

# **Can the Environmental Rights in the South African Constitution Offer Protection for the Interests of Animals?**

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## **1. Introduction**

In his famous 'I am an African' speech, introducing the final South African Constitution, Deputy President Thabo Mbeki, stated that:

'At time, and in fear, I have wondered whether I should concede equal citizenship of our country to the leopard and the lion, the elephant and the springbok, the hyena, the black mamba and the pestilential mosquito. A human presence amongst all these, a feature on the face of our native land thus defined, I know that none dare challenge me when I say – I am an African'.<sup>2</sup>

In this quote, Mbeki suggests that a defining feature of African-ness, is sharing the land with other creatures. He conjures up an ethos not of domination but of mutual respect and co-habitation with other creatures: indeed, far-sightingly, he suggests the conferral of equal citizenship upon non-human animals, a suggestions that has only recently been defended strongly in the academic literature.<sup>3</sup> Yet, unfortunately, these sentiments did not receive concrete expression in the constitution with no mention being made of non-human animals except in the schedules dealing with the competences of national government and the provinces.

An important question arises as to whether any of the existing provisions of the constitution have any implications for animals and provide protection for them. In this paper, I will consider the environmental right and its implications for animals. The right reads as follows:

'Everyone has the right

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

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<sup>2</sup> Thabo Mbeki, *I am an African*, Speech at the Adoption of the Republic of South Africa Constitution Bill (8 May 1996) available at <http://www.anc.org.za/show.php?id=4322> (last visited 17 January 2015).

<sup>3</sup> SUE DONALDSON AND WILL KYMLICKA *ZOOPOLIS* (2011).

- (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;
  - j. Promote conservation; and
  - k. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’.

In the post-apartheid era, South Africa passed a raft of environmental legislation which is rooted in this constitutional provision.<sup>4</sup> The direct consideration of animal welfare is mentioned no-where in primary legislation and, in general, even delegated legislation has sought to avoid engaging issues surrounding animal welfare. In fact, recently, the Department of Environmental Affairs (DEA) expressed the desire to amend one of the most progressive pieces of legislation passed since the new constitutional order began which is termed the ‘National Norms and Standards for the Management of Elephants in South Africa’.<sup>5</sup> One of the main grounds for doing so is that the DEA lacks the competence to regulate on matters concerning animal welfare which are entirely distinct from environmental concerns framed in terms of notions such as biodiversity and conservation.

In the second part of this paper, I shall consider the second part of the environmental right and, in particular, different approaches to interpreting the key concepts contained therein, namely, ‘conservation’ and ‘sustainable utilization’. These concepts also suffuse the rest of the environmental legislation passed in terms of the constitutional provisions. Two approaches shall be identified to interpreting these ideas, an ‘aggregative’ perspective – which involves a focus on overarching holistic goals - and an ‘integrative’ perspective – which requires an attitude of respect for the individuals that make up the whole. In the third part of the paper, I shall provide several arguments why the integrative perspective provides the best interpretation of the notions of ‘conservation’ and ‘sustainable use’. That means, in turn, that these concepts are not to be understood in a manner that excludes the interests of animals but such as to include respect for them within their very extension. Notions at the heart of environmental law thus are not separate from those engaged in ethical theory relating to animals but integrated with those concerns.

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<sup>4</sup> The ones that have a direct impact on wild animals include the National Environmental Management Act 107 of 1998 (NEMA); the National Environmental Management: Biodiversity Act 10 of 2004; and the National Environmental Management: Protected Areas Act 57 of 2003.

<sup>5</sup> Department of Environmental Affairs and Tourism, *National Norms and Standards for the Management of Elephants in South Africa*, GOVERNMENT GAZETTE 30833 (29 February 2008).

The final part of this paper develops these arguments and explores their implications in the context of two particularly important issues that have arisen in the South African political community relating to the protection of wild animals. The first relates to the DEA's attempt to reject its own competence to make regulations that take account of animal interests and welfare when it passes environmental legislation and regulations. I will show that such an attempt is unreasonable in attempting to divorce elements that are deeply integrated. The second relates to the substantive question that was raised in a case dealing with canned lion hunting<sup>6</sup> as to whether or not environmental concepts such as the 'survival of a species' or the conservation of 'biodiversity' can adequately engage the core ethical question raised by canned lion hunting which involves the reduction of animals to simply objects to be utilized for even frivolous human purposes. I argue, in light of the arguments provided for an integrative perspective, that there is indeed a deep connection between the two sets of concepts and only a respect-based ethic can hope to attain the larger environmental goals. This paper thus ultimately sets itself the ambitious purpose of connecting two sets of discourses that often talk past one another. I contend, the environmental right contained in the South African constitution must be integrated with a concern to protect animal interests intrinsically if its very purposes are to be attained.

## **2. The Environmental Right and Animals**

### *2.1. Why the Environmental Right?*

A constitution is by its nature a document that is framed at a high level of abstraction. It is meant to cover many aspects of life and society but cannot explicitly cover all of them. It is also meant to be a document that covers new situations over time and thus existing notions are often understood differently in different generations. As such, the omission to mention any particular groups cannot necessarily be taken as determinative that the constitution provides no protection to them. The South African constitution, for instance, contains no explicit provision that protects individuals against discrimination on grounds of their national origin or citizenship. Yet, the Constitutional Court has found that such protection indeed exists and, that foreigners, are included within the prohibition against unfair discrimination

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<sup>6</sup> *SA Predator Breeders Association v Minister of Environmental Affairs* [2010] ZASCA 151.

contained in section 9(4).<sup>7</sup> Similarly, there is no express provision in the Constitution protecting the rights to family life or the right of spouses to live together; yet, the Constitutional Court has interpreted the right to dignity to find that such rights indeed exist in the constitution.<sup>8</sup> Consequently, the fact that drafters did not expressly indicate that animals are to be afforded the protections of constitutional rights cannot be seen to be determinative. It is necessary to engage in an interpretive exercise to determine the extent to which they fall within the ambit of constitutional protection.

One possibility is that animals are themselves to be regarded as beneficiaries of the rights in the bill of rights and, thus, fall within the domain of its protections. The fact that the South Africa constitution lacks a clear indication of exactly who is entitled to claim most of the rights could be the basis for such an argument. I have in a past paper provided a general case for reading the bill of rights in precisely this way so as to apply the full range of its protections to animals as subjects.<sup>9</sup>

Without any prejudice to this argument, in this paper I wish to consider an alternative possibility. This involves focusing not on whether the application of the bill of rights includes animals as beneficiaries but on whether particular rights – as part of the very scope of the protection they offer - contemplate protection for individual animals and their interests. In the current paper, I wish to consider the possibilities that exist within the environmental right for affording protection to individual animals. The reason for doing so is that the right itself rather clearly must, in some way, include animals within its domain of application.

There is no uniform definition of what constitutes the environment at present in South Africa and the notion itself admits of wider and narrower definitions. The narrower definition includes only nature and natural resources; the wider approach includes a wider range of physical, cultural and social dimensions.<sup>10</sup> The wider approach was adopted in the case of *BP Southern Africa* where the environment was defined as ‘all conditions and influences affecting the life and habits of man’.<sup>11</sup> Whichever construction is adopted, however, it would

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<sup>7</sup> See, for instance, *Larbi-odam v Members of the Executive Council for Education (North-West Province)* 1998 (1) SA 745 (CC) at paras 19-20.

<sup>8</sup> *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC) at para 37

<sup>9</sup> David Bilchitz, *Does Transformative Constitutionalism Require the Recognition of Animal Rights?* 25 SOUTHERN AFRICAN PUBLIC LAW 267- 300 (2010).

<sup>10</sup> Morne van der Linde and Ernst Basson, *Environment*, Constitutional Law of SA 50-12 (Stu Woolman et al eds., 2006).

<sup>11</sup> *BP Southern Africa v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 (5) SA 124 (W) at 145.

include at least those elements making up the natural world. Animals – particularly wild animals – would clearly thus fall within the extension of the term ‘environment’. Indeed, the key piece of legislation that gives effect to the environmental right, the National Environmental Management Act 73 of 1998 (‘NEMA’) defines the environment as follows:

‘The surroundings within which humans exist and that are made up of:

- (i) The land, water and atmosphere of the earth;
- (ii) Micro-organisms, plant and animal life....’

Clearly, therefore, environmental legislation too recognizes that animal life forms part of the environment. It therefore follows that they must be included within the scope of the protections afforded to the environment by section 24. Of course, different facets of the environment would need different interventions: it is hard, for instance, to see how all the features mentioned above in NEMA require the same measures to protect them. Thus, whilst NEMA lays out principles that are of use in protecting the environment more generally, the legislature has passed several pieces of subsequent legislation to address specific questions such as air pollution, biodiversity and protected areas.<sup>12</sup> The broad concept of the environment will thus require two prongs when fleshing out its interpretation and implications for specific features included therein. On the one hand, there is a need for some disaggregation in order to address specific issues which fall within the broad domain of the environment; on the other hand, the notion itself provides the basis for forging a holistic approach which requires a consideration of the relationship between the various parts of what falls within the ‘environmental’ domain. In what follows below, I shall consider, in particular, the implications of the environmental right for non-human animals and what it requires in relation to our treatment of them which involves both disaggregation and a holistic concern for the interactions between different facets of the environment.

