

# BAN THE CAN: A CALL FOR THE RETURN OF THE AFRICAN LION'S VOICE

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“Until such time as the voice of the lion is heard, history will be written to glorify the hunter.”

-African Proverb

The horrors of the canned hunting industry affect countries across the global community, none more than South Africa, which boasts the largest canned hunting enterprise in the world. This note delves into the need to shift the voice from the hunter and back to the lion through disbanding canned hunting practices in South Africa with the hopes that this will promote a trickle effect felt by the entire global community. This note will also examine the difficulties that may arise from dissolving the practice, such as economic challenges, as well as the lack of social acceptance that may ensue. Ultimately, this note will argue for the ban of canned hunting in South Africa and show that canned hunting can be successfully outlawed and will have a positive impact on both the perception of wildlife, as well as the world's perception of South Africa.

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## I. INTRODUCTION

They are born surrounded by four menacing walls and onto dirty concrete floors, where, days later, they are ripped from their mothers and passed around for all to admire. They are then bottle fed until they are plump and deposited into different arms who hold them tight and with pride, while cameras flash all around. Soon, they become too big for arms to hold and are cast aside. They are then taken on walks, with different sets of hands guiding them around the yard and then locked away at night in cages much too small to house them. In the end, when they become too tired for walks, they are shipped off to lands surrounded by barbed wire, where disease runs rampant and food is scarce. Then, just as they are settled into this new life, they are taken out into an open field for all to see and executed.

This is the life of a South African lion born in captivity, used for human entertainment during all stages of its life, and brutally slaughtered all in the name of the practice commonly referred to as “canned hunting.” In canned hunting, there is no art of the hunt, no man versus beast, no test of strength nor wits. It is an industry that uses death to attract foreign tourists to pay top dollar to shoot an animal for its body parts, so that these individuals may display the animal for all to see as a prized trophy, rather than a sentient being.<sup>1</sup>

This note will discuss canned hunting in South Africa and, more specifically, the abuse of the animals kept in captivity on canned hunting farms, how the practices of the industry help fuel the illegal trade of animal parts on the black market, and the substantial threats to the species being raised and hunted, especially animals that are threatened or endangered like the African lion.<sup>2</sup> Ultimately, this note will argue for the dissolution of canned hunting practices through more informed internal laws in South Africa and through shifts in international law —more specifically, in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>3</sup> Part II of this note will discuss the background on

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1. Laura J. Ireland, *Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned “Hunting,”* (Sept. 17, 2019, 6:49 PM) <https://www.animallaw.info/article/canning-canned-hunts-using-state-and-federal-legislation-eliminate-unethical-practice-canned>.

2. *See infra* Part V.

3. *See infra* Part V.

canned hunting and explore canned hunting by the numbers. It will additionally discuss the difference between the practice of “trophy hunting” and canned hunting, as well as the harms of canned hunting which include: (1) the harms the practice causes; (2) how canned hunting is promoting the illegal trade of animal parts; and (3) how the canned hunting industry is allowing for abuse of these animals who are held in captivity.<sup>4</sup> Part III will discuss the current status of canned hunting both in (a) internal laws in South Africa; and (b) international laws. Part IV looks to practices that may be used to combat canned hunting which include: (a) more robust internal laws in South Africa; and (b) resolutions in CITES that could help dissolve the canned hunting industry.<sup>5</sup> Part V will conclude with a call for adoption of laws and regulations that can help give the African lion back its voice and dissolve canned hunting practices for good.<sup>6</sup>

## II. BACKGROUND ON CANNED HUNTING

### A. Canned Hunting — What Is It?

The term canned hunting was first coined on May 6, 1997, when a British television program called “The Cook Report” broadcasted the horrific scene of a tourist shooting a female lion at point blank in front of her cubs.<sup>7</sup> Prior to the Cook Report broadcast, very few individuals were aware that canned hunting existed, let alone the brutality that went hand in hand with the practice.<sup>8</sup> This scene sparked outrage in the international community and was the first exposure to the horrors of the canned hunting industry in South Africa.<sup>9</sup> The complete disregard for the animal’s life stunned the world and left a stain on South Africa’s ability to properly manage its wildlife — a stain that still remains today.

Before continuing, for the purposes of this note, it is important to iterate that canned hunting and the more commonly known practice of “trophy

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4. *See infra* Part II.

5. *See infra* Part III.

6. *See infra* Part V.

7. *See* Chris Macsween, *Roger Cook and the “Cook Report,”* LIONAID (Mar. 3, 2014), <https://lionaid.org/news/2014/03/roger-cook-and-the-cook-report.htm>.

8. *See id.*

9. *See id.*; *see also* BLOOD LIONS (PBS 2015).

hunting” are not one in the same. Trophy hunting is the “killing [of] wild animals for their body parts, such as head and hide, for display but not primarily for food or sustenance.”<sup>10</sup> Trophy hunting takes for pleasure, under government license, and generally takes place on reserves that hold government permits.<sup>11</sup> This is in stark contrast to canned hunting, where animals are not hunted on reserves that often boast miles of land for the animals to roam, but rather on canned hunting farms that are often little more than small plots of land surrounded by fencing and are frequently underregulated by the government.<sup>12</sup> These canned hunting farms often raise these animals in abhorrent conditions from birth until death, actively breeding the animals to keep the canned hunting industry alive and allowing the animals to suffer from disease, malnourishment, and abuse before the farm sends the suffering animals into the fields for tourists to slaughter them at point blank.<sup>13</sup> The appeal of the canned hunt over the traditional trophy hunt is twofold. First, it is largely based on the price difference between the two, as a lion hunt on a safari hunt can cost upwards of \$50,000 whereas a canned hunt can cost as low as \$5,000.<sup>14</sup> Second, there is a higher likelihood of successfully bagging a trophy, as trophy hunting success rates typically lie at close to sixty-one percent, while captive canned hunting in South Africa boasts a ninety-nine percent success rate.<sup>15</sup> Because of the price and guaranteed trophy, canned hunting has become a tantalizing alternative to traditional trophy hunting at staggering costs not only to the animals forced to live their lives in these facilities, but also to the species as a whole.

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10. HUMANE SOC’Y INT’L, *Trophy Hunting by the Numbers 2* (2016).

11. *Id.*

12. *See* Ireland, *supra* note 1.

13. *See* Rachel Fobar, *More than 100 Neglected Lions Found in a South African Breeding Facility*, NAT’L GEOGRAPHIC (May 8, 2019), <https://www.nationalgeographic.com/animals/2019/05/sick-neglected-lions-found-at-captive-breeding-facility-in-south-africa/>.

14. Patrick Barkham, *‘Canned Hunting’: The Lions Bred for Slaughter*, THE GUARDIAN (June 3, 2013, 2:00 PM), <https://www.theguardian.com/environment/2013/jun/03/canned-hunting-lions-bred-slaughter>. *See also* BLOOD LIONS, *supra* note 9.

