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RIGHTS FOR EVERY MEMBER OF THE EARTH COMMUNITY

Harmonious co-existence

Re-envisioning human -wildife relationships in South Africa

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Contents

Abbreviations and acronyms

CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species
COP	Conference of the Parties (to a specific treaty)
DALRRD	Department of Agriculture, Land Reform & Rural Development
DFFE	Department of Forestry, Fisheries and the Environment
GBO-3	Global Biodiversity Outlook 3
GBO-5	Global Biodiversity Outlook 5
HLP Report	High-Level Panel Report on Lions, Rhinos, Elephants and Leopards (commissioned in October 2019 by Minister Creecy, completed in December 2020, and publically released in May 2021).
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
NEM:BA	National Environmental Management: Biodiversity Act
NEM:ICMA	National Environmental Management: Integrated Coastal Management Act

Synopsis

Introduction

1. This document sets out a vision for transforming the relationships between humans and wildlife in South Africa, and the governance systems that regulate those relationships. Its purpose is to provide a basis for discussion amongst like-minded people, organizations and communities with a view to reaching broad agreement on a common vision that will facilitate mutually supportive actions by a wide range of parties.

2. At the heart of this vision is the proposal that "harmonious co-existence" should replace "sustainable use" as that the main guiding principle for conservation in Southern Africa, and in so doing, align South Africa with the *Living in Harmony with Nature* vision adopted by the Conference of the Parties to the Convention on Biological diversity as the 2050 Vision for Biodiversity.

3. In essence, there is a now a global consensus that:

   3.1. the dominant forms of civilizations in the world today[1] are neither ecologically sustainable nor conducive to enabling people to live in harmony with Nature;[2]

   3.2. the consequence of current human activities continuing unchanged (referred to as "business as usual") will be disastrous for humanity and well as for biodiversity;and

   3.3. reversing the catastrophic decline in biological diversity can only be achieved by rapid, fundamental, and systemic transformation of almost every aspect of these civilizations.

Neccessity of transformative change

4. According to IPBES's Global Assessment Report, "[G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors".[3] IPBES defines transformative change "*as a fundamental, system-*

[1] These civilizations treat Nature as a "natural resource" that is available of exploitation by humans in order to generate money. Most are based on economies that are predominantly capitalistic even though the political systems vary significantly (for example between China and the United States of America).

[2] *Clearly 'business as usual' trajectories are incompatible with any interpretation of a future in which human societies are living in harmony with nature by 2050*. (GBO-5 p 141)

[3] IPBES (2019): *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Service*s, S. Diaz, J. Settele, E.S. Brondizio, et al. (eds.). IPBES secretariat, Bonn, Germany. 56 pages.

wide reorganization across technological, economic and social factors, including paradigms, goals and values." The rationale underlying this assessment is to move away from current, relatively short-term incremental changes towards more holistic pathways reflecting revised paradigms, goals and values (Pelling et al. 2015).[4]

5. In order to bring about the transformative changes necessary to reverse declines in wild populations and biological diversity and to achieve dramatic improvements in ecological health, it is necessary to reorienting the legal, administrative and economic systems that govern how humans relate to wild species. They must be oriented to promote the overarching goal of harmonious co-existence with indigenous species, instead of focussing on how to use them (sustainably or otherwise).

Aims and purpose of this vision document

6. This document aims specifically:

   6.1. to set-out a compelling new vision of how humans could flourish by:

      6.1.1. reframing how people in the dominant civilizations relate to Nature (based on the understanding that humans are members, not managers, of the community of life); and

      6.1.2. enabling wildlife and ecosystems to regenerate;

   6.2. to articulate the concept of "harmonious co-existence" as a replacement for "sustainable use" as the main guiding principle for conservation in South Africa;

   6.3. to provide a clear rationale for making a transition from focussing on increasing or maintaining consumptive uses of wildlife, to focussing on promoting the restoration and flourishing of ecological communities (e.g. re-wilding);

   6.4. to explain why decisions should be made on the basis of what is in the best interest of the whole community of life, why that which is conducive to life must be prioritised, and how this could be done; and

   6.5. to define in broad terms the key elements of the governance systems that would be necessary to give effect to this vision.

7. This document will inform the development of:

[4] Pelling, M., O'Brien, K., & Matyas, D. (2015). Adaptation and transformation. DOI: 10.1007/s10584-014-1303-0

7.1. a draft Transformation Trajectory document which explores strategies for achieving the transition from the current system of governance to the systems described in this Vision Document;

7.2. a concept document and outline of a draft Wildlife Freedom Bill to show how the new approach could be implemented in law (including the changes that would have to be made to existing laws); and

7.3. specific supporting documents to back-up the rationale for this approach including a case study of how this approach could be used to establish large-scale, community managed conservation areas in parts of the Wild Coast region in the Eastern Cape.

8. The approach set out in this draft document is based on a particular world view that is both consistent with science and closely aligned with the understandings of traditional African philosophies. It will be refined on the basis of feedback received from those being consulted.

Giving effect to the vision

9. Civil society organizations face a number of challenges in giving effect to the vision proposed in this document. One of those challenges is the wide-ranging nature of the changes that are required (which span many spheres of human activity). A second is the fact that many of the measures necessary would have to be taken by governments.

10. This document proposes that a coherent response to these challenges would be to develop alliances among civil society organizations based on a mutual interest in adopting a common approach aimed at bringing about qualitative changes in how people relate to wild species and make decisions that affect them. Such a relational approach would simultaneous promote transitions in all eight transition sectors identified by the IPBES[5], as well as the psychological, behavioural, social, cultural, economic, political, governance, institutional, demographic, technical and technological dimensions of human societies.

[5] The 8 transitional sectors are: land and forests; sustainable agriculture; food systems; fisheries and oceans; cities and infrastructure; fresh water; climate action; and health.

1. Introduction

1. This document sets out a vision for transforming the relationships between humans and wildlife in South Africa, and the governance systems that regulate those relationships. Its purpose is to provide a basis for discussion amongst like-minded people, organizations and communities with a view to reaching broad agreement on a common vision that will facilitate mutually supportive actions by many parties.

2. At the heart of this vision is the proposal that "harmonious co-existence" should replace "sustainable use" as that the main guiding principle for conservation in Southern Africa, and in so doing, align South Africa with the Living in Harmony with Nature vision adopted by the Conference of the Parties to the Convention on Biological Diversity as the 2050 Vision for Biodiversity.

3. The vision of harmonious co-existence set out in this document is based on the belief that reorienting governance systems so that they seek to achieve harmonious co-existence with, instead of the sustainable use of, indigenous species is necessary to bring about the transformative changes necessary to reverse declines in wild populations and biological diversity and to achieve dramatic improvements in ecological health.

4. It is based on the understanding that wild animals cannot be effectively protected within legal frameworks based on the anthropocentric view that wild species are natural resources available to be used by humans. Effective long-term conservation will only be possible if societal attitudes to wildlife recognise the intrinsic value of wildlife and the roles that they play within ecosystems, and this is reflected in laws and governance systems. For example, recognising and enforcing a legal right for wildlife to be wild and free (i.e. a kind of right of self-determination) is fundamental to restoring the ecological health of Earth and the well-being and dignity of individual animals.

2. The Opportunity

Covid-19 pandemic

5. The on-going COVID-19 pandemic has highlighted the importance of the relationship between people and Nature, and in particular that continuing ecosystems degradation and biodiversity loss can have profound consequences for human well-being and survival.

   5.1. The Summary for Policy Makers in the Global Biodiversity Outlook 5 ("GBO-5") states:

Finding solutions that address all the varying values we attach to nature is challenging, but the potential rewards are great. As nations evaluate options on how to recover from the COVID-19 pandemic, there is a unique opportunity to initiate the transformative changes needed to achieve the 2050 Vision of living in harmony with nature. Such actions would put biodiversity on a path to recovery, reduce the risk of future pandemics, and produce multiple additional benefits for people.

5.2. Furthermore, as an IPBES Panel of experts noted "*The need for and possibility of rapid transformative change have become apparent during the COVID-19 pandemic*."[6]

6. Perhaps more importantly, everyone in the world has now experienced rapid and dramatic societal changes, that involved severely curtailing economic activity to protect human health. They now know that rapid and far-reaching changes are possible.

Global acknowledgement of need for transformative change

7. The need for transformative changes to protect biological diversity is now acknowledged internationally. The Global Assessment Report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES"), released on 6 May 2019 states

"[*G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors*" (IPBES 2019) . (See the discussion below in the section headed **Transformative Change**).

Proposal for new South African biodiversity policy

8. On 2 May 2021 the South African Minister of Forestry, Fisheries and the Environment, Ms Barbara Creecy, announced that a new policy (known as a "White Paper") would be developed on biodiversity conservation, sustainable use and a "One Welfare" approach for wildlife.[7] The Minister made the announcement when releasing the report of the High-Level Panel that was appointed to review policies, regulatory measures, practices and policy positions that are related to hunting, trade, captive keeping, management and handling of elephant, lion, leopard and rhinoceros ("the HLP Report").

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[6] *Scoping report on assessing the underlying causes of biodiversity loss and the determinants of transformative change (thematic assessment) to achieve the 2050 Vision for Biodiversity presented to the Plenary by the Multidisciplinary Expert Panel*, published by the IPBES Secretariat on 15 March 2021 (IPBES 8/4) at para. 3.

[7] The Minister made the announcement during her speech to the Portfolio Committee Portfolio Committee on Forestry, Fisheries and the Environment, and stated "We will be taking forward the recommendations [from the HLP Report] to develop a Policy on Biodiversity Conservation and Sustainable use and adopt a One Welfare approach for wildlife."

9. An article by Don Pinnock, a veteran commentator on wildlife matter, summed up the HLP Report as follows: "*The High-Level Panel report on Lions, Rhinos, Elephants and Leopards marks a tectonic shift from apartheid-era exclusive ownership and use of wildlife to a more inclusive and transformative approach that acknowledges community stewardship of conservation and the sentience and welfare of animals. It's not all the way there, but it's a remarkable start*."[8]

10. Since the publication of the HLP Report, Minister Creecy has engaged directly with a range of organizations that advocate for greater protection of the welfare and/or rights of wildlife, and that have been critical of how the "sustainable use" principle has been applied. The Minister has indicated that she is in favour of on-going communication between such organizations and the Department of Forestry, Fisheries and the Environment ("DFFE"), including in relation to the development of the White Paper.

11. These events have created an important window of opportunity for those who believe that the government's approach to wildlife over the past several decades, has been misguided. One of the objects of this document is to facilitate the development of a new vision, supported by clear policy proposals, that will be endorsed by many organizations and communities, and used to formulate coherent proposals to the DFFE in relation to the White Paper.

[8] South Africa's wildlife shake-up: Now's the time fo... (dailymaverick.co.za)

3. "Business As Usual" wildlife governance

Anthropocentric worldview

12. How humans relate to indigenous species in South Africa is determined to a great extent by a legal and public administration system that have been shaped by anthropocentric perspectives, the idea of human exceptionalism, and mechanistic concepts of how the Universe functions.[9] These ideas date back at least as far back as the 16th and 17th Century in Europe and are not consistent with contempary scientific knowledge. For example, there is no evidence of a radical discontinuity between the human species and other species that would justify the conclusion that humans are fundamentally different and superior. Humans are certainly particularly gifted mammals when viewed from the perspective of intelligence, adaptability and capacity to modify habitats. However in the absence of human beings, most ecological communities would do better rather than worse. In other words, seen from the perspective of what is most important to the overall health of an ecological community, the value of humans (or at least those with an exploitative mindset) is rather low

13. The South African legal system reflects this anthropocentric perspective. For example, all wild animals in South Africa are defined not as legal subjects with rights, but as objects which are either un-owned (*res nullius*) or have become the property of a legal subject (e.g. a human being or entity such as a company or the State) as a consequence of being captured or killed by a legal subject who intends to acquire ownership. Plants, fungi and micro-organisms are simply seen as components of land which is also defined as property capable of being owned (i.e. as an object not a subject in the eyes of the law).

