.e. it must be lawful).[143]

As such, a consideration of lawfulness would come to a halt where the use of the natural resources concerned fails to give effect to the other provisions of section 24(b) of the Constitution and/or fails to give effect to section 24(a) of the Constitution.

[142] Section 24(b)(iii) of the Constitution.
[143] Section 24 of the Constitution.

Therefore, in discharging the justifiability element,[144] the first enquiry is that the use of natural resources aimed at obtaining economic and social development must:

(i) Not result in an environment that is harmful to the health and/or well-being of everyone (as contemplated under section 24(a) of the Constitution)[145];

(ii) Seek to have the environment protected for the benefit of present and future generations (as contemplated in section 24(b) of the Constitution)[146];

(iii) Prevent pollution and ecological degradation (as contemplated in section 24(b)(i) of the Constitution)[147];

(iv) Promote conservation (as contemplated in section 24(b)(ii) of the Constitution)[148]; and

(v) Secure ecologically sustainable development and ecologically sustainable use of natural resources (as contemplated in section 24(b)(iii) of the Constitution).[149]

[144] As contemplated under section 24(b)(iii) of the Constitution.
[145] Section 24(a) of the Constitution.
[146] Section 24(b) of the Constitution.
[147] Section 24(b)(i) of the Constitution.
[148] Section 24(b)(ii) of the Constitution.
[149] Section 24(b)(iii) of the Constitution.

This is but the first enquiry that such a decision must undergo,[150] as the failure to ensure compliance with this,[151] it is submitted, will result in any such decision (although being in compliance with the legislative framework permitting it) being declared invalid[152] and set aside for its failure to give effect to the provisions of section 24 of the Constitution.[153]

The second element of the enquiry into discharging the justifiability element[154] is whether (i) the decision has been lawfully taken[155] and (ii) that the social and economic development (which must be ecologically sustainable) derived from the use of the natural resources so concerned (which must also be ecologically sustainable) must be lawful and not contrary to public policy/societal mores of the public.[156]

7.3. The Constitutionality of Trophy Hunting of TOPS Species and Its Enabling Legislation

As at this juncture, what has already been identified and established is that one has the right to (i) have an environment that is not harmful to one's health or wellbeing, as contemplated under section 24(a) of the Constitution[157], and (ii) to have the environment protected for the benefit of present and future generations, as contemplated under section 24(b) of the Constitution.[158]

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[150] https://www.researchgate.net/publication/327597838_The_promise_of_'well-being'_in_Section_24_of_the_Constitution_of_South_Africa
[151] Section 2 of NEMA.
[152] Section 149 of the Constitution.
[153] Section 2 and 172 of the Constitution.
[154] Section 2 of NEMA.
[155] Section 33 of the Constitution; Section 1 of the Promotion of Administrative Justice Act 3 of 2000.
[156] Section 24 of the Constitution.
[157] Section 24(a) of the Constitution.
[158] Section 24(b) of the Constitution.

Moreover, it has been established that the listing of species as TOPS Species under NEMBA requires a concerted effort to maintain that species in order to eventually result in the delisting of the species concerned,[159] and that the engaging in trophy hunting of TOPS Species (being a Restricted Activity) bears the starting point that no such trophy hunting of TOPS Species may occur unless an exemption is declared by the Minister of Forestry, Fisheries and the Environment.[160]

7.3.1. Whether the Trophy Hunting of TOPS Species Accords with the NEMA Principles

As such, the consideration therefore becomes whether the permitting of trophy hunting of TOPS Species under NEMBA, thereby permitting the Restricted Activity and deviating from the default position,[161] amounts to an infringement of one's rights contemplated in section 24, and in particular section 24(b) of the Constitution.