15. Patrick Barkham, *supra* note 14. *See also* BLOOD LIONS, *supra* note 9.

## B. Canned Hunting in South Africa — How Does it Work?

The canned hunting industry in South Africa runs on a permit system that requires the canned hunting farms to apply for a permit through South Africa's Department of Environmental Affairs, be approved for the permit, and be willing to comply with inspections of the facility.<sup>16</sup> However, though this system may seem straightforward, South Africa faces a unique issue in this matter, as it must deal with the back and forth of its national government along with each of its nine provincial governments, all of which “have concurrent jurisdiction on environmental issues under which ‘wild animals’ traditionally fall.”<sup>17</sup> These different levels of government regulation make it exceedingly difficult to construct a uniform system for issuing permits, creating standards for facilities, and enforcing regulations.<sup>18</sup>

In addition, the ability to obtain a permit for “‘restricted activities’ such as hunting, catching, killing, growing, breeding and propagating” is easy and extraordinarily cheap.<sup>19</sup> Many of the permits that are obtained to run canned hunting farms can be bought for as little as sixty-two South African Rand (the equivalent of four U.S. Dollars).<sup>20</sup> Further complicating the situation, different provinces in South Africa do not issue permits “in a uniform matter” and there is a lack of a “centralized permitting system or sharing of information,” which allows for facilities that are not meeting permit standards to slip between the cracks.<sup>21</sup> These inconsistencies in government regulations are exceptionally prevalent in the canned hunting industry.<sup>22</sup> In March 2019, the Department of Environmental Affairs reported that “nearly 40 percent of the 227 [lion] breeding facilities inspected in four of the provinces were noncompliant with regulations and many were operating with expired permits — although these were

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16. Amy P. Wilson, *South Africa's Fallen Pride: How Law and Government Fail to Protect Lions*, THE REVELATOR (May 23, 2019), <https://therevelator.org/lion-hunting-south-africa/>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *Id.*

22. *See id.*

subsequently renewed.”<sup>23</sup> Immediately, it is evident that the permitting system for South Africa’s canned hunting industry is complex and can allow for non-compliance.

### C. Canned Hunting in South Africa — The Staggering Numbers

South Africa is the country with the largest canned hunting industry and is the largest exporter of trophies shot on canned hunting farms in the world.<sup>24</sup> A recent Humane Society report notes that “South Africa has been identified as having ‘the largest hunting industry in terms of numbers of operators, visiting hunters, animals shot[,] and revenues generated.’”<sup>25</sup> Each year, approximately 54,000 animal trophies are exported from the country, with thousands of those trophies harvested from canned hunting farms.<sup>26</sup> Undoubtedly, the animal that suffers at the hands of the South African canned hunting industry the most is the African lion.<sup>27</sup> The lion is a member of Africa’s Big Five, a title given to the lion in the late 1800s by trophy hunters who deemed it, along with the leopard, elephant, African buffalo, and rhinoceros, as the “most challenging and dangerous animals to hunt on foot.”<sup>28</sup> The lion is a creature that, historically, has been viewed as a symbol of power, regality, and influence.<sup>29</sup> However, on South African canned hunting farms, this proud creature is stripped of this status and reduced to nothing more than a commodity that can be easily discarded. Today, it is estimated somewhere around 7,000 to 14,000 lions are held on approximately 200 to 400 canned hunting farms, though this number is likely much greater, as canned hunting farms are scarcely

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23. *Id.*

24. See HUMANE SOC’Y INT’L, *supra* note 10, at 5.

25. P.A. Lindsey et al., *Economic and Conservation Significance of the Trophy Hunting Industry in sub-Saharan Africa*, 134 BIOLOGICAL CONSERVATION 455, 457 (2007).

26. *See id.*

27. *See* Fobar, *supra* note 13, at 1.

28. Liz Langley, *What Are Africa’s Big Five? Meet the Continent’s Most Iconic Wildlife*, NAT’L GEOGRAPHIC (July 26, 2020), <https://www.nationalgeographic.com/animals/2019/07/africa-big-five-safaris-lions>.

29. *See* Alastair Sooke, *Why the Lion Is Art’s Most Powerful Symbol*, BBC NEWS (Dec. 1, 2017), <http://www.bbc.com/culture/story/20171201-why-the-lion-is-arts-most-powerful-symbol>.

regulated.<sup>30</sup> This number makes up nearly one-third of the total lions in the Southern and Eastern African region, which is recorded to be between 17,000 and 19,000 lions.<sup>31</sup> Even more staggering is the number of lion trophies that are exported from South Africa. In the United States alone, between 2005 and 2014, over 5,500 lion trophies were imported into the country, with over half of those trophies coming from South Africa.<sup>32</sup> Of those trophies, 1,542 of them (approximately 28%) were lions that tourists killed on canned hunting farms.<sup>33</sup> All but three of those 1,542 canned lion trophies were harvested from South Africa.<sup>34</sup> With these staggering numbers in mind, it is exceptionally evident as to why so many conservation experts are wary that canned hunting practices, especially those in South Africa, will do irreversible damage on the African lion's population, with some even going so far as to predict extinction.<sup>35</sup>

#### D. Harms of Canned Hunting

Canned hunting has been proven to be detrimental on both the individual animals that are subjected to a life of exploitation, as well as the species as a whole. More specifically, canned hunting hinders conservation efforts, promotes the illegal trade of animal parts, and condemns the animals held in these canned hunting prisons to a life of suffering.

##### 1. Hindrance of Conservation

One of the greatest detriments canned hunting poses is the irreversible harm to conservation efforts of the species sent out to slaughter on canned hunting farms. These harms can range from the spread of disease among species, the promotion of inbreeding and infanticide, and, most alarming,

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30. Adam Welz, *The Ongoing Disgrace of South Africa's Captive-Bred Lion Trade*, YALE ENV'T 360 (Sept. 18, 2018), <https://e360.yale.edu/features/the-ongoing-disgrace-of-south-africas-captive-bred-lion-trade>.

31. See HUMANE SOC'Y Int'l, *supra* note 10, at 12.

32. *Id.* at 13.

33. *Id.*

34. *Id.*

35. See, e.g., CONG. RSCH. SERV., INTERNATIONAL TROPHY HUNTING 13–14 (2019).

the drastic decrease in populations, shifting threatened species populations to endangered and endangered species populations to critically endangered or extinct.<sup>36</sup>

It is nearly universally accepted among both conservationists and hunters that canned hunting has “no benefit[s] for wild populations — in fact, these facilities are a serious cause for alarm because of disease transmission to wild populations.”<sup>37</sup> As nearly all captive hunting farms do not provide veterinary assistance to their animals, and additionally keep their animals in cramped, unsanitary, and overpopulated facilities, disease runs rampant and has the potential to infect other wild species that wander onto canned hunting farms.<sup>38</sup> Perhaps most troubling is the ubiquity of livestock becoming infected by disease that originated on canned hunting farms.<sup>39</sup> This terrifying phenomenon has come to fruition across nearly all continents, from outbreaks of tuberculosis brucellosis in the United States from captive deer and elk escaping into the wild and infecting nearby cattle, to Chronic Waste Disease spreading from captive animals to livestock.<sup>40</sup> Canned hunting poses a severe risk to not only the animals that are held as prisoners on the farm, but also to herds of wild animals and livestock as well, which can pose a threat to the health and safety of human populations that consume the infected animals.<sup>41</sup>

An additional threat canned hunting poses to conservation is heightened cases of incest and infanticide, which is a direct result of dwindling population numbers in species.<sup>42</sup> During the 1980s, the population of African lions stood at approximately 100,000, but over the years that number has dropped to less than 20,000.<sup>43</sup> In countries like South Africa, though they employ a permit system and set caps on number of

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36. *Id.* at 14.

37. Humane Soc’y INT’L, *supra* note 10, at 3.

38. *See id.*

39. *See Captive Hunts Fact Sheet*, THE Humane Soc’y U.S., <https://www.humanesociety.org/resources/captive-hunts-fact-sheet> (last visited Oct. 14, 2020).

40. *Id.*

41. *See id.*

42. *See* CONG. RSCH. SERV., *supra* note 35, at 15.