14. The governance framework for regulating human behaviour in relation to indigenous species is based on the understanding that the role of humans is to manage wildlife and their habitats, to achieve certain goals. Historically these goals have included:

    14.1. conserving a representative sample of habitats and different species in protected areas so that they can be enjoyed by current and future generations;

    14.2. restricting the hunting of wildlife to ensure that it is “sustainable” in the sense that it can be continued indefinitely; and

[9] From an anthropocentric perspective there is clear qualitative distinction between humans and other species, humans are superior to other species, and have both a moral right (or even responsibility) to manage and exploit wildlife and ecosystems in order to benefit humans (or a particular group of humans) even if doing so is harmful to other species. From this perspective humans are the most important beings in the Universe, and their views determine the value of other species and ecosystems, and the extent to which it is legitimate to harm them.

14.3. promoting the "sustainable use" of wildlife in order to create jobs and generate revenue in what is referred to as the "biodiversity economy" or the "wildlife economy".

15. The existing governance system also includes legislation that:

15.1. authorises large-scale capture and killing of marine species (e.g. the Marine Living Resources Act);

15.2. permits the hunting of certain indigenous wild animals, both subject to a permit and without permits (e.g landowners may hunt and kill certain species on their land without a permit); and

15.3. authorises the elimination of "problem animals" in situations where conflicts arise between wildlife and humans.

The "biodiversity economy"

16. The DEFF promoted the concept of a "biodiversity economy"[10] which includes a "wildlife economy"[11] The concept of a biodiversity economy encompasses revenue derived from activities that have a negligible adverse impact on the well-being of wildlife (e.g. most forms of wildlife tourism) as well as from those that do (e.g. trophy hunting and lion farming). However from this perspective, all such activities are classed as economic activities and are valued as such.

17. If wildlife is viewed primarily as a "resource" to be exploited in order to increase gross domestic product ("GDP") then it is clear that the increasing international demand for wildlife products (particularly for the luxury market) and for trophy hunting experiences, will lead to more and more wild animals being intensively farmed to meet the demand for those products. This will require removing wild animals from the wild and/or controlling the breeding and others aspects of animals in the wild in order to boost production. It is also likely to involve significant interference with the genetics of managed populations of wildlife in order to produce more animals that have an enhanced market value (e.g. colour variants). The effect of these incentives has already resulted in the establishment of a major lion farming industry which caters for both "canned hunting" and the production of lion bones to meet Asian demand for tiger

[10] See for for example the "Biodiversity Economy" page on the Department's website https://www.environment.gov.za/projectsprogrammes/biodiversityeconomy

[11] The Biodiversity Economy page referred to above also states: "The Wildlife Economy in South Africa is centred on the sustainable utilisation of indigenous biological resources including biodiversity-derived products for trade and bio-prospecting, the hunting industry, agriculture and agro processing of indigenous crops and vegetables and livestock breeds and indigenous marine resources and fisheries. Wildlife Economy focus areas centred on the socio-economic benefits of eco-tourism, co-managed conserva-tion areas and ancillary services to protected areas."

bones, commercial rhino farming and the breeding of colour variants or "sports" such as black Springbok.

18. Prior to the publication of the HLP Report, those who believe in increasing the exploitation of wildlife have been in the ascendancy within Southern Africa. Within South Africa there are well organized and well funded initiatives to enable trade in "wildlife products" such as rhino horn, lion bone and game meat, to promote the commercial farming of wildlife to produce these products, and to change laws and institutional arrangements to facilitate this. At the regional level certain SADC countries have been collaborating to weaken the (limited) controls on trade under the Convention on the International Trade in Endangered Species ("CITES"). Most of this is being justified on the basis that constitutes "sustainable use" and/or benefits rural communities.

Decision-making based on economic criteria

19. If wildlife and their habitats are conceived of as economic assets in biodiversity sub-sector of the economy, then those interactions with wildlife that generate significant amounts of money and many jobs will be valued more highly than those that generate less money and fewer jobs. This results in the application of the logic of the market to decision-making in relation to wildlife (e.g. maximising the output of goods and services in order to maximize profit). Defining wildlife as mere assets or commodities to be managed, bought and sold in order to contribute to gross domestic product (“GDP”) also obscures their intrinsic value, their contribution to the integrity, functioning and health of ecosystems and distorts human decision-making about wildlife.

20. Making decision that affect how humans co-exist with indigenous species primarily on the basis of economic criteria instead of ecological criteria is one of the main reasons why many countries have been unable stop or reverse the loss of species. Although environmental impact assessment and other processes have been established in an attempt to ensure that ecological considerations are taken into account when deciding whether or not to authorise new activities that be harmful, they are often ineffective in preventing potentially lucrative projects going ahead.

Intensifying commercial uses of wild species

21. The DFFE and the Department of Agriculture, Land Reform & Rural Development (DALRRD) have collaborated from many years with advocates of commercial exploitation, to establish legal and institutional arrangements that will legitimise and facilitate intensified use of wildlife for commercial purposes. This has included shifting administrative control of farmed wildlife to the Department of Agriculture and listing

species of wildlife under the Animal Improvement Act to facilitate their regulation as farmed animals.

22. There has also been a reluctance to implement Constitutional Court judgments that have recognised that the welfare of animals is intertwined with the environmental right in section 24 of the Constitution. Instead of thoroughly reviewing legislation such as the National Environmental Management: Biodiversity Act ("NEM:BA") to ensure that animal welfare considerations are fully integrated, only minor, relatively weak amendments were being considered.

"Sustainable use"

What is being sustained?

23. The term "sustainable use" in the context of wildlife was originally used as a means of distinguishing between those uses that can be continued indefinitely without causing ecological degradation, and those uses that cause ecological degradation (e.g. a decline in population levels of a species) and are consequently unsustainable in the long-term and should not be permitted.[12].

24. This use of the term is consistent with the environmental right in section 24 of the Constitution which uses the term "ecologically sustainable".

25. The National Environmental Management: Biodiversity Act ("NEM:BA") contains the following definitions:

*"**sustainable**", in relation to the use of a biological resource[13], means the use of such resource in a way and at a rate that—*

(a) would not lead to its long-term decline;

(b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and

(c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

*"**indigenous biological resource**"—*

(a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80 (2); or

(b) when used in relation to any other matter, means any resource consisting of—

(i) any living or dead animal, plant or other organism of an indigenous species;

[12] This is consistent with the reference to "ecologically sustainable" in section 24 of the Constitution.

[13] "*Biological resource*" is not specifically defined in the NEM:BA but it is defined in the National Environmental Management: Protected Areas Act 57 of 2003 (NEM:PAA) in a manner that is consistent with the definition of "indigenous biological resource" in NEM:BA.

(ii) any derivative of such animal, plant or other organism; or

(iii) any genetic material of such animal, plant or other organism;

26. Despite the fact that the definition of "sustainable" in NEM:BA is clearly oriented towards ensuring ecological sustainability, it is defined in terms of sustaining a "resource," in other words, a object for humans to use in meeting their needs and aspirations. Proponents of "sustainable use" most commonly use the term to mean continuing to use wildlife indefinitely (i.e. it focuses on sustaining the use rather than on sustaining the health of a species and the ecosystems that support it).

26.1. The South African government frequently reiterates that it is committed to the "sustainable use" of the country's biodiversity, meaning that it supports the use of indigenous species to generate income and employment subject to compliance with laws that are intended to ensure that the use can continue indefinitely.

26.2. Parties who advocate the intensive farming of indigenous wildlife frequently claim that these practices are protected by the South Africa constitution and by South African law because they are "sustainable". They argue that activities such as the intensive farming of lions and rhinos are not disrupting or degrading the environment because the farmed animals have been removed from the ecosystems within which they belong, and that the farming can be sustained more or less indefinitely, provided there is a sufficiently large genetic pool among the farmed animals. (The factual basis for the claims that such farming does not have a negative impact on wild populations is highly debatable.)

Problems with the sustainable use approach

27. The sustainable use approach ("SUA") suffers from several logical and practical flaws, including those listed below.

28. **Using "sustainable use" as an overarching guiding principle entrenches the harmful idea that all relationships between humans and other species is one of user and used**. Humans have always related to other beings in a many ways other than using them, and still do. It is important to place restrictions on human uses of other species to ensure that they do not cause unjustifiable harm, but defining all human interactions with wildlife (e.g. bird watching) as "use" is inaccurate and subsumes the rich variety of interactions to sub-categories of "resource use".

29. **It fails to recognise that other species are beings with their own volition and ecological roles to play and with inherent value, irrespective of their usefulness to humans.**Wild

species are living beings that each play a unique roles within the communities of life (e.g. ecosystems) to which they belong. Their freedom to be able to determine their own actions within the habitats within which their species evolved (i.e. to be wild) is an essential aspect of their ecological roles. However South African law defines wild animals as un-owned things (*res nullius*) which a legal subject (a human or juristic person) may acquire ownership of by exercising physical control over the animal with the intention of owning it (typically by capturing or killing it.) Indigenous plants are owned by the owner of the land on which they grow. As a consequence of the law defining indigenous species as objects, it does not recognize that they have any legally-protected rights or freedoms (only legal subjects may have rights). This means that despite the fact that legislation imposes many restrictions on what humans may do to wild species (particularly if they are threatened with extinction or otherwise protected), wild species do not have fundamental rights. For example, wild species do not have the legal right to dignity, life, freedom (e.g. i.e. the right to remain free and wild and not to be deprived of freedom without just cause), or security of person and bodily integrity (e.g. the right to be free of violence and the right not to treated in cruel ways).

30. **It does not consider whether the use is in the interests of the affected individual, species, or ecosystem**. Since wild species are defined as resources (i.e. objects), the question of what is in their best interests, is not considered. For example, it is clear that lion farming is not in the interests of the individual animals being farmed, the species (since it supports a growing demand for lion body parts), or the ecosystems from which the lions were removed. It also encourages humans to relate to lions in disrespectful, exploitive and cruel ways with are the antithesis of harmonious co-existence.

31. **It mischaracterises other species as a class of economic assets.** South African legislation classifies indigenous species as “natural resources” or “indigenous biological resources” and Government policies refer to biological diversity itself as a “natural capital asset”.[14] Valuing wild species as economic assets, rather than as subjects with inherent value and rights, has resulted in a policy focus on increasing the revenues generated from “the Wildlife Economy".[15] The fact that many (consumptive and non-consumptive) uses of indigenous species are economic activities that contribute to GDP does not mean that wild species should be classified as economic assets any more than humans should be classified as resources because human labour and ingenuity contribute to the economy.

[14] See for for example the “Biodiversity Economy” page on the Department’s website which states that: “South Africa is the third most biologically diverse country in the world, and therefore has one of the largest natural capital assets”. https://www.environment.gov.za/projectsprogrammes/biodiversityeconomy

[15] This concept is discussed in the earlier section entitled "The Biodiversity Economy".

