Justice for Animals

ANIMAL LAW REFORM
SOUTH AFRICA

ANIMAL CONFERENCE
CAPE TOWN 2019
14-15 SEPTEMBER, UNIVERSITY OF CAPE TOWN
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“Education is the most powerful weapon which you can use to change the world.”
It gives me great pleasure to write the foreword for our publication, “Justice for Animals”.

This is one of the first of many publications we as Animal Law Reform South Africa (“ALRSA”) hope to collate and distribute, to create material on the subject of animal protection in South Africa. We also hope to provide a platform for youth and other stakeholders to share their ideas, opinions and research - towards creating a better future for humans, non-human animals and the environment more generally.

About ALRSA

We were informally established in in 2014 by a group of lawyers interested in animal protection. In 2017, we were formally registered as a non-profit company by lawyers from academia, practice and civil society. Attorney Amy P. Wilson (me) and Professors David Bilchitz and Bonita Meyersfeld, are co-founders and directors of the board of ALRSA.

We are the first dedicated animal law non-profit in South Africa, and we work through three main pillars being: Animal Wellbeing; Social Justice and the Law. We envisage a society and legal system that adequately protects both humans and nonhuman animals.

Our work is done through our three work areas being: Legislative and Policy Reform; Litigation and Legal Services and Education and Research.

Utilising the law as our tool, we work on intersectional issues to ensure justice for all who require it. Through education, collaboration, research and access, we believe we can achieve incremental change for vulnerable beings and ensure that their interests are accounted for in the legal system.

This Publication has been put together to assemble the fantastic work and efforts flowing from the 2019 Cape Town Animal Conference (the “Conference”). We are extremely proud to have been involved in this event in 2019 as well as all of the fantastic work and relationships that have emerged therefrom.

The Conference

Main Conference

The Conference took place on the 14th and 15th September 2019 at the University of Cape Town (“UCT”). The Conference was organized by the Cape Town Animal Conference Organizing Collective, composed of: Animal Coalition of Southern Africa, We Are Animals (UCT),
Animal Law Reform South Africa ("ALRSA"), and the Center for Animal Law Studies at Lewis & Clark Law School ("CALS"). This was the second year that the event was held and was broadly about issues impacting on and relating to animals in different areas – ranging from activism, humanities, politics, education to welfare and various others. This year, the Conference agenda emphasized opportunities to protect animals in the legal arena, as well as the theme of “Justice for Animals”, in different disciplines.

The Conference was free and well attended by advocates, law students, university students, professors, academics, lawyers, educators, NGOs, animal rescues, activists and other stakeholders. The presenters and presentations were similarly diverse - making for a rich learning and networking event.

The Conference was made up of the following activities:

- The Main Conference (14th and 15th September 2019);
- A Student Session at the University of Cape Town held on 13th September 2019; and
- An Essay Writing Competition.

Here¹ is a link to the Conference Event. Here² is a link to the Program with the speakers and their presentations. Some of the sessions were recorded, and can be accessed Here³.

Student Session

The Student Session was co-hosted by We Are Animals at UCT, ALRSA and CALS. The University of Cape Town assisted with the promotion and organizing of this event. It was well attended by approximately fifty students and vegan snacks were served to attendees.

The Session was an introductory discussion conducted by legal experts about animals, their roles in society and how the legal system views them. It was chaired by Chloe Kingdom of We Are Animals.

It noted that animals have traditionally been classified as ‘things’ in South African law. Yet, in a ground-breaking judgment in 2016, the Constitutional Court found that animals are to be regarded as having ‘intrinsic value as individuals’. The court also recognised that the environmental right was to be interpreted in a way that connected conservation with animal welfare.

The first part of the presentation was delivered by Professor David Bilchitz (Professor of Fundamental Rights and Constitutional Law at the University of Johannesburg; Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law ("SAIFAC"); director of ALRSA and Secretary-General of the International Association of Constitutional Law). His presentation described the change in the status of animals in South African law as well as its philosophical justification. It raised the question of whether the time has come to recognise that animals have rights. He also considered the implications of this changed status for human uses and abuses in relation to animals.

The second part of the presentation was given by me – and in addition to presenting as a Director of ALRSA, I also presented in my capacity as the Legal Fellow of the Aquatic Animal Law Initiative, Center for Animal Law Studies at Lewis & Clark Law School. My presentation introduced the field of animal law both in the context of the United States as well as South Africa. I also provided information concerning a fully funded opportunity to study towards an LLM in this field – an opportunity which I myself had the pleasure of receiving and I became the first South African to receive my LLM in Animal Law from Lewis & Clark Law School, in Portland Oregon.
Contents of this Publication

This Publication has been divided into four main Sections:

Section One provides a brief background to the Conference from one of the co-organisers and co-founders, Les Mitchell.

Section Two highlights the entrants of the Essay Writing Competition and the essays that were submitted.

The Essay Competition was an initiative of ALRSA as supported by CALS. The Competition was open to all students (domestic or international) registered at a South African University or college as well as researchers and entrants were asked to write on the subject of “Justice for Animals in South Africa and Beyond”.

The competition sought the perspective of students and researchers on how they view the representation and treatment of animals in South Africa (and beyond its borders) in different disciplines, including those which they are studying/working. Multi-disciplinary approaches were welcomed, including but not limited to legal, philosophical, political, artistic, scientific, historical or otherwise.

Topics presented as options included but were not limited to:
• how animals are (mis)represented and/or (mis)treated by various disciplines;
• the current status of animals;
• our personal and societal relationships with animals;
• whether all animals are considered and/or treated equally;
• whether our current systems of government, habits, laws and education adequately capture the importance of animals; and
• whether there is there a way to achieve justice for animals or improve their current status and how this may be done.

There were a total of eight entrants who wrote on a broad variety of subjects on nonhuman animals – including in the fields of law, science, philosophy and others. The Essays were reviewed by a panel of three reviewers, who have many years of experience in both human and animal matters, based on a set rubric of criteria. This included myself, Sheena Swemmer and Rachel Heatley who volunteered their time. Each entry was carefully considered against a predetermined marking rubric.

For purposes of this Publication, we asked each of the entrants to provide us with an update on what they had been doing since submitting their essays and also asked them to give us a short description of why they entered the competition or their specific interest in the topic they selected. Some of the entrants updated their original essay entries for purposes of the Publication, taking into account the comments from the reviewers, others chose to leave them as is. We have not edited the contents of their essays, other than for formatting purposes.

We at ALRSA were extremely pleased with the entries we received. It was remarkable to see the entrants articulate their passion for the protection of animals utilising their fields of study and/or work. We are excited with the interest in the Competition and look forward to continuing this initiative in 2020.

Section Three provides a summary of the Legal Panel of the Conference.
This Summary was written by one of ALRSA’s very promising volunteers and mentees - Sifiso Ndlazi. Sifiso was also the runner up of the Essay Competition and he is currently completing his LLB at the University of Johannesburg. The Legal Panel was organized by ALRSA and sponsored by CALS entitled: “Justice for Animals: The role of law in protecting non-human animals”.

The Panel highlighted animal law as a burgeoning field in the country and delved into the complex relationship between the law and nonhuman animals. Topics covered included: the current status of animals in law, animals and the South African constitution, wildlife crimes in Africa, the role of the government in the protection of animals, translating activism efforts into law, recent developments and the future. The presentations were followed by a Q&A session with the delegates.

The Presenters on the Panel were: Professor David Bilchitz (mentioned above), Attorney Jim Karani (Director – Lawyers for Animal Protection in Africa), Attorney Sarah Kvalsvig (Consultant, Cullinan & Associates Inc) and Dr. Andrew Rowan (Wellbeing International). The session was moderated by Tony Gerrans (Executive Director of HSI Africa) on behalf of Animal Law Reform.

The Legal Panel was extremely successful and contributed immensely to the Conference. Recordings of the Legal Panel can be found here: Part I and Part II.

Section Four provides our closing thoughts and future efforts looking ahead – including our upcoming Conference, which we are enormously excited about.

Acknowledgements

I would like to take this opportunity to thank some of the wonderful people who made the Conference, the activities and this Publication possible.

Firstly, I would like to say a huge thank you to each and every person who attended the Conference and the Student Session and to those that presented at the Conference. Secondly, and more generally, a major thanks to all of the amazing animal and human activists working on these issues daily!

More specifically, I would like to thank the following wonderful people for all of their efforts:

- the organising team of the Conference: Les Mitchell, Sheila Wilson, Chloe Kingdom, Michael Glover and Elisa Galgut;
- the Center for Animal Law Studies for their funding and support provided for the Conference and specifically - the Legal Panel, Student Session; Essay Competition and this Publication. In particular, Natasha Dolezal (Director of International Animal Law);
- our Legal Panel speakers and presenters: Professor David Bilchitz, Jim Karani, Sarah Kvalsvig and Dr. Andrew Rowan. A special thank you to Tony Gerrans for moderating the session and his valuable input;
- Every single one of the students and researchers who entered the Essay Competition and took the time to put together such beautiful and passionate writings;
- My two co-reviewers of the Essay Competition, Sheena Swemmer and Rachel Heatley;
- Sifiso Ndlazi for his summary of the Legal Panel;
- Gregg Davies for his work on and contribution to this beautiful Publication;
- UCT for their assistance with the Student Session and its promotion, and in particular, Gaby Ritchie; and Professor David Bilchitz for his fantastic presentation to the students; and
- We are Animals team and their volunteers who assisted at the student event and main event (including recording the presentations) and, in particular, Chloe Kingdom and Michael Glover.
Lastly, I would like to thank my co-directors on the board of ALRSA, Professor David Bilchitz and Professor Bonita Meyersfeld. It is an absolute pleasure to work with both of you on these important issues daily and be able to learn from you and your vast experience.

We hope that you find the Publication helpful and illuminating.

All the very best,
Amy

Publication Notes:
The content of and views expressed in the Essays and Contributions to this Publication are those of the authors and are to be understood as such. They are provided on an “as is” basis with no guarantees of completeness, accuracy, usefulness or timeliness. None of the views expressed in the Essays or Contributions can or should be attributed to ALRSA, its directors or members; nor the organisers or sponsors of the Cape Town Animal Conference. ALRSA assumes no responsibility or liability for any issues arising therefrom.

We note that there are errors in the Essays, including in relation to the content, spelling and grammar, footnotes and referencing, and that traditionally these would have been amended and corrected in an academic publication, however, in order to be true to what the entrants have themselves produced and what was graded for purposes of the Essay Competition, we have not amended the contents of their essays other than formatting and otherwise for purposes of this Publication.
Some of the members of the Cape Town Animal Conference Organising collective (left to right): Michael Glover, Chloe Kingdom, Sheila Wilson and Les Mitchell
A note from Les Mitchell:  
One of the Founders and Organisers of the “Cape Town Animal Conference”

Animal Law Reform South Africa asked Les to give us a brief history of the Conference and why he thought it was important. This is what he said:

“As in many cases it’s hard to know where this began but in 2009 an “animal rights conference” was held at the Hunterstoun Centre of the University of Fort Hare up in the Amatola mountains just outside a village called Hogsback. The centre was really just a big house with a thatched roof where the baboons would come digging and looking for things to eat. Academics and activists from all over South Africa were invited and although Hogsback is not reached by public transport and is not the easiest place to get to, an amazing number of people said they would come - and they did! It was cold, the log fire kept going out and it was rather dark but it was brilliant!

Following this, conferences were held in different places in South Africa under the auspices of the Institute for Critical Animal Studies (ICAS - Africa). Some of these were quite small while others attracted a significant number of people, including those get-togethers held at the University of Cape Town.
In 2018, there having been no conference for a year or so, Sheila Wilson, a Cape Town activist, suggested it was time we had one and so the “official” Cape Town Animal Conference (“CTAC”) came into being. As in previous conferences it was organised by a small collective of volunteers. We had no money and no sponsorship, but it was a great success.

2019 was thus the second “official” year of the CTAC and was organised by a collective of myself, Sheila Wilson (History), Chloe Kingdom (English and Social Science and representative of our hosts - We are Animals Student Society), Amy P. Wilson (Law), Elisa Galgut (Philosophy), and Michael Glover (History). It saw two large lecture theatres used in parallel for just over one and a half days and closed with a plenary Legal Panel.
The CTAC has the following core values and processes:

- Attendance is open to everyone and is completely free. Registration is online or on the day.
- Only vegan food is available for purchase.
- We encourage activists, academics and emerging researchers of all ages to give presentations. There is no hierarchy.
- All attendees are understood as making a vital contribution to the life and process of the conference.
- People involved in other social change movements are encouraged to join us and very welcome.
- Applications to present are submitted in the form of an abstract and evaluated by at least three referees. Assistance might be offered, if needed, to some presenters with the aim of refining presentations.

Another aspect of the conference is networking. It brings together people who are working in diverse fields but with a common overall aim thus enabling information sharing and providing opportunities for collaboration.

The presentations we have had to date have been very diverse and have taken us to theatre, literature, the law, humane education, analysis of texts, the campaign against live export, captive dolphins, marketing vegan food, health, sanctuaries, animal testing, the lion bone trade, Christianity and animals, agency in cattle, and much more.

The aim of the conference is to benefit animals and to assist those who work on their behalf.”

Les

Follow the Cape Town Animal Conference Facebook Page to find out more!
https://www.facebook.com/CTanimals/
INVITATION AND CALL FOR ABSTRACTS

BACKGROUND

The Conference will cover a diverse range of topics relating to animals in South Africa, Africa and globally. Areas will include humanities, science, business, politics, law and various others. The Venue will be the University of Cape Town, Upper Campus.

It is hosted by the ASM (Studies from the University of Cape Town) and organized by the Animal Coalition of South Africa.

This year, we will also be emphasizing animals in the legal arena and are pleased to announce that we have invited two leading figures from the legal profession to lead the programme.

The Conference will feature a full animal law mandala discussion with experts in the field and highly skilled Barristers. It is our goal to make the law more accessible to those interested in understanding the legal rights and responsibilities of animals.

The Conference will also include a panel discussion of environmental issues and their impact on animals, with experts discussing the implications of climate change, habitat destruction, water, food systems, and other environmental issues.

The Conference will also cover the ethical implications of animal experimentation, medicine, and other industries.

The Conference will also feature a discussion on animal rights and the treatment of animals in the legal system.

You are encouraged to submit abstracts for papers, panels, or workshops on any aspect of animal law and animal rights. Submissions should be no more than 300 words and should be submitted via the online registration process.

Submissions of abstracts

Please submit a 250 - 300 word abstract and a short bio (250 words) to animalconference@uct.ac.za by 26th June 2021.

