

OPEN LETTER

**Honourable Minister Barbara Creecy
Minister of Forestry, Fisheries and Environment**

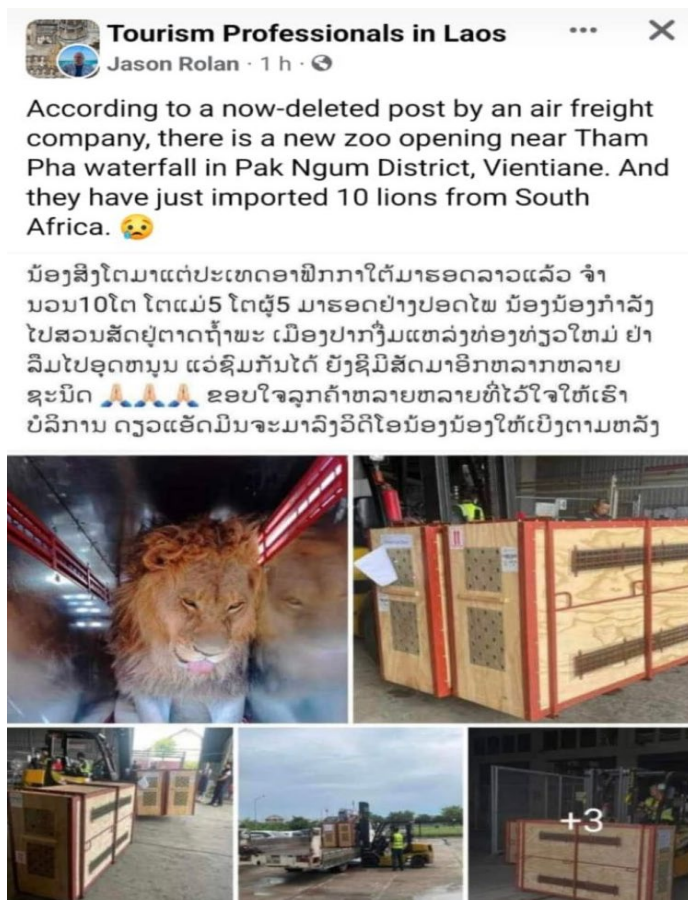
Via email: minister@environment.gov.za; Llevendal@environment.gov.za;
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cc. info@cites.org

10 August 2023 - World Lion Day

EXPORT OF 10 LIVE LIONS FROM SOUTH AFRICA TO THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

Dear Honourable Minister Creecy,

We are writing on World Lion Day to bring to your urgent attention a disturbing export of 10 live lions from South Africa to Lao which took place on 18th July 2023, particularly with the Ministerial and Departmental responsibilities in relation to the changes to NEM:BA effected by the NEMLA Act, with respect to the trade in and export of live wildlife.



The *EMS Foundation*¹ and *Ban Animal Trading*² obtained a legal opinion in relation to the implications of the changes to NEM:BA effected by the National Environmental Management Laws Amendment Act.

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

1. the insertion of a new definition of “well-being” in s1 as follows:
“wellbeing means the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment.”
2. the insertion of a new object to the Act in s2 as follows:
“2. Objectives of Act.—The objectives of this Act are—
...within the framework of the National Environmental Management Act, to provide for—
...
the consideration of the well-being of animals in the management, conservation and sustainable use thereof”
3. an entirely new section 9A empowering the DFFE Minister to prohibit certain activities:
“9A. Prohibition of certain activities.—The Minister may, by notice in the Gazette and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of an animal.”
4. an amendment to section 97 allowing the Minister to make regulations relating to “(aA) the well-being of an animal”
5. the creation of a new offence relating to non-compliance with a section 9A prohibition notice:
101. Offences.—(1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of—
...a notice published in terms of section 9A; and
6. additional technical changes giving MEC's the same powers as the national Minister in some cases (including relating to public participation processes).

It is clear that wellbeing now falls within your department's legal mandate. It also reflects the approach taken by the Gauteng High Court in the second *NSPCA* case (2019) where it was held that the welfare of captive lions was a relevant factor which the Minister ought to have considered in setting the lion bone quota. The Court said in paragraph 74 of its judgment that “at the very least our constitutional and legal obligations that arise from Section 24, NEMBA and the [Biodiversity Management Plan for Lion] require the consideration of animal welfare issues.”

The amendment to section 2 makes it necessary for wellbeing to be specifically considered when biodiversity policy and laws are made. Wellbeing is now clearly a relevant factor to consider when decisions are taken which affect biodiversity, for example, the decision to grant permits for keeping

¹ The EMS Foundation is a South African social justice NGO. Our key purpose is to alleviate and end suffering, raise public awareness, empower, provide dignity and promote the interests of vulnerable groups, including wild animals. We recognise that animals have agency and are cognisant of the entanglements of oppression. The Foundation is committed to the promotion of inclusive justice, showing compassion across species and working to build a better future for all through campaigns, research, analysis, advocacy and holding government to account. The EMS Foundation sees access to information, openness, accountability and transparency as the ‘oxygen of democracy’.