32. **It encourages humans to exploit Nature instead of contributing to ecological health**. Once wild species are seen primarily as economic assets within a Wildlife Economy, the focus on economic growth will inevitably intensify the uses made of indigenous species. The term "sustainable use" in the context of wildlife was originally used as a means of distinguishing between those uses that can be continued indefinitely without causing ecological degradation (i.e. ecologically sustainable uses) and those that should not be permitted because they do.[16] In other words the concept was intended to constrain use by allowing activities that undermine ecological health to be prohibited or restricted. However classifying species as economic assets which should be used to maximise revenue means that the goal of protecting and enhancing ecological health has been eroded, if not superseded, by the goal of maximising the economic returns from wild species.

33. **It undervalues wildlife and wild habitats**. Wild animals (including insects), plants, fungi and micro-organisms are living beings that each play a unique role within the communities of life (e.g. ecosystems) to which they belong. Valuing a wild organism on the basis that it is a discrete material object (e.g. valuing a kudu on the basis of the market value of its body parts) fails to recognise that its true value is as a protagonist in a complex web of ecological relationships, through which life flows, and regenerates itself. It is the web of relationships between beings that creates the ecological systems that sustain specific life forms such as human beings. (Given our very limited understanding of these relationships and of the dynamics of ecosystems, it is clearly prudent to protect all indigenous species and to minimise human disruptions of ecosystem functioning.)

34. **It diminishes the source of wellbeing**. Human beings are a species of mammal that are members of the living community we refer to as "Earth" or "Nature" and our well-being is derived from Nature. In the long-term, harming Nature in the pursuit of human wellbeing is a losing strategy because it progressively diminishes the capacity of Nature to provide what humans and other species need to live well and flourish, and consequently is unsustainable in the long term. This means that societies with governance systems that permit humans to cause long-term ecologically degradation, cannot be sustained. No matter how much money is generated in the short-term, humankind will inevitable suffer because the diminishing capacity of ecosystems to support life will ultimately diminish human wellbeing.

[16] This is consistent with the reference to "ecologically sustainable" in section 24 of the Constitution.

Ecologically sustainable use

35. Despite the above critique of sustainable use as an overarching principle to guide how humans relate to indigenous species, the idea that human uses of other species should be ecologically sustainable is still useful in establishing a boundary beyond which further use should not be permitted. In other words, the term can be used as a ceiling on use (i.e. use that is ecologically unsustainable is impermissible) provided that it is not assumed that (a) any use of indigenous species that is not specifically prohibited by law is automatically appropriate, and (b) that use should be maximised until this threshold is reached.

36. Put differently, ecological sustainability is useful as a standard that all forms of use should meet, provided that it is used within an eco-centric context which does not seek to maximise use wherever possible.

4. Transformative change

37. This section explains why an incremental approach to improving existing systems for managing wildlife and ecosystems in Southern Africa is wholly inadequate to address biodiversity loss and ecosystem degradation and it is now necessary to make fundamental, systemic changes to transform human-wildlife interactions as soon as possible

Catastrophic loss of wild species and habitats

38. It is difficult to overstate the threats to wildlife throughout the world. Humans have triggered the sixth period of mass extinction (the last occurred about 65 million years ago and was almost certainly caused by an asteroid colliding with Earth). According to WWF's 2018 Living Planet Report[17] humans have destroyed 83% of all mammals and half of all plants and that, even if the destruction were to end now, it would take 5-7 million years for the natural world to recover.

39. Africa is particularly rich in biodiversity and is the only remaining region to have significant numbers of large mammals. According to the WWF Living Plant Report 2020, between 1970 and 2016 the abundance of wild species in Africa fell on average by 65%. Overexploitation, particularly of fish and mammals, is a major threat (over 35% of the monitored populations for these two groups have declined) as are invasive species and diseases. The carnage is being driven primarily by human activities that cause the degradation and loss of habitats and by excessive killing of wildlife e.g. fishing and hunting. In many cases the loss is accelerating.

40. On 6 May 2019 the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES"), released the most comprehensive assessment of global biodiversity ever undertaken.[18] It revealed that the global loss of species (including insects) is probably a greater threat to humanity than climate change[19] (although both issues are closely linked and must be dealt with simultaneously.)

41. According to that report:

"Human actions threaten more species with global extinction now than ever before. An average of around 25 per cent of species in assessed animal and plant groups are threatened .., suggesting that around 1 million species already face extinction, many

[17] https://www.worldwildlife.org/pages/living-planet-report-2018
[18] https://www.ipbes.net/news/ipbes-global-assessment-summary-policymakers-pdf
[19] https://www.theguardian.com/commentisfree/2019/may/06/biodiversity-climate-change-mass-extinctions

within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss. Without such action there will be a further acceleration in the global rate of species extinction, which is already at least tens to hundreds of times higher than it has averaged over the past 10 million years."

Existing governance approaches have failed

42. In 2010 the Global Biodiversity Outlook 3 (GBO-3) pointed out that the five principal pressures directly driving biodiversity loss (habitat change, overexploitation, pollution, invasive alien species and climate change) were either constant or increasing in intensity.[20] GBO-3 identified the failure to tacke these underlying drivers as one of the reasons why the first global biodiversity targets set for 2010, were not met.

43. In order to stem the destruction of wildlife and life-sustaining ecosystems, in 2010, in Aichi, Japan, the Conference of the Parties to the Convention on Biological Diversity ("CBD") agreed on a strategy to guide global action during the United Nations Decade on Biodiversity 2011-2020. The strategy recognized the need to address the underlying drivers and set 20 targets to be achieved by 2020.

44. In 2020 the CBD Secretariat published the Global Biodiversity Outlook 5[21] ("GBO-5") which revealed that the international community did not fully achieve any of the 20 Aichi biodiversity targets.[22] The following statements in GBO-5 are particularly significant and relevant to this vision.

    44.1. Biodiversity is declining at an unprecedented rate, and the pressures driving this decline are intensifying. (Overview)

    44.2. Options are available to the global community that could simultaneously halt and ultimately reverse biodiversity loss, limit climate change and improve the capacity to adapt to it and meet other goals such as improved food security. These pathways to a sustainable future rely on recognizing that bold, interdependent actions are needed across a number of fronts, each of which is necessary and none of which is sufficient on its own. This mix of actions includes greatly stepping up efforts to conserve and restore biodiversity, addressing climate change in ways that limit global temperature rise without imposing unintended additional pressures on biodiversity, and

[20] Secretariat of the Convention on Biological Diversity (2010) *Global Biodiversity Outlook 3*. Montréal, 94 pages. (ISBN-92-9225-220-8) available online: www.cbd.int/GBO3.
[21] Secretariat of the Convention on Biological Diversity (2020) Global Biodiversity Outlook 5 – Summary for Policy Makers. Montréal.
[22] Global Biodiversity Outlook 5 – Summary for Policy Makers, p.4. "At the global level none of the 20 targets have been fully achieved, though six targets have been partially achieved (Targets 9, 11, 16, 17, 19 and 20)."

transforming the way in which we produce, consume and trade goods and services, most particularly food, that rely on and have an impact on biodiversity.

44.3. Navigating the available pathways to the 2050 vision involves consideration of all the multiple aspects of our relationship with nature and the importance we attach to it. Solutions need to seek an integrated approach that simultaneously address the conservation of the planet's genetic diversity, species and ecosystems, the capacity of nature to deliver material benefits to human societies, and the less tangible but highly-valued connections with nature that help to define our identities, cultures and beliefs.

44.4. Biodiversity is critical to both the 2030 Agenda for Sustainable Development and the Paris Agreement under the United Nations Framework Convention on Climate Change, each adopted in 2015.[23] (Introduction)

44.5. The conservation and sustainable use of biodiversity may therefore be regarded as foundational to the whole 2030 Agenda.

44.6. Conversely, the achievement of the Sustainable Development Goals contributes to the conservation and sustainable use of biodiversity.

45. The rapid and catastrophic decline in populations of wild species (including insects) has occurred despite the existence of international treaties,[24] targets and action plans, regional treaties[25] and protocols, and national law designed to protect wild species and their habitats. It is patently clear that conventional environmental laws and policies cannot stop, let alone reverse, this decline. A fundamental and decisive change of approach which addresses the roots of the problem.

46. The need for fundamental, systemic change has been recognised by IPBES. According to IPBES's Global Assessment Report, "[G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors" (IPBES 2019) .

Pressure to increase exploitation is growing

47. Despite the catastrophic loss of wild species, well-funded lobby groups are seeking to increase the exploitation of wild species under the guise of "sustainable utilisation", "sustainable trade" and the rights of local communities to exploit "their wildlife resources". This is particularly prevalent in Southern Africa, both within countries such

[23] Global Biodiversity Outlook 5 – Summary for Policy Makers, p.3

[24] These include the Convention on International Trade in Endangered Species (CITES), the Convention on Biological Diversity (CBD), the Bonn Convention on migratory species and the Ramsar Convention on wetlands of international significance.

[25] For example the SADC Wildlife Protocol

as South Africa and in international fora such as Convention on International Trade in Endangered Species ("CITES") meetings.

48. For example, in South Africa commercial interests (in same cases with the support of the Department of Agriculture and other organs of state) are seeking to change the existing regulatory framework governing wildlife:

48.1. to permit the intensive farming of wild species;

48.2. to give farmed wild animals the same legal status as domestic animals;

48.3. to promote selective breeding and the breeding of colour variants (e.g. by including wild species in the lists of species governed by the Animal Improvement Act);

48.4. to expand the meat industry based on wildlife;

48.5. to legalise trade in body parts of threatened and protected species (e.g. rhino horn); and

48.6. to increase trophy hunting.

Consequences of failing to make transformative changes

49. Without transformative change (i.e. continuing on the "business as usual" trajectory) will be disastrous for humanity. For example, degrading ecosystems increases the risk of pandemics, and imperil food supplies as fresh water, soil fertility and populations of pollinatinators and other species beneficial to agriculture, decline. As the GBO-5 report observes:

"*The projected decline in biodiversity will affect all people, but it will have a particularly detrimental effect on indigenous peoples and local communities, and the world's poor and vulnerable, given their reliance on biodiversity for their well-being*,"

50. The process for envisioning and identifying the transformative changes that are urgently needed, and the process of transition must both commence as soon as possible.

Benefits of transformative change

51. Implementing transformative change will require innovation, commitment, energy and determination and financial and other resources. Consequently it will be necessary to convince government, civil society organisations and donors that the benefits of implementing this change justify such investments.

52. Taking decisive action to protect Nature and wild species will not only help avoid harm, it will also generate positive outcomes for humanity. The GBO-5 Report points out that

the conservation and sustainable use of biodiversity is foundational for the achievement of the Sustainable Development Goals ("SDGs") set out in the United Nations 2030 Agenda for Sustainable Development.

53. Just as degrading ecosystems results in a downward spiral of degradation as different impacts interact with each other and accelerate the degradation, so enhancing ecosystems can generate a cascade of mutually reinforcing benefits. For example, healthy ecosystems provide clean water, protection against water-related hazards and disasters and habitat for many species which in turn contribute to ecosystem health and resilience.

54. In South Africa, in addition to the important work of protecting relatively pristine ecosystems and threatened and protected species, proactive measures to promote the restoration and flourishing of degraded ecological communities, have the potential to yield a range of socio-econonomic benefits, including work opportunities (particularly in rural communities), increased fresh water, and enhanced resilience to climate change impacts. The potential of this approach has been demonstrated by programmes such as Working for Water and Coastcare.

