

**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF THE
WESTERN CAPE HELD AT GEORGE (THEMBALETHU)**

Case No: USH 15/22

THE STATE versus ANDRÉ BARNARD

**NOTICE OF APPLICATION FOR LEAVE TO MAKE SUBMISSIONS AT
SENTENCING**

IN THE PUBLIC INTEREST

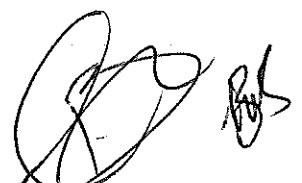
BY: LANDMARK FOUNDATION TRUST (NPO 039-416), Zeekoegat Homestead,
Riversdale, Western Cape

TAKE NOTICE THAT Landmark Foundation Trust ("the Applicant"), a registered non-profit organisation (NPO 039-416) with a statutory conservation mandate centring on apex predator conservation, hereby applies to the above Honourable Court for leave to make written and, if the Court considers it necessary, oral submissions at the sentencing of the accused, on the grounds set out below.

TAKE NOTICE FURTHER THAT the accompanying affidavit and its Annexure of Dr (Bool) Boudewyn Homburg de Vries Smuts will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant requests that this application be placed before the Presiding Magistrate prior to sentencing, and that the Prosecutor and the legal representative for the accused be furnished with copies of this notice and the supporting affidavit.

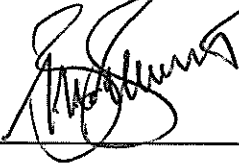
TAKE NOTICE FURTHER THAT the deponent to the supporting affidavit and its annexure holds himself available to appear before this Court and to be cross-

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examined on the contents of the annexed expert statement, and will be in attendance on the scheduled date, should the Court or either party wish to test any part of it.

KINDLY SET THIS APPLICATION DOWN FOR HEARING accordingly, alternatively deal with it on the papers, as the Honourable Court deems appropriate.

DATED at RIVERSDALE this 18th day of August 2026.



DR B.H. DE V. SMUTS

General Manager, Landmark Foundation Trust (NPO 039-416)

Applicant's authorised representative

Zeekoegat Homestead, Riversdale, Western Cape

Tel: 083 324 3344

Email: bool@landmarkfoundation.org.za

TO: The Clerk of the Court, Regional Court, George (Themba lethu)
IKawie@justice.gov.za; TWinter@justice.gov.za; PMatomela@justice.gov.za

AND TO: The Senior, Control and Trial Public Prosecutors, Regional Court, George
(Themba lethu) PNogonyoti@justice.gov.za; ElKrugger@npa.gov.za;
SHendricks@justice.gov.za

AND TO: The legal representative for the accused, Mr André Barnard, Adv Peter Daubermann; lawyer.za@gmail.com



**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF THE
WESTERN CAPE HELD AT GEORGE (THEMBALETHU)**

Case No: USH 15/22

THE STATE versus ANDRÉ BARNARD

**Dr SMUTS' FOUNDING AFFIDAVIT ON BEHALF OF THE LANDMARK
FOUNDATION TRUST**

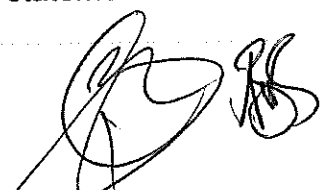
IN THE PUBLIC INTEREST

1. INTRODUCTION

1. I am Dr Boudewyn Homburg de Vries Smuts, the deponent to the expert witness statement dated 16 August 2026 already before this Court in this matter (ANNEXURE A). I am the Founder and General Manager of Landmark Foundation Trust (NPO 039-416), and I am duly authorised to depose to this affidavit on the Applicant's behalf.
2. The facts herein are within my personal knowledge, save where the context indicates otherwise, and are true and correct.
3. This affidavit is made in support of the Applicant's notice of application for leave to make submissions at sentencing in the public interest, and should be read together with that notice and with the expert witness statement already filed.

2. PURPOSE OF THIS APPLICATION

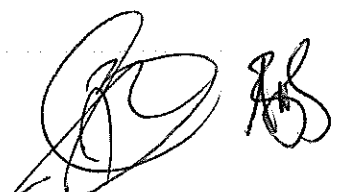
4. The Applicant does not seek to be joined as a party to the criminal proceedings, to challenge the conviction, or to usurp any function of the prosecution. The Applicant seeks only leave to place before the Court, for its consideration at sentencing, the ecological, welfare, and regulatory-context evidence and submissions set out in the annexed expert statement.



5. This application is brought because the Applicant's engagement with this matter, and its specialised expertise, place it in a position to assist the Court on matters that may not otherwise be fully before it, notwithstanding that a conviction has already been secured on the charges brought.

3. STANDING OF THE APPLICANT

6. The Applicant is a registered conservation non-profit organisation established in 2004, with a mandate centring on apex predator conservation and a particular focus on the leopard (*Panthera pardus*) in the region.
7. The Applicant, through its General Manager, holds a research and mitigation permit issued by the Northern Cape Provincial Department of Agriculture, Environmental Affairs, Rural Development and Land Reform (No. 0361/2025), and a CapeNature research and mitigation permit (No CN44-87-32783), authorising research, rescue, and interaction with leopards in the Western Cape.
8. The Applicant is a member of the National Department of Environment's (DFFE) national Leopard Consultative Forum.
9. The Applicant has monitored and attended the proceedings in this matter continuously since April 2022 — a period exceeding four years, spanning nineteen court appearances — and has maintained a continuous correspondence record with the National Prosecuting Authority throughout that period, including correspondence raising the applicability of the Animals Protection Act, NEMBA, the TOPS Regulations, and NEMA to these facts.
10. The Applicant's General Manager has, over more than two decades, engaged directly with the development, administration, implementation and enforcement of biodiversity legislation in South Africa, and has appeared as an applicant or respondent in matters, as a witness and expert witness in multiple court proceedings involving conservation and predator-related matters.

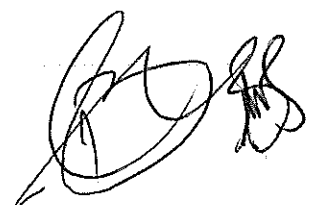
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11. The Applicant accordingly has a genuine, sustained and demonstrable interest in the outcome of this matter, going well beyond that of an interested member of the public.

4. LEGAL BASIS FOR THE RELIEF SOUGHT

12. Section 274(1) of the Criminal Procedure Act 51 of 1977 empowers a court, before passing sentence, to "receive such evidence as it thinks fit to inform itself as to the proper sentence to be passed." This provision vests the Court itself, and not only the prosecution, with a discretion as to the evidence and material it may receive for the purposes of sentencing.
13. The Applicant respectfully submits that this discretion extends to receiving, or granting leave to place before the Court, submissions of the kind set out in the annexed expert statement, where those submissions bear directly on the ecological and welfare gravity of the offence and on the statutory and constitutional framework applicable to it.
14. Section 24 of the Constitution of the Republic of South Africa, 1996, guarantees every person the right to an environment that is not harmful to their health or wellbeing, and the right to have the environment protected for present and future generations through reasonable legislative measures. The leopard is a listed threatened species, and the conduct giving rise to this matter engages that constitutional right directly. The Applicant submits that this public-interest and constitutional dimension supports the Court exercising its discretion in the Applicant's favour.
15. The Applicant is mindful that there is no settled procedure in this Division for amicus curiae or third-party representations at the sentencing stage of a regional court criminal trial, of the kind more familiar in civil and constitutional litigation. The Applicant does not contend that such a procedure is required as of right, but submits that the Court's inherent power to regulate its own process, read together with section 274(1), is sufficient basis for the Court to grant leave in an appropriate case such as this one.

