

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**CASE NUMBER: 995/2020**

*In application for leave to intervene as amicus curiae*

**ANIMAL LAW REFORM SOUTH AFRICA**

**Applicant for admission  
as amicus curiae**

In the matter between:

**NATIONAL COUNCIL OF SOCIETIES FOR THE  
PREVENTION OF CRUELTY TO ANIMALS**

**Applicant**

and

**AL MAWASHI (PTY) LTD**

**First Respondent**

**LIVESTOCK TRANSPORT AND TRADING  
COMPANY KSC (KLTT)**

**Second Respondent**

**JOHN PAGE N.O.**  
(As a Trustee of the Page Farming Trust)

**Third Respondent**

**BRUCE PAGE N.O.**  
(As a Trustee of the Page Farming Trust)

**Fourth Respondent**

**GLEN PAGE N.O.**  
(As a Trustee of the Page Farming Trust)

**Fifth Respondent**

**GARY KLINKKRADT N.O.**  
(As a Trustee of the Page Farming Trust)

**Sixth Respondent**

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**DEPARTMENT OF AGRICULTURE,  
LAND REFORM AND RURAL DEVELOPMENT**

**Seventh Respondent**

**THE MINISTER OF AGRICULTURE, LAND REFORM  
AND RURAL DEVELOPMENT**

**Eighth Respondent**

**DEPARTMENT OF RURAL DEVELOPMENT AND  
AGRARIAN REFORM: VETERINARY SERVICES  
(EASTERN CAPE)**

**Ninth Respondent**

**MEC FOR RURAL DEVELOPMENT AND AGRARIAN  
REFORM**

**Tenth Respondent**

**RED MEAT INDUSTRY FORUM**

**Eleventh Respondent**

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**FOUNDING AFFIDAVIT: AMICUS CURIAE (ALRSA)**

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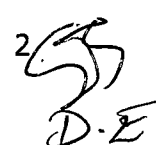
**I, the undersigned,**

**SHEENA JUSTINE SWEMMER**

do hereby state under oath that:

**I     INTRODUCTION AND PURPOSE OF THIS AFFIDAVIT**

1.     I am an attorney at the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand, situated at 1 Jan Smuts Avenue, Braamfontein. I am duly

  
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authorised to depose to this affidavit on behalf of Animal Law Reform South Africa (ALRSA), the applicant for admission as an *amicus curiae* in the present matter.

2. The facts in this affidavit are true and correct to the best of my knowledge, unless I state otherwise. I make legal submissions in this affidavit on the basis of advice received and in accordance with the instructions given to CALS by ALRSA.
3. At present, ALRSA's Director, David Bilchitz, who is responsible for this application, is outside the country and in Oxford. The global Covid-19 pandemic has for the time being prevented him from returning to the country. This pandemic has also presented challenges to him deposing to and notarising this affidavit in time for this application to be brought.
4. Accordingly, I have been duly instructed to depose to this affidavit on behalf of ALRSA, given that CALS is its duly appointed attorney of record and given further that the submissions that ALRSA advances are primarily legal submissions.
5. My affidavit is therefore in support of ALRSA's application for admission as an *amicus curiae* in accordance with Rule 16A and the Rule 16A Notice issued by the applicants in this matter.

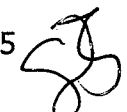
## II. WHO IS ALRSA?

6. ALRSA is a non-profit organisation which was established in 2017 with the aim of advocating for law reform in South Africa, to advance the well-being and protection of animals and human beings in South Africa. ALRSA's submissions in this application align with its mission and work, which fundamentally recognise the indivisible relationship between humans and animals, so as to increase social justice for both.
7. ALRSA is the first, and presently only, non-profit legal organisation which focuses primarily on animal law in South Africa. ALRSA is dedicated to 'filling the gaps' through research and reforms in South African law and policy, and, more broadly in international and foreign law, to ensure that animals, humans and the environment are protected.
8. ALRSA's scope of interaction is primarily around law and policy, and extends to many legal fields including constitutional law, commercial law, the law of delict, property law, criminal law, environmental law, international law, family law and administrative law.
9. ALRSA seeks leave to intervene in this application, because this case presents important issues about animal, environmental, administrative, co-operative governance principles and foreign and international law. It is in these areas that ALRSA believes it is uniquely placed to be of assistance to this Court in the resolution of this application.

10. Importantly, ALRSA considers that the jurisprudence set by the Constitutional Court, that animals have 'intrinsic value as individuals,' is directly implicated in this matter. The central question is whether the present practice of live export of animals ought to be allowed to continue in our country. This is the question presented in Part B of the application. The more immediate set of issues in Part A, deals with the more specific question of whether the exporting respondents are to be interdicted from continuing with their live exports from this country, pending the determination of Part B.
11. The facts set out by the applicant demonstrate the full extent of the cruelty that often accompanies such live export of animals, which is even more serious when the export is to the Northern Hemisphere during their summer months.
12. ALRSA submits that the present unregulated and arbitrary live export of animals violates South African law. ALRSA submits further that the present state of live export of animals in this country, is contrary to certain international and customary law standards.

### **III. COMPLIANCE WITH REQUIREMENTS FOR ADMISSION AS *AMICUS CURIAE***

13. On 14 July 2020, ALRSA's attorneys, CALS, sent its Rule 16A letter requesting consent for it to be admitted as amicus curiae. A copy of this letter is attached hereto as "**SS1**". That letter is self-explanatory, and I respectfully incorporate its contents by reference.

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14. On 16 July 2020 we received a letter from the Applicant consenting to ALRSA's intervention. The letter is attached marked "**SS2**".
15. On 23 July 2020 CALS received a letter from 11<sup>th</sup> Respondent consenting to ALRSA's intervention. The letter from the 11<sup>th</sup> Respondent (The Red Meat Forum) is attached marked "**SS3**".
16. On 24 July 2020 we received a letter from the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent refusing consent to the admission of ALRSA as amicus curiae for the purposes of Part A of the application. This letter is marked "**SS4**".
17. Because of the refusal by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, this application for admission is brought to seek the consent of the Court for ALRSA's admission into the proceedings as *amicus curiae*.
18. ALRSA only became aware of the Court's intention to hear the above matter on 3 June 2020, when the applicant approached this court on urgent basis. However, given the exigencies and difficulties caused by COVID-19 and the Lockdown, ALRSA and its attorneys CALS were unable to conclude our research in time to intervene in the hearing for Part A which was scheduled to be heard on 16 July 2020.
19. Subsequently CALS learnt, towards the end of June 2020, that the hearing of Part A of this application has been moved to 06 August 2020. This extra time has made it possible for ALRSA to complete its research and to bring this application for leave to enter the proceedings as *amicus curiae*.