5. What "transformative change" involves

Meaning of "transformative change"

55. IPBES defines transformative change as: "**a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values**."

56. The IPBES Global Assessment of Biodiversity and Ecosystem Services concluded that plausible pathways exist for achieving the 2050 Vision for Biodiversity in conjunction with key human development goals.[26] Following these pathways will require fundamental changes in development paradigms and in society, including transforming governance systems, reducing inequality, using land, water, energy and materials sustainably, and changing consumption habits, food systems, and global value chains.

57. In essence, most biodiversity scientists now agree that:

    57.1. the dominant forms of civilizations in the world today are neither ecologically sustainable nor compatible with living in harmony with Nature;

    57.2. the consequence of current human activities continuing unchanged (referred to as "business as usual") will be disastrous for humanity and well as for biodiversity; and

    57.3. reversing the catastrophic decline in biological diversity can only be achieved by rapid, fundamental, and systemic transformation of almost every aspect of these civilizations.

IPBES Pathways

58. The GBO-5 Summary for Policy Makers states that:

    Each of the measures necessary to achieve the 2050 Vision for Biodiversity requires a significant shift away from 'business as usual' across a broad range of human activities. The shape and nature of such transformative change can already be identified through a series of transitions …. Each of these transition areas involves recognizing the value of biodiversity, and enhancing or restoring the functionality of the ecosystems on which all aspects of human activity depend, and at the same time recognizing and reducing the negative impacts of human activity on biodiversity; thus enabling a virtuous cycle – reducing the loss and degradation of biodiversity and enhancing human well-being. The transitions will play out at a range of scales and are interdependent. (p.15)

59. The eight transitions that the report identifies concern: land and forests; sustainable freshwater; sustainable fisheries and oceans; sustainable agriculture; sustainable food

[26] Conceptual framework for IPBES, annex to decision IPBES-2/4.

systems; cities and infrastructure; sustainable climate action; and the transition to a "one health" approach which integrates efforts to enhance human, animal and ecosystem health. (See Appendix 1 for further details.)

Implications for civil society

60. The IPBES reports make it clear that the forms of civilization that dominate the contemporary world are having catastrophic impacts on wild species and ecosystems which cannot be reversed without far-reaching and fundamental changes to many aspects of those civilisations. When the IPBES sustainable use assessment has been completed it will provide further insights into what could be done to effect the necessary transformation change. However that assessment is in essence a desk-top assessment of available literature chronicalling what has already occurred and may have limited value to civil society organizations and communities wishing to drive and/or lead the necessary transitions.

61. Civil society has a vital role to play in driving the necessary transformations and in resisting vested interests who will try to maintain the status quo or seek to increase the use of wild species. However civil society organizations face a number of challenges in this regard. One is the wide-ranging nature of the changes that are required (which span many spheres of human activity). A second is the fact that many of the measures necessary would have to be taken by governments.

62. A coherent response to these challenges would be to develop alliances among civil society organizations based on a mutual interest in adopting a common approach aimed at bringing about qualitative changes in how people relate to wild species and in how decisions that affect wild species are made. Such a relational approach would simultaneous promote transitions in all eight transition sectors identified by the IPBES, as well as the psychological, behavioural, social, cultural, economic, political, governance, institutional, demographic, technical and technological dimensions of human societies.

63. In order to build strong civil alliances that are powerful enough to drive such fundamental change it will be necessary to span the current divisions between environmental, conservation, animal welfare, and animal rights advocates.

6. The aspiration to live in harmony with Nature

65. The idea of humanity "living in harmony with nature" already enjoys wide acceptance at the international level.

65.1. On 28 October 1982 United Nations General Assembly adopted the World Charter for Nature.[27] The Preamble to the Charter states that:

> *(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.*
>
> *(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature give man the best opportunities for the development of his creativity, and for rest and recreation."* (emphasis added).

65.2. The Conference of the Parties (COP) to the Convention on Biological Diversity have adopted a 2050 Vision titled "Living in harmony with nature" which states that "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet anddelivering benefits essential for all people". This was the vision used to guide the Strategic Plan for Biodiversity 2011-2020 but the COP have accepted that it remains relevant and should guide the development of the post-2020 global biodiversity framework.[28]

65.3. The United Nations has initiated a Harmony with Nature programme which promotes and tracks the emergence of laws, policies and related initiatives based on non-anthropocentric relationships with Nature and Earth jurisprudence. The website of the programmes states:

> "*Devising a new world will require a new relationship with the Earth and with humankind's own existence. Since 2009, the aim of the General Assembly, in adopting its nine resolutions on Harmony with Nature, has been to define this newly found relationship based on a non-anthropocentric relationship with Nature. The resolutions contain different perspectives regarding the construction of a new, non-anthropocentric paradigm in which the fundamental basis for right and wrong action concerning the environment is grounded not solely in human concerns*." and

[27] UNGA Resolution 37/7

[28] Decision X/2 of the Conference of the Parties to the Convention on Biological Diversity CBD/COP/DEC/14/230 November 2018.

> "*Rights of Nature is grounded in the recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet, and it creates guidance for actions that respect this relationship*."

66. In South Africa the Impact Statement in the Strategic Plan 2024 of the Department of Forestry, Fisheries and the Environment ("DFFE") states: "A prosperous and equitable society living in harmony with our natural resources".

67. However transforming the vision of living in harmony with Nature from an aspiration into a guiding principle for governance will require:

    67.1. articulating clearly what living in harmony with Nature involves and requires of humans and institutions; and

    67.2. establishing policies, laws, and institutions (i.e. governance systems) to guide people to act accordingly.

68. In order to give effect to the aspiration to live in harmony with Nature, we propose that:

    68.1. "harmonious co-existence" be adopted as the overarching goal for human-wildlife interactions;

    68.2. the concept of "harmonious co-existence" and what it implies, should be defined in a manner that is aligned with traditional African perspectives; and

    68.3. principles that can be used to guide decision-making that affects wildlife and transform the laws and governance systems that affect wildlife, in ways that promote harmonious co-existence, should be defined.

7. Harmonious Co-existence

Harmonious co-existence as a process

69. Harmonious co-existence is not a destination that can ever be reached because Earth systems are dynamic. Even systems that maintain homeostasis, are in constant flux. It is more accurate to conceive of living in harmony with Nature as a continuous process of considering the potential impacts of one's behaviour on other beings and choosing to act in ways that live in ways that benefit rather than harm the community of life / Earth community as a whole.

70. This means that it is not necessary to define precisely what a state of harmonious co-existence would look like. It is more important to identify the principles and procedures that will help identify the choice that is most beneficial to the Earth Community. (Examples of such principles are discussed in section **10 Principles of harmonious co-existence**.)

Implications of striving for harmonious co-existence

71. In order for human interactions with indigenous species to be re-oriented toward seeking harmonious co-existence, humans would be required:

    71.1. to shift from an anthropocentric to an ecocentric perspective and to recognise that the other beings with whom we have co-evolved have intrinsic value that is not determined by how useful they are to humans;

    71.2. to respect the fact that other beings should have the freedom to play their ecological roles and to express their inherent qualities and characteristics (e.g. rivers), and in the case of wildlife, to make their own choices;

    71.3. to accept that humans have a duty to refrain from killing, or interfering with the freedom of other beings, without adequate justification;

    71.4. to strive to maintain respectful relationships with other beings; and

    71.5. to restore any ecological degradation that they cause.

72. These aspects are discussed in more detail below.

Shift to an ecocentric perspective

73. Perhaps the most fundamental aspect of the proposed transition from sustainable use to harmonious co-existence is that it must reflect a transition from an anthropocentric to a ecocentric perspective. Making this transition requires consciously abandoning the

conceit that humans are separate from Nature and superior to all other beings, an reccognising the reality that we are part of Nature. Quantum phsyics has revealed that at the sub-atomic level, all matter is intimately entangled. Ecology teaches that understanding humans as discrete entities is an illusion – we are absolutely dependent on, and shaped by, the myriad of relationships between us and Nature. In other words, it is more accurate to describe humans as an aspect of the Earth community, rather than distinct from it.

74. From an ecocentric perspective it is clear that humans are but one species of animal among many and that the wellbeing of humanity is dependent on maintaining the integrity, health and vigour of the whole community of life we call "Earth". From this perspective humans are part of Nature and it is fundamentally important that they act as responsible members of the Earth community and learn how to live well (i.e. meet their reasonable needs and aspirations) in ways that do not degrade that community. Humans need to enhance their own wellbeing primarily by contributing to the ecological communities within with they exist, rather than at the expense of those communities. In other words we must live harmonious within Nature or Earth rather than understanding Nature / Earth as being separate from us and existing merely as the stage or environment on which human lives play out.

75. In order to have any realistic prospect of reversing the catastrophic global decline in wild species and restoring ecological health it is essential to adopt an eco-centric approach that recognises that human well-being is derived from Nature and sustaining human wellbeing requires restoring ecological health. Seeking economic growth at the expense of life is counter-productive. We need to sustain life in all its diversity, not the use and exploitation of living beings.

Recognise the intrinsic value of other beings

76. This will also involve recognising the intrinsic value of wild species and of Nature as whole. The sustainable use approach is based on the misplaced belief that the value of wildlife and wild habitats is determined by their use value to humans. This is a deeply flawed anthropocentric approach which only sees Nature through the eyes of the market and approaches conservation and wildlife as a sector of the economy. One of the core reasons why conservation is failing is because we value wildlife and Nature only as commodities. In fact other species and ecological communities are far more valuable because they are essential to all that really matters to humanity including our continued existence.

Reconceptualising the role of humanity

77. In order to co-exist harmoniously with other species, humans who aspire to dominate other species and to control and manage Earth (i.e. who have what might be described as a "colonial" attitude to other species and Nature) will have to discard those ideas and reconceive of themselves as participants in a community of life with specific responsibility towards that community.

78. In his seminal book "The Great Work", the eminent American scholar Thomas Berry explored the "Great Work" confronting humanity at this time. He wrote:

"The Great Work now, as we move into a new millennium, is to carry out the transition from a period of human devastation of the Earth to a period when humans would be present to the planet in a mutually beneficial manner." (p. 3)

"*Perhaps the most valuable heritage we can provide for future generations is some sense of the Great Work that is before them of moving the human project from its devastating exploitation to a benign presence. We need to give them some indication of how the next generation can fulfill this work in an effective manner*." (p7).

79. Anthropocentric governances systems cast humans and human institutions in the role of managers of the environment and "natural resources". Almost all civilizations (apart from those of Indigenous Peoples) are deeply invested in this "colonial" project. It is very difficult for people from cultures that have inculcated this worldview over many generations, to even conceive of a non-managerial relationship with Nature.

80. However from ecocentric perspective, the ideas that humans are the separate from, and superior to, the rest of the Earth community, and are responsible for and/or are capable of, managing the Earth community, is hubris. This begs the question "what role should humans within the Earth Community?" In other words, shifting to an eco-centric perspective also necessitates reframing how people in the dominant civilizations conceive of their roles within the Earth community and relate to wild species and Nature as a whole.

81. Making this transition will require replacing current ways of relating to wildlife which legimitise "colonial" relationships (e.g. ownership and management) with relationships of respect and responsibility (e.g. as compatriots, friends, companions, protectors and guardians).

Respectful relationship

82. Defining the Earth community and all the members of that community, other than humans, as objects in the eyes of the law, has a number of unfortunate consequences. One of these is that it obscures the reality that other-than-human beings are self-

regulating and self-willed actors with their own subjective desires and wants. It is the very fact that other beings are not objects but internally-motivated subjects, that enables them to play differentiated roles within, and to contribute to the health of,the ecological communities that we all form part of. They do not require regulation by humans. On the contrary, in order for communities of life to thrive, humans must respect, and refrain from unnecessary interference with, the lives of other beings. In other words, in order for humans to be a benign presence within an ecological community, they must maintain respectful relationships with other beings.