5. THE SUBMISSIONS FOR WHICH LEAVE IS SOUGHT

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16. The submissions for which leave is sought are those set out in the expert witness statement of the deponent dated 16 August 2026, already filed in these proceedings with the prosecution, addressing:

16.1. the conservation status and population biology of the leopard, nationally and in the relevant Western Cape population;

16.2. the clinical and welfare significance of the post-mortem findings;

16.3. the statutory and constitutional framework applicable to the conduct in question; and

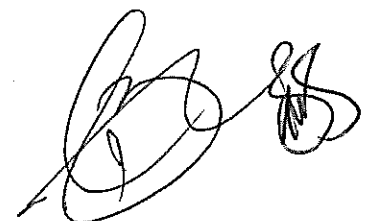
16.4. factors the Applicant respectfully submits are relevant to the assessment of an appropriate sentence.

17. The Applicant does not seek to introduce any new or disputed factual evidence beyond what is already before the Court through the conviction and the record of proceedings. The statement addresses the ecological, clinical and regulatory context of facts already established, and does not ask the Court to make any additional factual finding on a contested issue.

6. ABSENCE OF PREJUDICE

18. The Applicant submits that granting leave will not occasion prejudice to either the State or the accused. The application is brought prior to sentencing, affording both parties a full opportunity to respond to, and if so advised, to challenge or contest, any part of the annexed statement before it is relied upon.

19. I confirm that I am willing and available to appear before this Court and to give oral evidence, and to be cross-examined on the contents of the annexed statement, should the Court or either party wish to test any part of it. The Applicant does not ask the Court to receive the statement on the basis that it is immune from challenge. The Applicant will avail itself to the Court on the scheduled date for sentencing.

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20. The Applicant does not seek an order as to costs against any party, and does not seek to delay the sentencing proceedings beyond what is reasonably necessary to consider this application and any response to it.

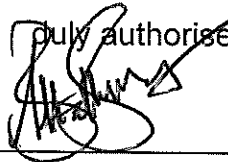
7. RELIEF SOUGHT

21. The Applicant respectfully asks the Court to grant an order:

- 21.1. granting the Applicant leave to place the annexed expert witness statement, and any further written submissions arising from it, before the Court for consideration at sentencing;
- 21.2. directing that the Prosecutor and the legal representative for the accused be afforded an opportunity to respond thereto prior to sentencing;
- 21.3. recording that the deponent holds himself available to appear and to be cross-examined on the annexed statement, should the Court or either party require this; and
- 21.4. granting such further or alternative relief as the Court considers just.

8. CONFIRMATION

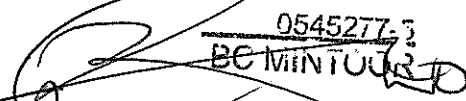
22. I confirm that the contents of this affidavit are true and correct, and that I am duly authorised to depose to it on behalf of the Applicant.



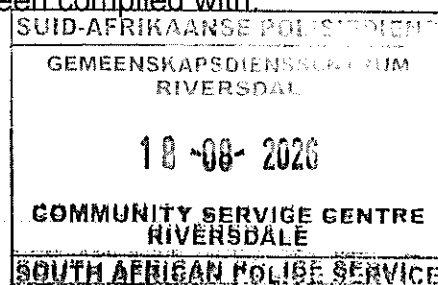
DR B.H. DE V. SMUTS

Deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at Riversdale on this 18th day of August 2026, the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, having been complied with.



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COMMISSIONER OF OATHS



IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF THE
WESTERN CAPE

HELD AT GEORGE (THEMBALETHU)

Case No: USH 15/22

THE STATE versus ANDRÉ BARNARD

EXPERT WITNESS STATEMENT IN AGGRAVATION OF SENTENCE

Leopard Conservation, Ecology, Population Viability, Welfare,
and the Statutory Framework for the Management of Listed Threatened Species

**Deponent: Dr Boudewyn Homburg de Vries Smuts (MBChB, MPhil
Environmental Management) ID 6603115133089**

Founder and General Manager, Landmark Foundation Trust (NPO 039-416)

Zeekoegat Homestead, Riversdale, Western Cape | 083 324 3344 |

bool@landmarkfoundation.org.za

16 August 2026

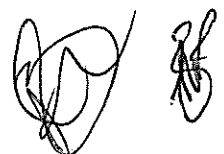
PART ONE: QUALIFICATIONS, EXPERIENCE, AND STANDING

1. Purpose of this statement

1.1. I am Dr Bool Smuts. I make this statement to set out my professional qualifications, experience and the basis upon which I am qualified to provide expert evidence in this matter.

1.2. I do so in the public interest, in pursuit of my Section 24 rights under the Constitution of the Republic of South Africa, and for the environment and leopard conservation specifically.

1.3. My expertise arises from the combination of formal scientific, clinical, pathophysiological and environmental-management training and more than two and a half decades of practical experience in biodiversity conservation, ecological management, threatened-species conservation, biodiversity governance, policy, legislative processes and public-interest advocacy.



1.4. My evidence is directed to matters falling within that specialised knowledge and experience. I do not purport to give legal opinion on questions that are properly matters for determination by the Court. Where my evidence concerns legislation, regulation or administrative processes, my purpose is to explain their **conservation, ecological and practical implications and their application in the field**, based upon my experience and related to the facts of this case before the Court.

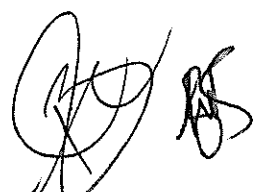
2. Qualifications and professional experience

2.1. I hold a B.Sc. in Anatomical and Biological Anthropology, an MBChB in Medicine and Surgery, a Postgraduate Diploma in Child Health (DCH) and a MPhil in Environmental Management. I practised as a medical doctor for approximately ten years before moving into environmental management and conservation.

2.2. My medical training and practice provided a foundation in clinical, pathophysiological and therapeutic scientific enquiry and treatments, evidence-based assessment, professional ethics, risk analysis and the practical application of knowledge. My subsequent environmental-management training and professional experience have applied those principles to specific animal interventions, ecological systems, biodiversity conservation and environmental governance.

2.3. Since 2002 I have worked extensively on leopard conservation and the conservation of other top-trophic species in agricultural and human-dominated landscapes. I founded the Landmark Foundation in 2004 and have led its conservation, research, management, advocacy and institutional-development work.

2.4. My practical conservation experience includes direct intervention and the rescue of 78 leopards, extensive engagement with farmers and landowners, development of non-lethal human-wildlife conflict measures,

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habitat and landscape stewardship, ecological research, education and capacity building.

2.5. I consider myself to have substantial expertise and recognised experience in the field of leopard conservation, developed through more than two decades of field-based conservation practice, research, leopard rescue and population monitoring.

2.6. My research and conservation work has resulted and contributed to 24 peer-reviewed scientific publications and extensive collaboration with universities, researchers, conservation organisations, government officials, landowners and practitioners. I have also supported the development of and contributions to the research involving five Master's students and five doctoral or post-doctoral researchers, as well as mentoring and capacity building involving many hundreds of students, interns and conservation practitioners.

2.7. I am a member of the National Department of Environment's (DFFE) national Leopard Consultative Forum.

3. Biodiversity governance, legislation and policy

3.1. A substantial part of my professional experience has involved the relationship between ecological conservation and the governance frameworks within which conservation takes place.

3.2. For the last two decades I have engaged with biodiversity legislation and policy at national and provincial levels, including processes concerning NEMBA, the TOPS regulatory framework, Norms and Standards, provincial conservation and hunting legislation and notices, national biodiversity policy and damage causing animal policy.