## *2.2. The key concept of ‘reasonableness’*

The environmental right in the South African constitution consists of various parts. Each may have some implications for animals: this paper does not seek to offer a detailed analysis of each facet of the right. Instead, I shall concentrate on the second part of the right (section 24(b)) which expressly recognizes an entitlement to have the environment protected. That protection is expressly meant to include the present and future generations: this has been

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<sup>12</sup> See *supra* note 4 in relation to the Biodiversity and Protected Areas Act. Air quality is protected in terms of the National Environmental Management: Air Quality Act 39 of 2004.

understood to include a requirement of inter-generational equity based on the idea that the earth must be understood to be held in trust for future generations.<sup>13</sup>

Giving effect to this right must take place through ‘reasonable legislative and other measures’. This language is reminiscent of that used in relation to other socio-economic rights included in the Constitution which the court has interpreted most extensively in the *Grootboom* case in relation to the right to have access to adequate housing.<sup>14</sup> The court there indicated that legislative measures were not themselves sufficient and that the State has an obligation to devise a programme to address the right in question that was ‘reasonable both in conception and...implementation’.<sup>15</sup> That programme must be a comprehensive one that coordinates efforts amongst all three branches of government and must be balanced and flexible. Consistently with the above requirement to consider inter-generational equity, a reasonable programme must balance short, medium and long-term needs.<sup>16</sup>

Two particular elements of reasonableness as understood by the Constitutional Court are of importance to apply in the context of animals. First, the court expressly mentions that ‘a programme that excludes a significant segment of society cannot be said to be reasonable’.<sup>17</sup> This factor can be understood to mean that a government programme must cover all relevant features of a society and be designed to take account of the particularities of each. It is strongly arguable that animals are a significant feature of the environment and, indeed, the broader social space in which we exist. Any legislation or government programme that fails to address their fundamental interests will leave out a central aspect of moral concern and so will not be reasonable upon the substantive understanding the court affords the term.

Secondly, the court states the following:

‘To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though

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<sup>13</sup> MICHAEL KIDD ENVIRONMENTAL LAW 22 (2008).

<sup>14</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

<sup>15</sup> *Id.* at para 42.

<sup>16</sup> *Id.* at para 43.

<sup>17</sup> *Id.* at para 43.

statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.’<sup>18</sup>

Whilst the court makes these comments in the context of the right of human beings to gain access to adequate housing, it recognizes the importance of the urgency of an individual’s interests in assessing reasonableness. In so doing, it recognizes that there are different degrees of importance of interests under consideration. Moreover, in doing so, it also takes a stance against a crude utilitarian ethic and articulates the view that the constitution is focused upon individuals and their entitlements. The fact that some individuals have their lives improved whilst others are left out may not be sufficient to meet the requirements of ‘reasonableness’ even though it constitutes a ‘statistical’ improvement in the delivery of houses. These elements of the reasonableness enquiry highlight how it is to be applied in the environmental context as well: it needs to take account of the urgent needs that exist as well as focus upon individuals and reject a purely holistic understanding of the environmental right.

### *2.3. Two approaches to Interpreting Conservation*

The reasonable measures identified above are required to achieve certain particular ends which are identified in the constitution. I shall not focus on the first of these (preventing pollution and ecological degradation) which is not directly on the point of these paper.

Section 24(b)(ii) requires reasonable legislative and other measures to ‘promote conservation’. Strangely, there has been virtually no judicial consideration of what is meant by promoting conservation in the case law. Conservation is defined by the Merriam Webster dictionary as a ‘careful preservation or protection of something’.<sup>19</sup> The OED defines it as follows: ‘it involves the ‘preservation, protection or restoration of the natural environment and of wildlife’.<sup>20</sup> One of the difficulties with the formulation in the South African constitution is the lack of an object for this phrase.<sup>21</sup> It is thus not clear exactly what must be conserved: the term is usually used in the context of wildlife and pristine natural areas. In relation to animals, however, the question arises as to whether conservation should be focused on preserving a species or protecting individual animals.

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<sup>18</sup> *Id.* at para 44.

<sup>19</sup> <http://www.merriam-webster.com/dictionary/conservation>

<sup>20</sup> <http://www.oxforddictionaries.com/definition/english/conservation>

<sup>21</sup> Kidd *supra* note 13 22-23.

We can identify at this point two approaches to interpreting the notion of conservation: the choice between them has far-reaching implications for the protections the environmental right will offer to individual animals. The aggregative approach sees the focus of conservation as being on the species as a whole and allows for the sacrifice of many individuals for this wider goal. The integrative approach focuses both on the survival of individuals and the species: it integrates a relationship between respect for individuals and the survival of the species. Thus, a practical example of the difference between the two ideas may flow from their attitude to trophy hunting of large mammals. Those who advocate the aggregative view often argue that trophy hunting has benefits for the species as a whole: it brings in large amounts of revenue to the country which partially can be put back into conserving the species. Moreover, it provides an incentive for people to protect the species in question as they benefit from the wildlife in the country.<sup>22</sup> These views essentially are grounded in a utilitarian ethic which justifies serious harm to individuals for the so-called 'greater good'. An integrative view would reject the idea that the sacrifice of a range of individuals can advance the goal of species conservation. It would argue that respect for individuals is essential to preserving the species as a whole.

#### *2.4. Two approaches to interpreting Sustainable Use*

Before providing arguments as to which notion should be adopted in South Africa, it is important to recognize that a choice between two such identical approaches is required in interpreting section 24(b)(iii) as well. This provision requires reasonable legislative and other measures to 'secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development'. The provision is awkwardly worded (and the second part of the provision appears to be repetitive): the key elements are clearly the notion of 'ecologically sustainable development and use of natural resources'. The idea of sustainable development is drawn from international environmental law. It was initially utilized in the Brundtland report of 1987 which defined sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.<sup>23</sup> This definition recognizes the potential for development to harm the environment which will impact on the future of humans (and other life) on the planet. It outlined a 'type of development that integrates production with resource

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<sup>22</sup> Alistair S Gunn *Environmental Ethics and Trophy Hunting* 6 ETHICS AND THE ENVIRONMENT 88 (2001).

<sup>23</sup> See World Commission on Environment and Development, *Our Common Future* Chapter 2 para 1 UN Doc A/42/427 available at <http://www.un-documents.net/ocf-02.htm>

conservation and enhancement, and that links both to the provision for all of an adequate livelihood base and equitable access to natural resources'.<sup>24</sup> Sustainable development thus involves an integrated type of thinking that links economic development (particularly focused on those who are poor) with environmental considerations. The Rio Declaration of Environment and Development represented a large international consensus on these broad ideas. Principles 3 and 4 included the notions of intra- and inter-generational equity and recognize the twin importance of environmental protection and socio-economic development. One key facet of this notion, is the acceptance of limits, on environmental protection grounds, on the use of and exploitation of natural resources.<sup>25</sup> This idea has been framed as a 'principle of sustainable use – the aim of exploiting natural resources in a 'sustainable', 'prudent', 'rational', 'wise' or 'appropriate manner'<sup>26</sup>.

The South African Constitutional Court in the *Fuel Retailers* case, accepted the principles of sustainable development identified in international law as helping to provide a gloss on the South African environmental right.<sup>27</sup> It stated that the 'constitution...recognises the need for the protection of the environment while at the same time it recognizes the need for social and economic development...Sustainable development and sustainable use and exploitation of natural resources are at the core of the protection of the environment'.<sup>28</sup> Of key importance here is a recognition that developmental and environmental considerations must somehow be harmonized. Natural resources can be used but this must be done in a manner that is 'sustainable'.

Unfortunately, at present, there is no direct case law indicating the manner in which these principles apply in relation to animals. The key principle to consider is the notion of sustainable use (and how it connects with development more generally). In the context of the sustainable use principle, there is a major question as to whether animals should be regarded as natural resources at all given that this may be understood to reduce them to mere 'things'. Much of the work on animal ethics in recent years suggests that any such reduction is mistaken morally and that animals are different in that they need consideration for their

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<sup>24</sup> Id. Chapter 1 para 47.

<sup>25</sup> PHILLIP SANDS PRINCIPLES OF INTERNATIONAL LAW 266 (2003)

<sup>26</sup> Id. at 253

<sup>27</sup> *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment Mpumalanga Province* 2007 (6) SA 4 (CC) at paras 46-56.

<sup>28</sup> Id. at .

interests in their own right.<sup>29</sup> Such an approach would exclude the application of general environmental principles surrounding ‘sustainable use’ in relation to animals.

Whilst this approach could be attractive from a perspective friendly to the interests of animals, in some sense, it appears that the horse has bolted. The environmental legislation passed in South Africa has assumed that the principles of sustainable development and use apply in relation to animals. Since animals form part of the environment, it would also seem unlikely that these principles have no application in relation to them. Whilst the Constitutional Court could recognize these developments as unconstitutional, it is unlikely to do so given the extensive regulatory framework built upon this basis.