Permitting the trophy hunting of TOPS Species fails to give effect to the principles contained in section 2 of NEMA[162], in that:

(i) Permitting the trophy hunting of TOPS Species fails to take into account the interests, needs and values of society as a whole, but rather

[159] https://www.researchgate.net/publication/315528329_Listing_and_Delisting_Thresholds_under_the_Endangered_Species_Act
[160] Section 38 of NEMA.
[161] Section 87A of NEMBA; Section 88 of NEMBA; Section 92A of NEMBA; Section 57 of NEMBA.
[162] https://africageographic.com/stories/missing-mark-african-trophy-hunting-fails-show-consistent-conservation-benefits/

seeks to take into account only a small percentage of the interests of those engaged within the industry,[163] and for this reasons falls foul of the Responsiveness Principle contemplated within section 2(4)(g) of NEMA;[164]

(ii) TOPS Species are, by their very listing as TOPS Species, are sensitive, vulnerable, highly dynamic or stressed components of an ecosystem,[165] whereby their ultimate demise shall have long-lasting and irreversible impacts on the ecosystems within which they live.[166] To this end, the permitting of trophy hunting of TOPS Species fails to provide the specific attention in management and planning procedures in this regard, especially considering that trophy hunting amounts to a human resource usage pressure.[167] For this reason, the trophy hunting of TOPS Species fails to give effect to the Flagged Ecosystem Principle contained within section 2(4)(r) of NEMA;

(iii) Similar to the concerns surrounded with the Flagged Ecosystem Principle,[168] the decision to permit the trophy hunting of TOPS Species is one which fails to acknowledge that all elements of the environment are linked and interrelated[169] and furthermore fails to consider the

[163] Section 2(4)(g) of NEMA.
[164] Ibid.
[165] Section 2(4)(r) of NEMA.
[166] Ibid.
[167] Section 2(4)(b) of NEMA.
[168] Ibid.
[169] Ibid.

effects of decisions on all aspects of the environment and the people in the environment.[170] Finally, the decision to permit the trophy hunting of TOPS Species is, arguably, one which is not the best practical environmental option,[171] thereby failing to give effect to the Integration Principle as contemplated in section 2(4)(b) of NEMA;[172] and

(iv) The decision to permit the trophy hunting of TOPS Species is one which seeks to consider only the social and economic impacts of the activities,[173] but fails to take into consideration the environmental impacts of the activities so concerned[174] and furthermore fails to take into account the disadvantages associated with engaging in trophy hunting specifically in relation to TOPS Species.[175] For this reason, the trophy hunting of TOPS Species fails to give effect to the Assessment Principle contained within section 2(4)(i) of NEMA.

7.3.2. <u>The Trophy Hunting of TOPS Species Is Not Premised on Conservation and Can Not Result in a Non-Detriment Finding</u>

Trophy hunting, unlike subsistence hunting, is a practice premised on the extraction of a trophy, with a vested interest in the increasing of the value and in turn the rarity

[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Section 2(4)(i) of NEMA.
[174] Ibid.
[175] Ibid.

of the species so concerned. This phenomenon is termed by the author as the "Decline to Zero Conundrum".

This describes the conundrum where the more lucrative or scarce a species becomes, the more the trophy hunter in question is prepared to pay to trophy hunt the species concerned. To illustrate this point, the average cost of trophy hunting a leopard, a TOPS Species, is approximately USD 44,000 (ZAR 796,000),[176] however, the cost of trophy hunting a caracal, not a TOPS Species, is approximately USD 1,500 (ZAR 27,165).[177]

Accordingly, the "Decline to Zero Conundrum" describes the situation where attempts to increase the value of the trophy in question and in turn the revenue to be generated from the trophy hunt, result in a vested financial interest in seeing the decline of the species in question. As previously indicated, the very listing of species as TOPS means that there is a Nil Surplus Base, as if there was, then there would be no need or imperative which was satisfied through their listing.