3.3. I have also undertaken extensive advocacy and technical engagement concerning CITES-listed species, including submissions relating to species trophy quotas, hunting quotas and Non-Detriment Findings. My

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involvement has included scientific review, critique of findings, policy submissions and public advocacy concerning the conservation implications of proposed regulatory decisions.

3.4. I have participated in processes concerning proposed amendments and implementation of TOPS regulations, Norms and Standards relating to damage-causing animals and the hunting of listed species, and broader national policy processes including the White Paper and High-Level Panel processes concerning biodiversity and wildlife management.

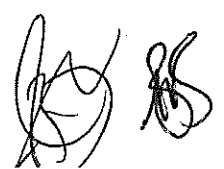
3.5. My experience is therefore not confined to the study of legislation. It includes observing and engaging with the **actual administration and implementation of biodiversity law in the field**, and assessing the consequences of regulatory and administrative decisions for species, habitats, landowners, conservation practitioners and the wider ecological system.

4. Advocacy and litigation

4.1. My conservation work has necessarily involved advocacy where scientific evidence, conservation objectives and administrative or legislative decisions have conflicted. This has included legislative advocacy, administrative engagement, public submissions, scientific critique, public information and litigation.

4.2. I have been involved in litigation and related proceedings concerning environmental and biodiversity matters in Magistrates' Courts and the High Court, as well as appellate proceedings, and have participated in and been an applicant and respondent matters reaching the Constitutional Court of South Africa. These matters have included issues concerning environmental rights, access to information, administrative action, wildlife permits, enforcement and the protection of wildlife.

4.3. I do not hold a legal qualification and do not present myself as a legal practitioner. My expertise in relation to legal and regulatory matters is that

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of an experienced environmental and conservation practitioner who has worked extensively with the **development, administration, implementation and enforcement of biodiversity law.**

5. Basis and scope of my expert opinion

5.1. My professional experience has led me to work across what I regard as the principal components of effective conservation: scientific knowledge, practical conservation tools and methods, appropriate governance, and human commitment or stewardship.

5.2. My particular expertise lies in understanding how these elements interact in the conservation of threatened and top-trophic species, particularly within landscapes where conservation objectives intersect with agriculture, private land ownership, wildlife utilisation and government regulation.

5.3. I therefore consider myself qualified to express expert opinions, where relevant to this matter, concerning the ecological and conservation implications of particular management practices; the practical operation and consequences of biodiversity regulatory frameworks and enforcements as they related to impacts on the species; the conservation significance of threatened and protected species; and the relationship between scientific evidence, conservation policy, legislation and its administration and implementation.

5.4. I approach this evidence from an ecological and conservation perspective. My long-standing involvement in advocacy does not alter my obligation as an expert to provide an objective opinion within my fields of expertise which is guided by the science. Where evidence or conclusions do not support a particular conservation position, I consider it my responsibility to say so.

6. Relevance of Professional Background to this Case

6.1. I am a medical doctor (MBChB) and conservation scientist (MPhil). I have worked in wildlife conservation for twenty-five years, with primary expertise

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in the ecology, management, conflict mitigation, rescue, and conservation of the leopard (*Panthera pardus*) across South Africa's Western, Northern, and Eastern Cape provinces and nationally on advocacy.

6.2. I am the Founder and General Manager of the Landmark Foundation Trust (NPO 039-416), a registered conservation non-profit organisation established in 2004 with a mandate centring on apex predator conservation, with specific focus on the leopard. I operate under research and mitigation permit No. 0361/2025 issued by the Northern Cape Provincial Department of Agriculture, Environmental Affairs, Rural Development and Land Reform, and the Western Cape's CapeNature research and mitigation permit No CN44-87-32783, which authorises me to conduct research, rescue, and interaction with leopards.

6.3. My academic medical training is directly relevant to this statement: I hold a medical degree that qualifies me to assess clinical and pathophysiological findings — including dehydration, tissue perfusion, emaciation, and trauma — in the same manner as those findings are assessed in human medicine. I have applied this training directly in field assessment of trapped and injured leopards throughout my career.

7. Field Experience and Research Output

7.1. Through the Landmark Foundation, I have been directly and personally involved in the rescue of 78 leopards from entrapment situations — including gin traps, cage traps, snares, and other devices. This makes the Foundation one of the most experienced leopard rescue organisations in the world by volume of documented field interventions. Each rescue generates direct clinical, ecological, and behavioural observations that form part of the Foundation's long-term research dataset.

7.2. My research and professional work and collaborations have resulted in more than 24 peer-reviewed scientific publications, including papers on: leopard population dynamics in the Cape; threats to leopard populations in

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South Africa; human-wildlife conflict and coexistence approaches; and the ecological consequences of removing individual animals from small fragmented populations. A full publication list is available on request.

7.3. I have appeared as a witness and at times an expert witness in multiple court proceedings involving conservation and predator-related matters and have provided affidavit and oral evidence on leopard biology, welfare, and conservation management.

8. Engagement with this Matter

8.1. The Landmark Foundation has monitored and attended the proceedings in *State v Barnard* from April 2022 to the date of conviction on 29 May 2026 — a period of more than four years, spanning nineteen court appearances. The Foundation has maintained a continuous correspondence record with the NPA during this period. I have personal knowledge of the factual and procedural history of this matter.

8.2. I am therefore in a position to give evidence from four overlapping capacities: as a scientist qualified in the ecology and population biology of the species in issue; as a clinician qualified to assess the clinical findings documented in the post-mortem evidence of a mammalian species; as a field practitioner with direct experience of the consequences of entrapment for leopards; and as an organisation representative who has monitored this matter from its inception and who can speak to the broader conservation and enforcement context in which it arises.

8.3. I do not propose to give legal opinion or evidence on questions of law that are properly matters for determination by the Court. My experience with biodiversity legislation and regulation arises from more than two decades of participation in its development, implementation, administration and practical application. Where I refer to legislation or regulations, I do so to explain their conservation, ecological and practical implications and the regulatory context in which the conduct occurred.

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PART TWO: THE SCIENCE — WHAT THE BIOLOGY OF THE LEOPARD REQUIRES THE COURT TO UNDERSTAND

9. Conservation Status — National and International

- 9.1.** The leopard (*Panthera pardus*) is classified as Vulnerable on the IUCN Red List of Threatened Species, reflecting a global population decline of more than 25% over the past three generations. This classification means that the species faces a high risk of extinction in the wild if the causes of decline continue. The leopard has been extirpated from more than 75% of its historic range globally.
- 9.2.** Leopards are listed on Appendix 1 of the Convention of International Trade of Endangered Species (CITES) demonstrating the international concern for species' continued conservation.
- 9.3.** In South Africa, the leopard is a listed threatened species under the Threatened or Protected Species Regulations, 2007, promulgated under the National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA"). Under section 57(1) of NEMBA, no person may carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7. "Restricted activity" expressly includes hunting, catching, capturing or killing such a specimen by any means, method or device. The TOPS Regulations, 2007 further made it an offence to undertake a restricted activity involving a threatened or protected species without a permit. The trapping and capture of this leopard therefore occurred within a statutory permit regime that was already in force at the time of the incident.
- 9.4.** The IUCN Red List, CITES Appendix I listing and South African TOPS listing each reflect the recognised conservation concern attaching to the leopard, although these instruments have different legal and conservation



functions. The South African TOPS listing is particularly relevant to this matter because it places specified activities involving the species within a statutory permitting and regulatory framework.

9.5. The Norms and Standards for the Management of Damage-Causing Animals in South Africa (GN 512, Government Gazette 40236, 30 August 2016), promulgated under NEMBA, expressly link the management of damage-causing animals to the identification of the individual animal responsible and the exhaustion of non-lethal alternatives before lethal intervention is authorised. This is not administrative language: it is a recognition that individual management decisions cannot be treated as ecologically isolated from the status of the population to which the animal belongs.