There are, however, two other alternative approaches to interpreting the notion of sustainable use in this context (which, as mentioned, earlier map onto the alternative notions of conservation identified above). The first ‘aggregative’ view rests on a rather simple version of utilitarianism: it suggests that what matters is the greatest overall benefit to the greatest number of human beings overall. It could also be modified slightly to focus on the greatest overall benefit to the environmental system as a whole. Thus, such an approach would practically support trophy hunting of large mammals on grounds that the killing of some lions, leopards and buffalo can provide incentives for people to conserve the rest of these creatures as they become a source of livelihood and wealth. Individual animals are not uniquely valuable and, as long as a limited number of animals are killed, the species will survive. A further argument contends that profits from these activities can also be ploughed back into conservation activities.<sup>30</sup> This approach essentially either rejects the notion that individual animals have worth and interests in their own right that are deserving of respect or regards their lives and welfare as having very minimal value. Their interests are subordinate to the economic benefits some humans may achieve from their existence or the benefits that can be achieved for other parts of the system by their deaths.

The major question facing such an approach is whether it in fact provides a viable interpretation of the notion of ‘sustainable use’. Indeed, the aggregative view seems to place most of the weight on the notion of ‘use’. Ultimately, for instance, animals are to be understood entirely instrumentally: they matter in so far as they help advance the uses humans may have for them now or in the future. The notion of ‘sustainability’ here is a

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<sup>29</sup> See, for instance, TOM REGAN *THE CASE FOR ANIMAL RIGHTS* (1983) and GARY FRANCIONE *ANIMALS, PROPERTY AND THE LAW* (1995).

<sup>30</sup> Gunn *supra* note 22.

simple qualification on the notion of use such that present ‘uses’ do not prevent or impair future ‘uses’.

An alternative ‘integrative’ understanding of ‘sustainable use’, on the other hand, gives equal weight to the composite term, ‘sustainable’ and ‘use’. The very approach to use must be such that it is conditioned to provide a future for the animal in question and recognizes its role in a wider holistic ecosystem. Sustainability here qualifies and colours the notion of use itself such that certain uses become impermissible. The integrative approach incorporates an understanding that a certain approach to use which ignores individual interests and welfare is inimical to sustainability. It is only where the individual animal is respected and afforded protections for its interests that any use of an animal can become sustainable. The integrative understanding recognizes that there is a legitimate sense in which we may use all those things that are in the ‘environment’. Indeed, the idea of ‘use’ alone is not necessarily objectionable in that, even in the human context, there are uses we make of other people that are legitimate. We can utilize the services of an electrician, for example, provided we pay for it and we may depend on a shopping teller to acquire our groceries. These forms of use are morally and legally acceptable as they do not undermine the respect we owe to other human beings and are consistent with it. They accord, for instance, with the famous second formulation of the categorical imperative provided by Immanuel Kant: ‘so act that you use humanity, whether in your own person or the person of any other, always at the same time as an end, never merely as a means’.<sup>31</sup> This principle does not preclude using others for achieving one’s ends but forbids reducing them merely to instruments for our own ends.

The integrative approach understands the notion of ‘sustainable use’ in a similar manner. Usage of those elements which comprise the environment is legitimate provided it meets certain conditions. It is to be understood along the lines of the Kantian qualification above: that, as we saw, individual animals may be used as a means, but never treated, *merely* as a means. Sustainable use enshrines, on this approach, a conception whereby any use is legitimate only if it is done in a manner compatible with respect for the entity in question that is being used. It would thus reject that the killing of animals such as lions for mere pleasure or entertainment constitutes a form of ‘sustainable use’.

I have identified two different approaches to interpreting the notions of conservation and sustainable use which clearly overlap normatively with one another. The question that arises

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<sup>31</sup> IMMANUEL KANT PRACTICAL PHILOSOPHY 80 (ed. Mary J Gregor, 1999)

is which is the preferred approach to interpreting the environmental right (and, consequently, the rest of the environmental law framework) in South Africa. In the next part of the paper, I will provide several argument as to why the integrative approach is preferable.

### **3. Why The Integrative Approach to Conservation and Sustainable Use is Preferable**

#### *3.1. The Core of the Argument*

The arguments I present in this paper are not founded upon the notion that animals have direct entitlements expressly in the Constitution. The reason for this is that no such express entitlements exist: instead, any protection for animals must be derived from other ideas.<sup>32</sup> The arguments I focus upon are that respect for animal lives and interests are centrally connected to the achievement of environmental goals such as conservation and sustainability. To avoid loading the dice in favour of the integrative view, I attempt to consider whether in fact the aggregative view of these concepts achieves its own goals.

The outline of the key line of argument for the integrative view is as follows: An aggregative approach to sustainable use conceives of animals as pure instruments to human ends (or larger environmental ends). As such, they are understood ethically to have very limited worth or none at all. As such, human purposes become primary in relation to any such animal and, just like an inanimate piece of stone, there are no (or very limited) moral limits as to what may be done to the being in question on its own terms. The argument is that such a purely instrumental understanding of animals is likely, in the longer run, to undermine the very sustainability of any use understood in terms of the aggregative approach itself. In other words, conceiving of animals as lacking any serious moral worth and promoting practices based on this understanding ultimately places the very future survival and flourishing of the species in jeopardy; and it will undermine the attempt to conserve the biodiversity of the environment and its holistic integrity. The question thus arises as to what basis there is to support this argument: why should we think that an aggregative view will undermine the very goals it sets itself?

#### *3.2. The indirect duty view*

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<sup>32</sup> Direct entitlements may be implied as I argue in the paper *supra* note 9 but I pursue a different argument here.

The first set of reasons relates to a form of argumentation that is often known as the ‘indirect duty view’ of our obligations towards animals. The view usually flows from an understanding of moral obligations that focuses on humans alone. Kant’s ethical system, for instance, only considers rational agents to be the subject of direct obligations. Yet, at the same time, these systems of thought often recognize certain obligations towards animals: the reasons for doing so relate to the claim that treating animals cruelly is not ethically inert: such behavior develops dispositions in individuals that lead them to treat humans badly. Animals must thus be treated decently in order to avoid harming humans.

Robert Nozick famously challenged this line of reasoning by wondering why it is inevitable that cruel treatment of animals leads to cruel treatment of human beings. He writes:

[i]f I enjoy hitting a baseball squarely with a bat, does this significantly increase the danger of my doing the same to someone’s head? Am I not capable of understanding that people differ from baseballs, and doesn’t this understanding stop the spillover? Why should things be different in the case of animals?<sup>33</sup>

The response to this argument is of course to recognize that animals are not baseballs.<sup>34</sup> The fact that animals are not inanimate objects but sentient creatures means that harming them requires a particularly hard-hearted and deadened character that is consistent with similar treatment to humans. There is a sufficient similarity between humans and animals such that a failure to respect the interests of animals can lead to a failure to respect the interests of humans. This argument is not just fancy a priori ethical reasoning: empirical research has recently found a clear correlation between circumstances in which there is animal abuse and those in which there is domestic violence towards women and children.<sup>35</sup> There are also a number of empirical studies showing that violent activities of serial killers began with cruel behavior towards animals.<sup>36</sup>

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<sup>33</sup> ROBERT NOZICK ANARCHY STATE UTOPIA 36 (1974).

<sup>34</sup> I have addressed this argument previously in David Bilchitz *Moving Beyond Arbitrariness: the Legal Personhood and Dignity of Non-human Animals* 25 SOUTH AFRICAN JOURNAL ON HUMAN RIGHTS 46-48 (2009). Whilst I accept there is some merit in the argument, I contend that ultimately there is no good grounds for not recognising direct obligations towards animals. However, the latter argument is less relevant in the context of the central thrust of this paper.

<sup>35</sup> R Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection* 5 ANIMAL LAW 85 (1999); CA Lacroix, *Another Weapon for Combatting Family Violence: Prevention of Animal Abuse* 4 ANIMAL LAW 7 (1998); AJ Dryden *Overcoming the Inadequacies of Animal Cruelty Statutes and the Property-based View of Animals* 38 IDAHO L REV 185 (2001).

<sup>36</sup> R Lockwood *id.* 82-83.

This line of reasoning also supports the argument that the aggregative view undermines the very goals which it wishes to achieve. As we saw, the indirect duty view is based upon the idea (borne out by empirical evidence) that there is a connection between our cruel and disrespectful actions to animals and those towards humans. We could argue a fortiori that, if this is true, there must be a connection between disrespectful actions towards some individual animals of a species and similar actions towards other individual animals of the same species. In other words, if we accept the aggregative view's perspective that individual animals may be sacrificed for a great good, that attitude ethically transfers from one animal of that species to other animals of that species. An aggregative view will thus struggle to keep its instrumentalist ethic in relation to animals confined to only some animals who may be sacrificed for self-interested human goals or wider environmental purposes; instead, its approach will breed an attitude and broader disposition to see animals of a particular species (and animals more generally) in purely instrumental terms. It is thus likely to lead to actions evincing utter disrespect for the particular species (and animals more generally). That, in turn, is likely to undermine efforts to ensure there are sufficient animals for future use and for the aesthetic purposes of conservation advocated by the aggregative view.<sup>37</sup>

I will elaborate upon the reasons we should expect this disrespect to harm environmental purposes further below. Before doing so, however, I wish to note that there may also be human-centric reasons flowing from the indirect duty view why the aggregative view should not be adopted. As we saw, behaving in a way that demonstrates utter disrespect towards animal life is not neatly compartmentalized; it translates and connects with a whole set of other behaviours in relation to human society as well. The deadening of the heart that allows for individuals to kill magnificent creatures simply for a trophy on the wall is likely to translate into negative behaviours towards human beings. The hunting industry has been shown, in a recent research, to continue to maintain highly racialized and discriminatory practices and perpetuate apartheid-era property and land relations.<sup>38</sup> Indeed, the research also shows how poor black people are often required to deal with wild animals with minimal

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<sup>37</sup> The aggregative view cannot see conservation as preserving animals who are valuable in itself and so the reasons to conserve must relate to some kind of 'aesthetic' value of having different species if they are not particularly valuable for their uses to human beings.