20. I direct this Court's attention to the fact that the refusal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to admit ALRSA, relates primarily to their concern that they do not want to delay the hearing of Part A on 6 August 2020. Apart from this, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not taken issue with any of the substantive issues outlined in the letter seeking admission. I submit therefore that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents accordingly accept, at the least, that the argument that will be advanced by ALRSA are relevant and germane to the issues and may be advanced by ALRSA as an amicus.
21. ALRSA regrets the delay in bringing this application but these were through matters beyond its control. Further, ALRSA does not want to delay the hearing on 6 August 2020. For this reason, we seek Directions from the Judge Presiding if we are granted permission to make counsel available to assist the Court at the hearing on 6 August 2020. We will provide heads of argument if so directed by this Honourable Court and will do so prior to the hearing (in accordance with any Directions issued).
22. If this application for intervention is not possible for Part A, then ALRSA nevertheless seeks admission as amicus curiae for Part B of the application. Again, we undertake to provide written heads of argument in accordance with any time frames set by this Court and seek permission to present oral argument at the hearing of Part B.
23. In what follows, I deal with the following issues: ALRSA's interest in this

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application and the submissions and arguments that ALRSA will advance which are novel and different to those presented by the parties.

#### IV. THE INTEREST OF ALRSA IN THESE PROCEEDINGS

24. I have given a general overview of ALRSA in **Section II** above (at paragraphs 6 to 12). I wish to amplify this with the following.
25. ALRSA asserts that it possesses both the expert knowledge of animal wellbeing and protection, as well as expertise in law and the development of policy in this field to be of relevant and unique assistance to the Honourable Court in this matter.
26. To this end, ALRSA has made extensive comments on legislation and policies relating to animals in South Africa including submissions on the Proposed Amendment to Schedule 1 of the Meat Safety Act, 2020<sup>1</sup>; Comments on the High-Level Panel set up by the Department of Environment, Forestry and Fisheries in relation to the Management, Breeding, Hunting, Trade, Handling and Related Matters on elephant, lion, leopard and rhinoceros<sup>2</sup>; Draft Animal Protection Act, 2017<sup>3</sup>; CITES (Convention on International Trade in Endangered

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<sup>1</sup> <https://emsfoundation.org.za/wp-content/uploads/ALRSA-and-EMS-Meat-Safety-Act-Comments-Final-30062020.pdf>

<sup>2</sup> <https://emsfoundation.org.za/submission-in-respect-of-deff-high-level-panel-the-ems-foundation-and-animal-law-reform-south-africa/>

<sup>3</sup> <https://www.animallawreform.org/our-work/>



Species of wild fauna and flora) Regulations 2017;<sup>4</sup> and the Protection of Performing Animals Amendment Act, 2015<sup>5</sup>.

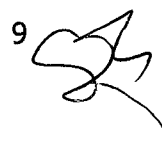
27. ALRSA's directors have between them published many articles on issues relating to the law and animals. All three have written on subjects related to animal welfare and the intersection of animal law and human rights and have developed expertise in the field of knowledge.<sup>6</sup>
28. It is submitted that ALRSA is demonstrably qualified and has the expertise to engage on many of the issues relating to animals and the law in South Africa generally, and more specifically on the current case before the Honourable Court regarding the live export of animals by sea.
29. ALRSA specialises in the overlap of law and policy relating to animals, humans and the environment. ALRSA is also dedicated to ensuring that the treatment of animals by humans improves progressively, through appropriate recognition and protection in our legal system. This application goes to the root of this interest and indeed of the very work of ALRSA.

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<sup>4</sup> <https://www.animallawreform.org/our-work/>

<sup>5</sup> As above.

<sup>6</sup> Examples of these publications are D Bilchitz, 'Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals' (2009) 25 South African Journal on Human Rights 38-72. D, Bilchitz, 'What was Left Unsaid: The Unconstitutionality of the Performing Animals Protection Act in NSPCA v Minister of Agriculture, Forestry and Fisheries' (2014) 30 South African Journal on Human Rights, 183-195. B Meyersfeld, 'Non-Human Animals and the Law: The Fable of Power' SAPL (2012-2013) Wilson, A. P. (2020). (Non) Human(Im)al Rights: Dismantling The Separateness In Law And Policy. Society Register, 3(3), 39-65. <https://doi.org/10.14746/sr.2019.3.3.03> and Wilson A.P., Animal Law in South Africa: "Until the lions have their own lawyers, the law will continue to protect the hunter" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399>

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30. ALRSA's work also includes ensuring the accountability of government, in decision-making over animals, particularly when animals are for human consumption and are transported live for this purpose.
31. This assumes heightened significance when live animals are exported beyond the borders of our country, especially by sea and over the equator to the Northern Hemisphere during the summer months. As the facts set out by the Applicant demonstrate, the cruelty to the exported animals in this process is severe. The subject matter of this application therefore falls directly within the work and interest of ALRSA.
32. This case also involves the right to a safe environment which must be protected for present and future generations. ALRSA's interest lies in its view that the relationship between animals and humans in this context, is indivisible. If this is so, and given that our law recognises the intrinsic value of animals as individuals, ALRSA asserts that this must include a prohibition on the suffering of and wanton cruelty towards animals. ALRSA's interests are again directly implicated in this application.
33. Further, ALRSA works to ensure the best international standards relating to animal welfare that emerge both from international regulatory frameworks and general principles of law from other jurisdictions are considered in the development of South African law relating to animals. To this end as well, ALRSA's interests are directly implicated in this application. This is because, as ALRSA will demonstrate, the current unregulated practice of the export of

live animals from our borders falls short of several international and customary law standards.

34. This application also highlights the need for the development of clear policy and a legal framework to address the live transportation and export of animals by sea. The absence of a policy in so critical an area is highly undesirable, and this lacuna creates susceptibilities for the abuse of animals and the abuse of process. Once more, ALRSA's interests are directly implicated in this application.
35. In summary therefore, ALRSA seeks to participate as *amicus curiae*, in support of the relief sought by the Applicant both in respect of Part A and Part B of the application.
36. ALRSA is mindful of the strictures of Rule 16A, which is to the effect that it must not repeat arguments already advanced by the parties and that it must present relevant and novel arguments.
37. The arguments that ALRSA will advance are dealt with in the remainder of this affidavit under the following topics. These topics will be expanded upon in written submissions and oral argument if ALRSA is permitted to participate as *amicus curiae*. These topics are dealt with as follows.

- 37.1. **SECTION V:** The recognition in our law of the intrinsic value of animals as individuals and as sentient beings capable of suffering.

- 37.2. **SECTION VI:** The right to a safe environment which must be protected for present and future generations, in section 24 of the Bill of Rights, and the indivisibility of animals and humans in this context.
- 37.3. **SECTION VII:** Administrative justice in section 33 of the Bill of Rights, read with the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
- 37.4. **SECTION VIII:** The principles of Co-operative Governance in Chapter 3 of the Constitution.
- 37.5. **SECTION IX:** Considerations of pertinent international law and customary law on the live export of animals, particularly to the northern hemisphere during their summer months.

## V. THE INTRINSIC VALUE OF ANIMALS AS INDIVIDUALS

38. ALRSA's submissions to this Court will proceed from the important normative standards set by the Constitutional Court, that animals are now regarded in our law as sentient beings capable of suffering and of experiencing pain and are to be regarded as having intrinsic value as individuals.<sup>7</sup> This recognition is now firmly embedded in our law and our jurisprudence must develop in accordance with this principle.
39. If we accept these principles, as we must, then the legal issues presented in

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<sup>7</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT 1/16) [2016] ZACC 46; 2017(1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) at paras 56 and 57.

this application, must be resolved by this Court upon these bases: first, that animals are entitled to the protection of the law; and second, that the law must protect animals from cruelty and suffering.