Presentations will be approximately 20 minutes each, with 5 minutes for questions.

Abstracts will be reviewed by at least three academic referees and referees provided by 19th July 2021. Acceptances will be based on contents available space, and overall program benefits.

MORAL INFORMATION

Further information will be provided in due course. If you are interested in volunteering your time, skills, or support at the event, please contact us.

The event will be held on the University of Cape Town campus, with the main venue being the UCT Business School. Parking is available on-site.

Additional means of communication for University students to participate in the event are available. Please contact the event organizers for more information.

Vegan food and other refreshments will be available during the conference.

Like us on Facebook for more information.

For general communication, contact animalconference@uct.ac.za
JUSTICE FOR ANIMALS IN SOUTH AFRICA AND BEYOND

Friday 13th September 2019
13:00 – 14:00 at KIUAM 113 | University of Cape Town

Interested in animal protection, social justice and/or law? Come join us for an introductory discussion on animals; their roles in society, and how the legal system views them.

Presented by:

- **Professor David McBride**
  - South African How Big Is Your Town? South African Low-Cost Spay/Neuter Programs

- **Amy P Wilson (via Skype)**
  - Animal Law and Protection Opportunities in South Africa and Internationally

For more information please contact: amywilson@animallawform.org

This session forms part of the Cape Town Animal Conference. All are welcome to attend! Snacks will be served.

SCHEDULE

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“Empathy is not inimical to good (animal) science.”
Jessica du Toit (Winner)

Independent Researcher, currently a 1st year PhD student in the Philosophy Department at Western University in London, ON (Canada).
(For queries: jess.dutoit@gmail.com)

Jessica was the winner of the Essay Competition with her essay entitled: “In the Name of Science: Animal Appellations and Best Practice” and received a cash grant provided by the Center for Animal Law Studies, as well as the title of “Winner: Justice for Animals Award 2019”

“Since submitting my essay to the competition, I have moved to Canada to start my PhD in Philosophy. I’m loving Western University and all the amazing opportunities I have had so far.”

“I grew up participating in the culture of subjecting animals to unspeakable cruelty for the sake of furthering trivial human ends. I participated in this culture because I didn’t ever think to stop and question it. But in my second year of university I was exposed to the work of Peter Singer, Tom Reagan, David DeGrazia and David Benatar, among others, and my eyes were opened to one of the most profound travesties of social justice. Since then, I have focused much of my research on issues in animal ethics. My hope is that my work will help others to see the ways in which they fail to take animal interests sufficiently seriously, and to ensure that more people take a stand against the grave-yet-everyday violations of animal rights.”
Publication Note from Animal Law Reform South Africa:

The Essay submitted by Jessica du Toit as part of the Essay Competition (as amended) has since been published in the Journal of Medical Ethics. For access to the published version of her article, please go to: https://jme.bmj.com/content/early/2020/04/24/medethics-2020-106127. Full Citation: "du Toit J, In the name of science: animal appellations and best practice. Journal of Medical Ethics Published Online First: 24 April 2020. doi: 10.1136/medethics-2020-106127"

For purposes of this Publication, we asked Jess to summarise some of the pertinent points from her Essay for informational purposes.
This is what she said:

“The practice of giving animal research subjects proper names is frowned upon by the academic scientific community. After reviewing the extant literature, it seemed to me that while researchers provide a number of reasons for avoiding this practice, the most common are that:

1) naming leads to anthropomorphising which, in turn, leads to data and results that are unobjective and invalid; and
2) while naming does not necessarily entail some mistake on the researcher’s part, some feature of the research enterprise renders the practice impossible or ill-advised.

My aim in my essay is to assess whether the scientific community’s attitude towards naming animal research subjects is justified. That is, I wish to consider whether the practice of naming animal research subjects is good or bad for the purposes of scientific research.

To this end, I analyse the most common arguments against the practice, and argue that neither 1) nor 2) usually constitutes good reason to desist from naming animal research subjects.

Thus, researchers seldom have good reason to desist from naming their animal subjects. In fact, it is my contention that there are usually powerful reasons in favour of their giving their research animals proper names. This is because the practice usually leads to greater empathy and so to improved animal well-being. This, in turn, leads to better animal science. Thus, the scientific community’s attitude towards naming animal research subjects is not justified.”
“If we struggle to come up with strict rules and regulations in protecting our animals and the environment, we run a risk being a threat to our own kind”
Sifiso Ndlazi (Runner-Up)

Student: University of Johannesburg BCOM Final year LLB Postgraduate.
(For queries: Sifiso.ndlazi@hotmail.com)

Sifiso was the runner up of the Essay Competition with his essay entitled: “Justice for Animal Rights in South Africa” and received a cash grant provided by the Center for Animal Law Studies.

“It has been a heart-warming experience to have been part of the Animal Law Reform South Africa program. At the Animal Law Conference held at the University of Cape Town, I realised how we as human beings have power in these engagements to conscientious our systems of law to take note that animals are not less important. I am currently in my final year of my LLB studies at the University of Johannesburg and work as a cook over the weekends. In 2020 I look forward to a successful academic year, to network and be more involved in Animal Awareness programmes to spark conversations on the sustainability of our animals for future generations.

One of the reasons I saw it necessary for me to be part of the Essay writing competition was the concern I had been having about the increasing cruelty towards our animals in South Africa. Year in and out our wildlife animals in the national parks run the risks of easily getting killed and exported to countries for illegal trade. I felt it was necessary for me enter the competition so to challenge the status quo, our government’s legislature to instill strict rigid laws in our jurisprudence of protection of animals with regards to the farming, trade and the cruelty they are subjected to.

As Prof. David Bilchitz mentioned at the Animal Law Conference, it is important to laydown principles like the movements in the LGBTQ. It is important that we invite our courts to build law in relation to animals, have an approach that must be followed with regards to the subject matter. As complicated as it may be, we need to put aside the views that divide us and present to the legislature that we need our environment to be protected for it is our fundamental duty to do so for purposes of sustainability and avoid the risks of having our animals being extinct and afford them the necessary rights.

Now one can only can imagine how science, technology and law put together can be very powerful in assisting in the challenges that we face. By engaging society this will effectively contribute in reducing poverty grow the agriculture industry and the environment.”
Let us start with the empirical questions. Surely, we are different from other animals, but can we establish what it is that makes us unique? What capacities do we all humans have that makes us unique? What capacities do we all humans have that other animals do not? What do we do that other animals do? This therefore speaks to how humans relate to another nonhuman animal. Our relationships with other animals are at times confusing and morally schizophrenic. On the one hand we love our so-called pets. On another, we devour animals we do not classify as pets.

The contrast between our two ways of dealing with them reveals the conflicting ways we see them: sometimes as intelligent and sentient beings capable of emotions and worthy of respect, sometimes as the ‘Other’ (unfeeling tools and lucrative ‘resources’ or items of property to be used as we see fit). The one view leads to kinship, affinity and reconciliation, the other to contempt, alienation and disconnection. Therefore, the time is now, more than ever before, to expose and perhaps reconsider, the way humans treat animals that are not human.

It is at this point we ought to ask ourselves: how far, as a nation, do we want to take justice for animal rights. That being said, this paper describes the various forms of animal exploitation and further explains how the said exploitation links with oppression, both locally and globally. Also, the paper goes on to discuss plans or policy issues on the part of national government as it relates to the enhancement of justice accorded to animals. Immediately following that, the paper will also highlight the aspect of animal welfare. Then the discussion is wrapped up with some recommendations. The aim is to give voice to the voiceless, to make the invisible visible, and to be the catalyst to reveal all our dormant feelings. This is done as to highlight the importance of why something different should be done.

As South Africans, we have experienced pain and suffering, but we are transforming our society and there is still hope for inclusive of justice, respect, kinship and compassion. Breaking with our apartheid past has taught us to think about oppression and has equipped us with the tools for change. Giving us strong reasons for questioning the status quo and working towards a society free from subjugation and violence – violence towards other human being as well as animals. Focus is on key front of institutionalized animal-use industries in South Africa and various struggles around them – trophy hunting, the trade in wild life, and the daily common use of animals as food.

2 SOURCES OF ANIMAL EXPLOITATION

Globally and locally, the oppression and exploitation of animals is rooted in hierarchical human social arrangements and belief systems, the ‘entanglement of human and animal oppression’. The oppression of humans causes much of the mistreatment of other animals, and the unpleasant treatment of other animals fuels human exploitation. Francione states that as he grew, he began to recognize that all forms of injustice, exploitation and cruelty are inexcusable. They are not only incomprehensibly linked but spring from the same source.
Global economic arrangements separate people from the means of production, so the brutal exploitation of animals becomes largely unseen and ignored. We humans often see ourselves as being outside of life processes other than our own and superior to other life forms. We colonise and appropriate animals, and the places where they are being abused are hidden from the public view.

Layers of clean, legal, institutionalised customs and practices hide the abuse, and the situation is made to appear normal so that the bulk of humanity can consume with a clear conscience. Our legal systems classify animals as things and as property, our ability to really care for animals or question our lifestyles is severely restricted. Animals are conveniently kept in large unstructured groups and then disassembled and packaged in ways that strengthens the collective and covering their individuality up.

Their individual lives are conveniently transformed into apparently inmate objects that have no connection with us. A further problem is the difficulty of doing anything about all this. For one thing, there is a wide variety of actors and shapers in the debates on how animals are perceived and treated in South Africa-animal use, industries and institutions, the government, conservation groups, animal welfare societies, animal rights organisations, and of course the general public. These local debates mirror global ones, particularly about conservations and sustainable development reflect power relations and would people’s attitude to the environment. It becomes difficult for anyone to voice their opinions and be heard. Not many people realise conservation is a patriarchal word which can mean ‘using’ rather than ‘conserving’. In the words of Mahatma Ghandi he says that, “The greatness of a nation and its progress can be judged by the way its animals are treated”.

Conservation organisations in South Africa are largely funded by corporations and promote trade and consumption of wild animals. The commercial use of ‘natural resources’ and the philosophy of “if it pays it stays” are established in conservation and reflected in government policies. The view that man is the centre of the universe, which sees ecological systems and the individuals that are part of these systems as ‘resources’. This is ingrained as anthropocentrism. The country becomes a daunting obstacle to those of us fighting for justice for animals. It power protects and legitimises the forces of exploitation. Animal groups must engage the government, understand how its policies are framed with regards to the exploitation of animals.

### 3 CONTINGENCY PLANS BY THE GOVERNMENT

Historically, South Africa has always favoured the consumptive use of wild animals. Under apartheid this was so white people could benefit and have private hunting grounds, but today this use is part of the language of development. Post-apartheid the governing party has not initiated any discussions about animal welfare and exploitation issues. This is because the South African perspective on animals reflects markets and unlimited growth. The then Minister of the Environment Affairs and Tourism-Valli Moosa, asserted that, “There is absolutely no reason why South Africa, both in the public and private sectors, should not be world leaders in sustainable development”. The International Union for the Conservation of Nature (IUCN) southern African director Salim Fakir warned that if the government has no consistent policy, then everyone is free to interpret as they please. The Department of Environmental Affairs and Tourism, which represents the government on this issue, has no policy guidelines relating to the rescue, release or rehabilitation of wild life. Hunting an animal is easier than saving it. As for legislation, laws relating to animal welfare are chiefly to be found in the Animal Protection

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6 [https://www.brainyquote.com/quotes/mahatma_gandhi_150700](https://www.brainyquote.com/quotes/mahatma_gandhi_150700)
8 World Conservation Union (IUCN-WCU).
Act (71 of 1962), but because animals are viewed as property the laws do little to reduce suffering. It becomes the job of the Department of Agriculture to implement legislation to protect animals. But in contrast its job is also to exploit them. It expresses concern about 'being both a player and a referee'.

The government is not taking any legislative responsibility that it actually has. For our governing bodies to have all intents and purposes and not delegate to animal welfare and severely under-resourced NGOs. The best way to deal with this from a political point of view is to have a dialogue. Have discussions, have an understanding what the issues are.

4 ANIMAL RIGHTS AND WELFARE

Conservation and animal welfare groups believe humans are unique given that we can communicate, reason, imagine, love and so on. We belong at the top of ecological pyramid and this position is ours alone. We think the only other beings worthy of respect are ones that look and behave like us. The same attitude that is at the root of racism and sexism. Discrimination against animals is termed speciesism. We are inclined to think that if some other life form does not feel pain the same way we do, then it is okay to hurt it. When we kill animals, we ignore their individual identities and feelings because they are an 'outgroup', intended for our use. We are beginning to understand that other animals share complex patterns of social organisation and have sophisticated emotional lives, including feelings of self-sacrifice and friendship. These findings make it unjustifiable to classify animals as things, property or resources. It is no longer possible to claim that humans are only animals that have intelligence and, perhaps more importantly, display emotions. If conservationists and others cannot see these qualities, it can only be because they do not want to.

To grasp these issues clearly, we need to understand the difference between animal welfare and animal rights, this is because have different effects on social arrangements and public policy. The animal welfare cannot provide any meaningful protection for animals. It reinforces cultural, religious and social beliefs, sees animals as property and resource. It is anthropocentric and does not ultimately change the way society perceives animals. It uses terms such as ‘humane’ and talks about ‘unnecessary suffering’, but it believes that the interests of animals can be sacrificed for human interests.

The central difference between animal welfare and animal rights is that animal welfare wants more humane killing methods, while animal rights wants commercial animal production systems dissolved totally. In a nutshell, animal welfare stands for reform and animal rights abolition. Therefore, in spite of over years of welfare campaigns, more animals are being killed, and laws protecting animals are not strong enough, poorly enforced or are non-existent.

Steve Smit, founder of the South African Animal Rights Organisation Justice for Animals has criticised animal welfare for not speaking against the industry or the hierarchical system of oppression. He concisely puts it, “Animal abusers have a working relationship and understanding with animal welfare bodies, which enables the abusers to defend their policies and have them endorsed. Thus exploitation is perpetuated.”

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9 M Pickover (note 2 above).
10 M Pickover (note 2 above).
12 S Best Thinking Pluralistically,a care for direct action (2004).
13 M Pickover (note 2 above).
the opinion that “animal liberation is perhaps the most altruistic freedom struggle in history since those engaged in it do what they do without any expectation of returns, recognition or reward, people who have taken up the fight for living beings that have neither voice, nor-choice, in our human-centric world”.14

In a world where there is a widening gulf between governments and markets on the one hand and people, animals and environments on the other, the global animal rights and liberation movements are a crucial part of the emergent social movements. These movements are guided by the values of democracy, equality, rights, collective action and social justice, and they exist because governments are unable to solve major problems and challenge existing world-views.