Put differently, if one can afford to subject TOPS species to trophy hunting, then it calls into question the underlying rationale for listing the species in the first place. As such, it is submitted, that until such time as the population numbers of the TOPS species in question have so dramatically increased to a point where their listing

[176] https://huntinafrica.com/leopard-hunting/#:~:text=A%2014%20day%20leopard%20hunt,to%20hunting%20area%20is%20%242%2C500.
[177] https://africahuntlodge.com/hunting-packages/caracal-hunts

under TOPS is not required, then alternatives to the species' demise *must* be considered as any practice involving their demise implies the existence of a surplus base, which is out of touch with their listing. Accordingly, without their being a surplus base of the species in question, the conclusion to be drawn is that the removal of any specimens of the TOPS Species concerned is one which would further imperil the survival of the TOPS Species concerned.

As such, the very listing of the species as a TOPS Species may, arguably, indicate that it is incapable of yielding a Non-Detriment Finding.[178] The consideration therefore becomes when a Non-Detriment Finding may be made? The answer to this question is a relatively simple one, as not all species listed in Appendixes I or II of the CITES Convention, requiring a Non-Detriment Finding, would be TOPS Species as well.[179] As such, those species not being TOPS Species but which are listed on Appendixes I or II of the CITES Convention may very well be capable of yielding a Non-Detriment Finding, such as in relation to Caracal, which is listed as an Appendix II species, but not a TOPS Species.

Although proponents for the industry and practice may seek to argue that it promotes conservation,[180] the very elements of engaging trophy hunting are not concerned with conservation of the species concerned at its heart. The position

[178] This point, however, may be open to debate within the scientific community, but for the purposes of this thesis is focussed purely on the consideration from a legal perspective.
[179] CITES Convention.
[180] https://www.perc.org/2021/02/18/misinformation-about-trophy-hunting-threatens-conservation/#:~:text=Trophy%20hunting%20can%20be%20successful%20at%20conserving%20wildlife,threaten%20the%20lives%20and%20livelihoods%20of%20rural%20people.

proffered by proponents may be true as it pertains to non-TOPS Species, however, the ultimate focus in relation to conservation efforts of TOPS Species must be the increase in the population size.[181]

Rather, the practice is concerned with the commodification of resources as part of the biodiversity economy for financial gain, with the ultimate upshot being that the rarer the species becomes the more financial gain that can be derived from such.[182]

Put differently, without the external market factor being present in trophy hunting, trophy hunting would not be capable of being continued.[183] Hence the vested interest remains in maintaining the demand for the trophy, increasing its value and in turn maintaining the external market.[184]

7.3.3. Subjecting Animals to Trophy Hunts Serves to Commodify Them, which is Out of Touch with Recognising Sentience and Welfare:

Animals have been treated as property in South Africa, a concept inherited by Roman-Dutch law.[185] That being said, however, characteristics of property are

[181] https://www.sciencedirect.com/topics/earth-and-planetary-sciences/conservation-of-species
[182] https://mises.org/power-market/trophy-hunting-saves-endangered-species
[183] https://www.news24.com/health24/Lifestyle/Environmental-health/Animals/10-consequences-of-banning-trophy-hunting-in-SA-20150805
[184] https://news.nwu.ac.za/trophy-hunting-worth-r198-billion-south-african-economy
[185] https://www.animallaw.info/article/animals-property ; www.scielo.org.za/pdf/dejure/v50n1/09.pdf

devoid of considerations of and recognition of the ability to experience pain and suffering.[186]

The Constitutional Court in *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC) has already held that "*animals are worthy of protection not only because of the reflection this has on human value, but because 'animals are sentient beings that are capable of suffering and of experiencing pain'*".[187]

The recognition of sentience and ability to suffer and experience pain is not synonymous with property, and this growing base of animal welfare jurisprudence has now required that animals no longer be treated as property.[188]

Trophy hunting is a practice which cannot devoid itself of the treating of animals as property,[189] as even proponents for industry use property law-based justifications as to why Government is incapable of making decisions serving to impact on the practice, couching it within the provisions of section 25 of the Constitution.[190]

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[186] https://www.groundup.org.za/article/how-our-constitution-views-animals/
[187] *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC) at para 56.
[188] Ibid, at para 55.
[189] https://dailycampus.com/2022/03/29/trophy-hunting-the-moral-implications-of-killing-animals-for-sport/#:~:text=Trophy%20hunting%20regards%20wildlife%20as%20a%20commodity%20and,the%20benefit%20of%20humans%20and%20doesn%E2%80%99t%20exist%20autonomously.
[190] Ibid.