40. The facts set out by the NSPCA demonstrate the intolerable cruelty to the sheep being exported, which are the subject of Part A, and more generally why the relief sought in Part B is necessary.
41. ALRSA supports the relief sought in Part A and Part B upon the bases that our law must give due recognition to animals in their own right and that the protective force of our law must prevent cruelty to and suffering of animals.
42. ALRSA submits and will therefore argue that the legal issues presented in this case, both for Part A and Part B, require resolution in line with these fundamental constitutional principles set by the Constitutional Court.
43. As the Constitutional Court has observed:

*“...[T]he rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.”<sup>8</sup>*

## **VI. THE RIGHT IN SECTION 24 OF THE BILL OF RIGHTS**

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<sup>8</sup> NSPCA, *supra*, at paragraph 57.

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44. ALRSA submits and will argue section 24 of the Bill of Rights places intra and inter-generational obligations on us all. This duty is to preserve and protect the environment for present and future generations. As with the approach to 'sustainable development,' the needs of the present generation must at all times be balanced with those far-reaching environmental obligations.
45. Further, the right to a safe and healthy environment, conferred by section 24 is broad in ambit and embraces all aspects of the environment, which includes animals. This essential recognition emerges in the central environmental law, which is the National Environmental Management Act 107 of 1998 ('NEMA').<sup>9</sup>
46. ALRSA submits that the environmental right, in section 24, is to be interpreted in an integrative way, as has been recognised by the Constitutional Court and High Court, and that this must take animal welfare and the treatment of animals into account.<sup>10</sup> We submit that this integrative approach is aligned with the principle of *Ubuntu*, an acknowledged value under our Constitution.
47. ALRSA submits that animals must be seen as part of the unitary environmental system rather than as disjointed adjuncts or merely as short-term commodities for human needs or gains.
48. From this perspective, ALRSA submits that the interests of all sentient beings

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<sup>9</sup> National Environmental Management Act 107 of 1998, section 1.


<sup>10</sup> In addition to the Constitutional Court case, see *National Council for the Prevention of Cruelty to Animals v Minister of Environmental Affairs* 2020 (1) SA 249 (GP) at paras 64-65 and 71 and 74.

in the environment, must inform legislation, policies and decision-making at every level of society. This includes the animals about to be exported in this application (with respect to Part A) and any such future practice (with respect to Part B).

49. ALRSA submits that an intersection of harm occurs where a lack of care for one group in the community (animals) can result in harm to another group such as humans and the physical environment.
50. As an example, there are well documented zoonotic diseases throughout our history, caused by the spread of germs or viruses from animals to humans. The current global pandemic brought on by the Covid 19 virus, is a classic case of this impact. The indiscriminate use of animals as a food source has resulted in the spread of this virus from animals to humans. We are presently living through the prejudicial impact of this.
51. If ALRSA is permitted to participate in this case, it will present written and oral argument to this Court from these perspectives.

## **VII. ADMINISTRATIVE JUSTICE**

52. Section 33 of the Constitution, read with PAJA, entrenches the right to administrative justice. This right facilitates accountability and transparency in our country. At a practical level, this right serves to ensure that administrative

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decisions are lawful, reasonable, rational and procedurally fair.

53. ALRSA submits and will argue that these basic jurisprudential principles are directly implicated in this application.
54. First, ALRSA will argue that the issue of permits for the export of live animals must be lawful. In the absence of a guiding legal or regulatory framework specifically on the live export of animals, administrative decision-making on these matters will remain arbitrary.
55. As the evidence presented by the Applicant demonstrates, the live export of these animals, results in intolerable cruelty, which violates the most basic protections in the Animal Protection Act. These protections apply within the borders of South Africa and they are protections that our Legislature has set as a minimum standard of protection in our democracy.
56. Yet, the very same animals are arbitrarily stripped of such protections when they are boarded onto a ship, which has docked in this country, for live export beyond our borders. The live-export trade in this case, is ostensibly brought about by some sort of agreement with the provincial government, meaning that it has been sanctioned by government or one or other organ of state.
57. ALRSA submits that no sphere of government and no organ of state, ought to issue any permits for the live export of the animals without a clear framework to address the welfare and cruelty concerns that this live export trade



demonstrably implicates.

58. ALRSA submits that the granting of the ostensible permissions or permits in this case, demonstrates that government failed to take into account relevant considerations relating to animal welfare and the protection against animal cruelty.
59. Given the evidence presented by the Applicant, ALRSA submits that no governmental official could have permitted the live export in this matter, if animal welfare concerns had been genuinely considered. Nor should future such exports be permitted through the present unregulated practice.
60. ALRSA will argue that the failure to enact legislation, regulations or policy around live export, such as in this case, is a critical legislative omission.
61. This omission allows administrative decision-making on an arbitrary basis, without regard to any controlling standards for the protection of the animals being exported (if such export is to be permitted at all).
62. As the facts set out by the Applicant in this case demonstrate, the present position in our country appears to be that when administrative officials or organs of state are called upon to consider whether to grant licences or permits for the transport of live animals, there are no enforceable or minimum standards, to guide decision-making in the matter and against which such decisions can be tested for compliance or accountability.

63. ALRSA submits and will argue that the administrative decisions made in this context, do not meet constitutional standards for lawful, reasonable or rational administrative action.
64. ALRSA also submits that a legitimate expectation was created by the Department of Rural Development and Agrarian Reform: Veterinary Services (Eastern Cape) and the Department of Agriculture, Land Reform and Rural Development (DALRRD) when, on 6 May 2020, Dr Rozani from Department Of Rural Development And Agrarian Reform: Veterinary Services (Eastern Cape) sent the Applicant an email with the following:

*'On your second point, the client that is exporting live animals to the Middle East has been informed that there will be no export between May and August as per DALRRD communication. Also the State Veterinarian Exports in East London has been informed. I can confirm that we have no intentions as the Eastern Cape Veterinary Services of going against the recommendation from DALRRD'.<sup>11</sup>*

65. ALRSA submits that this exchange set and created a substantive standard and a legitimate expectation that this standard would continue to be applied. The standard itself prohibited the live export of animals from South Africa to the Northern Hemisphere during their summer months.

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<sup>11</sup> NSPCA v Al Mawashi (Pty) Ltd, case no. 995/2020, Founding Affidavit, annexure FA22. My own emphasis.

66. Obviously, this standard was to prevent intolerable cruelty to live animals being exported during these hot summer months, as has been recognised in many other countries (which we deal with further in **Section IX**).
67. If that standard was to be changed or revoked, then all interested and affected parties had a right to a procedurally fair process, which would include giving all interested parties an opportunity to be heard about such change.
68. ALRSA is one such interested party and there are many more in this country who would want to provide input on such matters. No such hearing was granted to these interested and affected parties or, indeed, to anyone at all. The change in this substantive standard was accordingly procedurally unfair.
69. In the absence of a prior hearing about this change, ALRSA submits that the express promise made by government remains publicly enforceable and ought to be the controlling standard in such matters and in this application.<sup>12</sup>

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<sup>12</sup> In this regard, reference will be made, *inter alia*, to the following: M Murcott 'A future for the doctrine of substantive legitimate expectation? The implications of *KwaZulu- Natal Joint Liaison Committee v MEC for Education, KwaZulu Natal*' PER 18.1 (2015). See also the cases of *Nortjie v Minister van Korrektiewe Dienste* 2001 3 SA 472 (SCA) para 14 and *Ampofo v MEC for Education, Arts, Culture, Sports and Recreation, Northern Province* 2002 2 SA 215 (T) para 56.