43. *See* Orietta C. Estrada, *Lion Populations Are Growing in South Africa for the Worst Reason Possible*, ONE GREEN PLANET (2015), <https://www.onegreenplanet.org/environment/why-there-are-thousands-of-lions-in-south-africa-but-this-species-is-still-in-danger-of-extinction/>.

trophies, outside circumstances such as poaching, government corruption, and unregulated hunting practices — often taking place on canned hunting farms — have detrimental effects on the species.<sup>44</sup> According to scientists, trophy hunting and canned hunting can have a significant effect on population if the “population [of a species] is small or if hunting is prolific and focused on individuals with specific traits.”<sup>45</sup> This phenomenon holds especially true for the African lion, as large males with full, dark manes are the most desirable to hunters.<sup>46</sup> This selective hunting potentially disrupts the social organization of species, like lions, where the large males are often picked off, which results in depletion of the gene pool.<sup>47</sup> This diminution in the gene pool can then cause incest within prides, which further corrupts the species’ gene pool and can “affect the population’s viability and cause extinction.”<sup>48</sup> In addition, selective hunting allows for outside male lions to more easily infiltrate prides who have lost their dominant male.<sup>49</sup> This can result in infanticide of cubs within that pride and further reduce the species’ population.<sup>50</sup> Truly, hunting practices have the capacity to completely alter the genetic pool of species that are at risk of becoming endangered or extinct.

## 2. Bolstering of Illegal Trade in Animal Parts

Not all of the African lions imprisoned on canned hunting farms are sent out into the fields to be executed by gun-wielding tourists, rather, many are slaughtered and their bones are sent overseas and sold on the illegal wildlife market as tiger bones.<sup>51</sup> The trade in South Africa of lion skeletons to buyers in Eastern Asian countries is another blemish on the canned hunting industry. Due to the lack of internal government regulations of canned hunting farms in South Africa, the owners of these facilities are given nearly free reign to treat the animals in whatever

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44. See CONG. RSCH. SERV., *supra* note 35, at 22.

45. *Id.* at 14.

46. See *id.*; see also Estrada, *supra* note 43.

47. Cong. Rsch. Serv., *supra* note 35, at 15.

48. *Id.* at 14.

49. *Id.* at 15.

50. *Id.*

51. See Welz, *supra* note 30.

manner they see fit while the creatures are alive and dispose of the corpses in any way they please once these animals die.<sup>52</sup>

A recent report made by a senior investigator at the Society for the Prevention of Cruelty to Animals revealed the complete transparency of canned hunting farms in their practices and usage of African lion bones.<sup>53</sup> The officer described the horrors of the process, where farms hire veterinarians to dart the lions into unconsciousness and then immediately shoot the lions in the ear because “[o]verseas buyers don’t want skulls with a bullet in it.”<sup>54</sup> On that day, the inspector noted that over fifty lions were executed, their carcasses laid out and stripped of flesh down to the bones, which were then placed inside large crates and prepared to be shipped overseas.<sup>55</sup> In fact, while international law mandates a zero annual export quota for lion bones removed from the *wild* and traded for commercial purposes in South Africa,<sup>56</sup> the South African government established an annual export quota for bones collected from captive breeding operations, such as canned hunting farms. It is estimated that since 2008, “more than 6,000 lion skeletons weighing a total of approximately 70 tonnes have been exported from South Africa to Southeast Asia . . . for use in Asian traditional medicine practices.”<sup>57</sup> It is believed that since 2017, South Africa’s Department of Environment, Forestry, and Fisheries (DEFF) “has set a legal annual export quota of 800 lion skeletons, making South Africa the largest legal exporter of lion bones and skeletons.”<sup>58</sup>

Once the bones are shipped overseas, there is no sound way to ensure how the bones are to be used.<sup>59</sup> This means that canned hunting farms can ship the skeletons to “wildlife product dealers” overseas in Asia, who illegally sell the bones under the false pretenses that they are tiger bones.<sup>60</sup>

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52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. Convention on International Trade in Endangered Species of Wild Fauna Flora, app. II, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

57. *South African Lion Bone Export Quota*, OIPA (June 27, 2019), <https://www.oipa.org/international/south-africa-lion-bone-export-quota/>.

58. *Id.*

59. See Morgan Winsor, ‘Lions are on the Menu Now’: Inside the Legal Lion Bone Trade, ABC NEWS (Aug. 10, 2019), <https://abcnews.go.com/International/lions-menu-now-inside-legal-lion-bone-trade/story?id=64827468>.

60. See Welz, *supra* note 30.

Tiger bones are exceptionally valuable in the Asian market system due to the belief that wearing or injecting the bones allows the individual to take on the traits of the animal.<sup>61</sup> Tiger bone jewelry, wine, and “health” tonics that contain traces of tiger bones are all in high demand across Asia.<sup>62</sup> However, due to the tiger’s status as endangered, with less than 4,000 left in the wild, the international trade of tiger parts has been deemed illegal, meaning that a substitution is needed to keep up with the high demand for tiger bone products.<sup>63</sup> African canned hunting farms have become a substitute for this demand. With canned hunting farms in countries like South Africa providing Asian wildlife product dealers with bones that can pass for tiger bones, the illegal market continues to thrive.<sup>64</sup>

### *3. Promoting Abuse and Animal Suffering*

Canned hunting not only promotes the illegal trade of animals, but it also allows for the abuse of the animals that are imprisoned on these canned hunting farms. As noted above, canned hunting farms are not subject to strict government regulations and the suffering of these animals is often covered up or ignored.<sup>65</sup> A recent example of this took place in May 2019 on a canned hunting farm called Pienika Farm in South Africa, where over 100 lions, leopards, tigers, and caracals were found in abhorrent living conditions.<sup>66</sup> According to the inspector from the National Council for Societies for the Prevention of Cruelty for Animals (NSPCA):

[T]hey saw 27 lions afflicted with mange, a skin disease caused by parasitic mites. It was so severe that they’d lost almost all their fur. The inspectors reported that the animals were held in filthy, overcrowded enclosures, with more than 30 held in spaces meant for two. At least three cubs were suffering from a neurological condition called meningoencephalitis, an inflammation of the brain, that left them unable

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61. *See China’s Medicinal Tiger Bones and Rhino Horns: Tradition or Travesty?*, DW, (July 11, 2018), <https://www.dw.com/en/chinas-medicinal-tiger-bones-and-rhino-horns-tradition-or-travesty/a-46193315>.

62. *Id.*

63. *See id.*

64. *See id.*

65. *See supra* Part II.

66. *See* Fobar, *supra* note 13.

to walk. One was subsequently euthanized by a veterinarian at the facility.<sup>67</sup>

Though animal welfare charges were brought against this canned hunting farm, no further action was taken, and the lawsuit remained untouched as officials alleged that they needed to gather additional evidence.<sup>68</sup> Inspectors returned to the Pienika Farm several months later and discovered that conditions had remained the same and twenty lion cubs had been slaughtered with their corpses shoved into a freezer on the property.<sup>69</sup> This kind of abuse is nearly ubiquitous on canned hunting farms and the law affords these creatures little protection and allows these facilities to continue their exploitation without repercussions.

### III. CURRENT STATUS OF CANNED HUNTING IN SOUTH AFRICA AND INTERNATIONALLY

#### A. Internal Laws in South Africa

Currently, no domestic laws or regulations in South Africa provide a definition for canned hunting, punishments for violations, or a ban of the practice outright.<sup>70</sup> Instead, many of the laws cater to the canned hunting industry and allow for the continuation of the commodification and abuse of the animals on these farms.

#### *1. Codification of Animals as Property and Natural Resources through Apartheid-Era Legislation*

To fully understand South Africa's canned hunting industry, it is critical to gain a greater knowledge of the legal status of animals within South Africa's society and the legislation that dictates this status, which largely originated during South Africa's apartheid era. To begin, similar to a majority of countries, animals in South Africa have the legal status of

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67. *Id.*

68. See Carly Day, *Dead Lion Cubs Found in Freezer at a Cruel 'Canned Hunting' Farm*, LADY FREETHINKER (Aug. 10, 2019), <https://ladyfreethinker.org/dead-lion-cubs-found-in-freezer-at-cruel-canned-hunting-farm/>.