5 LIBERATION OF ANIMAL AND RECOMMENDATIONS

Section 2415 provides the constitutional framework for ensuring the continued healthy existence of human beings and the environment at large. Section 24 provides a constitutionally guaranteed right to an environment that is “not harmful to [anyone’s] health or well-being”16 and that is “protected for the benefit of present and future generations through reasonable and other measures”.17

Animal agriculture has a direct impact on human health and well-being. As part of many people’s dietary routine, animals directly affect people’s health and well-being, as they form part of their nutritional in-take. Animals in the food industry are utilised in different ways: certain animals are slaughtered for their meat and others are kept alive for their “fruits” or “produce” like milk or eggs.18

As the need for food increases with an ever-expanding global population, the pressure on the food industry has reached the maximum point. The inability of animal agriculture to keep up in an environmentally safe and sustainable way has caused certain industries like factory farming19 to become a major environmental threat, which could impact on human health and well-being. Factory farms are designed to maximise food production, often at the expense of environmental concerns, as well as concerns relating to animal welfare and human health and well-being. Animals are kept by the millions in unhygienic and uncomfortable conditions, often never experiencing natural animal behaviour or environments. Apart from it being unnecessarily cruel for animals to be confined and live out their lives on factory farms, animal agriculture accounts for a massive amount of animal and other waste which have a severely negative impact on the environment and human health and well-being.

It has been found that the agricultural industry will only continue to flourish if sustainable farming methods are applied, meaning that protection for the long-term productivity of the agriculture industry must be aimed at, while ensuring profitability and maintaining well-being of farmers and farm workers as well as animal welfare.20

Section 24 provides the constitutional framework which seeks to ensure the continued healthy existence of human beings and the environment at large. This section has two main goals. It firstly, in subsection (a), aims to guarantee a healthy environment. Conduct by the state or private individuals or institutions violating that right may be challenged. It is phrased negatively by granting everyone the right to a healthy environment, therefore granting a certain minimum standard. This is similar to the way socio-economic rights are interpreted.21

In Grootboom,22 it was held that socio-economic rights are “negatively protected from improper invasion”.23 Section 24(a) also grants individuals a justiciable right to prevent the state or private individuals or institutions from taking measure that could be considered regressive in relation to the protection of the environment, or that are actively harmful to the environment.24

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14 M Gandhi Foreword The International World Encyclopedia
16 Section 24(a) of the constitution.
17 Section 24(b) of the constitution.
18 N De La Guerre An analysis of whether factory farming is reasonable in terms of Section 24 of the constitution of South Africa (2017) Law Faculty, UJ 24-25.
19 A factory farm or “intensive animal-feeding system” defined by section 1(b) of the Health Act 63 of 1977. The new Act makes no reference to factory farming or “intensive animal-feeding system”.
21 HTF Developers v Minister of Environmental Affairs and Tourism and Others 2006 5 SA 512 (T).
24 N De La Guerre An analysis of whether factory farming is reasonable in terms of Section 24 of the constitution of South Africa (2017) Law Faculty, UJ 28-29.
Secondly, the South African government is constitutionally mandated by section 24(b) to employ “reasonable legislative and other measures” to ensure that the environment is “protected for the benefit of present and future generations”. The reasonable legislative and other measures are required to prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

A young South African animal rightist, Mantshadi Molotlegi, sees the similarity between animal abuse and apartheid: “Just as my grandparents and parents fought for my freedom, I’ve come to realise that there is yet another freedom that has to be fought for—the right of animals to be treated with decency.

What really hit me for a six was the awakening that the way we treat animals has all the hallmarks of apartheid—prejudice, callous disregard for suffering and misguided sense of supremacy. group areas and segregation helped to keep the suffering of black people from view. So, too, with animals.”

There are currently no reporting measures in place regarding factory farming in South Africa. As a point of departure, the status quo should be researched and documented in terms of factory farming in South Africa and the effect it has on the health and well being of South Africans as well as the negative impact it has on the environment at large.

6 CONCLUSION

The government should enact reasonable legislative and other measures to which specifically deal with animal agriculture, focusing on sustainable farming methods and sanctioning factory farming activities which have a negative environmental impact in terms of its constitutional mandate contained in section 24(b).

The government has a duty of stewardship over the environment, as discussed, the legislative and other measures should take into account the current generation’s as well as further generation’s stake in the agriculture industry and the environment at large. In order to fulfil the constitutional mandate, the government should legislatively address the threat of factory farming as an economic activity on the environment and human health and well-being.

This process should take place on a public participation basis, which considers the input of important stakeholders like farmers, environmental experts and communities surrounding farms in order to be considered reasonable, as required in section 24(b) of the constitution and which is also the model that was adopted by China. Participation by the poor and the socio-economically disadvantaged part of the population is particularly important to ensure that the measures taken by the government takes into account those affected most severely by negative environmental effects caused by deepened agricultural methods like factory farming, as is an essential requirement for the reasonableness as found by the court in Grootboom.

The encouragement through the incentives like tax and loans granted to sustainable farms could form part of a government program to get more people, especially the poor and the socio-economically disadvantaged part of the country, to provide food security in a sustainable manner in South Africa. The key focus area should be the encouragement of family farming. The reasoning behind this suggestion is based on the capacity of family farming to contribute effectively and significantly to poverty reduction by creating jobs in rural areas and ensure food security.

Furthermore, family farming has an important gender dimension as well as women have less access to productive assets, resources, services and economic opportunities, with family farming providing more opportunities. In supporting this development, the Department of Agriculture could set up rural advisory services as suggested by the Food and Agriculture Organisation of the United Nations. These rural advisory services could pro-

26 Quoted in Animal Voice, May 2003, 7.
27 Government of the Republic of South Africa v Grootboom 2000 1 SA 46 (CC) par 39-44.
28 The Food and Agriculture Organisation of the United Nations.
provide information and advisory services needed by family farmers, which could include technical, organisational, business and management skills and practices.

As a developing county, South Africa is required under section 24(b) to achieve justifiable social and economic transformation and development, while, at the same time, being constitutionally mandated to protect the environment for present and future generations. Therefore, the government ought to comply with its constitutional mandate to address factory farming as an unsustainable development and enact reasonable legislative and other measures to eliminate certain agricultural methods in order to discourage the exploitation and factory farming to further emerge in the agricultural sector in South Africa and by so doing protecting the environment for the current and generations to come.

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“You don’t have to change the world to make a difference, you can change infinite worlds by helping even just one animal and person”
Anna-Leigh Sharl La Reservee
(Entrant)

Student: University of Pretoria: Onderstepoort veterinary campus, Veterinary Science, 3rd Year.
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Anna-Leigh was one of the entrants of the Essay Competition with her essay entitled: “A Jack and Jenny story…Savage Slaying for Skin”

“I plan to continue studying veterinary science in 2020, now in my fourth year, I am more determined than ever to work hard and achieve a better tomorrow for the animals and people in our country. I plan to continue to write about welfare issues I come across and hope for these to educate the public on matters affecting our country.

The essence of my essay is to highlight the importance of the South African donkey in our economy. People rely on them for transport and to make a living. They are an essential part of our countries economy.

It highlights the heart ache many people are facing as stock theft is increasingly thriving and the brutal slaughter of our donkeys is becoming common practice to make a Chinese medicine called Ejiao. South African donkey’s welfare is being blatantly ignored because only the hide is required for the “medicine”.

No brutality is worth the making of any medicine, especially one with no scientific backing. Something needs to be done regarding trade laws, controlled legalised and humane equine slaughter or a complete ban until a humane solution can be found, if not we’ll have another species in crisis. This essay is important to me as animal rights are not given as much attention as it should and I could voice my concern. The penalty does not frighten people enough to not commit the crime and that needs to change.”
In recent years, the demand for donkey hides has increased dramatically to meet the ever growing need for a Chinese medicinal remedy called Ejiao. Donkey welfare has been of great concern as there have been claims of stock theft, violent mutilation, live skinning and donkeys being traded illegally and mistreated to extremely drastic levels.

Donkey numbers are dwindling! Not only is animal welfare, conservation and meat safety an issue but severe economic losses in South Africa are in rapid pursuit because of this donkey skin trade. What can be done? What is being done? And what does this mean for the future of donkeys in South Africa?

**Keywords:** donkey; ejiao; welfare, trade, economic impact

**Why are our donkeys being slaughtered for their skin?**

 Ejiao is a term that is used to describe a traditional Chinese medicine in which hard gelatin or gel that is obtained from donkey skin is a major component. Donkey hides are boiled to obtain the firm gel which is then dissolved in alcohol or boiling water. It is put into food, drinks and or beauty products and believed to help with many ailments such as poor circulation, fertility issues and low blood cell counts. Xin Wen wrote an article that shows that Ejiao has not been scientifically proven to achieve all the functions it is alleging it can accomplish. Therefore this question alarms me, are donkeys ultimately dying for a Chinese traditional medicine that may be a hoax?

The increasing population of China has now created a significantly higher demand for donkey hides to be used for Ejiao. According to statistics in the donkey sanctuary’s report ‘Under the skin’: ‘China’s donkey population has more than halved from 11 million in 1990 to 6 million in 2014’. Another statistic in this article shows that ‘Approximately 10 million hides are demanded from China per annum’.

China has made Ejiao a commercial product and this has again made it popular and easily accessible for consumers to buy and create a higher demand. A vicious cycle is rapidly growing larger in circumference. These demands have to be met as China does not have enough donkeys, it is South Africa’s donkeys that are up for grabs for this unnecessary and unregulated trade taking place in South Africa...

**What about animal law and welfare?**

China’s demand for donkey skin has skewed the perception of the value and appropriate welfare of a donkey in South Africa. The increasing demand encourages that the skin of the donkey is the most valuable aspect, thus the welfare of the donkey in many instances is disregarded. Donkeys that are ill, malnourished, starved and dehydrated are bought at much lower prices at auction and private owners compared to donkeys that are healthy and well-maintained.

People are getting paid the same amount for the donkey skin of a donkey whether the animal is healthy or neglected and abused. The welfare of these animals is severely compromised for profit gain. This undoubtedly violates the Animal Protection Act 71 of 1962, the Societies for the Prevention of Cruelty to Animals Act 169 of 1993 as well as the Five Freedoms of animals. The
Five Freedoms include: freedom from thirst and hunger, freedom from discomfort, freedom from pain, injury or disease, freedom from distress and fear and freedom to express normal behaviour. A report from a case in the Free State province, in Bloemfontein, where seventy donkeys were euthanised out of mercy, where the veterinarian on duty had reported that the animals were too sick to save. The animals were being starved and were awaiting their chronic, brutal and untimely death in the yard of the accused. This report demonstrates that only skin and making a profit matters in this trade and that welfare is negligible and not even a thought: <https://ofm.co.za/article/local-news/200222/case-of-neglected-bloemfontein-donkeys-continues->.

The slaughter of donkeys can either be done illegally or legally. The way that an animal is treated during its life, whether their basic needs are being met, transport to the abattoir, stunning and slaughter of the animal all have to be considered in the welfare of the animal. In South Africa, stock theft particularly of donkeys is becoming a major problem and violates the Stock Theft Act 57 of 1959.

Lucky Khobe Muntsu from the North West explained in an article that several of his donkeys were found skinned alive and bludgeoned to death with a hammer. He commented this: “I can’t sleep. I’m so scared they will come for the rest.”, “One of the mares was pregnant. I felt sick, my donkeys mean everything to me”.

<https://www.iol.co.za/news/opinion/silent-donkey-holocaust-9103854>. This is a reality many rural communities face. These rural communities rely heavily on donkeys to help them work, collect water and for transport. An economic gap is unfolding and the poor will suffer while the rich get richer. In most instances, these donkeys are the people’s only way of making a living. Stock theft is leaving them without a means of living and traumatising families around the country through these violent acts of slaughter and skinning.

Understanding a donkey’s behaviour also plays a role in the required welfare of these animals. It also contributes to understanding the responsibilities during the transportation of these beasts of burden. The Donkey Sanctuary explains that donkeys can develop very strong bonds with others around them. Separating bonded pairs can create enough stress to result in a serious condition of hyperlipaemia (an increased concentration of fat in the blood) which can be fatal. Donkeys have an excellent memory, donkeys that are brutally slaughtered in front of other donkeys can also develop hyperlipaemia, causing unnecessary stress to the animal before its unconscious demise.

According to Cullinan and Associates (an environmental attorney firm), the welfare of donkeys is protected under the Animal Protection Act, it is administered by the National Department of agriculture and implemented by the NSPCA (National Council of Societies for the Prevention of Cruelty to Animals). <http://cullinans.co.za/blog/article/can-they-suffer-the-new-demand-for-donkey-skins>
Possible solutions?

The Minister of Agriculture has the ability to ban the killing of donkeys for their skin, to protect the welfare of donkeys, their inhumane slaughter and also deter stock theft.

The Donkey Sanctuary, like Cullinan and Associates want to ban the trade of donkey skin until trade of it can be regulated and assessed, raise awareness of the reality of the trade so that Ejiao consumers can make informed choices on whether or not to purchase a product that supports the violent slaughter of donkeys. Police are urged to help communities protect their prized and hardworking animals, until such a time that an official rule has been established on the trade and the welfare issues surrounding this flesh for cash business are resolved. <https://www.thedonkeysanctuary.org.uk/sites/uk/files/2017-11/under_the_skin_report.pdf>

The SPCA has also started an initiative called The NSPCA National Donkey Protection Project around the country in order to minimise the hardships working donkeys face with regards to bits and halters that cause donkeys to work uncomfortably, suffer pain, whether it be from beatings, blisters or infection which could cause them pain on a daily basis thus donkeys do not perform to their maximum potential causing owners to get frustrated. Donkeys are thus interpreted as stubborn and lazy causing owners who do not understand the underlying cause to whip them.

By helping through this NSPCA initiative, people can get the maximum work out of their donkey in a day without compromising the donkey’s welfare. In doing this, the donkeys benefit greatly as well as the members of NSPCA who can educate people on Ejiao and the donkey skin trade currently happening. The communities’ trust can be earned in order to work together to catch the perpetrators of the trade. Donkey owners or those wanting to sell their donkeys can be made aware of the fate their donkeys may face, explaining that a once off payment will not benefit them in the long run. It is illegal to slaughter donkeys in such an inhumane way and the community should not turn a blind eye to such activity. The police or NSPCA should be contacted immediately if it is witnessed. This initiative can help communication between donkey owners, communities and the NSCPA in order to try get a grip on this slaughtering epidemic. <https://nspca.co.za/animal-welfare/donkeys-mules/upliftment-project/>

The history of the donkey

Donkeys originate from wild asses found in Africa and Asia. Africa had two different types, the Nubian wild ass from the north and the Somali wild ass from the east. Donkeys were domesticated approximately 5 000 years ago. Donkeys in South Africa came from Europe in 1656. Donkeys in earlier years were used to plough the land, had a role to play in the mining industry in the Northern Cape and used in rural areas to carry water from the river. These practices are still used today in many rural communities across the country. A heart breaking period in the history of donkeys in South Africa was the massacre
of thousands of donkeys in Bophuthatswana (part of the North West province) in the early 1980s. Government at the time believed there were too many donkeys and population control was deemed necessary. Donkeys were taken away and shot, sometimes in front of their owners.