<sup>38</sup> Nomalanga Mkhize *Game Farm Conversions and the Land Question: Unpacking Present Contradictions and Historical Continuities in Farm Dwellers' Tenure Insecurity in Cradock* 32 JOURNAL OF CONTEMPORARY AFRICAN SOCIETY 207-219 (2014); Femke Brandt and Marja Spierenburg *Game Fences in the Karoo: Reconfiguring Spatial and Social Relations* JOURNAL OF CONTEMPORARY AFRICAN SOCIETY 1-18 (2014)

safety measures, and extremely limited pay.<sup>39</sup> These findings bear out the key underlying assumptions of the indirect duty perspective, there is an intimate relationship between disrespectful treatment of other creatures and similar behavior towards humans. Moreover, the violence unleashed for profit-making purposes by trophy-hunting essentially accepts and normalizes violence more generally in society. South Africa, unfortunately, has some of the highest rates of domestic violence against women and children in the world; it also has an exceptionally high rate of violent crime more generally.<sup>40</sup> Whilst one must be cautious in drawing direct causal relations between trophy hunting, for instance, and the high rate of violence, at the same time, the promotion and sanctioning of violence against highly sentient creatures, at a minimum, does nothing to counter the general violent ethos in the society.

### *3.3. Self-interest and the aggregative approach*

Disrespect for individual animals is likely to have negative environmental effects in the longer-term for a range of reasons flowing from aspects of human nature. The aggregative view reduces animals to mere instruments for human use and thus prima facie provides hardly any limits on what any individual may do with animals to advance their self-interest. After having done so, the aggregative view then essentially requires individual human beings to adopt a long-term view that is happy to forego some profit and self-interest in the present for benefits in the future. The ultimate basis of the ethic is not morality at all but how to ensure the self-interest of humans in the use of other creatures is maintained over the longer-term. The aggregative view thus legitimates self-interest as the ground upon which we interact with other creatures (and the environment more generally).

There are several problems with this approach, the first of which involves creating the conditions for a serious collective action problem: for every individual, according to this ethic, there is very limited reason not to use an animal in a way that advances their self-interest; at the same time, collectively, if everyone does so, the number of animals available for everyone to use will decrease, the eco-system will be affected and the future availability/survival of the animal be affected. This problem is perhaps the key reason an aggregative view would seek to use the law to circumscribe the over-use by some people of

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<sup>39</sup> Femke Brandt *Trophy Hunting in South Africa: Risky Business for Whom?* DAILY MAVERICK (17 Nov 2015) available at [http://www.dailymaverick.co.za/opinionista/2015-11-17-trophy-hunting-in-south-africa-risky-business-for-whom/?utm\\_source=Daily+Maverick+Mailer#.VqCRDLZ97IV](http://www.dailymaverick.co.za/opinionista/2015-11-17-trophy-hunting-in-south-africa-risky-business-for-whom/?utm_source=Daily+Maverick+Mailer#.VqCRDLZ97IV).

<sup>40</sup> *2015 Crime Stats for South Africa: Everything You Need to Know* (Business Tech, Sept 29 2015) available at <http://businesstech.co.za/news/government/99648/2015-crime-stats-for-south-africa-everything-you-need-to-know/>

animals. Yet, the problem is that, inherent in this approach, is its elevation of self-interest as the key driving feature in our interaction with other creatures. As such, every individual has a strong incentive to try and free-ride: if one can gain benefits whilst others comply with the law, one will be able to advance oneself without affecting the aggregate availability of animals for future use. If many people adopt this free-riding approach, the survival and availability of the species as a whole will be affected. In countries with poor enforcement like South Africa (and many other parts of Africa), encouraging a self-interested ethic towards animal life is likely to impinge upon a serious resolution of this collective action problem.

Consider the following real-life situation. South Africa has become one of the centres of trophy hunting in the world. Environmental legislation and regulations seek to regulate the number of animals that are available for trophy hunting, thus presuming to follow the ‘aggregative’ conception of sustainable use. Hunting essentially involves the serious negation of the value of an individual animal which can be killed simply to satisfy the pleasure a hunter takes in killing it. This ethic is accepted within the existing legal framework. Trophy hunting for rhinos initially took place legally and their horns were shipped out to satisfy the demand for it in the markets of China and Vietnam. Gradually, the demand for rhino horn outstripped the supply that was based on the limited quotas the South African government allowed in relation to legal hunting. Slowly, illegal poaching of rhinos increased in order to meet the demand of the markets in Asia. That poaching has reached record levels with over 1215 rhinos being killed in 2014 in South Africa.<sup>41</sup> The very future existence and survival of rhinos has now been placed in peril and strong limits placed on the legal hunting of rhino.<sup>42</sup> Moreover, their role in the eco-system and part of the holistic environmental system is essentially threatened. What seemed like a ‘sustainable use’ on the aggregative view essentially sanctioned self-interested behaviours which could not be contained and multiplied eventually to threaten the very future of the species.

Those committed to the aggregative view would claim that there is a strong difference between legally hunting a rhino which is within strictly controlled quotas and poaching rhino which imperils the species. Yet, both views rest on an understanding of sustainable use that essentially renders individual rhinos pure instruments for other ends (particularly human self-

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<sup>41</sup> Save the Rhino, *Poaching: The Statistics* available at [https://www.savetherhino.org/rhino\\_info/poaching\\_statistics](https://www.savetherhino.org/rhino_info/poaching_statistics) (last visited on 18 January 2016).

<sup>42</sup> Tony Carnie, *Changes to Law Will Limit Rhino Hunts* (06 August 2013) available at <http://www.iol.co.za/scitech/science/environment/changes-to-law-will-limit-rhino-hunts-1.1558174> (last visited on 18 January 2016).

interest). Since there is economic profit to be gained and we owe no moral obligations towards animals who have no value in themselves (placing no limits on what we may do any specific individual), it is hard to see, from an individual point of view that is focused on present self-interested gain, why such an individual should not engage in poaching if trophy hunting is allowed? Particularly, given the socio-economic disparities that exist around hunting, why should wealthy Americans be entitled to kill animals at will and wealthy South Africans reap these benefits as opposed to poor individuals who are simply trying to provide a basic living for their families? An ethic that simply reduces animals to instruments is essentially contingent upon that ethic providing people with an interest in preserving some animals in the longer-term for future uses. Where humans do not widely share views about the importance of long-term species survival or find greater use in the destruction of these creatures (or their habitat), then it is unclear on what basis there is to limit current uses as the greatest benefit in their view will be achieved through unconstrained use.

Apart from indulging self-interest and struggling to deal with the collective action problem, the above example highlights that the aggregative view also cannot address the fact that human beings have limited life-spans and tend to be more interested in their proximal futures than distant outcomes. As such, an ethic that focuses on 'use' will always tend to imperil the sustainability thereof given the demands of the present being more pressing than those of the future. This point has been seen time and time again from over-fishing to emissions of greenhouse gases. Moreover, some of the initial successes of the aggregative view cited by pro-hunting lobbyists have had disastrous effects when situations change and people land up in situations of crisis where conserving animals becomes less important.

Consider, for example, Zimbabwe's attempt to implement an aggregative view of sustainable use through its CAMPFIRE policy (Communal Areas Management Programme For Indigenous Resource'). In a 2001 article, Gunn writes that the programme seemed to be successful on its own terms: it generated USD 2.5 million, 90 percent of which came from big game hunting licenses. Some of this money was ploughed back into conservation activities and community development. At the same time, Zimbabwe was hailed as a conservation success: whilst 1 percent of elephants were killed per year in hunting operations, the total number of elephants had increased substantially over time in Zimbabwe, from 32000 in 1960 to 70 000 in 1993. During the late 1990s, President Robert Mugabe undertook a disastrous series of reforms around land which plunged the country into economic crisis. Conditions in Zimbabwe deteriorated with fewer hunters and tourists coming to the country.

By 2003, over 80 percent of the animals in Zimbabwe safari camps had died.<sup>43</sup> With animals no longer so valuable in monetary terms, people began to kill them indiscriminately for poaching and subsistence purposes with one report speaking about the wildlife being ‘decimated’ by the economic crisis.<sup>44</sup> This example suggests that an ethic of pure self-interest around the use of animals is ultimately not sustainable and fails to conserve them for future generations. It renders their survival contingent upon particular conditions existing that renders them more useful to human beings alive than dead, and, in circumstances in which people value their uses in the longer-term. When people land up in positions of crisis or emergency, the self-interested ethic fails to offer any protection and rampant exploitation becomes the name of the game.