10. Population Structure and the Leopard

10.1. Leopard populations are not spatially homogeneous. They are spatially structured — they occur at substantially different densities in different parts of South Africa — and individual sub-populations may be partially or fully isolated from one another by habitat fragmentation, agricultural land-use, and human settlement.

10.2. In the Western Cape and broader Cape Floristic Region, the leopard population presents a distinctive conservation challenge. Population densities are comparatively low. Suitable habitat is fragmented across the Cape Fold Belt mountain ranges — the Langeberg, Outeniqua, Tsitsikamma, Swartberg and Baviaanskloof and associated ranges — interspersed with increasingly intensified agricultural and transformed land. They are resident populations in their own right, subject to their own demographic pressures, with their own ecological integrity.

10.3. Historical persecution has extirpated leopards from the former range and large portions of the arid interior of the Karoo and low-lying areas. Effective population density studies have currently estimated the Western Cape population to be around a mean of 500 individual adult animals. (Devens, C.H.,

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et al., 2019. Estimating leopard density across the highly modified human-dominated landscape of the Western Cape, South Africa. *Oryx*, pp.1-12; & Devens, C., et al. 2018. Counting the spots: The use of a spatially explicit capture–recapture technique and GPS data to estimate leopard (*Panthera pardus*) density in the Eastern and Western Cape, South Africa. *African Journal of Ecology*. <https://doi.org/10.1111/aje.12512>.)

10.4. The conservation question in any case involving the death of a Western Cape leopard therefore cannot be answered by reference to a national population estimate. It must be answered at the scale of the relevant local or regional population. The relevant scientific questions are: how many animals occupy the surrounding landscape; what is the size and connectivity of the local population; what is the sex and reproductive status of the animal; and what cumulative mortality pressures are the population already absorbing? A national count of thousands of animals is not a scientific response to the death of a breeding adult in a fragmented Cape population.

10.5. My research experience, and the broader peer-reviewed literature on leopard populations, establishes the following features of direct relevance to this court:

10.5.1. Adult male leopards occupy substantially larger home ranges than females. In the mountainous environment in the Cape, adult male home ranges may extend over areas of 25,000 to 100,000 ha or more in the arid zones where this leopard was killed, depending on prey availability, habitat, and population density. A single leopard therefore has to traverse multiple farms.

10.5.2. Each leopard is territorial in adulthood and females do not share territories with other females. Adult male territories may overlap with those of neighbouring males, but the degree of overlap is generally about 10% of their territories. Thus, they are limited in number by the limit of available suitable space.

10.5.3. A territorial adult male leopard is not simply one animal — it is an ecological presence that structures the behaviour and reproductive dynamics of the animals within and adjacent to its range. His territory may overlap with the home ranges of multiple adult females, typically



one male would have about 2 females in his range. His removal does not eliminate only his own reproductive contribution; it creates a vacancy that triggers range restructuring, increased movement of neighbouring males, and potential disruption to the survival of offspring by means of infanticide.

10.5.4. In low-density mountain populations, the death of a single adult male can have detectable effects on the demographic structure of the local population. Recovery from such losses, in a fragmented population without ready immigration from adjacent areas, may take years.

10.5.5. The leopard populations face cumulative pressure from multiple sources simultaneously: Loss of habitat, habitat fragmentation, isolation from neighbouring populations – known as factors that result in localised extinctions. These threats are compounded further by additional major threats: farm killings, hunting with dogs, gin traps, snares, vehicle strikes, poisoning, habitat loss, and prey depletion. Each source of mortality does not occur in isolation from the others. It is the cumulative total — not any single event — that threatens population ability to occupy areas and viability. This means that every individual killing has a marginal effect on the population's trajectory that extends beyond the loss of that individual.

10.5.6. Grave concerns from this attrition to their population have emerged and evidence of genetic isolation and bottlenecking has resulted, particularly in isolated populations such as the Swartberg population that this leopard was part of.

11. The Home Range and Territorial Significance of the Toorwater Animal

11.1. The farm Toorwater is situated in the Uniondale district of the Western Cape, within a landscape that supports a documented leopard population and hosts known leopard habitat. The animal recovered from the cage on Mr Barnard's farm was an adult leopard in midlife — the post-

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mortem confirmed good body condition prior to the entrapment event, indicating a resident animal in its prime.

11.2. No collar or camera-trap data exist for this particular animal, and I do not ask the Court to bridge that evidentiary gap by presumption. What is established is that this was an adult leopard in prime physical condition, found on a farm within known leopard habitat, where a trap had been maintained for more than ten years. The evidence is consistent with the loss of an established resident animal. In a landscape where leopard populations are small, fragmented and already subject to multiple sources of mortality, the removal of an adult leopard cannot properly be viewed only as the loss of an individual. Its ecological significance must be understood in the context of the population to which that animal belonged and the reproductive and territorial function that adult leopards perform within such populations.

11.3. Another male leopard studied in the same area in 2014 demonstrated an occupancy of about 30,000 ha.

11.4. What the evidence does establish is that the trap on Toorwater farm had been present for more than ten years and had been repositioned on multiple occasions in response to leopard spoor. This is not the evidence of a farm that was unaware of resident leopard activity in the area or the possibility to entrap one. It is the evidence of a farm that was aware of resident leopard activity, set a trap specifically designed to catch leopards in that area, and never applied for a permit to do so.

12. The Welfare Implications of Cage Confinement — A Clinical Assessment

12.1. I address here the welfare implications of the confinement documented in this case, drawing both on my field experience of 78 successful leopard rescue situations, and about the same number of unsuccessful rescues, and on my clinical training. The post-mortem

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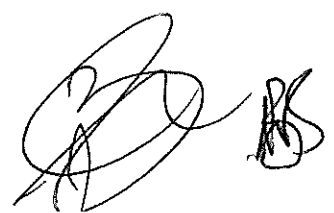
findings of Dr Willem Burger, as reported in evidence, establish the following clinically significant features; detailed in 12.1.1. to 12.1.4.

12.1.1. Severe emaciation and dehydration - assessed as the primary cause of death. Without water, a large carnivore in cage confinement, particularly under the ambient conditions prevailing in the Uniondale district, will progressively develop severe physiological compromise and may reach a life-threatening state within days. The post-mortem findings in this case demonstrate severe dehydration and emaciation. Dr Burger assessed the dehydration at approximately 15–20% of body mass and expressed the view that the findings were consistent with a minimum period of approximately seven days without water. The post-mortem findings, together with the evidence concerning the condition of the carcass, are consistent with prolonged confinement and a period of suffering extending over a number of days.

12.1.2. Complete absence of claws on both front paws. This finding is not incidental. The leopard's claws — retractile, keratin-sheathed — are not simply worn down by scratching. To lose the entire claw from the nail bed requires sustained, forceful, and repeated contact with an unyielding surface. The animal scratched at the bars and floor of the cage until the claws were avulsed — pulled out at the root. In the context of the other post-mortem findings, the complete avulsion of the claws is a compelling physical indicator of repeated and forceful attempts to escape from the cage and is consistent with severe and sustained distress.

12.1.3. Abrasion of the forehead. Consistent with repeated contact with the cage structure during attempts to escape due to prolonged time in the cage.

12.1.4. Sticks, soil, and debris in the stomach. An adult leopard does not ordinarily ingest such foreign material under natural field

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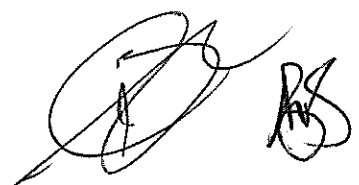
conditions. In conjunction with the severe emaciation and dehydration, the presence of this material is consistent with indiscriminate ingestion of material available within the confines of the cage during a state of extreme physiological deprivation. This finding provides further evidence of the severity of the animal's deprivation and its deteriorating condition.