The ‘overpopulation’ was believed because of the development and increased use of tractors and commercial industrial equipment that would be replacing donkeys in many of the industries. Many people lost their means of making a living, a way to reach basic resources, transport and respect for authority was lost. Many South African donkey owners are still weary and sceptical of authorities’ motives to this day whereby they question the intentions of veterinarians, government officials and members of the NSPCA or associates. Donkey owners still remember the massacre which had a negative impact on their way of life. Some donkey owners still hide their donkeys away because of the fear of what could happen to their animals. Animals that need help, are in some instances overlooked due to a misperception of the owner of the donkey fearing the worst. These perceptions are real for owners and SPCA needs time to regain trust of the communities in order to monitor, assist and ensure all donkeys are protected and taken care of in the appropriate way. [https://www.donkeysanctuary.co.za/about-eseltjiesrus-donkey-sanctuary/our-donkeys/history-of-donkeys-in-south-africa]

Conclusion

South Africa is a country rich in natural resources such as gold, diamonds and coal, but, what makes South Africa unique is our amazing flora and fauna. It is us as South Africans that need to protect our country from exploitation, animal abuse and illegal trade. We have the responsibility not to allow history to repeat itself with regards to our prized, hardworking donkeys. If we continue killing and allowing the brutal killing of donkeys for China’s skin trade pleasure by being bystanders, soon we will be saying goodbye to our resources, means of living for many and our humanity as a country. If we accept this violent illegal slaughter of our donkeys for
their skin for other country’s unscientifically proven products, we are sending the message that we do not understand or do not care about the true value and welfare of our precious donkeys.

There are only two Northern white rhinos left in the world, a shocking statistic. The illegal poaching of rhino for their horns for Asian medicine in Asian countries continues. It is a look in the future which should frighten South Africans. It is just a matter of time before I might be saying the same about the South African donkey if this trade continues to flourish in our country.

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“Animals should be afforded equal protections under our Constitution until a satisfactory justification can be provided for their exclusion, otherwise we risk violating the culture of justification our Constitutional requires.”
Bryan Buchler (Entrant)

Student: University of Cape Town, Final Year Postgrad Law.
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Bryan was one of the entrants of the Essay Competition with his essay entitled: “Animals are legal persons too”

“Since the Competition, I have begun work as a ‘Candidate Attorney’ at Bluet Maasdorp Attorneys in Cape Town.

I wrote this essay for my Social Justice elective in Final year Law. I chose to write on animal rights and South African law, as I believed this is a very important yet overlooked area of injustice within society. Many people’s expressed views towards the treatment of animals does not align with the cruelly inflicted upon farmed animals. I wished to make this gap clear and demonstrate that the exclusion of animals from the rights contained in the Constitution is arbitrary.”
Introducing

The preamble to the South African Constitution begins as follows:

*We, the People of South Africa

Recognise the Injustices of our Past;

Honour those who Suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa Belongs to All who Live in it, united in our diversity.1*

Yet one group that lives within South Africa is treated in a manner which stands in stark contrast to the assertion that our nation also belongs to them. In a nation that has attempted to break from our torrid past through the creation of a Constitution that asserts that all should be treated with respect and dignity, it is often lost on us that we have left animals arbitrarily out of this protective fold.

Almost all South Africans live with an extreme cognitive dissonance. On the one hand, we profess our love of companion animals and a desire to protect our iconic majestic wildlife. On the other hand, we subject factory farmed animals to cruelties beyond reasonable justification amongst a myriad of other animal injustices. Every year within South Africa one billion chickens (60% of South African protein consumption), three and a half million cattle, three million pigs and 5 million sheep are slaughtered for meat consumption2.

Whilst the sheer numbers of factory farmed animals is astonishing, many individuals when participating as consumers of meat products remain under the false assumption that these animals lived out their lives under relatively normal ‘traditional’ farm circumstances. The notion that farm animals roam in green pastures and express their natural behaviors prior to slaughter is a mere relic of the past3.

The vast majority of chickens are kept in battery cages so small that the chickens are incapable of walking or stretching their wings. Within the meat production industry, male chicks are considered useless and therefore ground up alive shortly after birth. This is all done under the justification of cost reduction and increased efficiency.

Whilst animals are also abused and treated in cruel manners as a result of cultural ceremonies, canned hunting and research purposes – the sheer scale and conditions of factory farms makes these animals an important illustrative tool of the urgency surrounding the need to recognise animal rights within South Africa. I shall argue in this paper that greater protections should be afforded to all animals, but where illustrative examples are made – I shall focus on farmed animals as their plight serves as the most striking example of widespread abuse of animals within society today.

Publication Note: This article was heavily influenced by the work of Professor David Bilchitz. Whilst it references specific articles written by him, the extent of the influence on the arguments and structure of the essay was not adequately acknowledged in the original piece. Professor Bilchitz has, in this instance, consented to the publication of the piece as one of the essays submitted provided it is acknowledged that it draws heavily from his work.

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1 Constitution of the Republic of South Africa, 1996
It is further worth focusing on farmed animals as the majority of these animals live far out of sight of the ordinary consumer, and thus the public unwittingly supports and participates in the treatment of these animals through the creation of demand for such products in our supermarkets and restaurants. As a result, the illustrative focus on farm animals is necessary to bring to prominence the greatest issues facing animal rights today. However, this focus should not be seen to exclude the inclusion of all other animals from the recognition of animal rights within South Africa.

The discourse within society and the media at large focuses almost exclusively upon the plight of human poverty, unemployment, crime and other ills which plague humans. It may be argued that with the limited resources the state possesses it would be unconscionable to divert the state’s attention towards the implementation and protection of animal rights until human suffering is alleviated. I shall however in this paper argue that under the new constitutional dispensation, where all actions and distinctions must be justifiable, the differential treatment between human and animal interests is arbitrary, with no rational reason for elevating the interests of human beings above that of animals.

If we should hope to solve human problems, we must recognise that the fate of both humans and animals are intertwined. By treating animals better, we may in the process learn how to treat fellow human beings better.

This essay shall take the following form. I shall firstly provide an overview of the current state of legislative protection of animal interests and the current legal status of animals within South Africa. I shall proceed to demonstrate that the present legislation has proven itself inadequate in protecting the interests of animals. Following this, I shall demonstrate that the underlying implications of our existing legislation seemingly implies that animals have interests of their own which give rise to direct duties on humans. This is opposed to the existing conception of animal rights being an indirect duty based on the interests of humans to feel better about themselves.

These direct duties imply that animals have rights against being harmed and as a result are capable of being recognized as legal subjects as opposed to mere objects. I shall then argue since animals are considered legal subjects, they should be included within the protections of the Bill of Rights, as to not do so would constitute a form of arbitrary discrimination. Finally, I shall suggest that a progressive realization of animal rights would be most appropriate and effective within South Africa as a result of our current societal attitudes.

**Current Legal Framework**

The present South African legal protection of animals is relatively weak. Animals are not expressly mentioned within the Bill of Rights at all. The only Constitutional provision that has been confirmed to include animals is the environmental right, as the legislative act which gives effect to the environmental right ’NEMA’ expressly includes ’animals’ within its definition of the environment. The environmental Act only provides indirect protection of animals as elements of the environment and are seemingly only protected in this right through an anthropocentric lens – the protection of the environment for present and future human interests.

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5 Amy Wilson., Animal Law in South Africa: “Until the lions have their own lawyers, the law will continue to protect the hunter”, (Forum of Animal Law Studies) (2019) - DOI https://doi.org/10.5565/rev/da.399

6 National Environmental Management Act 73 of 1998
The primary legislation within South Africa relating to the protection of animals is the Animal Protection ACT (APA). The Act was passed in 1962 and is thus relatively outdated. The Act provides protection to most categories of animals but fails to protect wild animals and fish. The primary problem with the Act is that it whilst the Act is extremely wide in its scope of unlawful actions towards animals – it is typically imprecise and vague in its descriptions of these offences. The Act makes treatment that causes "Unnecessary Suffering" unlawful yet fails to define when such suffering would be considered necessary or unnecessary. It would be difficult to argue that the conditions animals endure within factory farms fails to constitute 'suffering', but is this unnecessary suffering?

The issue of whether the production of low-cost meat within South Africa is a reason for the extensive suffering of such animals is highly questionable, yet there has never been a prosecution nor conviction of any animal abuse matter relating to the meat production industry. There is thus a seemingly strong bias in the manner in which this act is enforced – with it typically only being used to protect domestic 'companion animals' with little to no focus being placed on the widescale and potentially 'unnecessary' suffering of factory farmed animals.

The Status of Animals Within South Africa Law

If we are to protect animals adequately, the animal rights project must focus on conferring upon animals the status of legal personhood. This status would entitle animals to the rights found within the Bill of Rights, as opposed to the mere prohibitions on certain forms of their treatment as legal objects within the APA. This is important as the status of legal personhood is required before legal rights may be conferred upon a particular being. Section 8(2) states that the Bill or Rights binds all natural and juris-

tic persons. It is therefore necessary to inquire whether animals may through legal interpretation be classified as natural persons. Animals are at present classified as legal objects, things or property. This is due to the traditional orthodoxy of viewing membership of the human species to be both necessary and sufficient for inclusion as a legal natural person.

In his textbook, Sinclair defines a person in law as being an, 'entity or association which is capable of having legal rights and duties'. This definition is relatively well accepted, with the only contention being whether the entity must possess both rights and duties or if merely one of the elements is sufficient for personhood. I would contend that it is clear that the law does confer personhood upon those who merely possess rights but not duties – such as children or the mentally impaired. Our law thus recognises at present all human beings as legal subjects and confers upon them rights irrespective of their ability to simultaneously possess duties.

It is further worth noting that companies may be afforded the status of legal personhood under our law as juristic persons. This highlights the fact that entities which are not human beings may attain the status of legal personhood through legal fictions. The law is therefore willing to grant legal personhood to entities outside of purely human natural persons.

It should therefore be apparent that barring any legitimate argument that the category of human being is exclusively deserving of special treatment – any being capable of possessing either rights or duties – but not necessarily both - could also be considered a legal person and thus afforded all the protections afforded to such entities under our law.

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11 Ibid at 5.
I shall now demonstrate that according to our existing legal framework, it appears that animals possess interests of their own that give rise to direct duties against us.

These direct duties seem to imply that animals possess rights against us. As a result, they may be considered legal subjects as opposed to legal objects. Thus, should there be no convincing argument that legal personhood be restricted to merely the category of human beings (or companies) – then animals appear capable of attaining the status of a natural person and acquiring the rights which such status bestows.

The Underlying Implications of Our Existing Legal Framework

Animals in South Africa are classified as mere objects of our law, with their protection stemming only from prohibitions placed on certain manners of treatment within the Animal Protection Act. A logical question that follows is, if the protections provided to animals within this Act are being placed upon mere objects of the law – what is the underlying rationale for such protections? Has this Act elevated animals to the status of rights bearing persons, or are the prohibitions relating to animal treatment merely in place to protect human sensibilities?

The Animal Protection Act under Apartheid approached the issue of animal’s rights in an indirect manner – prohibiting cruel treatment of animals in order only to protect human or societal interests. This was confirmed in S v Edmunds\(^\text{12}\) where Miller J stated that the object of the Act was ‘not to elevate animals to the status of human beings but to prevent people from treating animals in a manner that would offend the finer sensibilities of society.’\(^\text{13}\)

The indirect rationale for the protection of animal interests is however flawed. If the reasoning for our implementation of the APA is merely to protect our own sensibilities, then one must question why private acts of cruelty towards animals are also impermissible. If an individual were to derive enjoyment from the torture of animals in the privacy of his home, this act would still fall within the ambit of the APA as unnecessary suffering.

In addition, we do not in a constitutional democracy find it acceptable to restrict the actions of an individual merely because such actions may offend the sensibilities of others. Our individual rights to freedom of speech, religion, belief and opinion are all protected within reasonable limits from the feeling’s others might have towards our behavior\(^\text{14}\). The underlying rationale behind the APA must lie in the reasons why we possess our strong sensibilities concerning the prevention of cruelty to animals in the first place – as opposed to the rationale being the mere protection of these pre-existing sensibilities themselves.

\(^{12}\) S v Edmunds 1968 (2) PH H398 (N).
\(^{13}\) Ibid H398, 758.
It may be possible to object to this point by asserting that since the slaughter of animals is not regulated by the Act, the Act does indeed aim to merely protect our own sensibilities rather than the direct interests of the animals. This is due to these animals being subjected to such forms of treatment outside of the public eye. I would assert that this oversight concerning the slaughter of animals can be explained in 2 ways.

1. The Act is severely outdated having been assented to in 1962. This was prior to the advent of modern factory farming methods and thus the need to legislate directly against such practices was not yet foreseen.

2. Many of the manners of treating animals within modern farms would constitute criminal offences under the APA - such as the unnecessary suffering caused by inadequate space found within battery cages. However, there is a lack of public and political support to prosecute such practices due to the vested societal interests in keeping mass meat production affordable and accessible – a reason which is trivial in comparison to the scale and severity of suffering which results. The lack of prosecutions under the Act should not be seen as confirmation of the indirect duty rationale, but instead a demonstration of our unwillingness to confront our collective complicity in the causing of such ‘unnecessary suffering’. The view of the Act as having an underlying indirect rationale exists only as a result of our collective unwillingness to recognise that the Act logically entails a ‘direct duty’ view towards the protection of animals.

A different argument for an indirect duty towards preventing animal abuse is that we protect animals so as to avoid developing a disposition within ourselves of cruelty and violence which may spill over into our relations with our fellow human beings. This was expressed within Immanuel Kant’s refrain, “Yet, behaviour towards animals has an impact on the actions of individuals towards other humans: he who is cruel to animals becomes hard also in his dealing with men ... Tender feelings towards dumb animals develop humane feelings towards mankind.”

This idea has some merit – as there is extensive research demonstrating that ill treatment of animals does indeed increase the propensity of individuals to also harm their fellow human beings - with animals typically serving as a testing ground for violent offenders in their youth before moving on to harming other humans later life.