69. *Id.*

70. See Wilson, *supra* note 16.

property.<sup>71</sup> As property, animals have little to no individual rights, and are the chattel of the individual who has title over them.<sup>72</sup> However, what sets South Africa apart from other countries is that, similar to domesticated animals, wild animals are considered the chattel of private landowners.<sup>73</sup> In many countries, ownership of wild animals lies with the country itself.<sup>74</sup> In countries such as Uganda, China, Norway, and Canada, ownership of wild animals is vested in the government “on behalf and for the benefit of the people.”<sup>75</sup> In contrast, South Africa grants ownership of wild animals to the individual landowners, allowing private landowners full control over the animals on their lands, whether wild or domesticated.<sup>76</sup> As a result of this private ownership, wild animals in South Africa have been established as not only property, but also a natural resource that individual landowners can utilize.<sup>77</sup>

This view of wildlife as a natural resource has been emboldened throughout the years, especially during South Africa’s apartheid era, where legislation stripped away the rights of both South African citizens and its native wildlife.<sup>78</sup> Apartheid began in 1948, when South Africa’s all-white government began implementing segregation laws against all nonwhite South Africans.<sup>79</sup> These laws called for nonwhite South Africans (who made up a majority of the population) to live separately, use different facilities, and have minimal contact with white South Africans.<sup>80</sup> In addition, during the period of 1961 through 1994, over 3.5 million nonwhite South Africans who lived in rural areas were removed from their

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71. *Id.*

72. *See* Carl D. Etling, *Who Owns the Wildlife*, 3 ENV’T L. 23, 31 (1973).

73. Wilson, *supra* note 16.

74. *See* Etling, *supra* note 72.

75. MARIA TERESA CIRELLI, LEGAL TRENDS IN WILDLIFE MANAGEMENT, § 4.1.1 (2002).

76. *See* Wilson, *supra* note 16.

77. *See id.*

78. Lisa Findley & Liz Ogbu, *South Africa: From Township to Town*, PLACES J. (Nov. 2011), [https://placesjournal.org/article/south-africa-from-township-to-town/?gclid=CjwKCAiA-P7xBRAvEiwAow-VaacKj16hWmqFMOzHazQY8yN\\_OfTrqB06EqTJba405eWTMXqR8QLwdBoCaO8QAvD\\_BwE&cn-reloaded=1](https://placesjournal.org/article/south-africa-from-township-to-town/?gclid=CjwKCAiA-P7xBRAvEiwAow-VaacKj16hWmqFMOzHazQY8yN_OfTrqB06EqTJba405eWTMXqR8QLwdBoCaO8QAvD_BwE&cn-reloaded=1).

79. *Id.*

80. *Id.*

land and forced to live in impoverished townships called “Bantustans.”<sup>81</sup> The land taken from the nonwhite citizens, along with any livestock or wildlife that resided on the land, was then sold to white farmers to be designated as “white” homeland area.<sup>82</sup> During apartheid, little regard was expressed for human life when passing legislation, and the same can be said about animal life.<sup>83</sup> This lack of concern for wildlife became evident with the passing of the “Game Theft Act” in 1991. The Game Theft Act codifies the ownership of wild animals<sup>84</sup> and notes that:

[A] person who keeps or holds game . . . held on land that is sufficiently enclosed . . . or who keeps game in a pen or kraal or in or on a vehicle, shall not lose ownership of that game if the game escapes from such enclosed land or from such enclosed land or from such pen, kraal or vehicle . . . .<sup>85</sup>

The act additionally solidifies the landowner’s right to the wild animals on their land by adding:

[T]he ownership of game shall not vest in any person who, contrary to the provisions of any law or on the land of another person without the consent of the owner or lawful occupier of that land, hunts, catches or takes possession of game, but it remains vested in the owner referred to in paragraph (a) or vests in the owner of the land on which it has been so hunted, caught or taken into possession, as the case may be.<sup>86</sup>

This act further emphasizes the view of wild animals as commodities and the power that is granted to individual landowners.

Apart from the Game Theft Act and other similar laws that were passed during apartheid, executive departments have interpreted South Africa’s Constitution in such a way as to further emphasize a landowner’s rights to the wildlife on his or her land.<sup>87</sup> South Africa’s Constitution lays out the

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81. *Apartheid*, HISTORY.COM, <https://www.history.com/topics/africa/apartheid> (last updated Mar. 3, 2020).

82. *See id.*

83. *See* BLOOD LIONS, *supra* note 9.

84. *See* Wilson, *supra* note 16.

85. Game Theft Act 105 of 1991 § 2 (1)(a).

86. *Id.* at § 2 (1)(b).

87. *See generally* Wilson, *supra* note 16.

rights of South African citizens to an environment that poses no detriment to their “health and wellbeing,” as well as the means through which the environment can be protected for future generations to come.<sup>88</sup> Subsection (b) of the environmental provision provides language that many lawmakers and scholars have interpreted to afford additional rights to landowners and strengthens their right to control the wildlife that inhabits their land.<sup>89</sup> The section states that “everyone has the right — (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that . . . (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”<sup>90</sup>

The phrase “‘sustainable use’ of ‘resources’” has “form[ed] the basis of the country’s environmental and biodiversity laws” and has “effectively ensured, and even promoted, the commodification of wildlife and is used to justify practices that most would consider abhorrent and repulsive.”<sup>91</sup> Identifying wildlife in South Africa not only as property, but also as a commodified natural resource, echoes the society’s view that the animals are both subservient and expendable.

## *2. Legality of Canned Hunting Solidified in Supreme Court of Appeal of South Africa Decision*

Currently, in South Africa, captive lion hunting remains legal due to longstanding statutes, as well as a pivotal outcome of a 2010 Supreme Court of Appeal of South Africa case, *SA Predator Breeders Ass’n & Others v. Minister of Environmental Affairs & Tourism*.<sup>92</sup> For a brief period, captive lion breeding and canned hunting were illegal in South Africa with the passage of the National Environmental Management

88. S. AFR. CONST., 1996 ch. 2, § 24.

89. *Id.* § 24(b). See also Melanie Murcott, *Transformative Environmental Constitutionalism’s Response to the Setting Aside of South Africa’s Moratorium on Rhino Horn Trade*, MDPI 4 (Sept. 7, 2017), <https://www.mdpi.com/2076-0787/6/4/84/html> (“Non-human life may . . . be regarded as a utility or commodity for the benefit of (sustainable development and use by) humans, and biodiversity need only be protected from this vantage point.”).

90. S. AFR. CONST., 1996 ch. 2, § 24(b).

91. Wilson, *supra* note 16.

92. See *SA Predator Breeders Ass’n v. Minister of Evntl. Affairs & Tourism* 2010 (72/10) SA 1 (ZASC) at para. 1 (S. Afr.).

Biodiversity Act 10 of 2004.<sup>93</sup> This Act gave broad discretion to the Minister of Environmental Affairs and Tourism to publish a list of “critically endangered, endangered, vulnerable, and protected species.”<sup>94</sup> In a 2007 decision, which caused much outcry from individuals running canned hunting farms, the Minister listed the lion as a vulnerable species.<sup>95</sup> Once the lion was listed as vulnerable, it was afforded protection under Section 57 (1) of the Act, which prohibited “[a] person [from carrying] out a *restricted activity* involving a specimen of a listed, threatened, or protected species without a permit.”<sup>96</sup> The term “restricted activity” was then defined in the Act: “[i]n relation to a specimen of a listed threatened or protected species it includes breeding, hunting, catching, capturing or killing any living specimen, and pursuing, lying in wait for or luring such a specimen.”<sup>97</sup> The final strike the Minister made against canned hunting came in the definition of the term “put and take animal.”<sup>98</sup> A “put and take animal” was defined as “a live specimen of a captive bred listed large predator . . . that is released on a property irrespective of the size of the property for the purpose of hunting the animal within a period of twenty four months.”<sup>99</sup> This definition, coupled with Regulation 24 (a), which prohibited “the hunting of a listed large predator . . . that is a put and take animal,” was a clear attack on canned hunting farms and solidified the protection of lions that lived on these farms.<sup>100</sup> No lion that was captively raised could be hunted prior to a two year waiting period, with the hopes that the lion would become acclimated to the wild and stand a fighting chance against the hunter seeking to kill it.<sup>101</sup> By listing the lion as a “vulnerable” species and, additionally, by defining a “put and take

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93. *See generally* National Environmental Management: Biodiversity Act 10 of 2004.