² Ban Animal Trading (BAT) is a registered South African animal protection NGO. Our long-term vision is to end animal exploitation through facilitating positive and meaningful change, recognising that change is incremental, and created through awareness and education and legislative enactment. We strive to raise awareness in order to facilitate long term change, by challenging the status quo in a legal, ethical and professional manner. Challenging the status quo encompasses, but is not limited to, challenging norms, traditions, cultures, past practices, outdated beliefs, and any form of policy-making, legislation, and profiteering from the exploitation of animals, to achieve changes in attitudes and beliefs, and ultimately, policy and legislative changes.

of, killing, hunting or trade in wild animals or to set quotas for hunting, export, etc. These are decisions that constitute “management, conservation and sustainable use” of animals.

Section 9A is widely drafted and is not limited to indigenous animals or wild animals or listed TOPS animals, applies to any animal and bans activities that are defined as “restricted activities” – catching, hunting, keeping, breeding, killing, trading, moving, exporting and importing – as well as any other activities not so defined, provided there was reasonable evidence of a potential negative impact on wellbeing. Section 9A also uses the wording “that may have a negative impact” which means that the Minister is not required to provide absolute proof of a negative impact before making a prohibition. The Minister is also empowered to use a precautionary approach, in line with the NEMA principles. The prohibition is given some teeth by making contravention of a section 9A notice a criminal offence carrying a maximum penalty of a fine of R10 000 000.00 or ten-years’ imprisonment or both.

Given the changes to NEM:BA, it is competent for the Honourable Minister to:

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

With the above changes to NEM:BA now relevant and enforceable, the 2019 Gauteng High Court judgment and the Minister’s reply to a Parliamentary Question on 09 June 2023, stating that: ‘A mandate for the regulation of the well-being of wild animals has been included in the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM:BA), as part of the National Environmental Management Laws Amendment Act, 2022 (Act No. 2 of 2022) (NEMLAA). NEMLAA was published in the Government Gazette No. 46602 of 24 June 2022 for implementation, but has not yet been signed into operation. **While the legislative mandate to regulate the well-being of wildlife is awaiting operationalisation, well-being needs will be taken into consideration relevant decision-making processes,**³ and another reply to a Parliamentary Question on 8 March 2021 that **‘The department further recognises that wildlife management and animal welfare are within the mandates of the Department of Environment, Fisheries, Forestry as well as the Department of Rural Development, Agriculture and Land Reform,**⁴ BAT and the EMS Foundation want to bring to the Minister’s attention an export of lions to Lao in July 2023.

These are the facts:

1. Ten lions (5 males and 5 females) were exported to Vientiane, Lao, on 18 July 2023 via Malaysia.
2. All ten lions were exported by Mr. Robbie Prinsloo, in Bethlehem, Free State Province.

³ <https://static.pmg.org.za/RNW2381-2023-06-23.pdf>

⁴ <https://pmg.org.za/committee-question/15614/>

3. The CITES permits were issued in by DETEA in Bloemfontein on 23 January 2023 and signed by N. Tshingo. The permit numbers include: 304417 and 304418.
4. The exporting agent was African Pride Imports & Exports, owned by Mr. Edward Coetzer.⁵
5. The exporting airline was Qatar.
6. The importer / agent was Omkham Travel and Cultivation of livestock sole co. ltd, Vientiane, owned / managed by Mr/Ms Omkham Thammavong.
7. The lions were exported to That Thum Pha Zoo in Vientiane.
8. There is no information available online about the zoo, or the Lao importer.

Of major concern is that Lao is a major hub for wildlife trafficking and illegal wildlife trade (including the lion bone trade) in the Southeast Asia region because of its porous border and weak law enforcement. Moreover, given the Minister's legal responsibility for the wellbeing of wild animals, clarification on the following matters regarding the export of ten lions in July 2023 to an unknown zoo in Vientiane, Lao, is needed urgently:

1. What steps were taken to ascertain whether the export of these lions would not have a negative impact on their well-being?
2. What measures were put in place to establish the legitimacy of That Thum Pha Zoo? (*'The 2.5-square-meter (27-square-foot) dens are roughly constructed and interconnected with each other with an outside enclosure, they said, adding that the design of the cages and demographics of the imported lions indicate "factory breeding" purposes.'*)⁶
3. Was the Lao CITES Management Authority (Ministry of Agriculture and Forestry) contacted to establish the legitimacy of the CITES import permit? If not, why not?
4. What measures were taken to ascertain the legitimacy of the export, given the fact that South Africa has only exported lion trophies, skeletons, bones, claws, teeth and skulls to Lao, but never live lions?⁷
5. What assurances were given that these lions will not be killed for their bones, given the fact that 'Nearly half of the lion bones exported from South Africa from 2016 to 2019 were supposedly destined for Laos, according to export records from the country's largest airport, but 'No bones actually entered Laos, according to customs records. Instead, other data indicates that many of the shipments were quietly rerouted to neighbouring Vietnam'⁸
6. The shipment would have been inspected by the EMI's before export at the OR Tambo International Airport, why was no alarm raised about the destination of these lions?

We look forward to your earliest response.

Yours Sincerely,



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⁵ <https://b2bhint.com/en/company/za/african-pride-imports-and-exports--K2016036929>

⁶ <https://www.rfa.org/english/news/laos/lions-07262023075437.html>

⁷ <https://trade.cites.org/>

⁸ <https://www.occrp.org/en/investigations/inside-south-africas-brutal-lion-bone-trade>