It is further worth noting that slaughterhouse workers have been documented to experience PTSD like symptoms, as well as displaying higher incidences of domestic violence, alcohol and drug abuse.

It is therefore not just animals who suffer under these cruel conditions, but also the workers within the meat production industry themselves.
The correlation between harmful treatment of animals and subsequent harmful treatment of humans cannot be explained away in any manner other than to recognise that animals are sentient creatures capable of suffering. Their suffering being similar enough to our own, that to commit acts of cruelty upon them is similar in nature to committing acts of cruelty upon fellow human beings. The similarity in the interests of animals and that of human beings creates a sufficient link that acts of cruelty towards animals would likely spill over into acts of cruelty performed upon human beings – or unhealthy coping mechanisms such as drug and alcohol abuse. It is the sufficient similarity of interest that both animals and human beings possess in not being harmed that grounds our legislation in preventing animal cruelty.

Whilst the traditional orthodoxy has been that the APA was created in order to protect our own sensibilities (indirect duty), It seems difficult to explain how our sensibilities against animal suffering can emanate from anything other than the recognition that animals deserve protection for their own sakes rather than our own due to their sufficiently similar interests to our own. When we witness an animals suffering, we recoil at the suffering due to our recognition that the suffering of animals resembles our own. It therefore appears that the indirect rationale does not find support in the argument for protecting our public sensibilities or our desire to merely avoid developing harmful dispositions within ourselves.

We must recognise the underlying value that we protect animals due to our recognition that they are beings capable of suffering and the infliction of suffering upon them is unacceptable due to the resemblance of their suffering with our own. There is a resulting direct duty to not harm animals as opposed to the nonsensical indirect duty that has formed the basis of our law in the past. This change in underlying rationale for why we attempt to protect animals from harm has found judicial confirmation in a recent 2017 Constitutional Court case involving the SPCA19.

The court ruled in obiter that the underlying reason why our legislation attempts to protect animals is not to safeguard the moral status of humans, but instead to provide recognition to the intrinsic value of animals themselves.

The Entailment of Legal Subject Status Arising Out of a Direct Duty

The recognition that the APA Act exists for the sake of animals themselves, and not to protect our own human interests has a number of important consequences. The fact that animals have interests in themselves against being harmed, places upon us direct rather than indirect duty to prevent them being harmed. This would also seemingly entail the that animals have a correlative right not to be subjected to suffering at the hands of human beings. If we have a direct duty to not harm animals, then this also seems to imply that animals have a right against being treated cruelly by humans. It is this point which raises the fundamental problem of treating animals as objects rather than subjects within our law.

19 National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another 2017 SACR 284 (CC)
The fact that animals have an interest against being harmed, imposes a direct duty upon us to not harm them, and thus their ability to possess a correlative negative right against us harming them makes the assignment of animals as mere objects of law (property) nonsensical. An object of the law cannot possess a right against other subjects. This argument seems to suggest that the present status of animals as mere legal objects is ripe for challenge.

The contention that animals cannot be included as legal subjects has typically rested on the conception that they lack the ability to possess and respect duties towards other legal subjects. A cat for example cannot enter into a contract or be held liable for delictual damage to a torn-up couch. Yet, within our existing legal framework there are already legal subjects who possess rights but not duties. Children for example have interests that give rise to legal rights – but may simultaneously also not possess duties. I thus contend that for legal personhood to be conferred on a thing it must possess either rights or duties – but need not possess both. As the situation of animals is analogous to children in that their interests give rise to rights – we must ask on what basis is natural personhood granted to children but not animals?

It appears from this discussion that animals have inherent interests which give rise to a direct duty to respect these interests. I would like to assert that these interests seem to imply that animals may indeed be considered a legal subject within our law.

Therefore, by implication of our current legislation, there appears to be a strong case for animals to benefit from all relevant rights contained within the Bill or Rights due to animals being legal subjects. However, at present animals are not afforded these rights despite their implied legal subject status. This exclusion demands an appropriate justification or else risks being arbitrary.

The Inclusion of Animals within the Bill of Rights

The new South African Constitutional order has been described by Karl Klare as one of “Transformative Constitutionalism”20. As a result, the Constitution in South Africa was not designed to entrench the existing status quo, but instead seeks to fundamentally transform all relations within the land.

One of the most important changes is the reaction of our constitution to the past unequal treatment bestowed upon certain classes of human beings on arbitrary grounds. Black South Africans were treated as inferior to white South Africans on the arbitrary basis of race alone. Discrimination on the grounds of race is now considered to be morally arbitrary. The primary issue with Apartheid was that individuals were treated differently on the basis of characteristics which had no relation to the reasons for such treatment itself.

The new constitutional order we find ourselves within rejects this form of arbitrary discrimination and insists that any differential treatment must be based on grounds that provide adequate justification21. Having already established that animals seem capable of legal personhood in resulting from their interest giving rise to negative rights against humans, one must proceed to ask what is the basis for excluding animals from the rights which may be applicable to them within our Bill of Rights?

If the Constitution excludes animals from such rights on an arbitrary basis, then the Constitution would be committing the same offence that South Africa’s Apartheid laws committed on the basis of race.

One such example of the explicit exclusion of animals can be found in the Section 10 right to Human Dignity.

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20 Karl Klare ‘Legal culture and transformative constitutionalism’ 1998 SAJHR 146-188
If animals were to be recognised as possessing inherent
dignity under the right to dignity, it may be possible
that the egregiously undignified conditions found within
factory farms would cease to be tolerable in modern
South Africa.

It should be noted from the outset that this right
explicitly restricts itself to the human species within its
title. The right to dignity may have many interpretations,
but one interpretation that has found favour in South
African courts is that, ‘dignity’ is essentially about the
recognition of worth and the consequent treatment that
must be accorded to such individuals who have such
worth. As past regimes have sought to exclude certain
types of individuals from this recognition of equal worth,
the present day exclusion of animals from this recognition
of equal worth must have some rational justification.

The denial of the right to dignity and all other
potentially applicable rights, will only be justifiable in
the new constitutional order if there is a rational reason
to do so. If we have chosen to exclude animals without
any rational justification, then our current Constitution
will be committing the same arbitrary preference for one
group over another that occurred under the Apartheid
regime.

Why Do We Exclude Animals?

There are two general approaches that can be taken to
justify why the right to dignity is restricted to ‘Humans’.
The first is the Category Approach and the second is the
‘Rational Agency Approach’.

The Category Approach

This approach simply asserts that human beings have
inherent dignity and worth resulting from their mere
membership of a particular species – Homo Sapiens.
Thus, being a member of the Homo Sapien species is
both necessary and sufficient for inclusion within the Bill
of Rights and the Right to Dignity in particular. The Cat-
egory approach often seems to be the underlying reason
for the exclusion of animals in our Bill of Rights as all
human beings are considered to be included within
its ambit irrespective of their individual traits such as
intelligence, gender or race. So long as one falls within
the one overarching category of Homo Sapien one is
entitled to the protections afforded by the Constitution.

This approach is wholly unsatisfactory as it provides no
rational justification for such preference as this approach
seems no better than to arbitrarily elevate one gender,
race or sexual orientation above another. There is no
difference between how a racist affords his own race
superior treatment through an appeal to the arbitrary
category of race, and how a speciest affords his own
species superior treatment through an appeal to the
arbitrary category of species. If our constitutional
democracy is committed to a culture of justification,
then we require a better reason for treating one species
better than another within the Constitution.

The Rational Agency Approach

A more promising justification lies in identifying the
particular characteristics which the species of homo
sapiens possesses that can justify the exclusion of
animals from the right to dignity. The most common
characteristic that is offered is the human capacity for
rational agency which seemingly distinguishes humans
from other animals.

The primary problem with this assertion is that a
separate argument is required to justify why the capacity
of rational agency is enough to justify the possession of
a right to agency. One might ask what it is exactly about
rational agency that entails a right to dignity or superior
treatment in law? It further seems troubling that beings
which possess the rational agency capacity define this
capacity as being the requirement for differential
treatment – much like how a white male may have
defined the characteristic of ‘whiteness’ as being the
required characteristic for superior treatment under
Apartheid. Animals possess many distinguishing
capacities and characteristics that humans lack (Echo
Location, flight, retractable claws), why should these
characteristics not be sufficient for dignity when our
arbitrarily defined rational agency capacity is deemed
sufficient?

23 David Bilchitz op cit note 14 at 52
24 P Singer (ed) In Defense of Animals (1985) 9
Even if one is to accept that rational agency is of a particular value in relation to dignity, it is not entirely clear that animals lack this capacity completely. The possession of rational capacity can be said to occur on a spectrum as opposed to being an absolute capacity one either possesses or lacks. Many factory farmed animals are indeed capable of learning and innovating – with pigs having been shown to be cognitively complex and both sharing and exceeding many traits found within animals we traditionally consider to be intelligent.

If we intend to make rational agency the sole distinguishing feature for recognising dignity and by extension worth then we must afford animals degrees of worth or dignity in relation to the degree that they possess rational agency.

Furthermore, even if one were to accept that rational agency is an all-or-nothing capacity, it is not clear that all human beings possess this capacity themselves. Many human beings may lack rational agency – such as infants, the senile or mentally incapacitated – but we do not consequently remove from these individuals their right to dignity as a result. If we are prepared to afford dignity to such humans who lack this necessary and sufficient characteristic for Dignity – then we should likewise afford the same recognition to animals or risk falling back into the arbitrary category approach.

Our natural disposition is indeed to find the assertion of treating animals with equal worth preposterous – but this inclination is without justification. We must be careful of our tendency to afford better treatment to those who are similar to us – our species – as a result of a natural affinity or social programming. Indeed, such natural affinities towards one’s own race was once a justification for superior treatment of one race over another. We should not commit the same mistakes in relation to different species. Animals should be afforded equal protections and worth under our Constitution until a satisfactory justification can be provided for why animals should not receive such equality of treatment or else risk violating the culture of justification our new Constitutional order requires.

Implications of this New Recognition

South African society is nowhere near being ready to make the changes required to give effect to the full recognition of animal dignity and their respective rights. As a result, were our lawmakers to ban consumption of meat generally there would likely be a wholesale disjuncture between our laws and the *boni mores* of our general society. Such laws would likely result in societal chaos and constitute too drastic a break from the ‘Continuity of our Laws’.

Some may also object to the full recognition of animals rights on the cultural and racial grounds. Thaddeus Metz has suggested that to afford full constitutionally recognised personhood to animals would serve only to undermine many African cultural practices that involve the ritual slaughter or consumption of animals. African cultures have throughout the Apartheid regime been undermined, and to outlaw such practices in modern South Africa would serve only to negatively judge and suppress these African cultural practices in the present. Due to the damage which has already been inflicted on African cultures in the past, to add modern legal prohibitions on such practices may be untenable.

In relation to the cultural objection, my response would be that that not all cultural practices are worthy of protection. Individuals should be free to express their cultures in whatever manner they wish, but this should never be done at the expense of another non-consenting being. It is unacceptable to allow a given culture to inflict pain, suffering and death upon another person who does

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not consent to such treatment. Culture is simply an insufficient reason to justify the killing of an innocent animal for the trivial purposes of taste, ornamentation or religion.

In relation to the disjuncture between the law and societal attitudes objection, I believe that a gradual process of recognising animal rights would be most appropriate and effective. In a similar fashion to how many rights within the Bill of Rights are tasked with ‘progressive realization’. The full realization of animal rights may be impossible at present, but our society should commit itself to the full realization of these rights as quickly as possible. Our society could establish a minimum core of rights which cannot be violated in the interim. This would set a standard upon which the treatment of animals may not fall beneath.

Whilst such an approach would likely not be able to give immediate effect to an animal’s right to life, within the meat production industry the worst and most unnecessary atrocities such as battery cages, sow crates, branding and castration may be found to violate alternative rights such as bodily integrity at present. Through such a progressive realization program, the worst forms of abuse committed upon animals may be curtailed in the interim.

In conjunction with banning the most egregious forms of animal abuse currently committed within factory farms, widescale government education programs should be implemented to sensitise the general public to the lives of animals and the varieties of abuse which they are subjected outside of public sight.

The mere act of informing the public of the practices which occur in the production of their meat would likely result in greater public interest and debate concerning how we treat animals. As the public’s awareness of the true conditions which animals are subjected to increases and in turn as societal attitudes increasingly shift, further recognition and implementation of animal rights may subsequently become politically feasible.

Finally, as a matter of economic policy our government may seek to implement a ‘sin tax’ on factory farmed meat so as to reduce the economic incentive to purchase such meat. Such a tax would also serve to align the cost of factory farmed meat with the suffering it causes. Animals reared in more acceptable conditions may be excluded from this tax thus eliminating the economic incentive for intensive farming practices.

The revenue derived from such taxes may be used to fund the aforementioned educational programs as well as subsiding the production of plant-based alternatives to the meat industry.

The ending of the worst forms of abuse inflicted upon animals should thus be the immediate focus of a progressive realization of animals rights, with the ultimate full recognition of animal interests – including the right to life – being the final goal. The first step in this process will however lie in our collective recognition that the exclusion of animals from our Bill of Rights is arbitrary and without sound justification due to animals possessing rights against us which gives rise to their status as legal persons.

Much of the speciesist discrimination and the subsequent harm we inflict on animals is indistinguishable from that of racial discrimination. We should be wary of repeating these same mistakes within a new context. The inability of animals to verbally protest should not be a sufficient reason to ignore their legally implied interests.
“Non-human animals are morally considerable entities because of our mutual ability to feel pain and pleasure.”
Patricia Mapipi (Entrant)

Student: University of Cape Town, Honours in Philosophy.
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Patricia was one of the entrants of the Essay Competition with her essay entitled:
"Is there a way to successfully separate all and only humans from all other animals with regard to their moral considerability?"

"My plans for 2020 are to complete my degree and apply for Masters in the second semester. Since the competition, I have started working part time for a vintage fashion company which I absolutely adore!

The reason why I entered the competition is because I hope, in my small way, to get people to think critically about their interactions with animals. Even though most of us are fond of them or use them for various purposes (like working canines in the police force, or eating animal meat for sustenance), we rarely think about using the same yardstick (as we do with humans) when it comes to their moral considerability.

We have this preconceived notion that we are superior and because of this we tend to maltreat most of our non-human companions (just look at the fact that we have created factories where they perpetually artificially inseminate cows just to get milk until they are completely spent then go off to slaughter!).