83. From this perspective, each human being, and humans collectively, have a duty to strive to act in ways that promote the good of the whole community of life, that respects the independence of other beings, that recognise the interdependence of all beings and to the extent that they fail to do so, to do whatever possible to remedy any harm and restore good relationships. This may be characterised as maintaining "respectful relationships".

84. Although it is not possible or appropriate to attempt to regulate all aspects of how humans relate to ecological beings, achieving the necessary transition will require the use of law to encourage people to main respectful relationships other beings. Policies and laws must be revised so that they are oriented towards ensuring that humans respect the rights of other beings to play their ecological roles, and are prevented from interfering with natural processes or harming other species and individual animals without adequate justification. The tests for what constitutes "adequate justification'' must be more strict than they are at present.

Learn from Indigenous Peoples

85. Respect for other beings, and the desire to live harmoniously with them, is fundamental to the worldviews of Indigenous Peoples.[29] Other beings (including rivers, mountains and winds) are understood as having agency and volition and are not viewed as objects. Indigenous cultures use a variety of techniques to ingrain this perspective into each person from a young age, including myths, stories, songs, rituals and other cultural practices. Customary laws also reflect these understanding and acting in a manner that is seen as disrespectful of other beings is regarded as a potential cause of harm to the human community, and may be sanctioned by the community.

86. Indigenous Peoples are markedly more successful than industrialised consumer societies in co-existing with other species without significantly degrading their shared habitats.

[29] In this regard see section 8 Traditional African Perspectives.

Although Indigenous Peoples constitute only about 5% of humanity, they own, occupy, or use a quarter of the world's surface area, and safeguard an estimated 80 percent of the world's remaining biodiversity.[30] Consequently protecting and extending land controlled by Indigenous People's who live in accordance with cultural norms that promote harmonious co-existence is an important aspect of giving effect to this aspiration.

Protect individuals, species and ecosystem

87. It will also be necessary to integrate respect for individual animals (which requires protecting their wellbeing) with conserving the species and the environment. The current division between protecting the well-being of individual animals and conserving the species (which is an aggregation of individuals) is unhelpful and misplaced. Both are necessary.

Recognising the rights of other-than-human beings

88. Most contemporary legal systems (certainly those in the dominant, extractive cultures) use the concepts of legally enforceable rights and duties as a means of defining acceptable norms regarding how people should treat one another. The concept of inalienable human rights (e.g. as expressed in the Universal Declaration of Human Rights) has been particularly influential in establishing universal norms regarding how humans should relate to one another. However many of these human rights cannot be upheld unless ecosystems are reasonably functional. The human right to life is meaningless without water. Water will not be available unless humans ensure that every part of the hydrological system (clouds, mountains, forests, rivers etc.) continue to exist and play their ecological roles. One way of achieving this is to recognise in law that aspects of Nature have rights and the humans have a duty to avoid infringing those rights.

89. Nature rights, like human rights, are conceived of as inherent, inalienable rights that arise from the mere existence of the rights holder. This means that every being or aspect of Nature (including people) must, at a minimum, have the right to exist, the right to a occupy a physical place and the right to interact with other beings in a manner that allows it to fulfil its unique role in ecological and evolutionary processes.

90. Recognising the rights of Nature is an important means of giving effect to the aspiration to co-exist harmoniously with other beings. For example, this approach:

[30] https://www.worldbank.org/en/topic/indigenouspeoples#1

90.1. facilitates a transition away from strongly anthropocentric worldviews by requiring the recognition of the other-than-human beings with whom humans co-evolved ("ecological beings") as subjects with the capacity to be rights-holders, rather than objects or resources;

90.2. enables the machinery of the State (e.g. government officials, the police and courts) to be used (albeit in an adapted form) to regulate how humans and juristic persons relate to ecological beings; and

90.3. is rapidly spreading through-out the world with the support of a fast-growing social movement.

Limiting rights of humans and juristic persons

91. This approach will require limiting the rights of human beings and juristic persons such as corporations or the State, to impose their will on ecological beings. In situations where a company, organ of state or other group of human beings wishes to do something that will restrict the freedom of other beings, it will be necessary to determine whether or not the proposed actions are justifiable. That question would have to be answered by considering what is in the best interests of humanity, the other beings affected, and most importantly, the community of life or ecosystem to which they all belong.

92. The process of making such decisions is analogous to a situation in which a court it required to consider whether or not a provision in legislation, or some government action, constitutes a justifiable limitation of one or more or the human rights in the Bill of Rights in the Constitution. (The question of limiting rights is discussed in more detail in **Section 9 Principles of harmonious co-existence**, under the heading *Restrictions on the rights of wild animals must be justificable and proportional*.)

Protect the freedom to be wild

93. Conservation efforts tend to be focussed on how to manage wildlife rather than people. Wildlife do not require management to thrive in their natural habitats, although some management interventions may be necessary to mitigate the impacts of human activities (e.g. the consequence of fencing a protected area). It is more important to protect their right to be wild and free of unjustifiable human intervention, and to manage humans to ensure that they respect this right.

94. Protecting the freedom of wildlife to live lives of their own choosing (i.e. to be wild) is one of the most important practical ways of respecting ecological beings.

Prohibit human interference without adequate justification

95. Although it is not possible or appropriate to attempt to regulate all aspects of how humans relate to ecological beings, achieving the necessary transition will require require revising policies, laws, procedures and public institutions so that human beings and juristic prersons:

    95.1. are under a duty to respect the rights and freedoms of other beings to live wild and play their ecological roles;

    95.2. are prohibited from interfering with natural processes, interfering with the freedoms of wildlife, or harming other species and individual animals without adequate justification, and

    95.3. making the tests for what constitutes “adequate justification’’ more strict than they currently are.

Change how we make decisions

96. Almost all decisions that affect human-wildlife relationships are made from an anthropocentric perspective with limited (if any) attempt to determine what is in the best interests of the affected individual animals, species and ecosystems, and in the long-term best interests of the community of life as a whole. In order to do so it will be necessary to transform decision-making institutions, principles and processes to ensure that:

    96.1. the interests and rights of other-than-human beings are identified and takeng account of in decision-making processes;

    96.2. the criteria for taking decisions are changed to ensure that that which is conducive to life is prioritised over economic considerations.

97. Identifying the interests of wildlife in a particular situation is inherently challenging because since wild animals cannot articulate their preferences in human languages. In order to do so it will be necessary to gather new kinds of information to inform decisions, to involve people who have intimate relationships with the affected places and beings and can help interpret their needs, and monitor the effects of decisions and make corrections where necessary. Despite the challenges involved, it is important to bear in mind that when faced with a specific choice (e.g. about whether or not to allow an infrastructure development to proceed) it is often possible to determine which choice would be prefererable from a the perspective of the affected wildlife, with a reasonably high degree of confidence.

Require proactive restoration of degraded ecosystems.

98. Given the amount of ecological damage that has already occurred, simply preventing more damage is insufficient. Measures must be put in place to achieve large-scale and rapid restoration of ecosystems (including for example, measures to re-integrate habitats on a large-scale, to re-establish migration corridors and others).

8. Traditional African perspectives

100. The concept of harmious co-existence which this document advocates is informed in part by this indigenous African philosophy of interdependence and seeks to reflect traditional African "environmental ethics" that are common to the vast majority of ethnic groups throughout Africa. These include in particular, the concepts of: community and interdependence, the community of life, respect, balance and harmony which are discussed below.

Community and interdependence

101. The philosopher Munyaradzi Murove, has observed that:

> "… Africa yet possesses in its own traditional culture the roots of an ethical paradigm to solve the current environmental crisis. This is an ethic of an interdependence of individuals within the larger society to which they belong and to the environment on which they all depend. This ethic is based on the concepts of *Ukama* (Shona) and *Ubuntu/Botho* (Zulu, Xhosa, Sotho and Tswana).
>
> While the Shona word *Ukama* means relatedness, *Ubuntu* implies that humanness is derived from our relatedness with others, not only those currently living but also through past and future generations. When these two concepts are compounded, together they provide an ethical outlook that suggests that human well-being is indispensable from our dependence on, and interdependence with, all that exists and particularly with the immediate environment on which all humanity depends. Were this to be developed as an environmental ethic appropriate to the contemporary world it would inspire people north and south to combat threats of pollution and environmental degradation."[31]

102. The African concept of community goes far beyond the Western idea of a group of people who have a degree of shared identity by virtue of the fact that they live in a particular place (e.g. a village) or have a shared history. From the perspective of African philosophy, the individual self can only come into existence through its relationships with other members of the community within which it exists, and the community itself is created by this network of relationships. The individual and the community are inseparable and co-create one another.

103. According to Schutte the key insight into the African idea of persons is that persons only exist in relation to other persons:

[31] Murove, Munyaradzi Felix, "*An African Environmental Ethic based on the Concepts of* Ukama *and* Ubuntu" in African Ethics. An Anthology of Comparative and Applied Ethics, Murove, Munyaradzi Felix (Ed), 2009, University of KwaZulu Natal Press, pp. 315 to 316.

"The human self is not something that first exists on its own and then enters into relationship with its surroundings. It exists only in relationship to its surroundings; these relationships are what it is. The most important of these are the relationships we have with other persons. That is why, in all African languages, there is the local variant of the Zulu saying *umuntu ngumuntu ngabantu* (a person is a person through persons). As African philosophers are fond of saying, 'I am because we are.' " (Schutte, 2009: 91)

104. Another example of this idea is the Sotho proverb "*Motho ke motho ka batho*" which Ramose explains means that to be human is to affirm ones humanity by recognising the humanity of others and by establishing humane relations with them. (Ramose, 2009: 308) As Ramose expresses it:

"Wholeness is the regulative principle here since what is asserted is that the single individual is incomplete without the other." (Ramose, 2009: 308)

105. It follows from this that participation in the community is essential for the individual and that recognising the interdependence of all is an essential aspect of being human. As Murove points out:

"Personhood is relationally constituted to such an extent that there cannot be personhood outside *Ukama* with others. Kasenene added that 'African societies emphasise interdependence and the individual's obligations to the community.' Here it follows equally that anyone who failed to recognise the all-pervasive reality of interdependence would thus be characterised as lacking *Ubuntu* or *Botho* (humanness)." (Murove, 2009: 322)

The community of life

106. It is important to appreciate that the concept of "community" extends far beyond the living human beings which a particular individual may have relationships with during his or her lifetime. It embraces both ancestors and generations to come as well as other-than-human beings since all are bound together by living forces to create the unified whole that is the universe.

"Not merely material, not purely spiritual, the forces that make the universe are seen instead as *life*, living energy, forces of life. The African conception of life includes both the physical and the spiritual. It applies to everything; stones are alive as well as animals. The difference is that animals have more life force than stones, and people more than animals."(Schutte, 2009: 90)

107. Therefore from this perspective the entire universe is alive and each being (i.e. distinct aspect of the whole that exists or has "come into being") merits respect as part of the whole.

Respect, balance and harmony

108. The concept of respect is fundamental to African society and mutual respect is understood as being essential both to maintain the cohesiveness of the community and harmony within it. Furthermore, as the following quote from Ramose makes clear, maintaining the harmony necessary to ensure that humans coexist peacefully within the community of life requires constant balancing of human interests with those of the other members of the community.