**VIII. THE PRINCIPLES OF CO-OPERATIVE GOVERNANCE (CHAPTER 3 OF THE CONSTITUTION)**

70. Sections 40 and 41 of the Constitution contain the bedrock principles and standards by which different levels of government must cooperate and align their plans and actions. Section 41 (1)(c) states that co-operative governance encompasses the principle that government entities must provide effective, transparent, accountable and coherent government for the Republic as a whole and section 41(1)(h) confirms that these entities must inform and consult with one another on matters of common interest while co-ordinating their actions and legislation with one another.
71. The letters of supported dated 17 June 2020, from the Provincial Department of Finance, Economic Development, Environmental Affairs and Tourism, to the 1<sup>st</sup> Respondent, expressly acknowledges the problems presented by this practice of live export. This letter on its terms shows that government is well aware of the problems associated with this particular live export arrangement:

“[w]e have noted the animal welfare challenges your company has experienced since it started operating and I [Mr M Mvoko] assure you that my Department (DEDEAT) will work closely in the future with DRDAR to solve them so that the trade continues smoothly’.<sup>13</sup>

72. It is to be noted that none of the ‘Government Respondents’ have filed any

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<sup>13</sup> NSPCA v *Al Mawashi (Pty) Ltd*, case no. 995/2020, Founding Affidavit, page 626, Annexure FA11.

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papers to defend their decisions in this application. Nor do any of them seek to oppose the relief sought by the Applicant. These Government Respondents have chosen instead simply to abide the decision of this Honourable Court.

73. ALRSA submits that this stance, together with the governmental communication referred to above, demonstrates that all of the relevant government departments are aware of the controversial animal welfare issues presented by the exports in this application and by future live exports.
74. This knowledge can only relate to the cruelty of exporting live animals, particularly over the summer months in the Northern Hemisphere.
75. ALRSA submits that any decision, permit, authorisation, certificate or permission which was ostensibly given for the export in this matter, appears to have been issued in breach of binding co-operative governance standards in Chapter 3 of the Constitution.
76. No government department has explained how the export in this instance could have taken place, lawfully, in the light of the national department's apparent moratorium on live animal export during the summer months; nor can there be a lawful basis for this approach. None appears to be evident from the papers in this matter.
77. Consequently, and to the extent that permits or any other official permission was provided at the provincial, local or port level, for the export to take place,

ALRSA will argue that this demonstrates a lack of appropriate coordination between the relevant national, provincial and any other organ of state on this issue.

78. To the extent that more than one governmental departments are involved, either at national and/or provincial government level, then this points also to the lack of coordination between departments themselves which may have shared or overlapping competence over this live export.
79. ALRSA submits that this fragmented approach is contrary to Chapter 3 of the Constitution and subverts the express constitutional commitment to accountable and coherent government. ALRSA will argue that these constitutional breaches must also be taken into account in the resolution of the issues presented in both Parts A and B of this application.
80. ALRSA will submit that these government departments, with overlapping or shared competences over these matters must develop and implement a consistent, reasonable policy and enforceable law if the live export of animals from South Africa is to continue at all (depending of course on the outcome of a public participation process).

**IX. CONSIDERATIONS OF INTERNATIONAL LAW AND FOREIGN LAW  
(SECTION 39 AND SECTION 231 - 233)**

***International Law***

81. ALRSA seeks to assist the Honourable Court by providing research and information on international law in relation to the matter of the live export of animals as well as other relevant practices and issues pertaining more generally to the international legal framework.
82. We submit that this will be useful to this Court, especially in view of what appears to be an unregulated and therefore arbitrary approach to decision making. In this regard, ALRSA submits that there are directly relevant international policies, practices, and laws which could assist this Court in deciding the issues presented in this application.
83. In particular, ALRSA will refer to the World Organisation for Animal Health – Terrestrial Animal Health Code (OIE). Even though ALRSA views this as a weak standard, it will demonstrate that even these standards are violated in the current practice of allowing the live export of animals.
84. Once again, we submit that this highlights the arbitrary, irrational and unreasonable nature of governmental decision-making in this arena, with a consequential failure to comply with even the basic protections of the Animal Protection Act.
85. ALRSA will refer also to the African Union and make submissions on the African Union AU-IBAR Animal Welfare Strategy in Africa, released by in 2017 through the Africa Platform for Animal Welfare (APAW) with the secretariat at AU-

IBAR.<sup>14</sup>

86. This Policy Document proclaims that the vision for Animal Welfare Strategy in Africa is:

*"[A]n Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource industry'. Its mission is 'Investing in developing animal resources value chains through treating animals as sentient beings and supporting good animal welfare practices in the animal resources industry to contribute to socio economic transformation' and 'its goal is 'to transform the animal resources industry through adoption of good animal welfare practices for the human wellbeing, sustainable livelihoods, poverty reduction and economic growth.'"<sup>15</sup>*

87. In the light of the African Union's approach to animal welfare, ALRSA will argue that the live export of sheep (which this application seeks to interdict in Part A, until the outcome of Part B) falls far short of this standard. The present practice fails to acknowledge, respect or protect the sentient nature of animals and as having intrinsic value as individuals. None of this meets the expressed vision of the African continent to be a leading continent in the implementation of good animal welfare practices. For this reason, ALRSA will argue that the relief

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<sup>14</sup> African Union, *Animal Welfare Strategy in Africa*, July 2017. Available at <http://worldanimal.net/images/stories/documents/Africa/AWSA.pdf>

<sup>15</sup> *Supra.*



sought is warranted.

88. ALRSA will finally provide assistance through a consideration of relevant documents and case law from the European Union that, it submits, will be useful to assist the Court and to inform decision-making about live animal export in South Africa.
89. Some of these provisions include Council Regulation (EC) No 1/2005 of 22 December 2004 which is directly relevant because it is concerned with the welfare of animals during transport by land and/or sea.
90. ALRSA submits that these materials and analyses are relevant to the issues presented in this application and will be of assistance to this Honourable Court.

### ***Foreign Law***

91. In terms of section 39(1)(c) when interpreting the Bill of Rights, a court, tribunal or forum *may* consider foreign law. In the light of the constitutional arguments set out herein, ALRSA will provide the Honourable Court with comparative jurisprudence and policies from countries which have considered the live export of animals and their implications for animal welfare.
92. These countries include Australia, New Zealand and the United Kingdom.
93. ALRSA will demonstrate that in all of these countries, there is a legal framework

that seeks to address animal welfare concerns and particularly the prevention of animal cruelty and suffering. Collectively this demonstrates that without such regulation, the risk of considerable cruelty to animals in live export, is inevitable.

94. Through this analysis, we will demonstrate that these countries recognise the serious detrimental implications for animal welfare through live export. Live export of animals is generally only allowed through a process of stringent regulation, and this is precisely to prevent cruelty to animals.
95. Further, ALRSA will demonstrate that New Zealand and Australia have recognised the inherent cruelty of exporting live animals to the Northern Hemisphere during their summer months (as have some countries in the European Union).
96. ALRSA will demonstrate that South Africa falls short of these standards, and will argue from this perspective in support of the relief sought by the Applicant.