12.2. The circumstances extend beyond the initial setting of the trap, its maintenance without the requisite permit, the unlawful capture of the leopard, its killing and the failure to inspect the trap. Of particular significance is what occurred after the accused was informed that a leopard had been captured: despite being aware that a live animal was confined in the cage, the animal was left there without intervention:

12.2.1. There is an important distinction between an animal accidentally becoming trapped and an animal being left confined after the person responsible knows that an animal is in the trap. In the present matter, the welfare consequences must be considered in the context of what was known about the animal's confinement and the decision that followed not to attend to it.

12.2.2. From an animal welfare and physiological perspective, the provision of adequate water and food to a confined animal is not an optional consideration. It is a fundamental requirement for maintaining life and preventing suffering. This is particularly so in the case of a large mammal confined in a cage in circumstances in which it has no ability to leave the cage and obtain water or food for itself.

12.2.3. Thirst is the physiological expression of a fundamental homeostatic requirement for water. As dehydration progresses, the animal's biological drive to obtain water becomes increasingly urgent. A free-ranging leopard would ordinarily be able to respond to that physiological need by moving through its home range in search of water or food. A leopard confined within a cage cannot do so.

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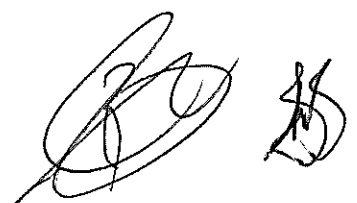
12.2.4. The cage therefore creates a situation in which the animal can experience an increasingly urgent physiological need while being physically prevented from satisfying it. This is important in understanding the nature of the suffering in this case and the human agency therein.

12.2.5. The leopard was not merely without water. It was deprived of the ability to respond to its biological need for water. As dehydration progressed, that deprivation could not be relieved by any action available to the animal. The physiological need persisted while the means of satisfying it remained inaccessible. The same principle applies to food. An animal confined within a cage cannot forage, hunt or otherwise obtain nourishment. The absence of food therefore becomes an imposed physiological deprivation rather than an environmental circumstance to which the animal can adapt through its normal behaviour.

12.2.6. The post-mortem evidence described in this case is particularly significant in that regard. The presence of sticks, soil and other foreign material in the stomach is consistent with an animal in extremis consuming whatever material was available within the confines of the cage in an apparent attempt to survive.

12.2.7. Taken together with the severe emaciation and dehydration, this provides powerful evidence of the extent of the deprivation experienced by the animal.

12.2.8. I consider it particularly important that the accused was an experienced livestock farmer. I do not rely on this as a matter of speculation concerning his subjective state of mind. Rather, from the perspective of ordinary agricultural animal husbandry, a person who has responsibility for livestock necessarily understands that animals require regular access to water and adequate nutrition and that prolonged deprivation can result in serious suffering and death.

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12.2.9. The significance of this experience is therefore practical. Once the accused was aware that an animal was confined in the cage, the consequences of leaving that animal unattended without food or water were not obscure or unforeseeable. The basic requirement of providing water to an animal in confinement is elementary knowledge in livestock husbandry.

12.2.10. In my professional opinion, therefore, the gravity of this case lies not only in the setting of the trap, not having a permit to do so, and not having killed a protected species, but in what happened after the animal became confined. The suffering documented by Dr Burger was not an instantaneous or unforeseeable consequence. It developed over a period of days. The animal remained alive while becoming progressively dehydrated, emaciated and physiologically compromised. During that period it had no capacity to obtain water, no capacity to obtain food, and no capacity to escape.

12.2.11. The decision to leave a conscious, sentient wild animal in those circumstances therefore had a foreseeable and objectively grave welfare consequence: the animal would remain exposed to increasing thirst, hunger, physiological distress and ultimately death unless somebody intervened.

12.2.12. The evidence of the avulsed claws, the abrasion to the forehead, the severe dehydration and emaciation, and the foreign material in the stomach demonstrates what occurred when that intervention did not take place.

12.2.13. In my opinion, these findings provide compelling clinical evidence that the animal did not simply die in the cage; it remained alive and struggled to survive while the physiological consequences of confinement and deprivation progressively became more severe. The distinction is important when assessing the severity of the suffering at the hand of human agency.

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12.2.14. The initial trapping created the condition of confinement. The subsequent failure to provide water and food, and the failure to intervene after the animal was known to be confined, allowed that condition to continue until it became fatal.

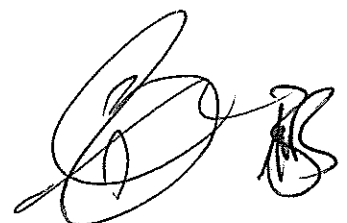
12.2.15. The suffering was therefore not merely the unintended consequence of an animal entering a trap. It was sustained over time by the continuation of the circumstances in which the animal was left.

12.3. The picture that emerges from these findings taken together is not ambiguous. This animal was alive and aware in a cage, in a state of extreme dehydration and progressive organ failure, without food, without water, without shelter, and without any prospect of escape, for a period which, on Dr Burger's assessment, was consistent with a minimum of approximately seven days without water and was, on the totality of the evidence, potentially significantly longer. It scratched until it lost its claws. It consumed foreign matter. It died.

12.4. In twenty-five years of leopard rescue fieldwork, I have attended many entrapment situations. I have assessed the clinical consequences of gin trap, snare, poisonings and cage entrapment on numerous occasions. The findings documented by Dr Burger in this case are consistent with one of the most severe welfare outcomes I have encountered in terms of the duration and completeness of the suffering. The failure to inspect the trap daily — which is a specific criminal conviction in this matter — was not a technical regulatory omission. It was a direct means by which this degree of suffering was allowed to continue and worsen.

13. The Question of Alternatives — What Scientific Practice Requires

13.1. Modern leopard conservation does not treat lethal control as the default response to human-wildlife conflict. This is not merely the philosophical position of conservation organisations — it is the position

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embedded in South Africa's statutory framework and in the international scientific consensus on damage-causing animal management.

13.2. A scientifically responsible response to alleged leopard predation on livestock requires the following steps, in sequence:

13.2.1. Establish the nature and extent of the alleged losses — including physical inspection of carcasses, identification of cause of death, and documentation of the pattern and frequency of losses.

13.2.2. Identify, where possible, the individual animal responsible — through camera trap data, spoor assessment, scat analysis, or other techniques. Not every leopard in a landscape is responsible for every livestock loss in that landscape.

13.2.3. Seek assistance from conservation entities like CapeNature mandated to assist in these circumstances, or organisations such as Landmark Foundation that are well known in the region and actively work to assist in such scenarios.

13.2.4. Implement preventative husbandry measures — including improved kraaling at night, human herding, livestock guarding dogs, non-lethal carnivore deterrents, carcass management (removal of attractants), herding techniques and modified grazing practices.

13.2.5. Where conflict persists after preventative measures, consider non-lethal capture for translocation under jurisdiction of the conservation authorities, where appropriate habitat exists, or for individual deterrence through conditioning.

13.2.6. Consider lethal intervention only as a last resort, where the above steps have been exhausted, where the individual animal responsible has been identified, and where the applicable permits and notifications have been obtained.

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13.3. The evidence before this court does not establish that any of steps 13.2.1 through 13.2.6 were undertaken before a trap capable of catching a leopard was set on Toorwater farm. The evidence establishes that the trap was set without a permit, that the accused knew it was capable of catching leopards, and that no application to CapeNature was made — at any point in the twenty years for which permit records are available — for either a hunting permit or a permit to set a cage trap. The management framework that Parliament designed for exactly this situation — the Ordinance and TOPS permitting system — was simply ignored.