> "The concept of harmony in African thought is comprehensive in the sense that it conceives of balance in terms of the totality of the relations that can be maintained between and among human beings, as well as between human beings and physical nature. The quest for harmony is thus the striving to maintain a comprehensive but specific relational condition among organisms and entities. It is the constant striving to strike, and then maintain, a balance between human beings and physical nature." (Ramose, 2009: 309)

109. The importance of maintaining harmonious relationships is emphasized in many African practises. For example, traditional healers gathering medicinal plants will usually leave a pinch of snuff or some other symbolic gift in return for having taken medicinal plants and to honour the principle of reciprocity.

110. From this perspective, declining wildlife populations of wild can be understood as a consequence of taking too much from those animals (whether it be habitat, food of as a consequence of hunting them) without taking the necessary reciprocal measures to maintain the natural balance and avoid destabilising the system. The negative impacts of biodiversity loss on human societies would, from a traditional perspective, be understood as a foreseeable consequence of having behaved with a lack of Ubuntu or appropriate regard to the interrelatedness of all aspects of the community of life.

9. Principles of harmonious co-existence

111. One way of giving content to the aspiration of harmonious co-existence is to articulate principles to guide humans to make choices and act in ways that respect other-than-human members of ecosystems ("ecological beings"). If such principles were required to be applied by both individuals and legal persons (such as corporations and the State) they could play an important role in transforming how humans relate to ecological beings and in halting, or at least mitigating the effects of, the sixth period of mass extinction which is currently underway.

112. From a governance perspective it would be desirable to enact legislation that prescribes those principles that decision maker must take into account when making decisions that affect wild species (or even all ecological beings). Examples of some such principles are set out below as a means of initiating further discussion on this aspect.

Duty to strive for harmonious co-existence

113. Human beings must strive to live in harmony within the community of life and to respect and defend the rights of all beings to fulfil their role within that community. This means that humans must take proactive steps to contribute to the integrity and health of ecological communities.

113.1. This is the central principle and the following principles can be understood as means of ensuring that humans move towards, rather than away from, harmonious co-existence within ecological communities.

113.2. Humans co-evolved in Africa with other indigenous species and, our past, present and futures are intertwined. It is our responsibility to seek to live in harmony with our ancestral compatriots, and to resolve any conflicts in the best interests of the whole community of life to which we all belong.

Sustain life

114. Decision-making should prioritise the conservation, protection and restoration of the ecological communities, processes and functions which sustain life.

114.1. In order to have any realistic prospect of reversing the catastrophic global decline in wild species and restoring ecological health we have to transform our approach by adopting an eco-centric approach that recognises that human well-being is derived from Nature and sustaining human wellbeing requires restoring ecological health. Seeking economic growth at the expense of life is counter-productive. We need to sustain life in all its diversity, not the use and exploitation of living beings.

Protect life at every level (individuals, species and ecosystems)

115. Respect for individual animals (which requires protecting their wellbeing) must be integrated with conserving the species and the ecological communities to which they belong. The current division between protecting the well-being of individual animals and conserving the species (which is an aggregation of individuals) is unhelpful and misplaced.

115.1. Historically most conservation policies have been directed at the conservation of species (particularly those that are threatened or subject to special protection) and of particular areas. However it is important that policies operate simultaneously at different levels. For example, to achieve objectives for individuals (e.g. welfare standards), species, and at the level of ecosystems and biomes.

115.2. One of the ways of giving effect to this principle is to require that decisions that affect wildlife must involve a holistic consideration of the wellbeing of the individual, group, population and species, as well the implications for ecological communities and landscapes (e.g. the restoration of habitats, ranges, territories and migration routes). This must be done in order to determine what is in the best interest of the affected animals and in the long-term best interest of the community of life. (See "Prioritise the collective interests of the whole community" below.)

Value other beings

116. This involves recognising the intrinsic value of individual wild animals, wild species, ecosystems and of Nature as whole. Humanity does not exist in a vacuum, we have come into being, and continue to exist, by virtue of our on-going relationships with Nature and we cannot hope to continue to exist without valuing the other members of the community of life and upholding their rights to exist.[32]

116.1. Giving effect to this principle will require explicitly requiring that consideration must be given to the wellbeing of other beings.

116.2. It will also require changing the language we use in relation to Nature and other aspects of Nature from terminology that frames them as economic assets without agency to relational language that recognises the subjectivity and inherent value of individuals as well as collectives. For example references to indigenous wildlife as "natural resources" or "indigenous biological resource" should be replaced with

[32] The sustainable use approach is based on the misplaced belief that the value of wildlife and wild habitats is determined by their use value to humans. This is a deeply flawed anthropocentric approach which only sees Nature through the eyes of the market and approaches conservation and wildlife as a sector of the economy. One of the core reasons why conservation is failing is because we value wildlife and Nature only as commodities. In fact other species and ecological communities are far more valuable because they are essential to all that really matters to humanity including our continued existence.

more neutral terms such a “indigenous wildlife”, "endemic wildlife", or “African animals”.

116.3. Using language that accurately identifies the wild species as indigenous Africans with claims to ancestral territories (and in some cases, migration routes) is important to change how they are perceived by humans and to encourage humans to value them as beings rather than assets.

Respect the rights of other beings to co-exist with humans

117. People must have a duty to respect and protect the rights and freedoms of all the other members of the ecological communities to which we belong so that all may live well in harmony with one another.

117.1. In order for humans to co-exist harmoniously with the other beings with which we have co-evolved, we must recognise that every being or aspect of Nature (including people) have, at a minimum, the right to exist, the right to a occupy a physical place and the right to interact with other beings in a manner that allows it to fulfil its unique role in ecological and evolutionary processes.[33]

117.2. Enacting legislation that recognised these right and the corresponding human duties to respect those rights would be the most effective way of achieving the transformative changes that is necessary and would make South Africa a world leader in conservation.

Protect the freedom to be wild

118. Humans must have a duty to respect and protect the freedom of indigenous wildlife to be wild and live free of unjustifiable human intervention in a habitat that is conducive to their long-term wellbeing.

118.1. Conservation efforts tend to be focussed on how to manage wildlife rather than people. Although some management interventions may be necessary to mitigate the impacts of human activities (e.g. the consequences of fencing a protected area), protecting the freedom to be wild is important because wildlife do not require management to thrive in their natural habitats.

[33] Nature rights, like human rights, are conceived of as inherent, inalienable rights that arise from the mere existence of the rights holder. Recognising the rights of Nature has a number of important advantages. For example: (a) it facilitates a transition away from strongly anthropocentric worldviews by requiring the recognition of the other-than-human beings with whom humans co-evolved (“ecological beings”) as subjects with the capacity to be rights-holders, rather than objects or resources; (b) it enables the machinery of the State (e.g. government officials, the police and courts) to be used (albeit in an adapted form) to regulate how humans and juristic persons relate to ecological beings; and (c) this approach is being driven through-out the world by a fast-growing social movement

Act in the best interests of animals in our care or custody

119. If humans assume any degree of control over the lives of wild species (e.g. by confining them within an area) they must simultaneously accept a corresponding degree of responsibility for the well-being of those animals (as well as other species like plants). Any person (including juristic persons like companies) that assume the role of custodian of wildlife must simultaneously assume responsibilities in relation to that wildlife.

119.1. Any person who assumes a degree of control over a wild animal must be subject to a "duty of care" which includes the duty to take measures to ensure their long-term wellbeing and to take any decisions that affect them, in their best interests.

119.2. The degree of responsibility (i.e. the measure that must be taken in the interests of the animals) must be proportional to the degree of control or power exercised over the animals. The greater the degree of control, the greater the degree of responsibility.

119.3. This duty must also apply to people owners and occupiers of land who control all or part of the habitat or territories essential to those animals. For example, the owners and occupiers of land on which wild animals live should have a duty to take reasonable measures ensure that they have sufficient habitat, food and protection from being harmed by humans.

Prevent unjustifiable killings and other harm

120. The State, and owners and occupiers of land on which wildlife live, must be responsible for taking measures to ensure that no animal is killed or harmed by humans without adequate justification (and except in emergencies, with prior written authority.) This principle raises the question of what would constitute "adequate justification". There will undoubtedly be differences of opinions on this issue, and of course the existence or absence of adequate justification would depend on the circumstances. However the most important first step is to reach consensus on the principle that such acts are unlawful in the absence of adequate justification.[34]

Restrictions on rights of wild animals must be justifiable and proportional

121. Humans (whether acting in their personal capacity or as a company, organ of state or other group) must not be permitted to restrict the rights or freedom of other beings

[34] For example some would take the view that trophy hunting cannot be justified because a desire to have a trophy does not constitute an adequate justification, regardless of whether or not the trophy hunting generates economic benefits. Others would argue that the sacrifice of a few animals to trophy hunting is justifiable if it creates sufficient socio-economic and/or conservation benefits.

unless those restrictions can be justified and are proportional in relation to their objective.

121.1. In order to determine whether or not the proposed human actions are justifiable it will be necessary to consider, simultaneously and holistically, what is in the best interests of humanity, the ecological beings affected (at the individual, group, population and species levels) and most importantly, the community of life or ecosystem to which they all belong.

121.2. The process of making such decisions is analogous to a situation in which a court it required to consider whether or not a provision in legislation, or some government action, constitutes a justifiable limitation of one or more or the human rights in the Bill of Rights in the Constitution. The Constitution requires that these fundamental rights may only be limited "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom …" taking into account all relevant factors (section 36(1)). Those factors require a consideration of issues such as proportionality. A court will evaluate the extent to which the restriction is reasonable in relation to the objective that it seeks to achieve and whether or not that objective could have been achieved by applying a less drastic restriction.

121.3. For example, in certain circumstances some restrictions on the freedoms of rhinos may be justifiable in order to protect them from poaching. However the intensive farming of rhinos is unlikely to be justifiable because it involves dramatically restricting their freedoms beyond what is necessary to conserve them, and the additional restrictions (such as keeping them in feedlots) are imposed primarily to achieve farming objectives. In other words, if it is possible to protect the rhinos using less drastic restrictions on their freedoms, then that should be done.

Prioritise collective interests of whole community

122. One of the implications of seeing the reality that humans participate in the functioning of ecological communities, and depend on them, is that the wellbeing of the whole community of life must be prioritised over the interests of any particular members (human or otherwise) because the wellbeing of each member is derived from the wellbeing being of the whole.

123. The National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 ("NEM:ICMA") already provides an example of how this inclusive perspective can be applied. NEM:ICMA provides that coastal public property (which includes land below the highwater mark and the marine environment within South Africa's territorial waters and exclusive economic zone) must be conserved and managed "in the interests of the whole community, and states that:

*"**interests of the whole community**" means the collective interests of the community determined by—*

(a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;

(b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and

(c) taking into account the interests of other living organisms that are dependent on the coastal environment;

Promote health and well-being in an integral manner

124. Humans are one mammal species among many and human health and wellbeing cannot be adequately protected without simultaneously protecting the health and well being of the other species with which we co-exist and the ecological communities that sustain us.

124.1. This understanding is reflected in both the "One Health" and the "One Welfare" approaches.

124.2. The One Health approach is based on the recognition that the health of people is closely connected to the health of animals, plants and our shared habitats, and that achieving optimal health outcomes requires taking an integrated approach. Over 70% of new and emerging infectious diseases in humans are zoonotic, with a large proportion originating from wildlife and the destruction, conversion and fragmentation of habitats bring people and wildlife into ever closer contact.[35] Successfully preventing and responding to the disease challenges of the 21st Century while ensuring the biological integrity of the Earth for future generations will require interdisciplinary and cross-sectoral approaches to disease prevention, surveillance, monitoring, control and mitigation as well as to ecological lconservation. There is now global support for the One Health approach and its objectives to fully integrate human, animal, and ecosystem health and well-being and to help protect the health and survival of wild populations.