94. SA Predator Breeders, 2010 (72/10) SA at para. 4.

95. *Id.*

96. *Id.* at para. 13 (emphasis added) (quoting National Environmental Act 10 of 2004 § 57(1)).

97. *Id.* at para. 14 (quoting National Environmental Act 10 of 2004 § 1).

98. *See id.* at para. 19.

99. *Id.* (quoting National Environmental Management: Biodiversity Act 10 of 2004: Threatened or Protected Species Regulations § 1, GN R. 152 of GG 29657 (23 Feb. 2007)).

100. *Id.*

101. *See id.* (quoting National Environmental Management: Biodiversity Act 10 of 2004: Threatened or Protected Species Regulations § 1, GN R. 152 of GG 29657).

animal,” the Minister seemingly dismantled the entire canned hunting industry in South Africa overnight.

The triumph of a canned hunting ban was short-lived, however, as several captive lion breeders and canned hunting farm owners brought a law suit against the Minister in 2010.<sup>102</sup> The appellants’ arguments centered around their belief that the Minister presented no rational reason for implementing the provisions that afforded the lions additional protections.<sup>103</sup> The group contended that the Minister specifically had no rational basis for imposing the “[twenty-four] month sterilization of the hunting of captive-bred lions,” provision found in section 24(2) of the Regulation.<sup>104</sup> As the lawsuit progressed, it became evident to the court that the Minister could not justify the twenty-four month period, but rather, “[the Minister’s] opposition seems to have stemmed from ethical reasons, the prevalence of malpractices in relation to such hunting and the adverse effects on South Africa’s reputation particularly in relation to tourism.”<sup>105</sup> The court noted that the “fulcrum on which the logic of reg 24(2) depends” on whether a captive-bred lion can successfully fend for itself in the wild and whether the twenty-four month period is a scientifically supported amount of time for the animal to be acclimated to its surrounding.<sup>106</sup> Several expert witnesses gave their testimony on the matter, with the appellants’ witness, Dr. H O de Waal, noting that “[i]t is doubtful whether the term ‘rehabilitated after being released’ should be used in the context of captive-bred lions,” suggesting that “[t]he human imprint on these animals is very strong,” and a seven-day time frame is preferable between the release of the big cat and the hunt.<sup>107</sup> Ultimately, the court found that the Minister did not provide a rationality for the inclusion of 24(2) and that there was a lack of scientific findings to support the twenty-four month waiting period.<sup>108</sup> The court ruled that the regulations would be amended and lions would be removed from the definition of “listed large predator” in 24(1), thus stripping away the complete ban on hunting lion and

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102. *See generally id.*

103. *See id.* at para. 28.

104. *Id.* at para. 29.

105. *Id.* at para. 36.

106. *Id.* at paras. 39–40.

107. *Id.* at para. 42.

108. *Id.* at para. 44–45.

rendering 24(2) invalid.<sup>109</sup> With a single court ruling, the African lion lost protection from the captive lion breeding and canned hunting industries.

## B. Canned Hunting International Laws and Regulations

### 1. CITES — No Regulation on Canned Hunting

Currently, there are no international treaties or laws that specifically discuss or regulate the practice of canned hunting.<sup>110</sup> However, while canned hunting itself remains omitted from international agreements, many of the animals that are subjected to canned hunting farms are afforded some protection under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>111</sup> CITES is an international agreement between governments from around the globe with the aim to “ensure that international trade in specimens of wild animals and plants does not threaten their survival.”<sup>112</sup> There are currently 183 countries that are parties to the convention and thus have agreed to be bound by the treaty.<sup>113</sup> Parties to the convention are encouraged to implement domestic laws that follow the framework of the convention and are followed at a national level.<sup>114</sup> In addition, the structure of CITES affords species of animals that are considered threatened, endangered, or critically endangered, protection through the Convention’s listing process.<sup>115</sup> CITES contains three different appendices that species and subspecies of animals and plants are placed on, which is based on the population status of those species and other factors.<sup>116</sup> Species that are threatened with extinction, such as the African white and black rhinos,

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109. *Id.* at para. 50.

110. Arie Trouwborst et al., *International Law and Lions (Panthera Leo): Understanding and Improving the Contribution of Wildlife Treaties to the Conservation and Sustainable Use of an Iconic Carnivore*, 21 NATURE CONSERVATION 83, 108 (2017).

111. *See id.* at 107.

112. *What is CITES?*, CITES, <https://www.cites.org/eng/disc/what.php>. (last visited Oct. 16, 2020).

113. *See id.*

114. *See id.*

115. *See How CITES Works*, CITES, <https://www.cites.org/eng/disc/how.php> (last visited Oct. 16, 2020).

116. *The CITES Species*, CITES, <https://www.cites.org/eng/disc/species.php>. (last visited Sept. 6, 2020); CITES, *supra* note 56, at app. I–III.

Bengal tigers, and Indian lions, are listed on Appendix I and “[t]rade . . . of these species is permitted only in exceptional circumstances.”<sup>117</sup> The importation of an Appendix I species — including their trophies, pelts, or products made from their parts — requires a permit “issued by the Management Authority of the State” and is “issued only if the specimen is not to be used for primarily commercial purposes and if the import will be for purposes that are not detrimental to the survival of the species.”<sup>118</sup> It is important to note, under CITES, trophy hunting, and thus canned hunting, are not considered commercial purposes; therefore, Appendix I trophies resulting from these types of hunting may be allowed to exit and enter countries while still complying with CITES.<sup>119</sup> In addition to the import permit, the country exporting the species must have obtained an export permit.<sup>120</sup> An export permit “may be issued only if the specimen was legally obtained; the trade will not be detrimental to the survival of the species; and an import permit has already been issued.”<sup>121</sup> Implementing this two prong permit system provides additional protection to those animals most vulnerable to extinction.

In contrast, the regulation of species listed on Appendix II is far more relaxed.<sup>122</sup> Species on Appendix II include the Cape mountain zebra, the African hippopotamus, and the African lion.<sup>123</sup> Species that are listed on Appendix II are considered “species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.”<sup>124</sup> For Appendix II species, only an export permit is needed and an import permit is not necessary unless it is required by the individual country’s national law.<sup>125</sup> Species placed on the Appendix II list are subject to far less regulation than those listed under Appendix I and are far more likely to be exploited.

As well as regulating the trade of listed species, CITES has adopted several resolutions pertaining to trophy hunting and the trade of species

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117. *How CITES Works*, *supra* note 115; CITES, *supra* note 56, at app. I.

118. *How CITES Works*, *supra* note 115.

119. *See* CONG. RSCH. SERV., *supra* note 35, at 9.

120. *See How CITES Works*, *supra* note 115.

121. *Id.*

122. *See id.*

123. *See* CITES, *supra* note 56, at app. II.

124. *How CITES Works*, *supra* note 115.