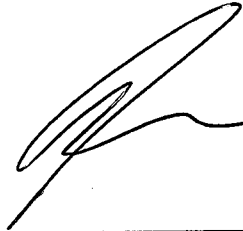
## **X. CONCLUSION**

97. Based on the foregoing, I respectfully submit that ALRSA's submissions are both relevant and novel. I submit that it would be in the interests of justice for ALRSA to be admitted as an *amicus curiae* in this application. I submit further that the written and oral submissions which will be advanced by ALRSA will be of assistance to this Court in the resolution of the issues presented in this

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application.


98. Accordingly, ALRSA prays for an Order in the terms set out in the accompanying Notice of Motion to which this affidavit is attached and will comply with any directions issued by this Honourable Court.



**SHEENA JUSTINE SWEMMER**

SIGNED and SWORN to BEFORE ME at FAIRLAND this 03 day of 08

2020, the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath and that she considers the said oath to be binding on her conscience.



**D.E. MTSHALI**  
7028184-0

**COMMISSIONER OF OATHS**

# CALS

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14 July 2020


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**RE: NATIONAL COUNCIL OF SOCIETIES FOR THE PREVENTION OF CRUELTY  
TO ANIMALS V AL MAWASHI (PTY) LTD AND OTHERS CASE NO. 955/2020  
REQUEST FOR CONSENT TO INTERVENE AS *AMICUS CURIAE* AS PER 16A(2)  
OF THE UNIFORM RULES OF COURT**

**INTRODUCTION**

1. We act on behalf of our client Animal Law Reform South Africa (ALRSA) who seeks your consent to intervene as *amicus curiae* in the above application.
2. ALRSA is a non-profit organisation which was established in 2017 with the aim of advocating for law reform to advance the well-being and protection of animals and human beings in South Africa. ALRSA adopts an intersectional approach which recognises the relationship between humans and animals and that seeks to advance greater social justice for both.
3. ALRSA is the first and presently only non-profit legal organisation which primarily focuses on animal law in South Africa. ALRSA is dedicated to 'filling the gaps' in South African law and international and foreign law to ensure that animals, humans and the environment are protected and it aims to secure both animal well-being and flourishing.

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4. ALRSA's scope of interaction is primarily around law and policy, and extends to many fields including constitutional law, commercial law, the law of delict, property law, criminal law environmental law, international law, family law and administrative law.
5. ALRSA's field of expertise is not isolated to one species of animal. Instead, it seeks to advance respect for a wide spectrum of the animal kingdom and recognises the needs and interests, for instance, of companion animals, those who are farmed and utilised in agriculture, other industries as well as wild animals.

### **ALRSA'S INTEREST IN THE PROCEEDINGS**

6. As mentioned above, ALRSA specialises in the field of law and policy relating to animals, humans and the environment. The particular application before the above Honourable Court falls within this category.
7. Along with the practical legal, procedural and policy issues relating to the live export and transportation of animals by sea, this application raises important substantive issues relating to (*inter alia*) the recognition of the intrinsic value of animals and the prevention of their undue and unnecessary suffering; the linkages and interactions between the interests of humans and animals; the potential harms of failure to take animal welfare into account; environmental law concerns and factors; South Africa's international obligations; relevant foreign jurisprudence and developments; and the accountability, undertakings, responsibilities, and duties of Government when making decisions relating to animals, particularly those for human consumption, and those being exported by South Africa.
8. This application also highlights the need for the development of formal and adequate policy and law relating to the live transportation and export of animals by sea.
9. ALRSA asserts that it possesses both the expert knowledge of animal well-being and protection, as well as expertise in law and the development of policy

in this field to be of relevant and unique assistance to the Honourable Court in this matter.

10. To this end, ALRSA has made extensive comments on various legislation and policies relating to animals in South Africa including but not limited to submissions on the Proposed Amendment to Schedule 1 of the Meat Safety Act, 2020<sup>1</sup>; comments on the High-Level Panel set up by the Department of Environment, Forestry and Fisheries in relation to the Management, Breeding, Hunting, Trade, Handling and Related Matters on elephant, lion, leopard and rhinoceros<sup>2</sup>; comments on the CITES (Convention on International Trade in Endangered Species of wild fauna and flora) Regulations 2017;<sup>3</sup> providing direct input into the drafting of the private member's bill to amend to the Animal Protection Act – which aims to, amongst other things, ban cosmetic testing of animals (2017)<sup>4</sup>.
11. ALRSA's directors, Amy P. Wilson, Professor David Bilchitz and Professor Bonita Meyersfeld are all acknowledged animal law experts in South Africa. All three have written on subjects related to animal welfare and the intersection of animal law and human rights and have developed expertise in the field of knowledge.<sup>5</sup>

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<sup>1</sup><https://emsfoundation.org.za/wp-content/uploads/ALRSA-and-EMS-Meat-Safety-Act-Comments-Final-30062020.pdf>.

<sup>2</sup> <https://emsfoundation.org.za/submission-in-respect-of-deff-high-level-panel-the-ems-foundation-and-animal-law-reform-south-africa/>.

<sup>3</sup> <https://www.animallawreform.org/our-work/>

<sup>4</sup> <https://www.animallawreform.org/wp-content/uploads/2019/01/2.-DRAFT-Amendment-to-APA-2017.pdf>.

<sup>5</sup> Examples of these publications are D Bilchitz, 'Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals' (2009) 25 South African Journal on Human Rights 38-72. D, Bilchitz, 'What was Left Unsaid: The Unconstitutionality of the Performing Animals Protection Act in NSPCA v Minister of Agriculture, Forestry and Fisheries' (2014) 30 South African Journal on Human Rights, 183-195. 'Does Transformative Constitutionalism Require the Recognition of Animal Rights?' (2010) 125 Southern African Public Law 267-300, ISSN 2219-6412, DoE list.

B Meyersfeld, 'Non-Human Animals and the Law: The Fable of Power' SAPL (2012-2013).

Wilson, A. P. (2020). (Non) Human(Im)al Rights: Dismantling The Separateness In Law And Policy. Society Register, 3(3), 39-65. <https://doi.org/10.14746/sr.2019.3.3.03> and WILSON A.P., Animal Law in South Africa: "Until the lions have their own lawyers, the law will continue to protect the hunter" dA. Derecho Animal (Forum of Animal Law Studies) 10/1 (2019) - DOI <https://doi.org/10.5565/rev/da.399>.