124.3. Associated with this is the emerging One Welfare concept as a multidisciplinary approach that analyses and leverages the synergies between human wellbeing,

[35] The Guidelines for Wildlife Disease Risk Analysis, a joint publication by the IUCN and the World Organisation for Animal Health (OIE), states that the domestic and international commercial trade in live and freshly slaughtered/butchered wildlife poses a significant risk of pathogen spillover and disease of zoonotic origin. The risk of emergence of further zoonotic diseases is increased through the increase in the human/wildlife interface and the capture, housing, breeding, shipping, slaughter, processing, storage, sale and consumption of wild animals.

animal welfare and environmental health to produce stronger, more resilient systems.

Resolve human-wildlife conflicts to restore harmonious co-existence

125. Perceived conflicts between humans and other species must be addressed with the objective of restore harmonious co-existence where possible, and in event, in a way that is in the long-term best interests of the whole ecological community to which those humans and other animals belong.

125.1. Historically humans have applied a "might is right" approach to resolving human-wildlife conflicts, usually be killing the other animals. In South Africa individual animals such as leopards are often lawfully killed on the grounds that they are "damage causing animals". This term is defined in the draft *Norms and Standards for the management of damage-causing animals in South Africa*[36] published under the National Environmental Management: Biodiversity Act ("NEM:BA") as follows:

*"**damage-causing animal**" means an individual animal or group of animals, as the case may be, that, when in conflict with human activities, there is proof that it –*

(a) causes substantial loss to livestock or to wild animals,

(b) causes substantial damage to cultivated trees, crops or other property; or

(c) presents an imminent threat to human life. already contain elements of this approach[37]

125.2. Applying this principle means that if a leopard has predated on a sheep, the conflict should not be framed simply as a conflict between the farmer and the leopard. In deciding how best to resolve the conflict, the wellbeing of both the farmer and the leopard must be considered within the wider context of the groups, populations and species to which they belong. The objective must be to seek to restore harmonious co-existence between humans and leopards and the priority must be to achieve the best possible outcome for the ecological community within which the farmer and leopard co-exist.

Redress past harms

126. Human beings have already impinged too much on the fundamental rights of other species to exist and flourish consequently promoting harmonious co-existence will require humans to redress some of the damage that they have already caused. For example it will be necessary for humans to take measures to facilitate the re-wilding of

[36] GN 512 in GG 40236 of 30 August 2016.

[37] For example, para 5(4) requires that proposed measures for the management of a damage-causing animal should be aimed at minimizing damage and be ecologically acceptable.

habitat and to restore at least some of the historic territories, ranges and migratory routes of wild animals.

10. Transforming governance systems

128. As explained above, the South African laws, policies and institutions that currently regulate how humans relate to to wildlife:

128.1. are based on inaccurate and unhelpful undestandings of the role of humanity in relation to other species and Nature as a whole;

128.2. are strengthening, instead of weakening, the forces in society that are driving the accelerating loss of biological diversity and degrading the health of ecosystems which support human and other life forms;

128.3. legitimise and facilitate many ecologically undesirable practices; and

128.4. are not designed to promote harmonious co-existence between humans and wildlife.

129. Reorienting governance systems so that they promote harmonious co-existence will inevitably require fundamental changes to how decisions are made in every sector and level of a human society. This will require innovative changes to institutions and decision-making principles and processes.This section sets out, in broad terms, the key elements of a governance systems designed to promote the harmonious co-existence of humans and wild species and in so doing make a significant contribution to the overall goal of living in harmony with Nature.

Elements of a transformed governance system

130. A transformed governance system should include some or all of the elements listed below (among others).

130.1. A revised system for protecting animal welfare.

130.2. A recognition of the rights of Nature in general, and in particular, the rights of wildlife to be wild and free (unless there are strong justifications for limiting those rights).

130.3. Legal, administrative and financial means of promoting and supporting large-scale ecosystem restoration, “rewilding” and the re-establishment and enhancement of biodiversity corridors and migratory routes for wild species. Ecosystem restoration on a massive scale is necessary in order to move out of the dangerous situation that we are now in as a consequence of transgressing the biodiversity “planetary boundary” and to address pressing environmental issues, including climate change.

130.4. Legal, administrative and financial measures to enable communities to act as effective custodians of wildlife and as management authorities for protected natural environments and other forms of protected area.

130.5. Innovative institutional arrangements and other measures to resolve human-wildlife conflicts and to limit and regulate human predation of other species.

130.6. The incorporation of African philosophical understanding of the importance of maintaining respectful relationships with aspects of Nature and the role of customary law use in implementing the vision.

130.7. Measures to mitigate the risk of zoonotic diseases and increase biosecurity security general by adopting the “One Health” approach that address environmental health, animal and human health in integrated ways.

130.8. The development of economic opportunities based on non-consumptive relationships with wildlife.

130.9. Reorienting South Africa’s role within the region and internationally, including its approack to implementing key conventions such as CITES.

131. Transforming the governance system will require research, public education, policy changes, enacting new legislation, amending existing legislation, and institutional reforms. By way of illustration, the next section provides an overview of a Wildlife Freedom Act which could be used to introduce this approach in relation to wildlife.

11. Wildlife Freedom Act

Overview

132. The proposed Wildlife Freedom Act would, among other things, change the status of indigenous animals (or even of all of Nature), articulate an ecocentric perspective; and integrate conservation and animal welfare considerations in line with the rulings of the Constitutional Court.[38]

Elements of the Act

133. It is envisaged that a Wildlife Freedom Act would incorporate the following elements (among others).

133.1. **Long title and preamble**. These would explain why this new approach is necessary. For example, by acknowledging that indigenous wildlife are sentient beings that have evolved within the ecosystems that constitute Southern Africa, that they have the inherent rights to exist within an ecosystem capable of meeting their needs and to remain wild so that they can play their role within those ecosystems, and that freedom of movement is fundamental to the wellbeing and survival of wild animals, and in many cases is essential to enable them to respond to climate change and other anthropogenic impacts.

133.2. **Legal status of indigenous animals**. The Act must define the legal status of indigenous animals, including insects, as beings that are not property and cannot be owned. Consideration should also be given to changing the legal status of plant, mico-organisms, and other aspects of Nature.

133.3. **Inherent rights of wildlife**. The Act should define these, for example, their right to exist within an ecosystem capable of meeting their needs and to remain wild so that they can play their role within that ecosystem (which would include rights to life, habitat, liberty and freedom of movement).

133.4. **Justifiable limitations on the rights of wildlife**. The Act must specify the circumstances in which humans may justifiably limit any of those rights. For example it may be permissible to kill wildlife to protect or sustain human life, or if doing so will be beneficial to the ecosystem within which the animal lives.

[38] It could be argued that new legislation is required because in the light of the Constitutional Court's interpretation of the environmental right in section 24 of the Constitution (referred to above) NEM:BA and existing animal welfare legislation are collectively insufficient to fulfil the State's duty under section 24 to take reasonable legislation to protect the environment and promote conservation. Put differently, enacting legislation that provides more effective environmental protection, particularly in relation to the wellbeing of animals, is a reasonable measure which the State could and should take.

133.5. **Human roles in relation to wildlife**. It is important that the define new roles for humans in relation to wildlife to replace the existing roles which are defined to give humans power over wildlife (e.g. as owners of wildlife or occupiers of land inhabited by wildlife). For example, owners and occupiers of land could be designated as custodians of wildlife on that land whereas conservation authorities could be defined as protectors of wildlife with greater powers. Consideration should also be given to allowing persons to fulfil roles as protectors or guardians of wildlife even if they are not land owners or occupiers, in appropriate circumstances.

133.6. **Duties in relation to wildlife**. The Act must impose and define specific duties which humans must fulfil in relation to wildlife. For example, owners and occupiers of land should be under a legal duty to take reasonable measures to ensure that the access which wildlife on the land have to shelter, food and water,is not restricted and that the environment is not degraded in a manner that is harmful to the indigenous animals that inhabit that place.

133.7. **Predation rights**. The Act should define the circumstances under which humans may predate on wild animals (e.g. by hunting and fishing), how this may be done and what limitations and conditions apply.

133.8. **Prohibitions**. The Act must prohibit certain acts that are not conducive to harmonious co-existence. For example, human beings and juristic persons (e.g. companies and organs of state) should be prohibited from: treating wild animals in a cruel or abusive manner; and from depriving wild animals of their life or liberty, or disturbing or harassing them without a good and sufficient reason.

133.9. **Regulated activities**. The Act should regulate and oversee certain activies that can be beneficial but which may also be abused. For example, it may require licences for facilities that breed wildlife for conservation purposes, and permits to transfer custody (as opposed to ownership) of wildlife. This is necessary so as not to undermine private reserves that currently buy and sell wildlife for conservation purposes.

133.10. **Promoting restorative measures**. The Act should establish mechanism to expand the habitat available to wildlife, to promote the "re-wilding" of areas that were formerly wildlife habitat, and re-establish migratory routes to enhance the freedoms of other species such as elephants.

133.11. **Conflict resolution**. The Act should establish institutional and other means of facilitating the resolution of conflicts between humans and wildlife and promoting

harmonious co-existence. There are already many innovations in this field but State support is currently lacking.

133.12. **Institutions**. The Act must establish institutions to support the implementation of the Act and the promotion of harmonious co-existence, either by transforming existing institutions or creating new ones.

133.13. **Enforcement.** The Act must provide for offences, enforcement and sanctions oriented to benefitting wildlife (e.g. by restoring habitat) rather than merely fines and imprisonment.

12. CONCLUSIONS

135. The legal challenges encountered in attempting to protect wild animals and places arise primarily from the fact that the law treats all of Nature as property available for exploitation by humans and corporate entities. Wildlife does not have any rights and it is legal to manage or farm most wild places and wild animals for non-conservation purposes. Consequently any long-term strategy to protect wildlife and the freedom to remain wild must seek to change fundamental aspects of the legal system. This approach is consistent with the philosophy of Earth jurisprudence which is rapidly gaining support globally.[39]

136. The current legal status of wildlife in South African law underpins and provides legitimacy for a range of commercial enterprises which use wildlife for profit but do not contribute to conservation.

136.1. Like most contemporary legal systems, the South African legal system treats animals as property or resources and does not recognise the reality that they are not objects but beings with the inherent right to exist and to play their part within the ecosystems within which they evolved.

136.2. Treating wild animals as commodities entrenches an exploitative relationship between humans (who have rights) and animals (who have none). This promotes unethical behaviour instead of engendering respect for wildlife and all aspects of the natural world that sustains us. It also means that as wild animals become rarer, it will become increasingly profitable to remove them from the wild and farm them (as has already occurred with several species). This is not only undesirable from an ecological perspective, it also exposes the animals to cruel commercial farming practices.

137. Recognising and enforcing a legal right for wildlife to be wild and free (i.e. a right of self-determination) is fundamental to restoring the ecological health of Earth and the well-being and dignity of individual animals. Wild animals cannot be effectively protected within legal frameworks based on the anthropocentric view that wild species are natural resources available to be used by humans. Effective long-term conservation will only be possible if societal attitudes to wildlife recognise the intrinsic value of wildlife and the

[39] The Harmony with Nature Programme of the United Nations supports and tracks the development of Earth jurisprudence. See http://www.harmonywithnatureun.org/

roles that they play within ecosystems, and this is reflected in laws and governance systems.

138. The vision of re-orienting how human-wildlife relationships are governed to promote harmonious co-existence, has the potential to deliver the transformation change that is required.