A further and more detailed analysis of this will be considered further on below. That being said, however, it is clear that trophy hunting, premised on the breeding of animals in captivity for the ultimate purpose of then subjecting them to a trophy hunt, serves to further commoditise animals and treat them as property, contrary to the views and decisions of the Constitutional Court.[191]

7.3.4. Continuing to Permit the Trophy Hunting of TOPS Species is Out of Touch With the Change in International Landscapes

Recently, a proposal was raised in Britain's parliament requesting a ban on the importing of wildlife trophies through the introduction of the Animals Abroad Bill,[192] a Bill aimed at tackling animal cruelty and the supporting of extra-territorial conservation efforts, and in doing so removing the United Kingdom's involvement to practices which are cruel to animals in other countries.[193] Moreover, in doing so, it is envisaged that the UK would not seek to hinder conservation effort and biodiversity through trophy hunting. [194]

The efforts made by the European Union and the United States as well, for example, serve to echo the changing international landscape of how trophy hunting is viewed within society.[195] Simply put, South Africa's continued justification of trophy

[191] https://www.discoverwildlife.com/animal-facts/mammals/the-truth-about-canned-hunting-what-is-it-and-how-is-it-regulated/
[192] https://bills.parliament.uk/bills/3223#timeline
[193] https://committees.parliament.uk/work/1368/animals-abroad-bill/
[194] Ibid.
[195] https://www.bornfree.org.uk/news/ban-trophy-hunting-eu-event

hunting will soon serve to place it beyond the current pace and thinking of international biodiversity management and conservation, a factor which would serve to detrimentally impact on South Africa's tourism industry, a factor already noted by the Minister of Forestry, Fisheries and the Environment in the High-Level Panel Report,[196] whereby it provides, albeit in the context of captive lion breeding for hunting:

> "*There was an overwhelming consensus from the local and international stakeholders participating in the colloquium that South Africa must bring an end to what is regarded as a controversial practice that is threatening to harm the proud conservation image of the country and the Brand South Africa"*[197]

7.3.5. <u>The Permitting of Trophy Hunting Fails to Give Effect to the Constitutional Court Decision of Fuel Retailers</u>

Finally, the decision to permit the trophy hunting of TOPS Species fails to give credence to the Constitutional Court's ruling in Fuel Retailers,[198] and in particular that the engagement of trophy hunting in relation to TOPS Species would seek to

[196] 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 – For Submission to The Minister Of Environment, Forestry And Fisheries, at page 100 of 582.
[197] Ibid.
[198] *Fuel Retailers Association of SA (Pty) Ltd v Director-General, Environmental Management, Mpumalanga, and Others* (CCT67/06) [2007] ZACC 13.

justify development on a deteriorating environmental base,[199] due to the species' very listing as TOPS Species and for this reason such unlimited development would be detrimental to the environment, which would ultimately culminate in the detriment to development.

7.3.6. Trophy Hunting Perpetuates Inequality

As previously noted, one of the hallmark features of current trophy hunting practices is that the animal subjected to the trophy hunt is most commonly bred in captivity for the purposes of then being subjected to the hunt.[200]

The breeding of animals in captivity or game ranching as it is commonly referred to as, takes place on private land.[201] It has already been noted that grave instances of inequality plague land ownership in South Africa, brought about by racially unjust practices and deprivation of land rights to non-white persons within South Africa.[202]

It is for this very reason that a majority of non-white persons are completely excluded from this industry, and as at the time of authoring this research report, the

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[199] Ibid, interpreted inline with para 44.
[200] https://www.discoverwildlife.com/animal-facts/mammals/the-truth-about-canned-hunting-what-is-it-and-how-is-it-regulated/
[201] Ibid.
[202] http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0256-95072013000800003#:~:text=Forced%20removals%20in%20South%20Africa%20were%20carried%20out,cities%20to%20live%20in%20barren%20and%20overcrowded%20places.