125. *Id.*

raised on ranches, but no resolution that specifically discusses canned hunting practices. Resolution 17.9, “Trade in Hunting Trophies of Species listed in Appendix I or II,” makes no reference of canned hunting, but rather delves into the practices of trophy hunting.<sup>126</sup> The resolution takes a hands-off approach when it comes to setting standards for trophy hunting, stating that the “peoples and States are and should be the best protectors of their own wild fauna and flora.”<sup>127</sup> In addition, the language of the resolution uses non-binding phrases such as “urges” and “recommends” when discussing the practices of trophy hunting.<sup>128</sup> This language allows for individual states to use their own discretion when determining the best means for regulating trophy hunting.

In addition to the resolution focusing on trophy hunting, CITES resolution, *Ranching and Trade in Ranched Specimens of Species Transferred from Appendix I to Appendix II*, discusses the means in which Appendix I species may be transferred to Appendix II when it comes to ranching.<sup>129</sup> This resolution notes that ranching is defined as “the rearing in a controlled environment of animals taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving to adulthood.”<sup>130</sup> The resolution continues, “populations of species included in Appendix I that occur within the jurisdiction of Parties and are deemed by the Conference of the Parties to be no longer endangered and to benefit by ranching with the intention of trade be included in Appendix II.”<sup>131</sup> Essentially, this resolution allows parties to make proposals to transfer a population of specimen from Appendix I to Appendix II if those parties can prove the following: (1) “[it would] be primarily beneficial to the conservation of the local population;” (2) “all products (including live specimens) of each operation [are] adequately

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126. Convention on International Trade in Endangered Species of Wild Fauna Flora, *Trade in Hunting Trophies of Species Listed in Appendix I or II*, at 1, Resolution Conf. 17.9 (2016), [https://www.cites.org/sites/default/files/document/E-Res-17-09\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-17-09_0.pdf).

127. *Id.*

128. *Id.* at 2.

129. See DAVID S. FAVRE, INTERNATIONAL TRADE IN ENDANGERED SPECIES: A GUIDE TO CITES 205 (1989).

130. Convention on International Trade in Endangered Species of Wild Fauna Flora, *Ranching and Trade in Ranched Specimens of Species Transferred from Appendix I to Appendix II*, at 2, Resolution Conf. 11.16 (Rev. CoP15) (2016), <https://www.cites.org/sites/default/files/document/E-Res-11-16-R15.pdf>.

131. *Id.*

identified and documented to ensure that they can be readily distinguished from products of Appendix I populations;” (3) “the programme [has] in place appropriate . . . mechanisms to monitor the wild populations;” and (4) “there [are] some significant safeguards established . . . to ensure that adequate numbers of animals are returned to the wild if necessary.”<sup>132</sup> This resolution, as it stands, affords little protection for the African lion as currently listed as an Appendix II species. Additionally, the resolution provides a loophole for canned hunting farms to continue their practices should the African lion ever be up-listed to an Appendix I species. Simply put, if the African lion was ever up-listed as an Appendix I species, the canned hunting industry could still be maintained, as the parties running the farms would simply have to show that their captive lion breeding is, in fact, contributing to the conservation of the lion species and improving the numbers of the local population.

## 2. *Individual Country Bans on Importation of Animal Trophies*

While CITES does not explicitly outlaw canned hunting and boasts reservations that protect trophy hunting and ranching, the international community has taken some proactive steps forward by implementing outright bans on the importation of wildlife trophies, including those collected from canned hunting farms, or else have banned all forms of trophy hunting, including canned hunting.<sup>133</sup> For example, countries like Romania and Holland have imposed an outright ban on all animal trophy imports into their country.<sup>134</sup> Other countries, such as France, Australia, and the Netherlands, have implemented bans on importation of specific species, including as the African lion.<sup>135</sup> Several other European countries, including the United Kingdom, are currently on the cusp of implementing an outright ban on the importation of trophies of any Appendix I or

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132. *Id.*

133. *See, e.g.*, Daniel Schearf, *Kenyan Conservationists Lament US Lifting Trophy Ban as Tillerson Visits*, VOA (Mar. 11, 2018, 6:09 PM), <https://www.voanews.com/africa/kenyan-conservationists-lament-us-lifting-trophy-ban-tillerson-visits>.

134. *See* CONG. RSCH. SERV., *SUPRA* NOTE 35, AT 11.

135. *See Trophy Hunting: Gove ‘Cautions’ Over Ban on Imports*, BBC NEWS (Mar. 7, 2019), <https://www.bbc.com/news/science-environment-48141268>.

Appendix II CITES listed species.<sup>136</sup> The U.K.’s Minister for International Wildlife voiced his confidence in the future success of the bill and noted, “[b]y placing a higher value on animals alive rather than dead, we will begin to turn the tide of extinction.”<sup>137</sup> Clearly, the tide is turning towards choosing protection of these animals, rather than using them for economic gain.

While some countries have opted to impose a ban on the importation of animal trophies, there are other countries that have implemented an outright ban on the practice of trophy hunting, and thus, canned hunting.<sup>138</sup> Currently, there are twelve countries that have imposed this ban: Angola, Congo, Gabon, Ghana, India, Kenya, Malawi, Mauritania, Niger, Nigeria, Rwanda, and South Sudan.<sup>139</sup> Kenya, one of the leading animal conservationist countries in the world, has banned trophy hunting in its country since 1977.<sup>140</sup> This ban, along with bolstering its internal protective laws and cracking down on poaching, has resulted in only eight elephant deaths at the hand of illegal poachers in 2017.<sup>141</sup> Truly, conservation as a whole benefits from creating bans on hunting and hunting practices.

#### IV. BAN THE CAN — WHAT CAN BE DONE ABOUT SOUTH AFRICA’S CANNED HUNTING INDUSTRY?

It is evident that canned hunting provides no conservation benefits and allows for the abuse of one of Africa’s most majestic creatures — the African lion. Currently, there are no internal laws that ban this practice and there are no international laws that address the practice.<sup>142</sup> South Africa, as the largest producer of canned hunting trophies in the world, could be the stepping stone for other countries to follow suit should South Africa determine they will disband the practice. As noted in the previous section,

136. See, e.g., *Government Extends Consultation on Hunting Trophy Ban*, BBC NEWS (Jan. 24, 2020), <https://www.bbc.com/news/uk-politics-51235848>.

137. Helena Horton, *Britain Will Have the Toughest Trophy Hunting Rules in the World as Government Announces Ban of ‘Morally Indefensible’ Act*, THE TELEGRAPH (Sept. 28, 2019), <https://www.telegraph.co.uk/news/2019/09/27/britain-will-have-toughest-trophy-hunting-rules-world-government/>.

138. See CONG. RSCH. SERV., *SUPRA* NOTE 35, AT 10–11.

139. See *id.* (noting Botswana reinstated its trophy hunting policies in 2019).

140. See Schearf, *supra* note 133.

141. *Id.*

142. See Wilson, *supra* note 16.

South Africa poses many legal difficulties to those determined to squash the canned hunting industry. With all of this in mind, what can be done to bring the horrific practice of canned hunting to an end?