13.4. Notwithstanding the absence of the requisite permits, the trap was not inspected in accordance with the applicable legal requirements, and the accused was convicted in respect of the failure to inspect the trap.

13.5. Notwithstanding being informed of the leopard in the trap, nothing was done to attend to the plight of the leopard.

13.6. This is significant in aggravation. The accused did not face a situation where the regulatory pathway was unclear or denied, or where the relevant authorities had failed to provide guidance. The permit system is publicly accessible. The requirement to hold a permit for a restricted activity involving a listed threatened species is explicit and unambiguous in the Nature Conservation Ordinance, the NEMA and NEMBA provisions, TOPS Regulations. The failure to engage that system was not inadvertent. The trap had been on the property for more than ten years.

PART THREE: WHAT SOCIETY AND THE LAW SAY — THE STATUTORY AND CONSTITUTIONAL FRAMEWORK

14. The Constitutional Dimension

14.1. Section 24 of the Constitution of the Republic of South Africa, 1996, guarantees every person the right to an environment that is not harmful to their health or wellbeing, and the right to have the environment protected for

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the benefit of present and future generations through reasonable legislative measures that prevent ecological degradation and promote conservation.

14.2. The legislation governing this matter — NEMBA, the TOPS Regulations, and NEMA — is the direct statutory expression of the section 24 right as it applies to biodiversity. The statutory biodiversity framework should be understood within the constitutional environmental framework established by section 24, including the constitutional obligation to promote conservation and prevent ecological degradation. It is enforcing a constitutional guarantee that Parliament has given effect to through specific legislation. The weight of that constitutional dimension should be reflected in the sentence.

15. The Statutory Framework and What It Prescribes

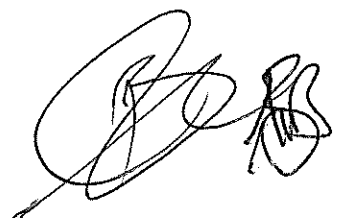
15.1. The following statutory provisions are directly relevant to the assessment of the gravity of this matter. I identify them for the court's reference, without offering legal interpretation:

Provision	Relevance to This Matter
NEMBA s57(1) + TOPS NEMBA s57(1) — prohibition on undertaking restricted activity without a permit	Conducting a restricted activity (trapping, hunting) involving a listed threatened species (leopard) without a permit — maximum R10 million and/or 10 years' imprisonment. (NOT charged in this matter.) NEMBA s101(1)(a) — contravention of s57(1) is an offence; NEMBA s102(1) — maximum R10 million and/or 10 years' imprisonment; NEMBA s102(2) — potentially the greater of the s102(1) penalty or three times the commercial value in specified circumstances. TOPS Regulations 2007, reg 73(1)(a) Undertaking a restricted activity involving a threatened or protected species without a permit TOPS Regulation 74 Penalty for an offence under reg 73
NEMA s28 (as amended)	Unlawfully committing an act that detrimentally affects the environment in a significant manner — maximum R1 million and/or 1 year. (NOT charged.)

NEMA s34 (vicarious liability)	Employers and principals vicariously liable for NEMBA/TOPS offences. Available in conjunction with NEMBA charges. (NOT charged.)
WC Nature Conservation Ordinance s27, 29	Hunting a protected wild animal without a permit; use of a prohibited hunting method. CHARGED (Counts 1 and 2).
Animals Protection Act s2(1)(a), 2(1)(b), 2(1)(c), 2(1)(k)	Torture, maiming, starving (food and water), unnecessary confinement causing suffering. These cruelty provisions were charged; (Counts 3, 4, 5, 6). The charges suggest up to 12 months custodial sentence individually

15.2. I note that the charges on which the accused has been convicted — while they are real and valid convictions — represent only a portion of the statutory framework available on these facts. The maximum available penalties under the charges actually brought are substantially lower than those Parliament has prescribed under NEMA/NEMBA/TOPS for the identical conduct. The court should consider imposing sentences at or near the maximum available under the charges before it, so that the cumulative sentence reflects the gravity of conduct that, under the full statutory framework, carries a maximum of ten years' imprisonment and/or a R10 million fine.

15.3. I am aware that the Landmark Foundation raised the failure to invoke NEMA, NEMBA, TOPS, and the vicarious liability provisions of NEMA with the National Prosecuting Authority in correspondence from April 2022 onwards. I say this not to place the NPA's conduct before the court as a ground of criticism — that is a matter for another forum — but to establish a factual context relevant to the court's sentencing exercise: the Foundation, as a recognised specialist organisation, identified the full applicable legal framework at the earliest opportunity and sought to have it applied. That engagement was not successful. The consequence is a sentencing ceiling



that does not reflect the full gravity of the conduct. The court should therefore consider imposing the maximum or near maximum available on the charges before it.

16. The Permit System as a Conservation Tool — And What Its Absence Means

16.1. The Ordinance, NEMA, NEMBA and TOPS permitting system is not merely an administrative requirement. It is a conservation management instrument. When a landowner applies for a permit to conduct a restricted activity involving a listed species, the conservation authority is placed in a position to: assess whether the alleged damage is documented and verifiable; identify whether preventative measures have been attempted; consider whether a non-lethal intervention is appropriate; consult its records for information about the individual animal; and impose appropriate conditions governing the manner in which the authorised activity may be undertaken.

16.2. None of this oversight was available in this case, because no permit was sought. The accused operated outside the regulatory system entirely, for more than twenty years of hunting operations, without a single permit application to CapeNature. The consequence of that choice was that no conservation authority ever had the opportunity to assess the situation, identify the animal, consider alternatives, or impose welfare conditions on the trap. The suffering documented in the post-mortem was a direct consequence of that regulatory evasion — not merely of the initial decision to set the trap.

PART FOUR: THE ETHICAL DIMENSION — WHAT OUR OBLIGATIONS TO ANIMALS REQUIRE

17. The Scientific Consensus on Sentience and Suffering in Carnivores

17.1. It is no longer scientifically or ethically tenable to treat suffering in large carnivores (or any animal) as an exclusively regulatory or agricultural issue.

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The scientific consensus — reflected in the Cambridge Declaration on Consciousness (2012) and in a substantial body of subsequent peer-reviewed research — is that mammals, including felids, possess the neurological substrates necessary for conscious experience of pain, fear, distress, and suffering. The leopard is not a machine. It experiences its confinement.

17.2. Large felids in acute stress produce elevated cortisol and catecholamine responses similar to those observed in human acute distress states. Prolonged confinement in a small space, without food or water, in an alien and threatening environment, produces a sustained physiological stress response that has measurable effects on organ function, immune competence, and cardiovascular stability. The terminal state documented by Dr Burger — severe dehydration at 15–20% of body mass, sunken eyes, loss of tissue turgor — reflects the end-stage of a physiological process that was ongoing, progressive, and experienced for days.

17.3. The clinical finding that this animal lost all claws on both front paws is, in the framework of animal welfare science, an extreme indicator. Claw avulsion — the tearing out of retractile claws at the root — requires sustained, forceful, panicked contact with the cage structure. It does not happen in a calm animal. It happens in an animal that has been fighting to escape with every physical resource available to it, for a period long enough for repetitive trauma to destroy the nail beds. This is not an abstract welfare concern. It is evidence of sustained, severe, conscious distress.