DFFE has acknowledged this very point in both the Draft White Paper on Sustainable Use[203] and the Draft Game Meat Strategy[204], both seeking to address the inequality in the industries, including within this the lack of a reformed and transformed land ownership landscape, and ensure an equitable distribution of resources through the biodiversity economy.[205]

Trophy hunting therefore predominantly takes place on land owned by white persons, predominantly to the exclusion of non-white persons, with those working on the land, being predominantly non-white persons.[206] Therefore, one of the key perceptions and legal considerations is whether trophy hunting is a colonial-era structure failing to not only give effect to section 24 of the Constitution, also the rights to dignity and equality.

Furthermore, trophy hunting is a leisurely practice requiring a large capital contribution to be undertaken, including the cost of the hunt, accommodation, license and permit fees, and taxidermy costs.[207] When viewed in light of the great disparity of social and economic inequality with the minority of South Africans (being white) holding a majority of the wealth of the country, the partaking in trophy hunting is to the ultimate exclusion of black South Africans.

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[203] Department of Forestry, Fisheries and the Environment Draft White Paper, on the Conservation and Sustainable Use of South Africa's Biodiversity Government: Gazette Notice 46687.
[204] Department of Forestry, Fisheries and the Environment Draft Game Meat Strategy, Government Gazette Notice 47024, dated 18 July 2022.
[205] Ibid.
[206] https://conservationaction.co.za/recent-news/the-trophy-hunting-industrys-latest-tone-deaf-argument-about-racial-inequality/
[207] http://huntersafrica.co.za/packages-and-prices/price-list

To this end, trophy hunting is not a practice engaged or partaken in by those members of society who are not wealthy.[208] In fact, the trophy hunting practice is one which, it is submitted, is premised on the demonstration/flaunting of wealth in its practice, hence necessitating the need for the extraction and showcasing of the trophy concerned.[209]

8. HAVE THE COURTS ALREADY SOUGHT TO OPEN THE GATES TO A CONSTITUTIONAL CHALLENGE OF THE TROPHY HUNTING OF TOPS SPECIES

An important consideration would be to determine whether any courts have opined to some extent or another on the trophy hunting industry, and in doing so determining the manner in which the courts have viewed the practice of trophy hunting.

The only judgment in South Africa dealing with trophy hunting was one in which the author lead the legal team on, and that is the matter of *The Trustees for the Time Being of the Humane Society International – Africa Trust and Others v The Minister of Forestry, Fisheries and the Environment and Another*.[210]

At paragraph 83, the learned judge had the following to say

[208] https://businesstech.co.za/news/business/206214/how-much-you-pay-to-go-trophy-hunting-in-south-africa/#:~:text=The%20total%20economic%20contribution%20of%20trophy%20hunting%20to,other%20general%20aspects%20such%20as%20transport%20and%20accommodation.

[209] Ibid.

[210] *Trustees for the time being of the Humane Society International – Africa Trust and Others v Minister of Forestry, Fisheries and the Environment and Another* (6939/2022) [2022] ZAWCHC 55.

"*In the event that no interdict is granted pending finalisation of the review proceedings, of the order of 170 animals will be hunted during 2022, their respective trophies mounted by local taxidermists and thereafter exported overseas. The primary beneficiaries of these killings will be the wealthy, foreign hunters who may wish to adorn their homes, man-caves, offices, club houses and the like with the hubristic consequences of their expensive forays into the wilds of southern Africa. If the interdict is granted, those animals will be spared death at the hands of those hunters. The irreparable harm is thus the difference between life and death. It is, to use the vernacular, "a no brainer" in the test for an interdict pendent lite.*"[211]

The learned judge's remarks make it clear that the ultimate focus will be on the international market in relation to the trophy hunting of TOPS Species, and hence serving no domestic purpose or ultimate benefit in social and economic development within the country.