I have argued thus far that the aggregative approach to sustainable use and conservation undermines its own aims. To achieve the very goals the aggregative approach aims at, it is necessary to adopt an integrative approach which refuses to reduce animals to mere resources to be used at will and recognizes that they are deserving of respect for their interests in their own right.<sup>45</sup> If such an ethic is promoted, it will not be permissible to kill animals for any trivial reason relating to their being sources of entertainment (hunting); in turn, their conservation and long-term survival will follow from the respect they are afforded. Whilst there are good reasons to think that the aggregative approach imperils long-term survival or at least places this at risk, a respect-based ethic of sustainable use inherently would lead to the survival of beings since they cannot just be disposed of at whim. Since their lives matter intrinsically, human beings may only use them under limited conditions which places a premium on the survival of individuals. Moreover, an ethic that promotes respect for animals must also respect their fundamental interests and the conditions required for their flourishing. An integrative approach thus is concerned both with animals as well as the relationship with humans and the environment in which they live. This leads to a further argument for the

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<sup>43</sup> Nash Jenkins *Who is Really Responsible for the Killing of Zimbabwe’s Lions and Other Wildlife?* Time (July 29, 2015) available at <http://time.com/3976344/cecil-lion-zimbabwe-walter-palmer/>

<sup>44</sup> Nick Wadhams *Zimbabwe Wildlife Decimated by Economic Crisis* National Geographic News (August 1 2007) available at <http://news.nationalgeographic.com/news/2007/08/070801-zimbabwe-animals.html>

<sup>45</sup> This is akin to adopting a more complex version of utilitarianism in relation to the environment. Instead of adopting a view that allows the benefits of humans (or the environment as a whole) to run roughshod over individual interests, it would require a rule to be adopted that individuals are deserving of respect in their own right and their interests must be protected. That rule would in the longer run achieve better the utilitarian purposes and is an expression of the general argument that is often made for rule utilitarianism over act utilitarianism.

approach which concerns the relationship between individuals and the environment as a whole.

#### *3.4. The Relationship Between Individuals and the Environment as a Whole*

One of the key features of the aggregative view is the notion that what matters is really the big picture: ensuring species survival and that the environment is not harmed for future generations. When challenged as to why these aspects of the environment matter, the answer is usually framed in terms of human self-interest: that it is necessary to guarantee future uses of a species, the aesthetic value of having biodiversity or the importance of the wider ecosystem to human flourishing. The aggregative view is not concerned about the survival of individual animals: what matters is the whole system or species survives.

One of the objections that can be made to this view is its difficulty in capturing the relationship between the individuals who make up the whole and the whole itself. The emphasis of the aggregative view is, for instance, on species survival: individuals do not really matter if they are replaceable so long as the whole species survives. Yet, a species is in fact a human concept which has no reality other than in terms of the individuals that make it up: we understand what a species consists in by virtue of the relationship that exists between particular individuals. The survival of a species may not be dependent on the survival of any particular individual animal: yet, it is individuals who must survive for the species to continue. As such, it is extremely strange to de-emphasize the survival of individuals where they are integral to the very survival of the wider over-arching concept. It also remains hard to see how one can promote respect for the broad concept of a species without respecting the individuals that make it up. The aggregative view - by allowing for the pure instrumentalisation and devaluation of the worth of individual animals - thus undermines its very goal of promoting the broad aim of the survival of the species.

The integrative view, on the other hand, recognizes that there is a close relationship between a focus on individuals and a focus on the whole and the one cannot be divorced from the other. By promoting respect for individuals and a recognition of our moral and legal obligations towards them, the view automatically forces human beings to have a stake in the survival of the more general whole, the species. Moreover, respect involves attention to the interests of animals, the habitat in which they live and the environment more generally. As such, the integrative view in fact adopts a more expansive holistic view than the aggregative approach: it requires understanding the relationship of animals with the rest of nature and

ourselves and thus requires not only a focus on the individual but the broader features of the environment as a whole.

### *3.5. Conflicts of Interests*

It may be objected that matters are not so simple and that there are often conflicts that may arise between a focus on individuals and a more holistic focus: elephants may pose threats to individual humans living near their habitat; it may be necessary to capture (and perhaps even on some occasions humanely kill) an animal which suffers from a serious disease and poses a threat to an entire population of other animals. The aggregative view essentially seeks to resolve these problems by focusing on either the self-interested benefits to humans or what it claims is best for the environment as a whole. In doing so, it does not accord any particular value to the interests of individuals in and of themselves and, as we saw, renders them purely instrumental to wider goals. Apart from the detrimental effects of such instrumentalisation mentioned above, it also can, in many ways, be said to fail to capture the complexity of any clash of interests by automatically resolving them in an aggregative way. Thus, to address human concerns about elephants living in their vicinity, it might simply counsel that those animals should be killed in a country where elephants are not in danger of disappearing. Yet, arguably, that approach adopts a drastic intervention that fails to recognize or even explore alternatives that may better respect the individual lives and interests of animals.

An integrative approach, on the other hand, has the resources, more successfully, to recognize and address conflicts that may arise between individuals themselves and between individuals and the whole. It is founded on a commitment to respect the individuals who make up the whole and thus requires a consideration of animal interests in their own right. This will mean that their interests are not subordinate immediately to human interests (or those of the environment as a whole). Instead, what will be required is a method of reasoning that recognizes a clash of interests and values and attempts to resolve them in the best way possible. This is not a situation that is unknown to constitutional law: indeed, clashes between the interests of humans is central to much of the case law. Particular modes of reasoning have been adopted – in particular, the proportionality enquiry – which seek to assist in the adjudication of competing interests.<sup>46</sup> An integrative view thus is better able to capture the

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<sup>46</sup> A full examination of this possibility cannot be examined here but, for a positive application of the principle of proportionality which protected animal interests even in the face of the profitable human industry of foie gras

various ethical interests at stake in a matter and inherently requires some form of balancing to take place between these different interests. It is suggested that, where balancing is required in terms of the environmental right, a proportionality enquiry could be utilized to help provide some structure to the reasoning process. Arguably, such a result is in fact entirely consistent with the structure of section 24 which hinges on the notion of ‘reasonable’ legislative and other measures.

The notion of ‘reasonableness’ could very well be interpreted to require such a balancing approach in the measures that are adopted. Indeed, in the socio-economic rights context, it has been contended that many elements of the proportionality enquiry are contained within this notion.<sup>47</sup> As we saw, the constitutional court requires balancing between short, medium and long-term needs, ensuring the inclusion of those with significant interests, and an attention to individuals rather than statistical goals overall. Those features of reasonableness would mesh well with the normative thrust of the integrative approach. Moreover, section 36(1) of the constitution itself (the general limitations clause) contains the broad notion of reasonableness and justifiability which includes the sub-elements of a proportionality enquiry. Sub-section 24(b)(iii) of the environmental right itself also, in a broader way inherently requires a form of balancing reasoning which requires there to be sustainability in the use of resources whilst still allowing for economic and social development. Balancing is thus not foreign to the environmental clause and the approach advocated for would thus cohere well with its language and structure. A strong argument for the integrative approach is thus also that it can recognize the value conflicts that exist in giving effect to the environmental right and requires a reasonable balance to be achieved (rather than giving expression to only one set of values).

I have thus far provided reasons for why the integrative approach to interpreting the notions of sustainable use and conservation is to be preferred to the aggregative view. In the next section, I wish to consider certain concrete controversies that have arisen in the public sphere where the differences between these views become evident in practice. I will seek, in particular, to consider the implications of the integrative approach for the way in which the

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production, see *Noah (Israel Association for the Protection of Animals) v Attorney General* H CJ 9231/01 [2002-3].

<sup>47</sup> See the argument made in this regard by SANDRA LIEBENBERG *SOCIO-ECONOMIC RIGHTS: ADJUDICATION UNDER A TRANSFORMATIVE CONSTITUTION* 226 (2010).

competences of environmental agencies are drawn and for the interpretation of environmental legislation.

#### **4. Environmental Law and the Implications of Respect**

To its credit, the South African national legislature has grasped the mandate set out in the Constitution and passed several new pieces of environmental legislation since the final Constitution came into effect in February 1997. The main framework piece of legislation that was passed is the National Environmental Management Act 107 of 1998 which outlines a number of general principles that provide the normative frame within which protection of the environment is to take place in South Africa. That normative frame is, to some extent contradictory: the reason for this relates largely to an adoption of an anthropocentric approach to the environment whilst seeking to advance goals of conservation and sustainability which we have seen are in tension. Thus, the law, for instance, states that ‘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’.<sup>48</sup> This enshrines a perspective that focuses on human beings and their concerns and may be seen to be at odds with a concern for environmental protection which may conflict with those needs. At the same time, the principle does not state that people’s needs are the sole concern but that they should be placed in a central role: this in turn could make room for other concerns. The special nature of animals in the environment is not mentioned in the principles at all, which is a glaring omission.

Sustainable development is said to require a consideration of a range of factors. In relation to the utilization of non-renewable resources, it is required to be ‘responsible and equitable’ and must take into account ‘the consequences of the depletion of the resource’.<sup>49</sup> In relation to renewable resources and the ecosystems of which they are part, use must not exceed a level ‘beyond which their integrity is jeopardised’.<sup>50</sup> As we saw, achieving these goals within a purely instrumental frame towards animals is unlikely and renders their protection precarious: only a respect-based integrative view can help achieve these goals.

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<sup>48</sup> Section 2(2) of NEMA.

<sup>49</sup> Section 2(4)(v).

<sup>50</sup> Section 2(4)(vi).