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12. It is submitted that ALRSA is demonstrably qualified to speak to many of the issues relating to animals and the law in South Africa generally, and more specifically on the current case before the Honourable Court regarding the live export of animals by sea.
13. It is on this basis that we seek your consent in terms of Rule 16A of the Uniform Rules of Court to enter as an *amicus curiae* in the above matter, for both Part A and Part B of the Applicant's application.
14. The submissions which ALRSA seek to make before the Honourable Court in this application, are as follows:

## **CHAPTER 2 OF THE CONSTITUTION, SECTION 10: DIGNITY AND ANIMALS**

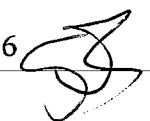
15. The Applicants argue that the live export of animals has an effect on *human* sensibilities or dignity and that it is a mechanism for 'transforming our once brutal society into one that is kind and caring'.<sup>6</sup> ALRSA supports this argument. However, we suggest that the Constitution can and should be read in such a way as to recognise the intrinsic value of animals in a way that is akin to the recognition of the dignity of human beings.<sup>7</sup>
16. It will be suggested that the basis for the allocation of dignity and legal personhood to a human individual predominantly rests on characteristics of sentience, and/or rational agency, or other factors which are assumed to be possessed by humans only. It will further be submitted that these factors do not provide a rational basis for recognising only the intrinsic value of human beings.<sup>8</sup> Instead it will be proposed that a clear outgrowth of the recognition of human rights should be according respect too for the intrinsic value of animals and their fundamental interests. Our law should thus approach the view that all who have the 'capacity to flourish', which animals do possess, have intrinsic

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<sup>6</sup> *NSPCA v Al Mawashi (Pty) Ltd*, case no. 995/2020, Founding Affidavit, page 37, para 77.

<sup>7</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) ('NSPCA').

<sup>8</sup> P Singer *Animal Liberation* (2009).

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value and entitlements to decent treatment.<sup>9</sup> The Constitutional Court already has embarked upon this route in the case of *National Society for the Prevention of Cruelty to Animals v Minister Justice and Constitutional Development*.<sup>10</sup>

17. These submissions also find support internationally in growing global recognition of animal sentience, the inherent worth of non-human animals, and the importance of the protection of their wellbeing.
18. Specifically, in relation to this application and the principle that animals are the bearers of intrinsic value, it will be argued that the live export of sheep, in torturous conditions, is an unacceptable treatment of these animals as lacking any respect for their intrinsic value. We submit that respectful treatment must include an absence of direct cruelty and intentional neglect.
19. The growing international and foreign recognition of animals' intrinsic value in law, including through statutes, regulations and case law, together with the adjustment of policies and practices around this recognition also links to the development of customary international law, which we include below.


## **CHAPTER 2 OF THE CONSTITUTION, SECTION 24 : THE ENVIRONMENTAL RIGHT AND ANIMALS – THE AGGREGATIVE APPROACH VERSUS THE INTEGRATIVE APPROACH**

20. We are of the view that section 24 of the Bill of Rights has strong relevance to and application in this case. Section 24(a) provides that which everyone has the right 'to an environment that is not harmful to their health or well-being'. Given the terrible conditions animals are kept in live transport, we contend that there is good evidence that such conditions are breeding grounds for zoonotic diseases (that transfer between animals and humans). As COVID-19 demonstrates, a virus that develops in China can easily spread around the world, including to South Africa and harm people drastically in our country. Consequently, South Africa has a duty in terms of this section to take a

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<sup>9</sup> M Nussbaum *Frontiers of Justice* (2006) and M Leukam, 'Dignified Animals: How "Non-Kantian" is Nussbaum's Conception of Dignity?' Thesis, Georgia State University, 2011.

<sup>10</sup> NSPCA above.

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precautionary approach and avoid allowing animals to be transported by sea in such unhealthy conditions that create strong possibilities of zoonotic disease being developed.

21. ALRSA will further submit that section 24(b) of the Constitution, the right to have the environment protected, is also relevant and encompasses and protects the interests of animals. Section 24(b)(i) requires the government to take reasonable legislative and other measures to 'prevent pollution and ecological degradation'. Transporting animals by sea simply for slaughter is wasteful, contributes to climate change and thus ecological degradation. The government should not be supporting or enabling such a measure.
22. Section 24(b) (ii) and (iii) require reasonable legislative and other measures that 'promote conservation' and 'secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development'. In this regard, we submit that there are currently two approaches to the interpretation of the terms 'conservation' and 'sustainable use' as set out in section 24(b). The first is what may be termed the 'aggregative approach' and the second is the 'integrative approach'.<sup>11</sup>
23. Although historically the aggregative approach has been adopted by our legislature and executive, the integrative approach has been adopted by our judiciary in Constitutional Court, *National Society for the Prevention of Cruelty to Animals v Minister Justice and Constitutional Development*.<sup>12</sup> ALRSA will submit that this should thus be used as the approach to guide decisions around animals in legislative, policy and judicial considerations.
24. Briefly, the aggregative approach is one which is focused on the aggregates or the collective goals ensuring that any uses of animals do not imperil the long-term survival of humans or the biodiversity of the environment. Part of the problem with this approach is its inherent anthropocentrism which focuses on the overall benefit to human beings over and above any other living entity,

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<sup>11</sup> D Bilchitz, Exploring the relationship between the environmental right in the South Africa Constitution and protection for the interests of animals', *SALJ* (2017).

<sup>12</sup> *NSPCA* above.

including animals and plant life. Yet, it is shown, the approach is also self-defeating and cannot achieve its own goals of truly sustainable use of animals.

25. The integrative approach however gives equal weight to terms such as 'sustainable' and 'use'. This approach recognises that the ability to guarantee survival and the continuation of different species of animals (including human animals) depends on the development of attitudes in humans which respect the interests of animals and the broader environment. This approach also recognises the interconnectedness of individuals in an ecosystem. Thus, in terms of this approach '[s]ustainable use enshrines... 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'.<sup>13</sup> Given the utter lack of respect shown to such animals, it would reject the idea that the export of live animals in torturous conditions can qualify as a form of 'sustainable use'. Indeed, such treatment breeds utter disrespect towards animals more generally which undermines efforts to protect them from cruelty or conserve them for the future.
26. The integrative approach also requires 'justifiable social and economic development'. Whilst ALRSA strongly support the advancement of job opportunities and economic growth in South Africa, we fail to see the rationality of exporting animals simply for purposes of slaughter on the other side. More jobs would be created if the animals remained in South Africa and were slaughtered here. Moreover, social and economic development must according to this standard be justifiable: we shall argue that such development is not ultimately justifiable if it disregards the intrinsic value of animals and subjects them to terrible cruelty.

## **CHAPTER 2 OF THE CONSTITUTION, SECTION 33: JUST ADMINISTRATIVE ACTION**

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<sup>13</sup> D Bilchitz, Exploring the relationship between the environmental right in the South Africa Constitution and protection for the interests of animals', *SALJ* (2017), 753.