By getting people to understand that non-human animals have moral considerability too I hope to change our "superiority complex", for lack of a better phrase, and improve our interrelations with them. Animals are worthy of protection because if they don't thrive neither will we! From pest control to being active members of our entire ecosystem in various forms, they are invaluable and need to be respected."
Is there a way to successfully separate all and only humans from all other animals with regard to their moral considerability?

I. Introduction

My first shocking encounter with the intricate, multiplex system of relations that exists between human-animals and non-human animals occurred at the age of seven. The neighbour’s dog had just had a litter of beautiful, black spotted Dalmatian puppies and my mother could not resist but to bring one home. Needless to say I was thrilled. One afternoon, while I was playing with Beam, the tiny pup got a little rambunctious and left a small scratch on my palm. When dad got home and heard the news, he was furious. Without any hesitation, he stormed outside, picked Beam up and threw him against the burglar bars on the front door. Moments later I heard him yelp and began to cry, pleading with my mother to make him stop. Like a law enforcement officer, she was meant to ban the cruel treatment that my dad was dishing out against the little, furry life form that had brought so much joy into my life. She, in turn, got a little heated with me for not confronting him myself. From that day on I swore I would. Who knew that two decades later, that day would actually come.

Fast-forward to the summer of 2018 and I’m a young adult, aged 26, back at home from college. At this point dad had five dogs. Over the years, the crime rate had gone up considerably in and around the area hence the need for the extra muscle. The dogs served one purpose only: security. Everything else was superfluous. Unfortunately, a chicken coop was introduced into the back yard and, worse still, it wasn’t secure so the chickens would escape and roam the whole yard freely from time to time.

Sometimes Bingo, Lucy, Shumba, Foxy and Grey would completely ignore them or chase them for fun, and other times they ate them. Nevertheless, the evidence of their indiscretions was always left behind in the form feathers. On one such occasion during my stay, dad flew into a rage and began to hit them with a thick metal rod, then started picking up stones and throwing those when he couldn’t catch them.

First came the profanity from the car as he noticed what had happened. Then came the hard, fast-paced footsteps and then yelping followed by the sound of the dogs trying to run away. After a moment of, hearing, then seeing, this scenario unfold through my bedroom window, I screamed for him to leave them alone and ran outside. He tried to chase after them but I was much faster. I stood between him and his supposed source of irritation. Every time he went past me, I would just repeat the cycle again and yell 'don't hit them, hit me!'

Just before I could get there, I had undergone such an explosion in moral crisis during those split few seconds, that I could almost feel every stroke of the rod, every smack of the stone, as if they had landed on my own skin. I even told him so, I told him that every time he hits them it’s like he is hitting me. To me, we were all his children, so if
he wanted to blame someone he could blame me, punish me, because at least I was the only one of us who was "rational" enough to offer a response which was intelligible enough to calm him down. I had a voice, I could express my emotions in words and I could protect them. And so I did. It's funny, but in those fleeting moments, to me, my dad was more animal than the dogs were. I knew he wasn't a bad man. So what had gone so horribly wrong?

This is where the very common (and at times very toxic) distinction, mentioned earlier, between human and non-human animals comes in handy. The major purpose of this essay is to determine whether we can successfully separate all and only humans from all other animals with regard to their moral considerability. This will be done by, predominately, drawing on the work of Peter Singer, Cora Diamond, David DeGrazia and Carl Cohen.

After pouring over quite a substantial amount of material, it seems that the criterion that is at the forefront of giving most, if not all, human-animals moral considerability is their propensity to be self-aware. Singer (2011:85 & 89-90) for example, distinguishes between merely conscious beings (i.e. non-human animals, newborn infants and some intellectually disabled humans) and beings that are 'fully' conscious (i.e. the majority of adult human beings and some sentient animals). According to him, the latter are rational and self-conscious which makes them different and gives them precedence over everyone else.

Like Geppetto’s Pinocchio, it takes the wave of a magic fairy’s wand to cast the spell of “you are a real boy” and ‘viola!’ suddenly you’re special! My wish is to dispel any notion that we are the only ones who deserve moral considerability and demonstrate, in a manner that is adequate and satisfactory enough I hope, that non-human animals are morally considerable entities because of our mutual ability to feel pain and pleasure. In my view, such an idea has more plausibility notwithstanding the fact that we can distinguish between non-human and human-animals on the basis of intellect should we wish to do so. As Rachels (2004:169) points out, if an entity possesses a particular attribute (such as the capacity to feel pain), then there may be a direct duty to treat it in a specified manner (not to torture it), even if that same entity lacks other characteristics (such as autonomy).

It is vital to give non-human animals some form or sense of moral considerability and moral status, otherwise there is very little left to stop the maltreatment that they are very likely to suffer at the hands of human-animals. This argument is clarified by DeGrazia (2008:183) with the following statement: 'If Mimi the cat has moral status, then to treat her merely as a tool, a resource for amusement, or property with no independent regard for her interests is to treat Mimi wrongly.'

II. The Separation of Humans from Animals

DeGrazia (2008:183) looks at ‘personhood’ and describes what it takes to be part of the human-animal community: ‘it may be argued that personhood is a cluster concept that serves as a summary place-holder for other concepts such as moral agency, autonomy, the capacity for intentional action, rationality, self-awareness, sociability, and linguistic ability.’ Cohen (1986:866) goes as far as to claim that since non-human animals are deficient in their capacity for free moral judgment ‘they are not beings of a kind capable of exercising or responding to moral claims. Animals therefore have no rights, and they can have none.’ Put succinctly, animals cannot make rational decisions and this means we can simply throw any notion of them ‘having rights’ out the window in our interactions.
with them.

To be fair, even though he does say they have no rights, he does not preclude the fact that they should be treated with respect (i.e. should be regarded as morally considerable entities). My brief response to Cohen (in particular, but Singer is also included on a less agitated level) is that being conscious or having the capacity to make judgments between what is right and wrong is nothing to be chuffed about. Humans have the aptitude to do this because they NEED to, animals don’t. Am I saying that, in this regard, we are devolved and not evolved? Such a deduction would be correct. Perhaps, at this point, I should venture to stipulate a few reasons why such an inference has been made from my side.

If you look carefully and closely enough, you can’t help but to come to the conclusion that the non-human animal is the epitome of unbridled perfection. They just act in accordance (and in complete fluidity) with the rest of nature. They can do no wrong or right. Our rationality actually makes us the inferior ones in this case because we are obligated to stop and think, to make a supposed well-informed decision, instead of purely acting in a coherent manner with everyone and everything else. As Regan (1983:152-153) points out: ‘a moral patient lacks the ability to formulate, let alone bring to bear, moral principles in deliberating about which one among a number of possible acts it would be right or proper to perform...Only moral agents can do what is wrong.’

Cohen (1997:95), himself, reiterates the same point by saying that ‘rights are of the highest moral consequence...but zebras and lions and rats are totally amoral; there is no morality for them; they do no wrong, ever. In their world there are no rights.’ Such a claim stems from his example of a baby zebra being slaughtered by a lioness and the fact that we do not intervene under such circumstances, as grotesque as they might seem to us: ‘Do you believe the baby zebra has the right not to be slaughtered by that lioness? That the lioness has the right to kill that baby zebra for her cubs? If you are inclined to say, confronted by such natural rapacity-duplicated with untold variety millions of times each day on planet earth—that neither is right or wrong, that neither has a right against the other, I am on your side’ (Cohen, 1997:95).

Still, and this is the second reason why non-human animals have more going for them than human-animals do, I wish to contend in direct contradiction to Cohen that they do have a sense of morality but their ‘mechanism’ is self-regulating in a deterministic sense. Taking his example, yes, it is an undisputed fact that lions are carnivorous by nature, but don’t they still care for their young? They know where and when to put ‘the brakes,’ if you will, on their predominantly ferocious and predatorial nature. This, is the natural flow of morality that I am trying to point towards and why, as strange as it may seem, I think they are actually superior to us. They simply have no inclination or will (or capacity, thank goodness!) to control and discombobulate their surroundings, their existence is harmonious because they live intuitively, not ‘intellectually.’

Taking this into consideration makes it clear that having a sense of morality doesn’t necessarily depend on being self-reflective. In fact, how successful are we in neatly demarcating between which actions are right and wrong in our lives anyway? That being said, I do agree with...
Cohen that in the particular scenario mentioned above, and in many others just like it, non-human animals would have ‘no rights.’

III
Nevertheless, I concede to this only because it is an interaction between two non-human animals, not between a human-animal and a non-human animal. In dealings such as the latter, they should and frequently do have rights (as protective measures against any form of abuse towards them by ‘sapient’ beings). The reason why they ought to, nay MUST, have rights and be considered as entities worthy of morality is packed with a powerful punch in the following statement made by Cora Diamond: ‘We are blind to our own exploitation and oppression of the other group. We are blind to the fact that what we do to them deprives them of their rights; we do not want to see this because we profit from it, and so we make use of what are really morally irrelevant differences between them and ourselves to justify the difference in treatment’ (Diamond, 1978:465).

Now, why would animals be worthy candidates of rights and moral considerability even though they have no sapience, no long-term goals, desires or a sense of the future? As the brief hint in the previous section indicates, it is our ‘mutual capability to suffer. Some harms done to moral patients are of the same kind as harms done to moral agents’ (Regan, 1983:239). Non-human animals need protections from abuse just like we do. It’s sentience, not sapience, that should count in the realms of moral considerability. As Sachs (2011:96), rightly states ‘one infers from the fact that [pigs] are sentient, that they have moral status, and from the fact that [pigs] have moral status to the fact that [pigs] have a claim to not be caused unnecessary pain.’ Diamond (1978:465-466) palpably agrees with this sentiment: ‘we must give equal consideration to the interests of any being which is capable of having interests; and the capacity to have interests is essentially dependent only on the capacity for suffering and enjoyment. This we evidently share with animals.’

Some unequal consideration theorists do agree that non-human animals are morally considerable entities (for the reason just mentioned above) but insist on degrees, with humans inevitably lodged at the top because they have more interests and inherent value. DeGrazia (2008:192) gives us a sense of this by looking at the two-tier model and sliding-scale model:

One picture is a two-tier model, according to which persons have one level of moral status while sentient nonpersons have a lower (but nonzero) level of moral status. A second picture is a sliding-scale model, according to which there are any number of degrees of moral status. On this view, the degree of consideration to which you are entitled—that is, the degree of moral weight your interests are to receive in comparison with others’ comparable interests depends on the degree of your cognitive, affective, and social complexity. Thus, persons have the highest moral status, Great Apes and dolphins a bit less, elephants and monkeys somewhat less than apes and dolphins, middling mammals still less, rodents less, and so on down through the phylogenetic scale.

That being said, one cannot help but to question the attempt to put beings on a spectrum because it seems, as Singer (2011:131-132) himself notes, that more and more animals are being included on the one side (fully conscious side). So if our lack of knowledge about other beings is the [only] dependent variable at hand and the classification process keeps on changing as the ‘gap’ gets bridged,
gets smaller and smaller, then what is the use? Equal Consideration (EC) gets the SAME results faster! With this mind, the intuitive feeling that comes across is that, at the heart of the matter lies not sapience but a simple biological preference. Let's follow McMahan (2005:379) on this score, as he says that claims about ‘our common humanity, our common life, our common fate, our fellow creatures, and the importance of being human seem, when we press for clarification or elucidation, either to be translatable into claims about morally significant intrinsic properties or else to dissolve into empty notions of a moral status that is created by imagination or by some form of caring.’

And he goes on to say that ‘the notion of a human being, divorced from its basic biological meaning, has no determinate substance there at all: it is merely a rhetorical ornament that takes over the function of persuasion when the argument runs out’ (McMahan, 2005:379).

Diamond (1978:474) seems to agree and takes it even a step further by including non-human animals in the category of the biological. She states that ‘we are all equally animals’ and therefore ‘have an equal right to have whatever our interests are, taken into account. The starting point for our thought is what is general and in common and biologically given.’

III. Conclusion

In the end, even though one can ‘successfully’ separate human-animals from their supposed non-human counterparts to a very small degree (if particular standards and criteria are taken into account), I am of the view that it is very difficult to do so in the realms of moral considerability if our shared capacity to suffer is invoked. In summary, even though we may make various distinctions, we ought not to do so. The various repercussions that come enmeshed with incorporating such a thin and nuanced social construction into our everyday dialogue and interaction with these fellow creatures of ours is excessively dire, as the example in the beginning of this paper clearly demonstrates, albeit on very a small scale. At this point it would be apt to close off with following words from Rachels (2004:169) which summarises the whole premise of this essay beautifully:

There is no characteristic, or reasonably small set of characteristics, that sets some creatures apart from others as meriting respectful treatment. Instead we have an array of characteristics and an array of treatments, with each characteristic relevant to justifying some types of treatment but not others. If an individual possesses a particular characteristic (such as the ability to feel pain), then we may have a direct duty to treat it in a certain way (not to torture it), even if that same individual does not possess other characteristics (such as autonomy) that would mandate other sorts of treatment.

*Notes*

1 All credit goes to Cora Diamond for the term ‘human-animal,’ since it was reading her paper that familiarised me with it (Diamond, 1978:466).
2 A quick and honourable mention goes to McMahan (2005:362) for the label and his treatment of the ‘fellow creature’.

IV. Bibliography

T Regan The Case for Animal Rights (1983) 152.
“There is space for us to oppose all forms of bias.”
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Megan was one of the entrants of the Essay Competition with her essay entitled:
“Speciesism: human supremacy and the animal afterthought”

“Since the competition, I have started the final year of my DLitt et Phil Criminology. I am still working as a Teaching Assistant at the University of South Africa.

I entered the competition because I believe animals are our equals and are worthy of being protected. It is not only important to incorporate this mindset into our moral system, but to officially recognise animals and environmental concerns under law. Currently, animals are legally vulnerable and are treated with less importance in comparison to humans, and it is time for this to change.

Each person should have an ethical and legal responsibility to safeguard their environment and the animals therein, and punishment should be meted out if the environment or animals are harmed. What occurs in the environment has a serious impact on humans as well as animals, and the protection thereof is thus a civil rights issue. A healthy environment is necessary for our survival.”
Abstract

Habitually regarded as property, animals are a marginalised group with limited rights and little protection. This leaves them at the mercy of humans, and open to neglect and abuse. Since we cannot speak of one type of marginalisation without addressing others, it becomes evident that an intersectionality exists between the rights of animals and the rights of other beings. Crimes against animals, including those domestic and wild, may thus be viewed as an unresolved civil rights issue.