Two possibilities thus exist in relation to the current legal framework: on the one hand, it could be found to be inconsistent with what the constitution requires and thus need to be revised. Alternatively, the integrative approach, which I have argued should be utilized to interpret the constitutional right, should also suffuse the manner in which the legislation is approached. In other words, the very principles contained in NEMA could be read in light of such a respect-based understanding which is understood to be a necessary condition for their realization. Indeed, much of the problem with the environmental law framework that has been passed in relation to animals relates to an attempt to define questions in terms of broad concepts utilized in environmental law such as sustainability and biodiversity without acknowledging their implications for individual animals. Unfortunately, this is also a problem which has affected the South African academy with many environmental law courses hardly addressing in any manner at all how the conceptual underpinnings and even concrete rules affect animals.

I now turn to consider how these issues relate to two important controversies that have arisen in concrete policy circumstances: one relates to the competence of the Department of Environmental Affairs to pass regulations that address animal welfare (in the context of the particular question of elephant management); the other relates to how substantive ethical concerns relating to animals can be integrated within an environmental frame (in the context of the particular question of canned lion hunting). I shall argue that the concrete circumstances of these cases provide reasons for adopting the integrative approach and provide an illustration of how it could be effected in practice.

#### *4.1. The Competences of the Department of Environmental Affairs*

The lack of an explicit focus on animals and the acknowledgment of an integrative approach to environmentalism has led recently to the Department of Environmental Affairs (DEA) claiming that it lacks the competence to legislate over issues that concern animal welfare and any concern for animals as having some intrinsic worth. The issue raised its head with a process that was initiated to modify a document titled the National Norms and Standards for the Management of Elephants in South Africa (“Norms and Standards”).<sup>51</sup> This document which is essentially a set of regulations was issued in terms of section 9 of the National Environmental

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<sup>51</sup> *Supra* note 5 above.

Management: Biodiversity Act 10 of 2004 (“Biodiversity Act”) by the former Minister of Environmental Affairs in 2008. The Norms and Standards provide a framework for regulating the management of elephants in South Africa. Their purpose is stipulated to involve a number of elements which include managing elephants in such a way as to ensure, for instance, their long-term survival; promote biodiversity and broad socio-economic goals in a manner that is sustainable; not disrupt the ecological system of which elephants are a part; they are treated in a manner that is ethical and humane; and their sentient nature, highly organised social structure and ability to communicate are recognised.<sup>52</sup> The Norms and Standards were issued following an extensive process of public and stakeholder engagement, which drew on expertise from scientists, civil society and academia. This followed a major debate that took place as to whether the culling of elephants should be allowed as part of the process of managing elephants and their impact on the environment.

The Norms and Standards are perhaps the one example in post-apartheid South Africa of an environmental set of regulations that could be said to incorporate respect-based considerations and adopt a more integrative approach. The Norms and Standards set up a series of guiding principles which are the basis the management of elephants must be approach by anyone exercising a power relating to them. They include a requirement to recognize that ‘elephants are intelligent, have strong family bonds, and operate within highly socialized groups and unnecessary disruption of these groups by human intervention should be minimised’.<sup>53</sup> The principles recognize that management interventions regarding elephants must be based on scientific knowledge and take into account the social structure of elephants and be based on measures to avoid stress and disturbance of elephants.<sup>54</sup> The guiding principles require every effort to safeguard elephants from abuse and neglect.<sup>55</sup> At the same time, there is a balance created in the principles which recognizes the impact of elephants on biodiversity and on people who live in close proximity to them.<sup>56</sup> In relation to such issues as culling, ‘lethal interventions’ are only to be utilized with caution and after all available alternatives are considered: in other words, these are interventions of last resort.<sup>57</sup> The Norms and Standards essentially require anyone who is responsible for elephants to create a management plan for doing so. They limit the ability to keep elephants in captivity and require strong justifications

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<sup>52</sup> The purposes are laid out in terms of sections 2(2).

<sup>53</sup> Section 3(a).

<sup>54</sup> Section 3(h).

<sup>55</sup> Section 3(l).

<sup>56</sup> Sections 3(b) and 3(f).

<sup>57</sup> Section 3(i) and section 19 (b)(ii).

for the translocation of elephants. The Norms and Standards thus recognize the need to protect individual elephants whilst ensuring that people's interests and other environmental concerns are also addressed.

The Norms and Standards, of course, in doing so have restricted the uses that can be made of elephants, thus conforming well with the integrative approach outlined above. This salutary feature has, however, generated a pressure from exploitative industries to amend them. The Department itself has put forward the argument that it needs to remove all aspects of the document that relate to animal welfare as it lacks the competence to regulate in that regard. In its concept note advocating for amendments to these Norms and Standards, the DEA states that 'a number of the guiding principles relate to the prevention of abuse and the neglect of elephants, which is problematic as the Department of Environmental Affairs [DEA] does not have the mandate to regulate welfare issues'.<sup>58</sup> Many of the inputs and comments received from other interested parties also articulate this point. This idea - that the DEA is not empowered to regulate welfare issues – seems to underpin one of the key elements of the case that the Norms and Standards should be revisited.

The key argument is based on the fact that the empowering legislation is the *National Environmental Management: Biodiversity Act 10 of 2004*. The purpose of this Act speaks about being to manage and conserve 'biological diversity within the Republic and of the components of such biological diversity' and 'the need to protect the ecosystem as a whole, including species which are not targeted for exploitation'.<sup>59</sup> It also involves the use of 'indigenous biological resources in a sustainable manner'.<sup>60</sup> Key concepts here are biological diversity, conservation, holistic protection and sustainable use. The understanding of sustainable use and conservation, for instance, becomes very important in the manner in which we construct the act and will need to be compatible with the understanding included in the Constitution. Section 9 of the Act provides that the Minister may issue Norms and Standards to achieve any of the objectives of the Act including the 'management and conservation of South Africa's biological diversity and its components'; and 'restriction of activities that impact upon biodiversity and its components'.<sup>61</sup> The DEA has argued that these sections do not contemplate some of the

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<sup>58</sup> Department of Environmental Affairs, *Key challenges Relating to the Implementation and Enforcement of the Norms and Standards for the Management of Elephants in South Africa* available at <http://conservationaction.co.za/wp-content/uploads/2014/09/Concept-Note-Key-challenges-relating-to-the-management-of-elephants-in-South-Africa.pdf>

<sup>59</sup> Section 2 (a) (i) and (IA).

<sup>60</sup> Section 2(ii).

<sup>61</sup> Section 9 of the Biodiversity Act.

elements in the Norms and Standards which protect animal welfare and thus the current Norms and Standards exceeded its powers in that regard. It is instead the Department of Agriculture that is tasked with regulating animal welfare and the DEA should focus only on environmental questions.

I contend that there are several grounds upon which such an argument should be rejected. First, as we saw, the standard for legislative measures taken to give effect to environmental matters is one of ‘reasonableness’. Reasonableness at least involves the notion that the legislation is rational and not arbitrary. It is absurd to suggest that norms and standards regulating the management of elephants can exist without considering their nature, welfare, social character and much else which cannot be simply or neatly unbundled from other matters relating to their management. To attempt to regulate elephants without considering these aspects would be like attempting to regulate tobacco without considering its effect on human health. It is well established in law that if something is incidental to – or necessarily accompanies – the proper performance of an authorised legal power, then it, too, is legally authorised.<sup>62</sup> The Norms and Standards must, therefore, take account of these matters. To avoid doing so, would risk a legal challenge of these regulations being found to be irrational.

Consider, for instance, the fact that the Norms and Standards provide for management plans to be drawn up by those responsible for managing elephant populations in a particular area.<sup>63</sup> These plans must include consideration of the ‘availability of adequate food plants; the availability of adequate shelter; the availability of adequate water for drinking and bathing; and the size of land available to the population’.<sup>64</sup> All these provisions can only be explained and make any sense if one takes account the welfare needs of elephants.

Another provision severely limits the possibility of capturing elephants from the wild.<sup>65</sup> This is for good reason to prohibit the traumatic separation of family units and, in particular, female elephants from their young. This practice often occurred in order for private tourist operations

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<sup>62</sup> The Constitutional Court affirmed this principle which it regarded as trite in *Matatiele Municipality v President of the Republic of South Africa* 2006 (5) SA 47 (CC) at para 50. It has also been affirmed by the Supreme Court of Appeal in *GNH Office Automation CC v Provincial Tender Board, Eastern Cape* 1998 (3) SA 45 (SCA) at 51G-H. In *Moleah v University of Transkei* 1998 (2) SA 522 (Tk), Van Zyl J expressed the principle of implied powers as follows at 536H-I:

‘Applying the principles applicable to the interpretation of statutes, it is clear that, if certain conduct is required or authorised, the authorising act should be interpreted as impliedly including authorisation to do that which is ‘reasonably necessary’ to achieve the main purpose or to perform the action effectively or that which is ‘reasonably incidental’ or reasonably ancillary’ to those powers expressly conferred.’

<sup>63</sup> Section 5(1)(f).

<sup>64</sup> Section 7(b).

<sup>65</sup> Section 11.

to acquire baby elephants which are then destined for a life of captivity in zoos or for being used in elephant-backed safaris. How could the Minister pass a provision such as this without recognising the deep connections between elephants and their young?

The Norms and Standards also cover subjects such as the need to ensure sedation of elephants is not performed repeatedly;<sup>66</sup> limits to the number of times elephants can be translocated, requiring this to occur in family units;<sup>67</sup> the manipulation of ranges of elephants;<sup>68</sup> and limits to the use of culling, which should only be employed as a last resort.<sup>69</sup> These are all measures which provide significant protection for elephants – and are founded on a recognition that they are sentient creatures with inherent worth who have strong welfare and social needs.