APPENDIX 1: IPBES PATHWAYS TO LIVING IN HARMONY WITH NATURE

IPBES scenarios and pathways

Part III of the The Global Biodiversity Outlook 5 ("GBO-5") is titled "*Pathways to the 2050 Vision for Biodiversity*". '. It reaffirms the validity of the "Living in harmony with Nature" vision of a world in which "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people." The key conclusions from Part III are summarised in the *Summary for Policy Makers* (pp. 6 – 22). The following conclusions quoted from Part III and the *Summary for Policy Makers* (underlining added) are particularly relevant to the proposed transition to a vision of "harmonious co-existence" that is proposed in this document.

Scenarios and pathways to 2050

Available evidence suggests that despite the failure to meet the goals of the Strategic Plan for Biodiversity 2011-2020, it is not too late to slow, halt and eventually reverse current trends in the decline of biodiversity. Moreover, the actions required to achieve this turnaround (or 'bending the curve' of biodiversity decline, as it has been termed), are fully consistent with, and indeed crucial components of, the goals and targets set out under the 2030 Agenda for Sustainable Development and the Paris Climate Change Agreement.

In summary, realizing the 2050 Vision for Biodiversity depends on a portfolio of actions in the following areas, each of which is necessary but none on its own sufficient:

• Efforts to conserve and restore biodiversity need to be scaled up at all levels using approaches that will depend on local context. These need to combine major increases in the extent and effectiveness of well-connected protected areas and other effective area-based conservation measures, large-scale restoration of degraded habitats, and improvements in the condition of nature across farmed and urban landscapes as well as inland water bodies, coasts and oceans;

• Efforts to keep climate change well below 2 degrees C and close to 1.5 degrees C above pre-industrial levels are needed to prevent climate impacts from overwhelming all other actions in support of biodiversity. The conservation and resto ration of ecosystems can play a substantial role in this. Such 'nature-based solutions' can also be an important part of adaptation to climate change;

• Effective steps need to be taken to address all remaining pressures driving biodiversity loss, including invasive alien species, pollution and the unsustainable exploitation of biodiversity especially in marine and inland water ecosystems;

• Transformations need to be achieved in the production of goods and services, especially food. This will include adopting agricultural methods that can meet growing global demand while imposing fewer negative impacts on the environment, and reducing the pressure to convert more land to production;

• Transformations are similarly needed to limit the demand for increased food production by adopting healthier diets and reducing food waste, and also in limiting the consumption of other material goods and services affecting biodiversity, for example in forestry, energy and provision of fresh water.

Each of these areas of action relies on very substantial changes and innovations, implemented on a short timescale and involving a wide range of actors at all scales and across all sectors of society (see transitions described below). However, even the most intensive efforts in each of these areas will not succeed in 'bending the curve' of biodiversity loss, unless tackled together with the other areas. For example, the most ambitious measures to conserve and restore ecosystems will fail to address biodiversity loss and food security unless equally ambitious steps are taken to sustainably increase agricultural productivity and adopt more sustainable diets. On the other hand, combining actions across all areas will make each of them easier to achieve, due to the connections and synergies between them. (p18)

Each of these transition areas involves recognizing the value of biodiversity, and enhancing or restoring the functionality of the ecosystems on which all aspects of human activity depend, and at the same time recognizing and reducing the negative impacts of human activity on biodiversity; thus enabling a virtuous cycle – reducing the loss and degradation of biodiversity and enhancing human well-being. The transitions will play out at a range of scales and are interdependent. The transitions are:

*The **land and forests transition**: conserving intact ecosystems, restoring ecosystems, combatting and reversing degradation, and employing landscape level spatial planning to avoid, reduce and mitigate land-use change. This transition recognizes the essential value of well-conserved habitats for the maintenance of biodiversity and the provision of ecosystem services for the benefit of people, and the need to move to a situation in which maintaining and improving food security no longer involves the large-scale conversion of forests and other ecosystems.*

*The **sustainable freshwater transition**: an integrated approach guaranteeing the water flows required by nature and people, improving water quality, protecting critical habitats, controlling invasive species and safeguarding connectivity to allow the recovery of freshwater systems from mountains to coasts. This transition recognizes the importance of biodiversity in maintaining the multiple roles of freshwater ecosystems to support human societies and natural processes, including linkages with terrestrial, coastal and marine environments.*

*The **sustainable fisheries and oceans transition**: protecting and restoring marine and coastal ecosystems, rebuilding fisheries and managing aquaculture and other uses of the oceans to ensure sustainability, and to enhance food security and livelihoods. This transition recognizes the long-term dependency of marine food supplies and other benefits from the oceans on healthy ecosystems.*

*The **sustainable agriculture transition**: redesigning agricultural systems through agroecological and other innovative approaches to enhance productivity while minimizing negative impacts on biodiversity. This transition recognizes the role of biodiversity, including pollinators, pest and disease control*

organisms, soil biodiversity and genetic diversity, as well as diversity in the landscape, for productive and resilient agriculture that makes efficient use of land, water and other resources.

*The **sustainable food systems transition**: enabling sustainable and healthy diets with a greater emphasis on a diversity of foods, mostly plant-based, and more moderate consumption of meat and fish, as well as dramatic cuts in the waste involved in food supply and consumption. This transition recognizes the potential nutritional benefits from diverse foods and food systems, and the need to reduce demand-driven pressures globally while ensuring food security in all its dimensions.*

*The **cities and infrastructure transition**: deploying 'green infrastructure' and making space for nature within built landscapes to improve the health and quality of life for citizens and to reduce the environmental footprint of cities and infrastructure. This transition recognizes the dependency of urban communities on well-functioning ecosystems to sustain the human population, the majority of which is living in cities, the teleconnections between cities and nearby and distant ecosystems, and the importance of spatial planning to reduce the negative impacts on biodiversity of urban expansion, roads and other infrastructure.*

*The **sustainable climate action transition**: employing nature-based solutions, alongside a rapid phase-out of fossil fuel use, to reduce the scale and impacts of climate change, while providing positive benefits for biodiversity and other sustainable development goals. This transition recognizes the role of biodiversity in sustaining the capacity of the biosphere to mitigate climate change through carbon storage and sequestration and in enabling adaptation through resilient ecosystems, as well as the need to promote renewable energy while avoiding negative impacts on biodiversity.*

*The biodiversity-inclusive **One Health transition**: managing ecosystems, including agricultural and urban ecosystems, as well as the use of wildlife, through an integrated approach, to promote healthy ecosystems and healthy people. This transition recognizes the full range of linkages between biodiversity and all aspects of human health, and addresses the common drivers of biodiversity loss, disease risk and ill-health*. (pp.20-21)

DEPARTING FROM BUSINESS AS USUAL

The review of the Aichi Biodiversity Targets set out in Part II of this Outlook makes clear that based on current trends and progress towards the goals of the Strategic Plan, continuing with 'business as usual' will put the Vision for Biodiversity out of reach, with serious consequences not only for the future of biodiversity, but for all of the Sustainable Development Goals and targets for limiting climate change. Under current 'business as usual' trajectories, each of the main pressures driving the loss of biodiversity, and the depletion of nature's contributions to people, would continue to intensify.(p.140).

…

Clearly 'business as usual' trajectories are incompatible with any interpretation of a future in which human societies are living in harmony with nature by 2050. The foregoing examples, and the global scenarios examined by the IPBES Global Assessment, project significant negative impacts on biodiversity at all levels, from genetic diversity to biomes. A significant fraction of wild species is projected to be at risk of extinction during the 21st century due to climate change, land use, natural resource extraction and the impact of other direct drivers. These potential impacts are shown to apply to terrestrial, inland

water and marine ecosystems. In turn, these pressures would result in a major decline in nature's contributions to people. The role of nature in regulating water quality, reducing coastal risk and pollinating crops will be significantly compromised by 2050 under a 'business as usual' scenario, especially in regions where the need for such contributions is greatest. Up to five billion people face higher water pollution and insufficient pollination for nutrition under future scenarios of land use and climate change, particularly in Africa and South Asia. Hundreds of millions of people face heightened coastal risk across Africa, Eurasia and the Americas. (p.141)

While radically-increased ambition for nature conservation is a prerequisite for achieving the 2050 Vision for Biodiversity, countries may adopt a range of different approaches to address biodiversity loss. (p. 144 Box 2.2)

Multiple lines of evidence suggest that realizing the 2050 Vision for Biodiversity depends on a portfolio of actions in the following areas, each of which is necessary but none on its own sufficient:

• Efforts to conserve and restore biodiversity need to be scaled up at all levels using approaches that will depend on local context. These need to combine major increases in the extent and effectiveness of well-connected protected areas and other effective area-based conservation measures, large-scale restoration of degraded habitats, and improvements in the condition of nature across farmed and urban landscapes as well as inland water bodies, coasts and oceans;

• Efforts to keep climate change well below 2 degrees C and close to 1.5 degrees C above pre-industrial levels are needed to prevent climate impacts from overwhelming all other actions in support of biodiversity. The conservation and restoration of ecosystems can play a substantial role in this. Such 'nature-based solutions' can also be an important part of adaptation to climate change; Effective steps need to be taken to address all remaining pressures driving biodiversity loss, including invasive alien species, pollution and the unsustainable exploitation of biodiversity especially in marine and inland water ecosystems;

• Transformations need to be achieved in the production of goods and services, especially food. This will include adopting agricultural methods that can meet growing global demand while imposing fewer negative impacts on the environment, and reducing the pressure to convert more land to production;

• Transformations are similarly needed to limit the demand for increased food production by adopting healthier diets and reducing food waste, and also in limiting the consumption of other material goods and services affecting biodiversity, for example in forestry, energy and provision of fresh water.

Each of these areas of action relies on very substantial changes and innovations, involving a wide range of actors at all scales and in all sectors of society (see transitions described below). However, even the most intensive efforts in each of these areas will not succeed in 'bending the curve' of biodiversity loss, and meet global objectives on food security, unless tackled alongside action in the other areas. ..

Actions in one area will remove barriers impeding change in another, so that multiple interventions across the whole range of activity actually become more feasible than attempting to focus interventions in isolated parts of the action portfolio. (p.142)

This section of the Outlook focusses on eight distinct but closely inter-related aspects of the interface between people and nature: the use of land, forests and other ecosystems; the management of fresh-water ecosystems; marine fisheries and other uses of the ocean; the production of agricultural products from the landscape; the food system, including diets, demand, supply chains and waste; the footprint and requirements of cities and infra structure; the interaction between ecosystems and climate change; and the multi-faceted connections between nature and human health. …

Transitions in each of these areas are fundamental to a realignment of people's relationship with nature and a move to sustainability. ((p146)

IPBES sustainable use assessment

The IPBES is current engaged in a thematic assessment of the sustainable use of wild species ("the IPBES sustainable use assessment") which aims to identify and providing and understanding of factors in human society, at both the individual and collective levels, and at different scales from local to global, that can be leveraged to bring about transformative change to help achieve the 2050 Vision for Biodiversity and the Sustainable Development Goals. These factors span psychological, behavioural, social, cultural, economic, political, governance, institutional, demographic, technical and technological dimensions, corresponding to the indirect drivers of change in biodiversity. They include the role of formal and informal institutions, and the impacts of the patterns of production, supply and consumption on nature, nature's contributions to people and good quality of life.

The assessment will consider the importance of the indirect drivers mentioned above in their impact on the most important direct drivers of change (i.e. land-/sea-use change, direct exploitation of organisms, climate change, pollution, and invasion of alien species) across all biomes.