27. Section 33 of the Constitution, codified in the Promotion of Administrative Justice Act 3 of 2000, sets the parameters for lawful, reasonable, procedurally fair and therefore accountable decision making.
28. The Promotion of Administrative Justice Act confirms that decisions and actions must be rational and reasonable, and legitimately connected to the purpose for which the decision was taken. Conversely, a decision or action cannot be taken because of the unauthorised or unwarranted dictates of another person or body. Furthermore, a decision cannot be said to be just, fair, rational or reasonable if irrelevant considerations were taken into account, or if relevant considerations were ignored. This standard of reasonableness, rationality, and procedural fairness also extends to when organs of state make decisions which create legitimate expectations.
29. It will be submitted that in this particular application, the Department of Rural Development and Agrarian Reform: Veterinary Services (Eastern Cape) and the Department of Agriculture, Land Reform and Rural Development (DALRRD) created a legitimate expectation on the issue of live export. A substantive standard was set, which prohibited the live export of animals during those Northern Hemisphere summer months. If that standard was to be changed, then all interested and affected parties had a right to be heard prior to such decision being reversed.
30. On 6 May 2020 Dr Rozani from Department Of Rural Development And Agrarian Reform: Veterinary Services (Eastern Cape) in an email to Grace De Lange of the NSPCA and copied to Cebisa Mnqeta, Lungile Jali, Ryno Barnard, Stuart Varrie and Mphane Molefe of the DRDAR and the DAFF stated that

*'On your second point, the client that is exporting live animals to the Middle East has been informed that there will be no export between May and August as per DALRRD communication. Also the State Veterinarian Exports in East London has been informed. I can*

*confirm that we have no intentions as the Eastern Cape Veterinary Services of going against the recommendation from DALRRD'.<sup>14</sup>*

31. We will submit that this 'moratorium' on live animal export during the months of May and August, is consistent with an established international practice in countries which export live animals. We deal with this argument in the following section.
32. This practice recognises the particular cruelty of transporting animals across the equator during the northern hemisphere's summer months, particularly in instances where the destination is the Middle East and the temperatures higher than 47 degrees Celsius, imposes unspeakable cruelty to the animals.
33. We will argue that this communication by Dr Rozini on behalf of the Department Of Rural Development And Agrarian Reform: Veterinary Services (Eastern Cape) created an enforceable standard for the purposes of this application.
34. In these circumstances, ALRSA will submit that if this enforceable standard was to be changed then all interested and affected parties had the right to a hearing,<sup>15</sup> prior to such change and in the absence of that, the express promise remains enforceable and ought to have been honoured.<sup>16</sup> This did not happen.
35. Despite the undertaking and assurance by Dr Rozani that no live animal export would take place in South Africa between the months of May 2020 until August 2020, the First Respondent has proceeded to attempt to undertake the live export process in direct violation of this directive. ALRSA submits that this is a further legal area in which the claims of alleged economic or financial death of the first respondent must be assessed. The First Respondent failed to provide clear details to the NSPCA of when its shipment was due to arrive, which, we

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<sup>14</sup> *NSPCA v Al Mawashi (Pty) Ltd*, case no. 995/2020, Founding Affidavit, annexure FA22.

<sup>15</sup> *Phillips*, para 28.

<sup>16</sup> In this regard, reference will be made to the following: M Murcott 'A future for the doctrine of substantive legitimate expectation? The implications of *KwaZulu- Natal Joint Liaison Committee v MEC for Education, KwaZulu Natal*' *PER* 18.1 (2015). See also the cases of *Nortjie v Minister van Korrektiewe Dienste* 2001 3 SA 472 (SCA) para 14 and *Ampofo v MEC for Education, Arts, Culture, Sports and Recreation, Northern Province* 2002 2 SA 215 (T) para 56.

argue suggests it wished to proceed with the transport in a manner it knew contravened governmental statements in this regard. The Government had a duty to prevent this from transpiring.

### **CHAPTER 3 OF THE CONSTITUTION AND THE PRINCIPLE OF CO-OPERATIVE GOVERNANCE**

36. Sections 40 and 41 of the Constitution set out the principles and standards by which different levels of Government must cooperate, relate, and conduct themselves. Section 41 (c) states that co-operative governance encompasses the principle that government entities must provide effective, transparent, accountable and coherent government for the Republic as a whole; whilst section 41 (h) confirms that these entities must inform and consult with one another on matters of common interest whilst furthermore co-ordinating their actions and legislation with one another.
37. The attached letters of support from the Provincial Department of Finance, Economic Development, Environmental Affairs and Tourism<sup>17</sup> addressed to the First Respondent dated 17 June 2020 note 'the animal welfare challenges your company... and assure you that my Department (DEDEAT) will work closely in the future with DRDAR to solve them so that the trade continues smoothly'.
38. It is noted that to date none of the 'Government Respondents' have filed any papers.
39. However, it is submitted that DEDEAT and DRDAR 'working closely to solve any animal welfare challenges' together with the communication from DALRRD indicates that both Departments are fully aware of the issues relating to live animal export, and the attendant cruelty of exporting live animals over the summer months.

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<sup>17</sup> NSPCA v Al Mawashi (Pty) Ltd, case no. 995/2020, Founding Affidvit, page 626, Annexure FA11.

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40. We will argue that any decision, permit, authorisation, certificate or permission which was (presumably) given for the export in this matter, appears to have been done in breach of binding Co-operative Governance standards in Chapter 3 of the Constitution. It is unfathomable how the export in this instance could have taken place, lawfully, in the light of moratorium of live animal export during the relevant summer months.
41. Consequently, and to the extent that permits or any other official permission was provided at the provincial, local or port level, for the export to take place, we will submit that this points to a lack of appropriate coordination between the relevant national, provincial and any other department on this issue.
42. To the extent that more than one governmental departments are involved, either at national and/or provincial government level, then this points also to the lack of coordination between departments themselves that have shared competence of this live export.
43. We will submit that this fragmented approach is contrary to Chapter 3 of the Constitution and the live export in this application must be viewed from this perspective as well.
44. ALRSA will submit that these government departments, with overlapping or shared competences over these matters must develop and implement a consistent and reasonable policy and enforceable law if the live export of animals from South Africa is to continue.
45. We submit that ALRSA's submissions in this regard will assist this Court by providing an additional constitutional [and legal] framework from which to assess the issues in this matter.

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**SECTIONS 39 AND 232 OF THE CONSTITUTION: CONSIDERATIONS OF  
INTERNATIONAL LAW AND FOREIGN LAW**

**INTERNATIONAL LAW**



46. ALRSA seeks to assist the Honourable Court by providing research and information on international laws in relation to the matter of the live export of animals as well as other relevant practices and issues pertaining more generally to the international legal framework. Particularly as the current legal framework pertaining to this issue is insufficient, unclear and otherwise problematic.
47. We will also demonstrate to the Court that international practice opposes and prohibits the live export of animals across the equator during the Northern hemisphere's summer months due to the recognition that it is a cruel practice. The number of countries which have adopted such an approach suggest that this practice has attained the status of being a customary practice in international law.

## **FOREIGN LAW**

48. ALRSA will provide the Honourable Court with comparative jurisprudence and policies from countries which present varying approaches to the intersection of animal welfare and live animal export.

## **CONCLUSION**

49. It is submitted that South Africa is at the forefront of an opportunity to stop the cruelty attendant on the export of live animals.
50. The evidence and submissions which ALRSA seek to advance are novel and have not, to our knowledge and at this stage been raised by any of the parties. We believe that these submissions are relevant to the application before the Honourable Court and will be of assistance to the Honourable Court and the interests of justice in the circumstances.

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51. We accordingly request that the parties consent to ALRSA being admitted as *amicus curiae*, to adduce documentary evidence and to present written and oral submissions before the Honourable Court.
52. We understand that we are bound by the strictures of Rule 16A and will abide by any directives issued by this Court, in the event that we need to make application to Court for our admission as *amicus curiae*.
53. In so far as our request at this stage is directed to the parties involved, we record that we are not seeking to delay the scheduled hearing of this matter in any way.
54. Please may we have your response as soon as possible to this request for admission as *amicus curiae*.