These arguments are supported by the fact that the empowering legislation explicitly recognises the ability to regulate ‘components of biodiversity’. This requires an understanding of the nature of each particular component in question which, in the case of sentient creatures involves their having a welfare with particular characteristics. As such, one simply cannot provide sensible environmental regulations without taking into account the nature of the subject of the regulations.

This view supports the adoption of an integrative understanding of the environmental right articulated above. The DEA is the principal state organ which gives effect to the environmental rights. As already discussed, these rights impose obligations for the protection of the environment for present and future generations, including the protection of animal life and, particularly, vulnerable species. The preferred integrative view would understand conservation and sustainable use to require respect for the particular creatures that are being protected. Respect for such creatures would involve displaying an understanding of and concern for their natures which, in the case of sentient creatures, involves their having a welfare. The DEA is mandated to pass reasonable legislative and other measures that protect the environment: it cannot do so without recognising the nature of the creatures before it and according them the respect that is due to them. Animal welfare and environmental considerations are integrated (as the above example shows) and cannot neatly be separated.<sup>70</sup>

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<sup>66</sup> Section 10.

<sup>67</sup> Section 12.

<sup>68</sup> Section 18

<sup>69</sup> Section 19.

<sup>70</sup> It is arguable that animal welfare and a consideration of the nature of a creature would matter – at least to some extent - even on an aggregative view as completely ignoring the welfare of animals and their needs may well lead to a crisis, thus affecting their continued survival which would prevent human uses of them in the future.

The DEA's arguments are also mistaken for two other reasons. First, the mere fact that another department must also account for animal welfare does not remove the obligations of DEA in this regard. Rather, it simply indicates that both departments have these duties – it is fallacious to suggest that constitutional obligations can simply be parcelled into silos with only particular functionaries having competences in relation to them even when they are connected to the work of other functionaries. The DEA's argument that it lacks the mandate to regulate welfare issues on the basis that another department has this mandate also does not stand up to scrutiny.

Secondly, any single law regulating environmental matters cannot be considered outside of the more general framework of legislation in the country. The Biodiversity Act, in terms of which the Norms and Standards were issued, itself lays out that its provisions must be read in line with NEMA, and that any application of it must be guided by the principles laid out in NEMA.<sup>71</sup> NEMA asserts that its principles “apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and ... serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of [NEMA] or any statutory provision concerning the protection of the environment”.<sup>72</sup> The current Norms and Standards acknowledge that they apply within a web of other applicable legislation, which includes legislation such as the Animals Protection Act 71 of 1962 which does concern animal welfare. The Animal Protection Act clearly requires that the welfare of animals be considered in any dealings with them and provides that violations of this welfare constitute a crime. Justice Cameron writes that this statute recognises “that animals are sentient beings that are capable of suffering and of experiencing pain. And they recognise that, regrettably, humans are capable of inflicting suffering on animals and causing them pain. The statutes thus acknowledge the need for animals to be protected from human ill-treatment”.<sup>73</sup> The DEA thus cannot legislate or regulate in a vacuum and must take account of the important role the state has generally in ensuring the welfare of animals are protected in accordance with all applicable legislation. Environmental law concerning animals and animal protection legislation are to be read together and not dealt with as if they are two separate subject matters.

The DEA has, in its arguments, attempted completely to separate environmental legislation from issues relating to animal welfare. As I have attempted to show, these two cannot be

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<sup>71</sup> Sections 6 and 7 of the Biodiversity Act.

<sup>72</sup> Section 2(1)(c) of NEMA as affirmed by the Supreme Court of Appeal in *Harmony Gold Mining Company Ltd v Regional Director: Free State Department of Water Affairs* [2013] ZASCA 206 at para 20.

<sup>73</sup> *National Council of the Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] ZASCA 78 at para 38.

separated when dealing with animals and any attempt to do so will be both irrational and unreasonable. Understanding this also helps bolster the integrative approach to interpreting the constitutional right outlined above which recognises the interrelationship of these concerns. I now turn to consider a particular court case which, once again highlights the need to integrate considerations relating to respect for animals with environmental law principles rather than separating them out.

#### 4.2. *Canned Lion Hunting and Environmental Law*

This case of *Predator Breeders Association v Minister of Environmental Affairs and Tourism*<sup>74</sup> involved a challenge to the validity of regulations that sought severely to restrict the practice of ‘canned lion’ hunting.<sup>75</sup> Canned hunting in South Africa generally involves allowing hunters to shoot an animal in a wild setting which has been reared by humans and thus domesticated. Given that the animal is habituated to humans, it usually does not run away and the kill is virtually guaranteed. Canned hunting facilities thus ‘share the same basic concept: hunters pay for a guaranteed kill - they never have to walk away empty-handed’.<sup>76</sup> South Africa had seen the extensive growth of canned lion hunting which led to the introduction of these regulations.<sup>77</sup>

In 2007, the Minister of Environmental Affairs and Tourism passed the Threatened or Protected Species Regulations (‘ToPS Regulations’) in terms of powers granted to him under the Biodiversity Act. Section 57 of that Act authorizes the Minister to ‘prohibit the carrying out of any activity – (a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and (b) which is specified in the notice...’. The ToPS Regulations prohibited the hunting of a ‘put and take animal’ which is defined as a ‘live specimen of a captive bred listed large predator...that is released on a property irrespective of

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<sup>74</sup> [2010] ZASCA 151.

<sup>75</sup> The description of the case is drawn from David Bilchitz *Animal Interests and South African Law: the Elephant in the Room?* in ANIMAL LAW AND WELFARE: INTERNATIONAL PERSPECTIVES (Deborah Cao and Steven White eds., 2016 forthcoming).

<sup>76</sup> L Ireland, *Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned “Hunting”* 8 ANIMAL LAW 223, 227 (2002)

<sup>77</sup> See P Lindsay et al, *Possible Relationships Between the South African Captive-Bred Lion Hunting Industry and the Hunting and Conservation of Lions Elsewhere in Africa*. 42 *South African Journal on Wildlife Research* 11 - 22 (2012) for a discussion on the increase of canned lion hunting in South Africa.

the size of the property for the purpose of hunting the animal within a period of twenty four months'.<sup>78</sup> The regulations, however, contained an exception: a listed large predator which had been bred in captivity could be hunted provided it had been rehabilitated to live naturally in an environment that was subject to minimal human intervention and had been fending for itself for at least twenty four months.<sup>79</sup> This effectively prevented the hunting of animals that had not been living freely for two years and vastly increased the costs of raising animals for hunting purposes. Whilst lions, at the time the case was lodged, had temporarily been removed from the published category of 'listed large predators', the Minister had clearly expressed the intention that they were to be included in the near future, with the consequent implications that these regulations would apply to hunting them.

The Predator Breeders Association (PBA) – a group of breeders of predators and of hunters of those animals that were bred in captivity – challenged the regulations and, particularly, the exception, on the grounds that they were irrational. In terms of South African law, all exercises of public power must be rational which requires that there be a rational relationship between the scheme adopted and the achievement of a legitimate government purpose; that a decision is rationally related to the purpose for which the power was given; and that there is a rational connection between the information available to a government functionary and the actions taken by him on the basis thereof.<sup>80</sup> The PBA argued that the period of 24 months bore no rational connection to any legislative purpose of the Act; no rational basis or evidence existed for the underlying assumption that a captive-bred lion could be rehabilitated at all; and the period of 24 months was not justified by information in the possession of the Minister.<sup>81</sup>

I shall consider the reasoning in the appeal judgment to the Supreme Court of Appeal. The appellate court first considered the legislative basis for the prohibition on canned lion hunting. In terms of the empowering provision in the Biodiversity Act, the focus of any regulations had to be on the purpose of ensuring the survival of a threatened or protected species. This meant that the prohibition on canned lion hunting or any exception thereto had to be justified in terms of its impact on the survival of lions as a species. The court found that some of the motivation for the regulations lay in public opinion which was opposed to captive-bred lions being hunted and certain concepts of ethics surrounding hunting which included notion that there should be a 'fair chase' between the hunter and the hunted. In analyzing these justifications, Heher J

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<sup>78</sup> Section 1.

<sup>79</sup> Regulation 24(2).

<sup>80</sup> *Predator Breeders Association supra* note 72 at para 28.