The judge went on to note further, the remarks noted within the content of this research report relating to the perpetuation of inequality within the country,[212] where it was noted:

"*And, in any event, as I have said, if the review is unsuccessful, the desire of the fortunate few who can afford to hunt protected animals exclusively for the purpose of transporting their trophies for display overseas will not have been lost, only delayed. So too the much vaunted inflow of foreign currency into South Africa's hunting industry"*[213]

[211] Ibid, at para 83.
[212] https://conservationaction.co.za/recent-news/the-trophy-hunting-industrys-latest-tone-deaf-argument-about-racial-inequality/
[213] *Trustees for the time being of the Humane Society International – Africa Trust and Others v Minister of Forestry, Fisheries and the Environment and Another* [2022] ZAWCHC 55 at para 87.

Finally, the learned judge remarked of the possibility of a constitutional challenge to the trophy hunting of TOPS Species, where it was remarked that:

"When the Minister's compliance with her obligations under NEMBA and the CITES Regs are ultimately considered this provision of the Constitution [section 24(b)] *will come into play through the principle of subsidiarity. Consequently, her decision will be evaluated with reference to, inter alia, both animal welfare and the interests of trophy hunters*.[214]

9. CONCLUSION

In conclusion, it is submitted that the permissibility of NEMBA in allowing for the trophy hunting of TOPS Species as an exemption to the standard position of prohibiting Restricted Activities in relation to such TOPS Species amounts to a contravention of section 24 of the Constitution.[215]

As such, the provisions of NEMBA may stand to be challenged, in so far as they permit the trophy hunting of TOPS Species, for failing to give effect to section 24 of the Constitution.

[214] Ibid at para 91.
[215] Ibid at para 96.

Bibliography

Legislation

The Constitution of the Republic of South Africa, 1996.

Animals Protection Act 71 of 1962.

The National Environmental Management Act 107 of 1998.

The National Environmental Management: Biodiversity Act 10 of 2004.

The Threatened or Protected Species Regulations (TOPS), 2007.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Regulations, 1963.

International Conventions

The United Nations' Convention on Biodiversity

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Regulations, 1963.

The Threatened and Protected Species Regulations GN R151 in GG 29657 of 23 February 2007 as amended.

The Convention on International Trade in Endangered Species Regulations GN R 629 in GG 33002 of 5 March 2010.

Case Law

Fuel Retailers Association of SA (Pty) Ltd v Director-General, Environmental Management, Mpumalanga, and Others (CCT67/06) [2007] ZACC 13.

National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16) 2017 (4) BCLR 517 (CC) (8 December 2016).

National Council of Societies for the Prevention of Cruelty to Animals v Openshaw (462/07) 2008 (5) SA 339 (SCA) (30 May 2008)

National Society for The Prevention Of Cruelty To Animals v Minister of Justice and Constitutional Development and Another (29677/2013) 2017 (4) BCLR 517 (CC).

National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another 2017 (4) BCLR 517 (CC).

NCSPCA v Openshaw (462/07) [2008] ZASCA 78 (RSA)

Trustees for the time being of the Humane Society International – Africa Trust and Others v Minister of Forestry, Fisheries and the Environment and Another (6939/2022) [2022] ZAWCHC 55.

Journal Articles

The World Bank *Inequality in Southern Africa: An Assessment of the Southern African Customs Union* 2022.

D. Cingano "Trends in Income Inequality and its Impact on Economic Growth", OECD Social, Employment and Migration Working Papers, No. 163, OECD Publishing, 6

United Nations Educational, Scientific and Cultural Organisation World Social Science Report 2016 Inequality and Natural Resources in Africa James C. Murombedzi, 1 – 3.