These acts of mistreatment point not only to speciesism - the idea of human supremacy over animals, but also to a disconnect between humans and nature. One needs only consider companion animals to establish the emotional benefits of a bond between humans and animals. However, care must be taken for the value of an animal not to be judged in terms of its benefit to humans. An all-embracing approach is required whereby animals are not only awarded the legal protection that they deserve, but also recognised as the sentient beings that they are.

Keywords
Animals, animal rights, animal abuse, crime, speciesism, intersectionality.

The current status of animals

When contemplating the current status of animals, which includes both domestic animals and wildlife, it becomes clear that two key perspectives come into play – animals as property, or animals as sentient beings. The view of animals as property does not allow for the recognition of animals as having intrinsic worth and limits the scope of victimhood to humans only. There is, however, a growing need to increase the capacity for the legal and moral recognition of animals.1

Despite this, laws regulating animal rights are principally focused on protecting human interests and managing various human actions that are directed towards animals. Where the law is found to be lacking, it often falls to animal rights activists to bring awareness to issues for eventual incorporation into existing legislation.2 In this regard, animal law may currently be seen as a framework for humans to utilise animals, with provisions for what actions are deemed improper, exploitative or in violation of social norms.

However, this basis may be deemed inadequate, since importance should be placed on preserving all civil liberties - not just for the sake of humans but also for the benefit of animals and the environment as a whole.3 This would ensure a better balance between the rights of humans and animals, rather than the latter being just an afterthought in the context of human supremacism and prejudice.

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1 T Wyatt Wildlife Trafficking – A Deconstruction of the Crime, the Victims and the Offenders (2013) 67.
3 Nurse (note 2 above) 3-4.
Speciesism

The notion that humans reign supreme and animals should be relegated to the fringes of society speaks to a distinct type of marginalisation, which is known as speciesism. Like other forms of prejudice, speciesism refers to the erroneous belief that one group is better than another – in this case, that the human species is superior to the animal species.

Along these lines, animals are subject to oppression and violence in a similar way to other marginalised groups, such as women, disabled people, racial and religious minorities, and members of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community. Speciesism therefore intersects with other ‘isms’, including sexism, ableism, racism, homophobia and transphobia.  

Related to speciesism is the anthropocentric environmental philosophy, in which humans are the dominant kind and animals are left vulnerable to their whims. This may lead to victimisation and suffering for the animal, as well as being ethically detrimental to humanity. A hierarchy of victimhood may also exist, whereby certain animals are thought of as more valuable than others.

As an example, greater significance may be placed on rhinos and elephants as opposed to cows and sheep – and better efforts might be directed towards securing their well-being as popular and/or endangered creatures.

While highlighting speciesism demonstrates that animals should be our equals and are not objects for humans to use and abuse, it does not suggest that humans and animals should receive the same sort of treatment. For instance, humans and animals will not always have the same needs or interests. What is important is that equal regard is shown for their diverse needs and interests, without one dominating the other.

It is furthermore emphasised that concern for animal welfare is not an indulgence when compared to human welfare matters, as there is space for us to oppose all forms of bias. The philosopher Peter Singer stated in his book Animal Liberation, ‘I don’t see any problem in opposing both racism and speciesism, indeed, to me the greater intellectual difficulty lies in trying to reject one form of prejudice and oppression while accepting and even practicing the other.’

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4 <https://www.peta.org/features/speciesism-social-justice/>
5 Wyatt (note 1 above) 62, 76-78.
6 <https://www.peta.org/features/speciesism-social-justice/>
7 Ibid.
In fact, one might contend that for true justice to be achieved, humans should fight against all types of oppression and not purely those that personally impact their lives. This includes the marginalisation of animals, which may even be explored as a ‘final frontier’ civil rights issue.

On the other hand, some marginalised individuals, including disadvantaged South Africans, may believe that their welfare concerns are viewed with less importance than that of animals. For instance, research relating to rhino poaching has shown that some South Africans are of the opinion that animals like the rhino are given preference over ‘black rural lives’.

This denotes the serious inequalities that exist between humans in our country, and explains why certain individuals may even feel resentment at what they perceive as animals being treated better than they are. It may nevertheless be put forward that these crimes are not only an offence against the animal, but can also be considered a type of cultural victimisation for society and some of the members thereof.

These individuals’ cultural identities intersect with animals, which they see as a crucial part of their heritage that requires preservation and protection from harm.

**Crimes against animals**

As alluded to above, crimes against animals includes myriad offences, including those against wild or domestic animals. These incidents might involve neglect, abuse, exploitation, trafficking and killing, and the victims range from pets, livestock, animals in captivity, and wildlife.

As the causes of and motivations for these criminal acts are diverse, the prevention thereof needs to encompass engagement from multiple angles and disciplines, such as law, criminology, social sciences, education, government, non-governmental organisations and the public. Criminology in particular has the ability and duty to develop the definition of victimhood to incorporate all beings that are harmed as a result of criminal actions.

In accordance with the inclusion of women and racial minorities in the criminal justice system in recent history, animals too should be integrated.

Furthermore, comprehensive policy changes need to address issues such as poverty, unemployment, poor education and racism, which will counter opportunities and motives, and thus prevent crime. In terms of punishment, more attention should be paid to rehabilitation rather than retribution in order to address the root causes of this type of criminality and prevent recidivism. The current procedure of employing often short-term imprisonment to stop crimes against animals is excessively dependent upon proper policing, adjudication and punishment rather than uncovering the source of the issue and leading to systemic social changes.

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10 Wyatt (note 1 above) 169.
11 Nurse (note 2 above) 223.
Due to the prevailing speciesism and resulting apathy that exists in society, it is recommended that offences against animals be regarded as a serious priority crime, in its own category, to be dealt with urgently and comprehensively by the criminal justice system. This would aid in safeguarding animals as our equals and ensuring that harsher and more effective punishments are meted out for offenders that harm these sentient beings - not only stopping individual offenders temporarily but helping to prevent animal harm in the first place.

The human-animal connection

Emanating from the inference that animals are perceptive beings, capable of thinking and feeling, the next point to consider is the human-animal connection. While some may argue that this connection is based on our need for convenience or even on anthropomorphism (the projection of human qualities on to an animal), the researcher is of the view that social and personal relationships with animals can be established through reciprocity. In this regard, we may look to the cultural significance of animals as previously mentioned, as well as to the bonds that people form with animals, including family pets, support animals and service animals.

Research has found that having a pet can provide support for people who are experiencing considerable stressful events in their lives. Generally, having a pet can promote our physical and mental well-being – even for individuals who are not undergoing challenges. Those with pets are more likely to display healthier personality traits, greater self-confidence and less negativity. As a source of social support, pets can bring happiness to humans and encourage them to have better relationships with other people, thus reducing feelings of rejection and isolation. Similarly, special connections can be formed between service animals and their humans, including individuals diagnosed with autism, anxiety, depression and visual impairments.

According to the well-known autistic academic Temple Grandin, there is a definitive connection between the intelligence of humans and that of animals. For this reason, people who are frequently around animals may start to sense that there is more to them that others realise – including intellect, perception and memory.

She goes as far as to say that animals and autistic people have much in common, including having special abilities that neurotypical (non-autistic) individuals tend to either not notice or to be mystified by. There is thus an intersectionality between the perception of autistics and animals, in a manner that promotes a relationship of deep understanding between the two groups.

In addition to this, the intellectual and perceptual capabilities of some dogs in their roles as support animals are especially advanced - oftentimes far exceeding the abilities of humans. For example, seizure alert dogs are trained to predict seizures in their human companions by picking up on bodily changes that a human is unable to detect. While these dogs are able to sense an imminent seizure, including sometimes well before it happens, they are also capable of resolving potential problems by retrieving medication, summoning help or lying on top

of the person to prevent injury during a seizure episode.\textsuperscript{15} This demonstrates both superior thinking and problem-solving skills.

**Conclusion**

From the above discussion, we can deduce that animals are indeed exceptional sentient beings that are not inferior to humans. Each animal is important and should benefit from recognition and protection under the law, just as humans do. This will entail a comprehensive approach, including changes to legislation and more effective consequences for animal abusers. Most significantly, however, it necessitates a total mindset shift in which animals are looked upon as equals deserving protection, rather than as an interchangeable means to an end.

This method does not suggest that humans and animals have the same wants and requirements, but instead promotes the idea that the unique wants and requirements of animals should be taken as seriously as those of humans. As the species with all the official power, securing the safety of animals is our moral imperative – and action must be taken swiftly to defend them.

\textsuperscript{15} Grandin (note 13 above) 288.
“The lion doesn’t take more than it needs, and we shouldn’t either”
“Since the competition, I have finished my first year of veterinary studies and returned home to Canada for the holidays. For 2020 I will continue with my studies and plan on travelling more around South Africa.

When I first heard about the essay contest, I decided to enter but wanted to write about something that may not be immediately considered. I have always been interested in African wildlife so I felt it would be a unique idea to research. I then decided that would be my topic, giving perspectives from society, veterinarians, and from someone like myself who is originally from North America.

From poaching and illegal trafficking to disease outbreaks, there are numerous problems seen by those who deal with wildlife on a daily basis. With this essay I hope that giving a small glimpse into these issues will spread the word and make a difference. My message in my essay is that we must push for conservation of wildlife species and work towards sustainability and preservation.

I believe all animals are worthy of protection and it is important to conserve the wild places we have left.”
Abstract

African wildlife is facing numerous problems in regards to their perception and treatment not only within South Africa, but beyond our borders in North America as well. From the viewpoints of society we learn poaching, trafficking and human-animal conflicts are main concerns South Africans share on a relatively daily basis.

Veterinarians also share concerns for wildlife in regards to disease outbreaks and knowing when to make ultimately difficult ethical decisions. Finally, North Americans view the treatment of African wildlife through seeing the animals in circuses and zoos. The unique perspectives all share a common theme of needing to protect and preserve African wildlife.

Introduction

The use of animals has always been a unique aspect of human culture, whether it is for consumption, creating products, tourism or simply keeping them as pets. Domesticated animals are the most commonly sought-after species due to their value and marketability around the world. Within South Africa, wild animals are a unique aspect for ecotourism and brings in people from all around the world to marvel at the beauty of Africa’s greatest beasts. South Africa contains approximately six per cent of the global total of mammal species with the second highest number of threatened species totalling 284 species.

With these numbers in mind, it is frightening to see how wildlife is threatened by man’s activities. South Africa is estimated to bring in $62 billion rand a year through ecotourism. It is then easy to see how keeping and managing large areas of wildlife can become a financially fruitful decision for many South Africans, however it is not without its problems. Looking at how wildlife is managed and utilized for human benefit gives unique perspectives from different stakeholders. South Africa’s wildlife is viewed in different ways within society, the veterinary profession, and beyond our borders in places such as North America which all leads to a unique perception of treatment of these animals where conservation and protection is crucial. It is important to view the problems wildlife are facing by examining the problems first within society.

Societal Challenges Against Wildlife

South Africa faces many societal problems when it comes to preserving and protecting their wildlife from poaching, selling of animals in black markets, and human-animal conflicts. Poaching was originally utilized for providing bush meat as a source of protein, however it has now turned into the destruction of wildlife and ecology of South Africa. Society in general views poaching as a negative aspect and there are many who dedicate their lives to protect endangered species.

Publication Notes:
This essay was submitted with footnoting numbering errors. These have not been revised, and have been included as submitted.
Poaching is not simply killing or stealing threatened animals, but also selling exotic birds to black markets and the illegal harvesting of plants. Rhino and elephant poaching has gotten to critical levels where the military has gotten involved and people could be killed in confrontations with poachers. Poaching may not necessarily impact a single animal’s welfare but the impacts are felt at a population level. Excessive poaching of elephants for their ivory has led to skewed sex ratios as big bulls were targeted for their larger tusks.

The representation of large mammals in South Africa has shifted from one that imposed danger and beauty on someone who happened to walk by, to one of financial gain of ill intent. Poaching of these animals funnels into the illegal trafficking of these creatures through means of a black market.

The transnational wildlife market is worth an estimated $159 billion with over 350 million animals and plants traded a year, while an estimated six billion is illegal trade. The majority of these animals are sold to exotic collectors, game farms, laboratories, circuses and exotic meat dealers. This is also where poaching for ivory, bones, and other animal parts are sold for use in traditional medicines. The illegal animal trade has become so large, in the United States alone it is cheaper to buy a tiger cub than a purebred dog.

Animals have been used as representation of power for thousands of years and is seen today in the Middle East as a status for the wealthy, so it can be understood why owning a big cat or otherwise dangerous animal is well sought after. South Africa has provincial laws that attempt to regulate wildlife trade so it is a start in protecting the threatened animals. The battle to stop poaching and the illegal trafficking of animals is one that requires the utmost determination.

While society in general views wildlife of South Africa through news stories of large-scale poaching and trafficking, South Africans ultimately deal with the everyday struggles of living with wildlife and sharing the wild spaces they call home. Human-animal conflict is a tale as old as time where humans struggle to defend their livelihood against wildlife. Many tactics have been utilized over the years to prevent predators from eating livestock such as eradication, poisoning carcasses, and hunting.

These tactics unfortunately end up hurting the ecosystem as carnivores are wiped out in the areas these are employed. It has been suggested that better tactics would be to modify behaviour of carnivores, livestock and/or humans, and to mitigate activities of humans and animals in the same area. These conflicts are driven by social and environmental issues rather than financial losses so there are ways to successfully change minds and turn towards anti-predation methods that do not involve killing the carnivores.

Overall, I believe poaching and trafficking represent a large portion of the news stories we see coming out of South Africa, and this alone shows how large the problem is. I understand poachers are mostly local people who are trying to find money in any way possible, so a common solution I have seen employed is where jobs are created to protect animals instead. If there are opportunities to earn a living but also prevent the senseless slaughter of animals, I feel we have a winning solution. The issue with trafficking is that people are not educated on keeping wildlife as pets and that leads to lower welfare of the animals and more attacks on humans.
If people were educated on the fact that big cats and other African wildlife should not be kept as pets, I believe it would lower the amount of animals trafficked altogether. Education is also important and crucial to prevent the selling of animal products for medicinal purposes. Regarding the human-animal conflicts, I have heard of some great programs that are convincing tribes there are other ways to deal with situations rather than killing lions and other animals for eating their cattle. I feel with more programs like these in motion, we could lower the potential of these conflicts.

The viewpoints of society on these topics give us a greater understanding of how everyone views and treats wildlife differently and how we must use this knowledge to move forward in appropriate ways that suit the particular situation. It is also important to have animal professionals involved in these kinds of projects.

A Veterinary Perspective on Wildlife Challenges

As I am a veterinary student, I feel it is only fair to view African wildlife from the unique perspective of a veterinarian through controlling diseases and the ethics of dealing with wildlife. Veterinarians are the front line when it comes to zoonotic diseases and preventing these from spreading. A viral disease called rinderpest affects ungulates capable of causing dysentery, immunosuppression and possibly death.