#### A. Can We Ban the Can? A Look into the Counterarguments in Favor of Canned Hunting and Their Merits

Before delving into proposals for implementing a dissolution of the canned hunting industry in South Africa, it is necessary to determine the feasibility of this dissolution. Perhaps one of the most widely used arguments by those who support canned hunting is its ability to generate revenue for the South African economy and the impoverished communities who rely on canned hunting.<sup>143</sup>

There is no denying that canned hunting does bring in money to South Africa's economy.<sup>144</sup> It is estimated that canned hunting can bring in as much as \$70 million a year to South Africa.<sup>145</sup> While this number may seem significant, it pales in comparison to the revenue that is brought in by traditional trophy hunting (approximately \$200 million),<sup>146</sup> the overall money generated from tourism (approximately \$17 billion),<sup>147</sup> and the overall gross domestic product of South Africa (nearly \$350 billion).<sup>148</sup> In addition to the little revenue that canned hunting is bringing to South Africa's economy, the canned hunting industry is actually costing South Africa money in the long run.<sup>149</sup> On average, it costs approximately

143. Jacalyn Beals, *Canned Hunting and Cub-Petting Are Big Business in South Africa*, EARTH ISLAND J. (Jan. 20, 2015), [https://www.earthisland.org/journal/index.php/articles/entry/canned\\_hunting\\_and\\_cub-petting\\_are\\_big\\_business\\_in\\_south\\_africa/](https://www.earthisland.org/journal/index.php/articles/entry/canned_hunting_and_cub-petting_are_big_business_in_south_africa/).

144. *See id.*

145. *Id.*

146. Julian Rademeyer, *FACTSHEET: How Much Does Hunting Contribute to African Economies?*, AFR. CHECK, <https://africacheck.org/factsheets/factsheet-how-much-does-hunting-contribute-to-african-economies/> (last updated July 31, 2017, 11:37).

147. *Id.*

148. *South Africa GDP*, TRADING ECON., <HTTPS://TRADINGECONOMICS.COM/SOUTH-AFRICA/GDP> (last visited Oct. 16, 2020).

149. Michael Markarian, *Eco-Tourism Worth More to African Economies than Trophy Hunting*, HUFFPOST, [https://www.huffpost.com/entry/eco-tourism-worth-more-to\\_b\\_8455186](https://www.huffpost.com/entry/eco-tourism-worth-more-to_b_8455186) (last updated Nov. 2, 2016).

\$55,000 to hunt and kill a lion in the wild,<sup>150</sup> and far less to kill a lion on a canned hunting farm.<sup>151</sup> However, lions left alive in the wild have the ability to generate more than \$1 million in their lifetime from visitors who participate in eco-tourism.<sup>152</sup> Clearly, the dissolution of canned hunting could be supplemented through eco-tourism, which, in fact, could generate more revenue for the South African economy.

In addition to the argument of canned hunting bringing in revenue to South Africa's economy, there is also the belief that canned hunting can generate income for impoverished communities. This belief, however, is largely unsupported, as it is estimated that a mere 3% of the revenue made by hunting companies finds its way back into these communities.<sup>153</sup> The majority of the money in the canned hunting industry, rather, goes to "firms, government agencies and individuals located internationally or in national capitals . . . expenditure accruing to government agencies rarely reaches local communities due to corruption and other spending requirements."<sup>154</sup> As well, the dissolution of hunting practices, instead of creating loss of revenue and jobs amongst those most vulnerable, has historically had the opposite effect.<sup>155</sup> For example, Botswana closed all forms of big game hunting in 2014.<sup>156</sup> That year, Botswana had a turnover of just shy of \$20 million a year and approximately 1,000 jobs from the promotion of wildlife tourism.<sup>157</sup> A mere three years later, Botswana generated a turnover of \$687 million with 26,000 jobs from tourism.<sup>158</sup>

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150. *Id.*

151. *See infra* Part II.

152. *See* Markarian, *supra* note 149; *see also* *What is Ecotourism?*, TIES, <https://ecotourism.org/what-is-ecotourism/> (last visited Nov. 10, 2020) ("Ecotourism is now defined as 'responsible travel to natural areas that conserve the environment, sustains the well-being of the local people, and involves interpretation and education.'").

153. *See* RODERICK CAMPBELL, *ECONOMISTS AT LARGE, THE \$200 MILLION QUESTION: HOW MUCH DOES TROPHY HUNTING REALLY CONTRIBUTE TO AFRICAN COMMUNITIES* 3 (2013), <https://www.conservationaction.co.za/wp-content/uploads/2013/09/The-200-Million-Question-How-Much-Does-Trophy-Hunting-Really-Contribute-to-African-Communities.pdf>.

154. *Id.*

155. *See* BERTRAND CHARDONNET, *RECONFIGURING THE PROTECTED AREAS IN AFRICA* 38 (Sheila Hardie trans., 2019), [https://conservationaction.co.za/wp-content/uploads/2019/03/etudesAP\\_configAP\\_EN.pdf](https://conservationaction.co.za/wp-content/uploads/2019/03/etudesAP_configAP_EN.pdf).

156. *Id.*

157. *Id.*

158. *Id.*

Clearly, canned hunting provides little relief for impoverished communities and the dissolution of hunting practices has the capacity to create more jobs and greater revenue.

### B. Strengthening of Internal Laws — Returning Canned Hunting to a Thing of the Past

The only way that the canned hunting industry can be brought to an end in South Africa is through strengthening of internal laws, which can often prove difficult as the South African government has made it evident that it is willing to overlook the canned hunting industry. However, the global outcry to end canned hunting has the capability cost the country over four billion dollars in tourism income.<sup>159</sup> The solution to secure South Africa's future and preserve some of its most precious wildlife is to implement internal laws and policies that address canned hunting and establish a ban on the canned hunting industry.

#### *1. First and Foremost, a Legal Definition of Canned Hunting Needs to be Established in South Africa.*

If South Africa is ever to work towards establishing potential internal legislation to combat canned hunting, a legal definition for canned hunting needs to be implemented and accepted across all provinces. Currently, in South Africa, there is no legal definition for the term “canned hunting.”<sup>160</sup> This lack of a definition allows for canned hunting facilities to claim that what transpires on their facilities does not constitute canned hunting and claim that canned hunting is not actually illegal.<sup>161</sup> Creating a legal definition for the phrase “canned hunting” would not only notify the population that the act is illegal and what to look for in canned hunting farms, but it would also afford additional protections for the big cats that are imprisoned on the farms.<sup>162</sup> In 2005, the South African government considered creating a legal definition for canned hunting: “[c]anned hunting is considered to be any form of hunting where: [1] a large predator is tranquilised, artificially lured by sound, scent, visual stimuli, feeding

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159. See Wilson, *supra* note 16.

160. *Id.*

161. *Id.*

162. See *id.*

bait, other animals of its own species, or another species, or any other method, or (b) captive large predators are hunted.”<sup>163</sup> However, the suggestion of a definition for canned hunting never gained traction and South Africa still remains without a definition for canned hunting.<sup>164</sup> The need for a definition of canned hunting is still relevant today and could greatly improve protection efforts of those animals imprisoned on canned hunting farms. One definition for canned hunting that South Africa could adopt would be, “where the target animal is unfairly prevented from escaping the hunter, either by physical constraints (fencing) or by mental constraints (tame, habituated to humans).”<sup>165</sup> This definition would be exceptionally beneficial to the protection of the animals, as it not only describes those animals that are hunted within confined spaces, but also brings in captive breeding of animals for the purpose of releasing them into the wild to be hunted down and slaughtered. Ultimately, providing a legal definition of the term “canned hunting” will educate the public on the continued legality of canned hunting, will allow for more airtight legislation, and will prohibit canned hunting farms from falsely claiming that their practices do not fall under the definition of canned hunting.

## *2. Bolster Scientific Research and Reintroduce the Biodiversity Act*

As noted above, for a brief period of time, canned hunting was outlawed in South Africa when the Minister of Environmental Affairs and Tourism passed the National Environmental Management Biodiversity Act 10 of 2004.<sup>166</sup> However, since the court ruled the act arbitrary in *SA Predator Breeders Ass’n & Others v. Minister of Environmental Affairs & Tourism* due to a lack of scientific findings, little has been done to combat canned hunting in South Africa.<sup>167</sup> Despite this ruling, with minor changes

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163. Draft National Norms and Standards for the Sustainable Use of Large Predators Issued in Terms of Section 9(1) of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004), GN 72 of GG 27214 (28 Jan. 2005).