<sup>81</sup> *Id.* at para 29.

stated that '[i]t is by no means clear to me how either ethical hunting (whatever its limits may be) and fair chase fit into a legislative structure which is designed to promote and conserve biodiversity in the wild and, more especially in relation to captive-bred predators that are not bred or intended for release into the wild'.<sup>82</sup>

The judge here struggles to connect the broad environmental law notions such as 'biodiversity', 'conservation' and 'survival of a species' with the ethics around a practice such as canned hunting. Indeed, in terms of the aggregative view of 'conservation' or 'sustainable use', such a practice would seem justified: as long as domestically-reared animals do not mix with wild populations, any genetic abnormalities created by in-breeding would not be transferred. This form of hunting in turn would involve the use of a 'renewable resource' and not deplete the number of animals living in the wild or kill those animals in the wild with the best genetic stock. The survival of the species would thus not clearly be affected and the 'wild' animals conserved. Some of these claims can be challenged on their own terms: for instance, canned operations may need require new genetic stock and so remove animals from the wild, thus depleting the gene-pool therein. Furthermore, the extent of the contribution of such operations to conservation can be challenged.<sup>83</sup>

To understand what is foundationally wrong with this reasoning, however, it is necessary to think ethically and reject the notion that there is no relationship between how animals are treated in canned hunting operations and in other wild contexts as has been argued above. Canned hunting by its nature involves the rearing of animals specifically for the purpose of being killed. The ethical objections and revulsion in relation to canned hunting arises from the very idea of raising domesticated wild animals and then allowing them to be shot. Underlying this concern appears to be a worry that the lives of magnificent creatures such as lions are treated with utter disrespect and they are simply reduced to objects to be reared and shot for profit. Yet, lions remain lions whether they are killed in a canned lion hunting operation, hunted in the wild or through poaching. As such, an ethic that reduces the value of such creatures to mere playthings for human entertainment without any regard for their lives or welfare, will place the very basis for conserving such creatures and maintaining their survival in jeopardy. People in society will be encouraged to see them as just tools to personal enrichment towards whom we owe no obligations. To counter such a destructive ethos both for animals and

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<sup>82</sup> *Id.* at para 37.

<sup>83</sup> A number of these arguments in response to the aggregative view are made in Anne Susskind *Lions to the Slaughter* NOSEWEEK 20 – 23 (November 2015).

environmental reasons, we can well defend the Minister's use of the Biodiversity Act to restrict canned hunting and, indeed, ban it. The unethical nature of the practice itself is in fact related to the environmental concepts of managing and conserving biodiversity as well as the survival of the species. Indeed, the court itself seems to have recognised that it may have been better for the Minister to issue an outright ban on canned hunting rather than creating an ostensible compromise that lacked a proper scientific basis. The courts stated that '[n]o doubt the Minister was entitled to take account of the strong opposition and even revulsion expressed by a substantial body of public opinion to the hunting of captive-bred lions.'<sup>84</sup> What the court did not do is link that revulsion to the environmental purposes of the Act which I have argued can be done.

The case has also been used by the department to justify its claim that it lacks the competence to regulate matters relating to animal welfare and as a justification for its attempt to remove these notions from the Norms and Standards on Elephant Management discussed above. Nowhere did the court in the *Predator Breeders* case find that the Department cannot regulate in environmental matters that have a bearing on animal welfare. As we saw though, the court did express some anxiety as to whether the ethical questions raised by canned hunting are covered by the focus on survival of species in the empowering provision itself (section 57(2)). Those ethical issues were not all do to with animal welfare either but whether the practice of killing domesticated animals and notions like 'fair chase' (whose ethical provenance is itself debatable)<sup>85</sup> can be addressed under the environmental law framework. The DEA argues that the reservations expressed by the Court indicate its lack of competence to regulate general ethical questions around the use of animals and where welfare concerns are at issue.

The first point to make is that the empowering provision for regulations around threatened and protected species was not the only provision in terms of which delegated legislation could be formed that addresses animals. Indeed, it was more restrictive than other provisions such as section 9, for instance, which empowered the Minister to issue norms and standards on wider grounds. Even if one accepted that section 57(2) was too narrow to include regulations relating to welfare and the ethical questions raised above (which we should not), that would not end the

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<sup>84</sup> *Predator Breeders Association supra* note 72 at para 44.

<sup>85</sup> See the distinction made by Erik Cohen *Recreational Hunting: Ethics, Experience and Commoditization* 39 TOURISM RECREATION RESEARCH 5-9 (2014) between the overall ethics of hunting (for which there is very little support) as opposed to the internal ethics of those who hunt (which includes the notion of 'fair chase' that may have very little independent ethical force to commend it but comes from the analogy of hunting to a sporting activity).

question as there were other provisions which were wider in terms of which the Minister could Act.

Secondly, the key point which I have argued in this paper, concerns the fact that the core ethical problem with a practice such as canned lion hunting – the utter disrespect for animal life and reduction of a being to having little or no worth - does in fact fall within the ambit of both the more restrictive and wider empowering provisions in the legislation. The reason, as I have argued, is that only the alternative integrative approach (founded upon displaying respect to individual animals) is consistent with achieving the narrower purpose of ensuring the survival of a species and the wider purpose of conserving biodiversity and the environment more generally. Finally, it is important to recognise that the argument of the DEA also misconstrues the key findings of the case which did not relate to the competence of the DEA to regulate in this area (expressly recognised in fact by the court). Instead, the case itself, turned on the fact that the Minister had, according to the court, misconstrued the findings of an expert panel which stated that hunting should only be permitted once an animal was self-sustaining. The panel had not suggested any specific period of delay before an animal could be regarded as becoming self-sustaining. Moreover, there was also a complete lack of expert evidence, the court found, that captive-bred lions could in fact be rehabilitated into the wild. The regulations thus purported to create an exception to the general ban on hunting animals bred for that purpose which was unsupported by evidence and seemed incapable of being utilised. It was thus declared to be irrational and consequently invalid.

The reasoning of the court provides a clear indication of the potential perils an environmental law framework may hold for the protection of animals where the two sets of concerns are divorced from one another and a concern for the interests of animals is not taken into account directly in the reasoning. It, however, also demonstrates the importance of harmonising environmental concerns with those relating to the interests of animals in a way suggested by the integrative approach I have argued for in this paper.

## **5. Conclusion: Reconciling Environmentalism and Animal Interests**

The South African constitution does not expressly contain any direct protections for animals. In this paper, I considered whether the environmental right can be utilized to provide them within any protection. Doing so requires considering, importantly, how to interpret key concepts contained in the constitution such as ‘conservation’, and ‘sustainable development

and use of natural resources'. I identified two potential approaches towards these concepts when considering animals: the one is an 'aggregative' approach which avoids any focus on the individual animals and only considers wider holistic purposes such as the advancement of human well-being or the protection of the environment as a whole. Individuals become instrumental to these wider purposes and potential uses are unlimited by any constraints that exist in relation to how individuals may be treated. An alternative integrative approach involved inculcating an attitude of respect towards every individual animal which makes up the environment or eco-system. Individuals are not understood purely instrumentally and have some intrinsic value which limits the use that can be made of them. Only such uses are 'sustainable' according to this view.

I have provided a number of arguments for why integrative approach should be adopted to interpreting key environmental law concepts. The key reasons for doing so relate to the fact that only such an ethic really provides good reasons for conservation or sustaining the environment at all. Moreover, the aggregative approach was seen to be self-defeating on its own terms: it was only an integrative approach that could in fact secure the very ends it purported to achieve. The integrative approach, as its name suggests, also offers an opportunity to integrate concerns that were intimately connected - those relating to individuals and the holistic environment in which they exist - rather than attempting an awkward and unnatural separation. In doing so, it also does not deny conflicting interests may arise but rather recognizes these clashes occur within a constitutional framework that can take account of both protecting animal interests and achieving environmental goals around conservation and sustainability. This is important in that, first, it recognizes that animal interests have value and must be considered in any such clash. Secondly, it highlights the fact that constitutional approaches can be utilized to help resolve and mitigate the effect of such clashes. In particular, the widely-utilised notion of proportionality and its various sub-components may well be of assistance in addressing any such conflicts and, in many cases, offer some protection for animal interests.

The implications of this approach were explored in relation to two concrete issues that have arisen in relation to animals and the environment in South Africa. The integrative approach recognizes the impossibility of simply separating out environmental concerns and concepts from animal welfare and protection for their significant interests. This becomes very important in understanding the competences of the Department of Environmental Affairs and that it is required to assume responsibility for the protection of animals and their welfare as

well. An examination of the Norms and Standards relating to the management of elephants in South Africa highlighted the absurdity of separating what is intimately connected. A case relating to canned lion hunting, moreover, highlighted the importance of connecting ethical issues concerning the protection of animals with the environmental law frame. The reduction of creatures to mere playthings for humans must itself be understood to threaten the survival of those beings and the conservation of biodiversity as a whole.

The argument in this paper may also merit further research into its implications for other features of the environment. Animals, as I utilize the term, are a special case as they are beings in the environment who have a conscious experience of the world. Their sentient nature has widely been recognized to place strong ethical obligations upon human beings in their relations with them. A respect-based ethic clearly makes sense in relation to sentient creatures. Yet, it may be argued, that similar reasoning to that employed in this paper may be necessary in relation to other components of the environment too. In other words, whilst the floral kingdom, mountains, oceans and rivers lack a consciousness of their own, it could be argued that they will be preserved adequately for future generations only by inculcating an attitude of respect towards them that is not premised on their being purely instrumental to our own self-interested goals. That is a more complicated argument to make out and I leave it for further research.

The Constitution of South Africa issues in a new era in which the relations between people are meant to be founded in a respect for one another that is captured by the foundational values of 'dignity, equality and freedom'. The inclusion of an environmental right, I contend, highlights the fact that this respect is not to be confined to the human species but must radiate outwards and include, at least, creatures who are sentient who must be conserved and preserved for future generations. Indeed, such an ethic of respecting non-humans may well be necessary to achieve the very society envisaged in relation to humans themselves. Concepts such as sustainability recognize the deep interconnection between ourselves and the features of the world around us within a holistic system: one prong in achieving those noble goals is integrating a deep respect for the rest of the animal life that make up the rich tapestry of the environment within which we live.