17.4. The Animals Protection Act 71 of 1962 — under which four of the charges in this matter were brought — recognises the obligation of persons with control over animals to prevent unnecessary suffering. The word "unnecessary" is important. Suffering that arises because a trap is not inspected daily — a statutory obligation in this matter — is not incidental or unavoidable. It is a direct and foreseeable consequence of the failure to comply with statutory obligations concerning the prevention of unnecessary suffering and the proper inspection and management of the animal. This

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suffering was not merely unnecessary in the colloquial sense. The accused was convicted of offences under the Animals Protection Act arising from the circumstances of the confinement and suffering.

17.5. The circumstances must also be considered against the statutory framework applicable at the time of the incident. The Animals Protection Act 71 of 1962, in section 2(1), criminalised conduct causing unnecessary suffering to an animal, including the unnecessary confinement of an animal, or confinement under conditions or in a manner causing unnecessary suffering, as contemplated in section 2(1)(b), as well as the unnecessary starvation, under-feeding or denial of food or water contemplated in section 2(1)(c). The National Environmental Management Act 107 of 1998 ("NEMA") established, through section 28, a statutory duty of care in relation to significant pollution or degradation of the environment, requiring reasonable measures to prevent such degradation from occurring, continuing or recurring. The National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA") provided the statutory framework for the conservation and management of biodiversity and, NEMBA section 57(1), prohibits the carrying out of specified restricted activities involving listed threatened or protected species without the requisite permit. The Threatened or Protected Species Regulations, 2007, promulgated under NEMBA, regulated restricted activities involving listed threatened and protected species and provided for the national permitting system applicable to such activities. The leopard was a listed threatened species within this statutory framework.

17.6. In my opinion, these provisions demonstrate that the protection of animals from unnecessary suffering and the responsible management and protection of threatened species were not matters left solely to personal discretion or ethical preference. They formed part of the statutory framework applicable at the time. In the circumstances of this case, once a live leopard had become confined in a cage trap, its inability to obtain water, food or freedom from the trap by its own means was an immediate and objectively foreseeable welfare concern. The subsequent failure to intervene allowed the animal to remain in circumstances in which its fundamental physiological

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needs could not be met, resulting in prolonged dehydration, emaciation, physical injury and ultimately death.

17.6.1. In my opinion, the circumstances of this case are wholly inconsistent with the principles embodied in this statutory framework. Once a leopard had become confined within a cage trap, it was incapable of obtaining water, food or freedom from the trap by its own means. The continued confinement of such an animal therefore created an obvious and escalating welfare obligation upon the person responsible for the trap to intervene and prevent suffering. The provision of water and adequate nutrition, and the prevention of prolonged confinement resulting in injury, dehydration, emaciation and death, are fundamental elements of the care of a living sentient mammal. They are not matters which could reasonably be regarded as unforeseen or incidental consequences of confinement.

17.6.2. In this context, the fact that the accused was an experienced livestock farmer is significant from an animal-welfare perspective. The basic requirements of animals for water, food and protection from prolonged suffering are elementary principles of animal husbandry. In my opinion, it would therefore be unreasonable to regard the prolonged deprivation suffered by this leopard as an unforeseen consequence of its confinement. Once the animal was known to be in the cage, the consequences of leaving it there without access to water or food were foreseeable and progressively became more severe with the passage of time.

17.6.3. I emphasise that the suffering of this leopard was not confined to the moment of its capture. The evidence indicates a continuing process of deprivation which culminated in severe dehydration, emaciation, physical injury and death. Each period during which the animal remained confined without water or food extended the period of suffering. In my professional opinion, therefore, the failure to intervene cannot properly be understood merely as a failure to provide an

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incidental welfare benefit. It amounted to allowing a conscious and sentient wild animal to remain in circumstances in which it was unable to satisfy fundamental physiological needs and from which it could not escape.

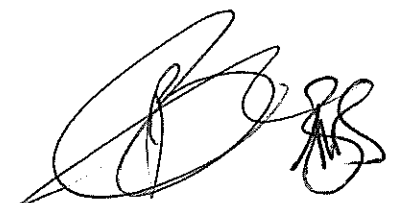
17.6.4. In my opinion, there is nothing in the circumstances of this case to suggest that the animal's welfare, its need for water and nutrition, or the prevention of prolonged suffering was ever contemplated as part of the manner in which the trapping and subsequent confinement were conducted. On the contrary, the circumstances demonstrate that the continued welfare of the animal was effectively disregarded after it entered the cage. This is particularly concerning in the case of a leopard, a protected and threatened species to which the statutory biodiversity framework attaches specific conservation and welfare considerations.

17.6.5. Serious consideration should be given to custodial prescripts for the counts under which the accused was convicted.

18. The Obligation of Coexistence — The Scientific and Ethical Middle Ground

18.1. The conservation and farming communities in South Africa need not be adversaries. The Landmark Foundation has spent over twenty years working alongside farmers, extension officers, and provincial conservation authorities to develop and implement practical, effective, cost effective and ethical approaches to human-wildlife coexistence. We are not an organisation that dismisses the reality of livestock predation or the economic pressure it places on farming families.

18.2. What we assert — and what the scientific evidence supports — is that coexistence is possible, that non-lethal methods are effective across a wide range of conflict scenarios, and that the regulatory framework exists precisely to provide a pathway through which landowners with genuine conflict can obtain guidance, support, and where necessary, regulated intervention. That pathway was not used despite being easily accessible.

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The trap was set, without a permit, without consultation, without any attempt to identify the individual animal, without any attempt at non-lethal management, and without any monitoring. The animal it caught died over a period of days, unattended, in conditions that are — without equivocation — among the most severe welfare outcomes I have encountered in 25 years of this work.

18.3. The ethical obligation to minimise suffering — recognised in the Animals Protection Act, NEMA, NEMBA, the TOPS regulatory framework, the Damage-Causing Animal Norms and Standards, and relevant veterinary and conservation standards — is not a soft sentiment. It is a professional and legal standard. It is the standard against which this conduct must be assessed.

19. The Cumulative and Systemic Dimension — Why This Case Matters Beyond Toorwater Farm

19.1. I have documented, through the Landmark Foundation's field records, a consistent and concerning pattern across the Northern, Western and Eastern Cape: leopard populations continue to decline within increasingly fragmented landscapes, while indiscriminate practices including dog hunting, snaring, poisoning, gin trapping and cage trapping persist with impunity. Where these practices continue in landscapes in which leopard presence is documented, their cumulative impact on small, fragmented and already-stressed populations has the potential to alter their population trajectory fundamentally, undermining their persistence and long-term viability, and, in some circumstances, increase the risk of local extirpation.

19.2. The case before this court is not the first of its kind. It will not be the last. The sentence imposed by this court will be cited — by farmers, by conservationists, by prosecutors, and by the media — as the benchmark for what South African courts regard as the appropriate consequence for the trapping and death of a protected leopard in conditions of prolonged suffering and without permits. If that benchmark is a suspended sentence or

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a modest fine, it will communicate that the cost of this conduct is negligible. If it is a sentence that reflects the full gravity of what occurred, it will communicate that South Africa's courts take seriously both the protection that Parliament has afforded to threatened species and the constitutional right of every person to an environment that is protected for present and future generations.

- 19.3.** That is why I ask this court, in the most respectful terms, to impose a sentence that is proportionate not only to the individual case but to the signal it sends — to the farming community, to conservation authorities, to the NPA, and to all those who depend on South Africa's commitment to its biodiversity obligations.

PART FIVE: EXPERT EVIDENCE RELEVANT TO SENTENCING

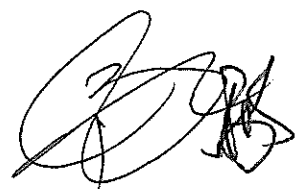
- 20.** Drawing together the scientific, ecological, welfare, ethical, and legal dimensions set out in this statement, in my professional opinion, the following factors are relevant to the Court's assessment of the ecological and welfare gravity of the offence:

21. Sentence Should Reflect the Seriousness of Each Count Individually

- 21.1.** Each of the six counts reflects a distinct dimension of the accused's culpability — the unlawful trapping and killing of the animal, the prohibited method, the torture, the starvation, the failure of the daily inspection duty, and the intentional infliction of suffering. These are not six different ways of describing the same event: they are six different legal wrongs, each with its own causal relationship to the death and suffering of the animal. Sentences that are made to run concurrently in a way that effectively penalises only the most serious count will not reflect this.