The Economic Impact of Trophy Hunting in the South African Wildlife Industry, Melville Saayman, Petrus van der Merwe, Andrea Saayman Global Ecology and Conservation Volume 16 October 2018.

Books

Fuggle and Rabie's Environmental Management in South Africa (ND King, HA Strydom and FP Retief) (3ed) 2018

Websites

https://www.biofin,org/south-africa>;

https://www.imf.org/en/news/articles/2020/01/29/na0128206six-charts-on-South-Africas-persistent-and-multi-faceted-inequality>.

https://www.esi-africa.com/regional-news/africa/a-pursuit-of-profit-over-our-environment/

https://www.britannica.com/explore/savingearth/poaching

https://www.iol.co.za/dailynews/news/451-rhinos-were-poached-in-2021-says-the-department-of-forestry-fisheries-and-the-environment-47f33e23-6d5e-4541-8f28-2a3d116e1b17

https://conservationaction.co.za/media-articles/protecting-south-africas-biodiversity/

https://www.livescience.com/41421-animals-threatened-with-extinction.html

https://wildtrust.co.za/arguments-for-and-against-trophy-hunting-in-south-africa/

https://www.macmillandictionary.com/dictionary/british/trophy-hunting

https://www.nrahlf.org/articles/2019/2/6/there-is-no-difference-between-trophy-hunting-and-hunting/

https://www.poachingfacts.com/faces-of-the-poachers/subsistence-poachers-farmers/

https://www.macmillandictionary.com/dictionary/british/trophy-hunting

https://en.wikipedia.org/wiki/Trophy_hunting

https://rhinoreview.org/value-of-trophy-hunting-to-conservation-massively-overstated-report/

https://www.dffe.gov.za/projectsprogrammes/biodiversityeconomy

https://www.dffe.gov.za/event/deptactivity/3rdbiodiversity_economyindaba

https://gameandhuntdaily.co.za/tga-trophy-hunting/

https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/03/Trophy-Hunting-Working-paper.pdf

https://www.researchgate.net/publication/327597838_The_promise_of_'well-being'_in_Section_24_of_the_Constitution_of_South_Africa

https://www.researchgate.net/publication/315528329_Listing_and_Delisting_Thresholds_under_the_Endangered_Species_Act

https://huntinafrica.com/leopardhunting/#:~:text=A%2014%20day%20leopard%20hunt,to%20hunting%20area%20is%20%242%2C500.

https://africahuntlodge.com/hunting-packages/caracal-hunts

https://africageographic.com/stories/missing-mark-african-trophy-hunting-fails-show-consistent-conservation-benefits/

https://www.perc.org/2021/02/18/misinformation-about-trophy-hunting-threatens-conservation/#:~:text=Trophy%20hunting%20can%20be%20successful%20at%20conserving%20wildlife,threaten%20the%20lives%20and%20livelihoods%20of%20rural%20people.

https://www.sciencedirect.com/topics/earth-and-planetary-sciences/conservation-of-species

https://mises.org/power-market/trophy-hunting-saves-endangered-species

https://www.news24.com/health24/Lifestyle/Environmental-health/Animals/10-consequences-of-banning-trophy-hunting-in-SA-20150805

https://conservationaction.co.za/recent-news/the-trophy-hunting-industrys-latest-tone-deaf-argument-about-racial-inequality/

Other

Draft Game Meat Strategy: Government Gazette Notice 47024, dated 18 July 2022.

Department of Forestry, Fisheries and the Environment Annual Report 2020/21, published on 29 October 2021, RP358/2021;

The IPBES Global Assessment Report on Biodiversity and Ecosystem Services 2019.

The Report by 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 (2020).

Department of Forestry, Fisheries and the Environment Draft White Paper, on the Conservation and Sustainable Use of South Africa's Biodiversity Government: Gazette Notice 46687, dated 8 July 2022;