164. See Wilson, *supra* note 16.

165. *Canned Hunts*, BIG CAT ALLIES, <http://www.bigcatallies.org/education/big-cats-in-captivity/canned-hunts/> (last visited Oct. 16, 2020).

166. See generally National Environmental Management: Biodiversity Act 10 of 2004.

167. See *SA Predator Breeders Ass’n v. Minister of Evntl. Affairs & Tourism* 2010 (72/10) SA 1 (ZASC) at para. 44 (S. Afr.).

to the National Environmental Management Biodiversity Act 10 of 2004, the Act could pass the criticism of being based off a lack of scientific findings. In *SA Predator Breeders*, the crux of the issue the court had with the Minister's actions was in the mandatory twenty-four month time period a lion had to be free to roam before hunting.<sup>168</sup> The Minister of Environmental Affairs posed no scientific reasoning behind the two year time frame, and thus, the court determined there was no rational basis for the Act.<sup>169</sup> There is a great deal of scientific evidence pointing to the inability for captive lions to ever be able to be fully reintroduced into the wild without posing serious risk to the creature's health and safety, though this is not always the case.<sup>170</sup> Lions typically become so accustomed to human interaction while they are captively raised, that if they were reintroduced into the wild and a human was ever to approach them, they likely would not be afraid to be in close proximity to the human, making it an easy target for hunters.<sup>171</sup> However, some experts say that reintroduction of big cats into the wild is a possibility, which could provide the Minister with enough data for the courts to give deference and find that the twenty-four month waiting period is supported.<sup>172</sup> Even though there is no specific scientific data to support a twenty-four month waiting period, there is evidence to show that the longer an animal is given to acclimate to its surroundings, the better chance it has at survival.<sup>173</sup> All the Minister would need to support his claim is to show that a lion has a greater chance of acclimation at two years than it would at some lesser time. With the reintroduction of a two-year waiting period between release and ability to hunt, the National Environmental Management Biodiversity Act could still be salvaged.

Additionally, by placing the lion on the vulnerable species list, which is fully supported through scientific data, the lion has protection from

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168. *Id.* at para. 29.

169. *See id.*

170. James Owen, *Most Captive-Born Predators Die if Released*, NAT'L GEOGRAPHIC (Jan. 23, 2008), <https://www.nationalgeographic.com/animals/2008/01/predators-captivity-habitat-animals/>.

171. *Id.*

172. *See, e.g.*, Zoe Cormier, *Can Captive Animals Ever Truly Return to the Wild?*, BBC EARTH, <https://www.bbcearth.com/blog/?article=can-captive-animals-ever-truly-return-to-the-wild> (last visited Oct. 16, 2020).

173. *See id.*

breeding and hunting done without a permit. There is ample evidence of the rapid decline in lions; as noted above, their numbers have drastically dropped from over 100,000 to less than 20,000 and their habitat space has been dwindling due to human development.<sup>174</sup> With the lion listed as a vulnerable species, the canned hunting industry would undoubtedly take a hit, if not begin the process of completely dissolving.

Another option the Minister could use to revitalize the National Environmental Management Biodiversity Act is to list canned hunting in the “restricted activities” section of 57(1) of the Act. By simply placing canned hunting on this list, it will take away any loophole canned hunting facilities might have had in bypassing this section of the act. The list would also include hunting and breeding, creating sweeping protection and dismantling the canned hunting industry.<sup>175</sup> In addition, adding canned hunting to the Biodiversity Act would bring attention to the subject of this issue and make the public abundantly aware that canned hunting is not permitted in South Africa.

### C. International Solution Addressing Canned Hunting in CITES with a Specific Resolution

The governments in CITES could provide an international solution to the dissolution of canned hunting practices in South Africa and beyond by creating a specific resolution in CITES that addresses canned hunting. Though resolutions in international treaties are often considered non-binding, CITES has taken the approach that resolutions are to be more permanent and act as guidelines to be followed by the parties of the treaty.<sup>176</sup> A resolution in CITES would allow for a definition of canned hunting that would be accepted by the international community, which would bring greater awareness of the horrors of the canned hunting industry, as well as act as a stepping stone for inclusion of canned hunting in future international treaties. The resolution could be drafted in many ways. One such way is to create a specific resolution on the conservation and trade of the African lion. There are several CITES resolutions that

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174. See Estrada, *supra* note 43.

175. See generally *SA Predator Breeders Ass’n v. Minister of Evntl. Affairs & Tourism* 2010 (72/10) SA 1 (ZASC) at para. 44 (S. Afr.).

176. See *CITES Resolutions*, CITES, <https://www.cites.org/eng/res/intro.php> (last visited Feb. 2, 2020).

pertain to specific animals, such as elephants, the Tibetan antelope, and pangolins.<sup>177</sup> Many of these resolutions were adopted due to high demand for these animals and an overarching concern that these species are on the path to extinction.<sup>178</sup> Additionally, these resolutions are meant to encourage the countries where these species reside to create more stringent internal laws, as well as heavily regulate trade on these species.<sup>179</sup> The African lion would be a perfect candidate for such a resolution due to its dwindling numbers and high demand for lion bones on the Asian black market.<sup>180</sup> As well, the resolution could note the harms canned hunting is posing on the African lion population as a means to condemn the practice and notify the international community of the harms of canned hunting.

Yet another dismantling reservation to the canned hunting industry as well as affording additional protections for African lions is to create new and stricter guidelines for setting up and running canned hunting farms, which could include stringent reporting requirements, guidelines for the physical layout of the farm, and additional management requirements. This would be similar to the resolution Guidelines for Evaluating Marine Turtle Ranching Proposals Submitted Pursuant to Resolution Conf. 11.16, which discusses the guidelines for parties seeking to “allow international trade in products of sea turtle ranches.”<sup>181</sup> The government could adopt a similar resolution in this style, but instead cater it to canned hunting “ranches.” With these stricter trade regulations and guidelines for canned hunting farms in place, the canned hunting industry would undoubtedly take a hit as many of the farms would be unwilling or unable to comply with the strict guidelines set forth in the resolution.

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177. See *Complete List of Resolutions and Decisions Related to Enforcement Matters*, CITES, [https://cites.org/eng/prog/imp/enf/introduction/Resolutions\\_Decisions](https://cites.org/eng/prog/imp/enf/introduction/Resolutions_Decisions) (last visited Oct. 16, 2020).

178. See, e.g., Convention on International Trade in Endangered Species of Wild Fauna Flora, *Conservation of and Trade in Pangolins*, Resolution Conf. 17.10 (Rev.) (2016), [https://www.cites.org/sites/default/files/document/E-Res-17-10\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-17-10_0.pdf).

179. See Convention on International Trade in Endangered Species of Wild Fauna Flora, *Guidelines for Evaluating Marine Turtle Ranching*, Resolution Conf. 9.20 (Rev.) (1994), <https://www.cites.org/sites/default/files/document/E-Res-09-20-R10.pdf>.

180. See Welz, *supra* note 30.

181. *Id.* at 1.

## V. CONCLUSION

The canned hunting industry remains a stain on South Africa. It allows for the exploitation of one of the country's most proud creatures from the time it is born until its death. Canned hunting has no conservation benefits, has allowed for rampant abuse of innocent animals, and has begun to push species of animals to the edge of extinction. This practice has been allowed to continue through the lack of internal regulation in South Africa, as well as the absence of canned hunting in international treaties and resolutions. However, through utilization of internal laws by creating a definition of canned hunting, reinforcing existing legislation, and listing the animal as a threatened species, as well as creating a CITES resolution that discusses canned hunting, canned hunting can finally come to an end in South Africa. It is time to give the lion its voice back and to once and for all ban canned hunting.