Yours sincerely,



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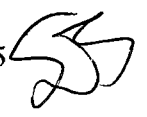
CENTRE FOR APPLIED LEGAL STUDIES

Sheena Swemmer

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D E 15 

**From:** Sheena Swemmer sheena.swemmer@wits.ac.za  
**Subject:** NSPCA v Al Mawashi and Others No. 955/2020 - request for consent to intervene as amicus curiae  
**Date:** 14 July 2020 at 11:10  
**To:** Lloyd@schindlers.co.za Lloyd@Schindlers.co.za, justin@nbandb.co.za, rene@nbandb.co.za, hvanbreda@sainet.co.za, gary@stirkyazbec.co.za, matthew@stirkyasbek.co.za, MicBotha@justice.gov.za, vusi.rozani@drdar.gov.za, Owen@huxattorneys.co.za, akika@fwbattorneys.co.za  
**Cc:** Vuyoletu Mntonintshi vuyoletu.mntonintshi@wits.ac.za, Basetsana Koitsioe basetsana.koitsioe@wits.ac.za

Dear Colleagues

Kindly see attached the Animal Law Reform South Africa's (ALRSA) letter requesting consent to be admitted as *amicus curiae* (to rule 16A of the Uniform Rules) in the above matter.

We look forward to your response by 17 July 2020.

Kindly confirm receipt hereof.

Best

Sheena

Sheena Swemmer (she/her)  
Head of Programme: Gender Justice

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**From:** Dominique Lloyd Lloyd@Schindlers.co.za  
**Subject:** RE: NSPCA v Al Mawashi and Others No. 955/2020 - request for consent to intervene as amicus curiae  
**Date:** 16 July 2020 at 13:14  
**To:** Sheena Swemmer Sheena.Swemmer@wits.ac.za  
**Cc:** Vuyoletu Mntonintshi vuyoletu.mntonintshi@wits.ac.za, Basetsana Koitsioe basetsana.koitsioe@wits.ac.za, Dean Wright Wright@Schindlers.co.za, Elani Vogel vogel@schindlers.co.za

Dear Sheena,

The above matter together with the below, refers.

Our Client has instructed us to not oppose your client's intervention as an *amicus curiae* in this matter.

Kind Regards,

**Dominique Lloyd**  
Senior Associate

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**From:** Dominique Lloyd <Lloyd@Schindlers.co.za>

**Date:** Tuesday, 14 July 2020 at 21:12

**To:** Sheena Swemmer <Sheena.Swemmer@wits.ac.za>, Vuyoletu Mntonintshi <vuyoletu.mntonintshi@wits.ac.za>, Basetsana Koitsioe <basetsana.koitsioe@wits.ac.za>

**Cc:** Dean Wright <Wright@Schindlers.co.za>, Elani Vogel <vogel@schindlers.co.za>

**Subject:** Re: NSPCA v Al Mawashi and Others No. 955/2020 - request for consent to intervene as amicus curiae

DE SS

Dear Sheena,

We confirm receipt of your email below and are in the process of taking instruction from our Client.

Please take note that Part A will be heard on **6 August 2020** and not on **16 July 2020**. A copy of the postponement order is attached hereto.

Kind Regards,

**From:** Sheena Swemmer <Sheena.Swemmer@wits.ac.za>

**Date:** Tuesday, 14 July 2020 at 11:11

**To:** Dominique Lloyd <Lloyd@Schindlers.co.za>, "justin@nbandb.co.za" <justin@nbandb.co.za>, "rene@nbandb.co.za" <rene@nbandb.co.za>, "hvanbreda@sainet.co.za" <hvanbreda@sainet.co.za>, "gary@stirkyazbec.co.za" <gary@stirkyazbec.co.za>, "matthew@stirkyasbek.co.za" <matthew@stirkyasbek.co.za>, "MicBotha@justice.gov.za" <MicBotha@justice.gov.za>, "vusi.rozani@drdar.gov.za" <vusi.rozani@drdar.gov.za>, "Owen@huxattorneys.co.za" <Owen@huxattorneys.co.za>, "akika@fwbattorneys.co.za" <akika@fwbattorneys.co.za>  
**Cc:** Vuyoletu Mntonintshi <vuyoletu.mntonintshi@wits.ac.za>, Basetsana Koitsioe <basetsana.koitsioe@wits.ac.za>

**Subject:** NSPCA v Al Mawashi and Others No. 955/2020 - request for consent to intervene as amicus curiae

Dear Colleagues

Kindly see attached the Animal Law Reform South Africa's (ALRSA) letter requesting consent to be admitted as *amicus curiae* (ito rule 16A of the Uniform Rules) in the above matter.

We look forward to your response by 17 July 2020.

Kindly confirm receipt hereof.

Best

Sheena

Sheena Swemmer (she/her)  
Head of Programme: Gender Justice

Centre for Applied Legal Studies  
University of The Witwatersrand

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D.E.S.S



Our Ref: Mr A Kika/jn/MEA11/0041

Date: 23 July 2020

Your Ref: Swemmer

To: CENTRE FOR APPLIED LEGAL STUDIES

Attention: Sheena Swemmer

Email: [sheena.swemmer@wits.ac.za](mailto:sheena.swemmer@wits.ac.za)

No. of Pages: 1 pages (Inclusive)

Dear Sirs

**NSPCA/ AL MAWASHI (PTY) LTD & OTHERS (CASE NO. 955/2020): CONSENT TO INTERVENE AS AMICUS CURIAE AS PER 16A (2) OF THE UNIFORM RULES OF COURT**

1. Your request seeking consent to intervene as an *amicus curiae*, dated 14 July 2020 refers.
2. We confirm that the eleventh Respondent has no objection to the Animal Law Reform South Africa intervening as an *amicus curiae* in the abovementioned application.

Yours faithfully

**FAIRBRIDGES WERTHEIM BECKER**

PER: Amish Kika

Tel: 011 268 0250

E-mail: [akika@fwbattorneys.co.za](mailto:akika@fwbattorneys.co.za)

[nmatsebula@fwbattorneys.co.za](mailto:nmatsebula@fwbattorneys.co.za)

**(SENT ELECTRONICALLY THEREFORE UNSIGNED)**

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FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

Also in Cape Town.

*[Handwritten signature]*



**SS4**

Attorneys & Conveyancers  
Prokureurs & Aktebesorgers

OUR REF: HvB/er/MAT6118/A265

YOUR REF:

24 JULY 2020

Ms S Swemmer  
CALC

e-mail: [Sheena.Swemmer@wits.ac.za](mailto:Sheena.Swemmer@wits.ac.za)

Dear Madam

**RE: NSPCA / AL MAWASHI et al**

The above matter refers.

As to your request, we refer you to the unnumbered paragraph at the top of page 7 of the Rule 16A notice, which we attached hereto. Given the terms of the notice, we are not at liberty to consent to you joining as *amicus curiae*. Your joining Part A at this late stage are in any event highly undesirable.

Yours faithfully.

**Henry Van Breda**  
**Changfoot Van Breda Inc.**

Directors: H van Breda, NJ Ristow.  
Assisted by: JC Zandberg, J Zandberg.  
Consultant: W Changfoot.

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D-E