22. Financial Penalty Should Be Calibrated to Real-World Value Anchors

- 22.1.** If the court imposes a fine in addition to or in lieu of a custodial sentence, I respectfully submit that the following benchmarks are material:

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the cost of a legally authorised trophy hunt permit for a leopard exceeds US\$40,000 (approximately R700,000); for example, the operational cost to the Landmark Foundation of a single successful leopard rescue is approximately R80,000; and the statutory maximum under NEMBA — had those charges been brought — is R10 million per count. A fine that falls below the cost of a single rescue operation will not be experienced as a consequence proportionate to what occurred.

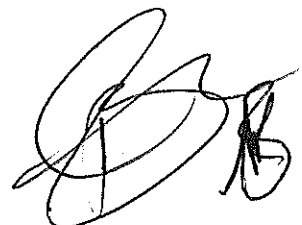
- 22.2.** Should the court consider directing any portion of a fine to a conservation purpose, the Foundation respectfully suggests that such a direction be to a leopard conservation fund administered by a recognised conservation body, or another entity such as the SPCA, which often deals with animal cruelty and is struggling for resources, — to be applied specifically to conflict mitigation, coexistence programmes, and rescue capacity in the Southern Cape districts and surrounding leopard landscape.

23. Custodial Component and Conditions

- 23.1.** In the Landmark Foundation's submission, a custodial element would be appropriate. The conduct in this matter was not negligent in the ordinary sense. The trap was set deliberately. The accused was informed an animal was in it. He did not attend. The evidence establishes no remorse, no expression of concern, and no acknowledgment of the suffering. A fine alone, particularly at the lower end of the available range, will not discharge the deterrent function that sentencing in environmental crime must serve.

- 23.2.** Where any portion of a custodial sentence is suspended, which we believe should not be, the Foundation submits that the following conditions are appropriate:

- 23.2.1.** A prohibition on the accused in the ownership and care of any animal, alternately;

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23.2.2. A prohibition on the setting of any trap, cage, snare, or other device on any property under the accused's direct or indirect control for the duration of the suspension period;

23.2.3. A requirement that all hunting and game management activities on the accused's properties be conducted in full compliance with the applicable permit framework, with annual written confirmation of compliance to CapeNature; and

23.2.4. A requirement that the accused attend, within six months of sentencing, an approved training programme on the requirements of NEMBA, TOPS, and the APA.

24. A Declaratory Finding on Gravity

24.1. I respectfully ask that the court make a formal finding, recorded in the sentencing record, that this matter falls at the serious end of its category — the indiscriminate trapping of a listed threatened species in conditions of prolonged and extreme suffering, by an operator who had knowledge of the regulatory requirements, had the means to comply, and chose not to.

24.2. That finding will serve as a sentencing reference in future matters in this jurisdiction.

PART SIX: CONCLUSION

25. In my professional opinion, the evidence demonstrates that this was not a sudden or unavoidable death. It was a prolonged process of confinement, physiological deprivation, injury and deterioration in a sentient wild animal that had no ability to obtain water or food or to escape. The welfare consequences were severe, foreseeable and sustained over time. The death of the animal must also be understood within the ecological context of a low-density and fragmented leopard population in which additional mortality contributes cumulatively to

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population pressure. These are the scientific, ecological and animal-welfare considerations that I respectfully place before the Court in assessing the gravity of the conduct.

26. The ecological and welfare significance of this case therefore does not arise solely from the initial capture. It arises also from the continuation of the confinement after the presence of the live leopard was known. From that point, the animal's inability to obtain water, food or escape was no longer merely a potential consequence of the trapping method; it was an existing and continuing condition, and the failure to intervene allowed the resulting suffering to continue until death.

27. The accused set the trap that killed it. He was informed it was occupied. He did not go. He has offered this court no explanation, no remorse, and no acknowledgment of what the evidence establishes.

28. The Landmark Foundation has attended this court for four years — nineteen separate appearances — to ensure that the full weight of what occurred is placed before the court. That weight, in my professional and personal view, calls for a sentence that is serious, direct, and structured to deter not just this accused but every landowner in the Western Cape, and nationally, who considers setting an unmonitored cage trap, in leopard country without a permit.

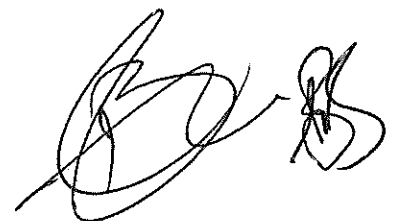
29. I confirm that this statement accurately represents my professional opinions, that I am aware of my duty to the court as an expert witness, and that I am prepared to be called to give oral evidence on its contents.



DR B.H. DE V. SMUTS (MBChB)

General Manager, Landmark Foundation Trust (NPO 039-416)

Date: 16 August 2026



ANNEXURE A — EXPERT CREDENTIALS SUMMARY

Category	Detail
Qualifications	MPhil, MBChB (medical degree), DCH, BSc; 25 years conservation science practice
Organisation	Landmark Foundation Trust, NPO 039-416, established 2004, registered in 2005
Permit authority	No. 0361/2025, Northern Cape Provincial Dept. Agriculture, Environmental Affairs, Rural Development and Land Reform. Western Cape's CapeNature research and mitigation permit No CN44-87-32783.
Field experience	78 documented leopard rescues from entrapment; monitoring and research of numerous additional individuals
Research output	More than 24 peer-reviewed publications on leopard ecology, population biology, conflict and conservation
Court experience	Expert witness and affidavit evidence in multiple court proceedings involving conservation & predator-related offences. Led litigation into Constitutional Court
Case engagement	19 court appearances in State v Barnard; continuous NPA correspondence record April 2022 to date
Comparative field reference	Attended and led rescue at Calvinia gin trap incident, 11 July 2025 (Calvinia Enquiry No 9/7/2025) — provides direct comparative clinical baseline for assessment of this case; The State V Malan Rall matter in Heidelberg Court CAS 38/07/2025



ANNEXURE B — SUMMARY OF KEY ECOLOGICAL AND WELFARE

FINDINGS

Finding	Scientific / Conservation Significance
Adult male leopard, prime condition (Dr Burger necropsy)	Established breeding-age animal; high individual conservation value in a low-density Cape population. Extreme dehydration and cachexia.
Trap on farm >10 years; repositioned to follow leopard spoor	Establishes ongoing deliberate trapping in known leopard habitat; not an accidental interaction
No permit application on CapeNature records since at least 2004	Trap maintained for more than ten years and repositioned in response to leopard spoor; no permit application identified in the available CapeNature records.
Complete claw avulsion on both front paws	Clinical indicator of severe, sustained, panicked escape behaviour over extended period; extreme welfare outcome
Foreign matter (sticks, soil) in stomach	Consistent with indiscriminate ingestion of available material during extreme physiological deprivation.
15–20% dehydration by body mass (Dr Burger assessment)	Severe, life-threatening dehydration; consistent with minimum 7 days without water; indicative of multi-day confinement
No remorse, no mitigation evidence offered	Accused elected not to testify; no expression of concern or acknowledgment of welfare findings
Alternatives not attempted	No evidence of preventative husbandry, guardian animals, CapeNature consultation, or non-lethal intervention prior to setting trap