Rinderpest is a zoonotic disease easily transferred to humans through close contact with domestic and wild ungulates. The contributions from veterinarians and other professionals were all integrated together to completely remove the disease from South Africa altogether in 1903. Veterinarians are constantly dealing with diseases in wildlife like rabies, foot and mouth and canine distemper to contain it and prevent it from affecting others. Veterinary research into these diseases and health of wildlife is crucial to the overall utilization of wildlife.
Veterinarians of South Africa deal with numerous issues concerning wildlife beyond disease control, mostly concerning ethical choices. For example, elephant populations within the Kruger National Park and other areas are rapidly increasing to the point there are too many that cannot be sustained in the national park areas. There is an ethical dilemma with this as the public would not permit culling of the population, along with understanding elephants being intelligent and social creatures so removing even a few from the herd would be traumatic.

However culling entire herds was a popular technique in the 1960’s along with translocating the animals, though it led to issues where stranglers would be traumatized as their entire herd had been killed. Therefore, veterinarians utilize an immunocontraceptive vaccine for female elephants that causes the immune system to produce antibodies that prevent fertilization.

I believe veterinarians are the key to dealing with a large proportion of issues pertaining to wildlife and domesticated species within South Africa. The prevention and detection of disease is critical to avoid massive outbreaks that could be transmitted to livestock and therefore affect not only animals but humans as well.

Additionally due to the increased number of trafficked illegal animals, it can make things even more difficult to avoid foreign diseases from entering South Africa.

Veterinarians are tasked with making ethical choices on a daily basis and to come up with unique ways to deal with situations presented to them. Therefore, I fully believe the veterinary perspective on the utilization and treatment of wild animals is extremely important to gain a full understanding of the problems African wildlife are facing. A perspective from outside of South Africa may also be useful in seeing how African wildlife is viewed to another part of the world.

The Perception of African Wildlife from North America

As I have lived in Canada for the majority of my life, I feel bringing a perspective from North America regarding African wildlife would help see how others generally view these animals. African wildlife is represented mostly by lions and other big cats, commonly seen in places like circuses or zoos. Animal welfare seems to be much more prevalent in North America than in South Africa, so it is interesting that wild animals are still kept in circuses. Animals in a circus are confined for the majority of the day with one to nine per cent of the day spent training or performing.

The forced movement along with human handling and excessive noise leads to stress, and the small areas they are confined to causes stereotypies and abnormal behaviour to occur. Stereotypies commonly seen in big cats are pacing, pawing and chewing, while elephants showed...
rocking and head bobbing. The Ringling Bros. is a large circus well-known in America for their large exotic animal display, but were exposed on their mistreatment of their animals, namely their elephants. The elephants were found to be treated poorly and exposed to electric shocks, bullhooks and three-day train rides with no breaks.

Due to the controversy, petitions were signed and circuses were boycotted leading the Ringling Bros. company to announce they were phasing out their elephants on top of lawmakers attempting to pass a bill stating exotic and wild animals cannot be used in travelling circuses. It looks like circuses involving wild animals are surrounded in controversy to the point that many circuses no longer feature animals at all and are fairly successful as a human-only circus. As circuses slowly wind down their use of animals, zoos however, use animals as their main attraction.

For those who wish to view wildlife they may not normally see, a visit to the zoo is a way to see animals in an area they do not normally inhabit. Zoos must keep their animals healthy and provide them with environmental enrichment as customers do not want to see animals that are sickly or clearly not looking well. The main role of zoos considered by the public is for conservation purposes though general thoughts of zoos are a mix of negative and positive associations. According to a survey, animals in zoos were perceived as restricted and passive while wild animals were seen as free and active.

This may be due to seeing the animals in small enclosures and the perception people have of these animals looking bored or sad. However, it has been found that larger animals are more popular among adults and children at a zoo, though they are the most costly to keep. The Toronto Zoo in Ontario, Canada was a place I had visited often when I was younger, and I remember seeing the elephants there in what seemed to be a relatively small outdoor paddock. The keeping of African elephants in Toronto was a bit of a controversy and was considered to cost on average $930,000 a year.

In 2011, it was decided to move the elephants down to California as it had become too expensive to keep them along with the issues with accreditation the zoo had run into when it lost a large portion of their elephant herd. Quickly afterwards, the Calgary Zoo located in Alberta, Canada had also decided to move their elephants.

Overall, I believe the treatment of African wildlife in North America is getting better though it once was filled with controversy. It looks like people are becoming more aware of animal welfare and rights, as Canada had recently banned keeping dolphins and whales in captivity due to the outpour of animal cruelty concerns. I recall animal-based circuses were particularly popular decades ago, but I have not heard of a circus being advertised for years now. It is interesting to see how things have changed at the Toronto Zoo regarding the elephants and welfare of other animals, and I can only see things getting better as more people become aware of the situations wild animals are facing when kept in confined areas.

Conclusion

African wildlife is perceived in many different ways from the viewpoints of society, veterinarians and people who have not yet had the chance to experience visiting South Africa. Within society, poaching, trafficking and human-animal conflict are seen as problems that can be resolved. Poaching and trafficking can be prevented through education and creation of more jobs to defend wildlife. Human-animal conflicts may take a different approach depending on the animals and people involved, but the majority of issues can be fixed using methods that do not harm, injure or kill wildlife.

Within the viewpoint of veterinarians, trying to control diseases and deal with the ethical limitations of working with wildlife are a daily concern. Disease prevention and control is extremely important to avoid massive outbreaks or having new foreign diseases enter South Africa’s wildlife population, so veterinarians are key to ensuring all animals are healthy when entering or leaving South Africa. The ethical decisions take a toll of veterinarians which is why the veterinary profession has an extremely high rate of suicide. Finally, a North American perspective on African wildlife is commonly seen through their thoughts of circuses and zoos. Circuses have had long histories of animal abuse and cruelty though it appears many circuses are now giving up their animals and turning towards human-only circuses. Zoos are also
attempting to keep controversy at bay by continuously striving to follow the guidelines set by lawmakers to improve the life of animals in captivity.

African wildlife throughout the world is therefore represented as an income, a career and as a means of entertainment. I believe the issues wildlife face can be prevented, but it will take time to work with those involved and change the minds of others. Wildlife in Africa is critical for ecotourism and bringing in money on a daily basis, so it is important to protect at all costs. Wildlife in South Africa is something worth cherishing and effort must be put in to maintain the wild places we still have left.

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12 G Lossa, C Soulsbury, S Harris ‘Are wild animals suited to a travelling circus life?’ (2009) 18 Animal Welfare 129-140
19 T Finlay, L James, T Maple ‘People’s perceptions of animals: the influence of zoo environment’ (1988) 20 Environment and Behaviour 508-528
21 G Skipper ‘Failure to acknowledge high suicide risk among veterinarians’ (2012) 39 Journal of Veterinary Medical Education 1
“I am more favourable around animals than people, but I am sure it’s my religion.”
Sherene van Vuuren (Entrant)

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Sherene was one of the entrants of the Essay Competition with her essay entitled:
“Is animal welfare a religion?”

My plans include in this year 2020, to ensure that animal protection in South Africa will proceed to flourish and that animals will be better kept and better looked after. My goals are that veterinary services be available all-around South Africa with the charity linked to Hillsong Church as a Shine Project that is available to the public.

If it would be possible to create a team that will go out into the neighbourhoods in South Africa in terms of creating work for the volunteers further encouraging young children and adults to get more involved in projects that pertain animals and specifically animals that are domestic animals and to either euthanise an animal that is suffering or to make sure that animals don’t end up in a pet shop to pursue companies that I am working with to back our projects for instance “Shine” and educate people how to live with their pets and keep them in a liveable condition.

“I entered because, I truly care about the well-being of animals in South Africa. My passion sprouts from animals. Because of our cultural believes and being a South African truly inspires to lead to a better future for animals in South Africa. I would include my future plans in my essay for what I wish to do in the future to enable me to better myself and families around South Africa to encourage them to educate and include the welfare of all animals including domestic animals, that so desperately need homes in our Country.”
The right to freedom of religion is enshrined in the Constitution of South Africa. Section 9, the equality clause, prohibits unfair discrimination on various grounds including religion.\(^1\) In the matter of Prince known as the Rastafarian community he was refused admission as an attorney because his religion is not a community that is geographically in one section in terms of South Africa. Religion is enough people that believe what you do and it is supposed to be a human right -religion.

In terms of animal welfare all major religions of the world praise creation and acknowledge that humankind depends on nature for its own survival. Nearly all religions recognise the inherent value of animal life and the need to avoid suffering. Once in terms of law a religion can be practiced which then takes matters to justice and normal standard to the normal society.\(^2\) Many people believe that all living things should be treated with respect. They believe animals have the same right to be protected for ill-treatment and exploitation as humans.

St Antony of Padua preached to fishes, St Francis of Assisi preached to the birds and become the most popular pro-animal figure. St Columba told his monks to care for a crane. Thomas Aquinas was equally unconcerned with the welfare of animals, ‘animals were created to be used by human beings’ further ‘Animals do not have the ability to reason, and are therefore inferior to human beings’.\(^3\)

Animals are loved by enough in every community to constitute a new religion as my suggestion for the furtherance of welfare and justice for animals. The is no formal recognition of animal sentence in legislation or policy. However section 2(1) of the Animal Protection Act\(^4\) refers to causing animals unnecessary suffering and includes reference to infuriating and terrifying animals. The strategic plan of the Department of Agriculture, Forestry and Fisheries includes mention of updating animal protection legislation with a new Animal Welfare and Protection Bill\(^5\).

However, the plan does not include details on the proposed scope of changes to animal protection legislation. Are there economic and societal barriers to improving this aspect of animal welfare? Section 4 of the Animals Matter Amendment Act mentions that that Minister of Justice may from time to time, with the concurrence of the Minister of State Expenditure, appropriate funds to a society for costs incurred relating to the removal, custody, disposal or destruction of an animal, but this is not a regular or formal financial arrangement.\(^6\)

Neither the South African government not any of its ministries has pledged in principle support for the UDAW. The Universal Declaration on Animal Welfare is a proposed formal international acknowledgement of a set principles giving animal welfare due recognition among governments and international community.

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2. D Rollos ‘religion-regressive hold on animals’ in (2017) 78
3. Eg: <https://www.bbc.co.uk/religions/christianity/christianethics/animals_1.shtml>
4. The Animals Protection Act 1962 (2(1))
In the need of animal welfare there is a failure in legislation with no standards. Should this propose religion of animal welfare entail – the right to standard dogfood, the right to health, right to safety and care which is already part of most South African households general morality in society. This theme of religion based not on the right of animal itself but through Human Rights and the freedom to religion. It examines recognition of animal sentence and the importance of animal protection as a societal value within the country. Animal care and protection should be included in the national education system at primary and secondary level and can be given to humane handling form part of veterinary medicine education.

A lack of financial resources and understanding of animals on the part of those owning or responsible for the care of companion animals represents a barrier for improvement, further enforcement mechanisms are not in place in policy or legislation. Breach of the anti-cruelty provisions of the Animal Protection Act is punishable with fines, imprisonment, confiscation and banning animal ownership.

The law is there for justice but not resources. It is worth mentioning that the current draft of the animal welfare strategy acknowledges that the existence of multiple codes of practice creates a fragmented approach. As such, one of the objectives of the strategy is to bring all these regulations together so that implementation is straightforward.

The Animal Protection Act outlines acts of cruelty that are prohibited. This is a detailed list that includes deliberate acts such as overloading, causing unnecessary suffering by confining, chaining or tethering, abandonment and denying food or water, deliberately or negligently keeping in a dirty or parasitic condition and failing to procure veterinary assistance. Should the suggested religion be able to act as a legal person which is included in South African law, any such judgement shall have effect as if it had been given in a civil action duly institute before such court.

Statistic show that South African government has one of the poorest justice systems in the world, the lack of productivity worsens the effects of animal abuse. Animals have been killed as part of gang initiations, including being boiled alive. Justice need to be done and laws need to be established. Paying a small fine for such a criminal offence should not be accepted within today’s society.

Between Ubuntu and animal welfare there is a consensus that it relates to how one operates in the world on a moral and humanitarian level. Practised with the good of all in mind. Molatso Khosi, a lecturer in African philosophy and ubuntu at the University of South Africa, says ‘ubuntu’s focus on relationships goes beyond those that are between humans. It also relates to the way people interact with both the natural and metaphysical worlds. Khosi explains that ubuntu structures every living being

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8 The Animal Protection Act of 1962
in a hierarchy and allocates particular responsibilities to each of them. In terms of the South African legal system and Constitution we as society is given the freedom of thought, belief and religion and it includes the right to change your religion or beliefs at any time.9

There is no longer an economic incentive to care about the welfare of animals. As the world exists now, animals are part of a moral void of human desires and situational ethics. There is a need to recognise the existence of all other species who, by virtue of their sentience and independent existence, make strong moral claims upon human beings for their consideration and protection from harm caused by humans. As the High Court in South Africa is the upper guardian of all minor children10, to provide for ‘the best interests of the child so should a designated commission be the guardian of all animals within reasonable fairness that matters.

The idea of animal rights is the belief that animals have a right to be free of human use and exploitation, but there is a great deal of confusion about what that means. Animal rights are not about putting animals above humans or giving animals the same rights as humans. Rights cannot be determined by the ability to think or we’d have to give intelligence tests to determine which humans deserve rights. Animal welfare describes a broad spectrum of views, while animal rights are more absolute. Animal welfare is an ethical concern for the mental and physical well-being of animals under our care, we make these decisions as a group or as a community.

Through religion for animals it is possible to use unique expertise and determination to create lasting change in how the world sees and treats animals. Through educating, challenging the law and inspiring others to protect animals, we are bringing closer the day when cruelty will be a society free of false thoughts that animals has no value.11

Children and animals can have a great impact on each other’s lives, yet little is known about the relationship. One particular aspect that may have a great influence on these relationships, is the belief in animal mind, that animals are sentient beings that experience thoughts and

9 Eg: <http://www.animalagenda.org>
10 Eg: <http://api.worldanimalprotection.org/country/sout-africa>
11 Eg:<http://www.sentientbeings.org>
feelings including happiness, pain and distress. To educate in the young the implications for welfare education and for preventing childhood animal cruelty. What would a animal religion entail in terms of beliefs – We would believe in the importance of animal empathy enlightenment that refers to true empathy, a realization of the suffering of animals, and the desire to do all one can to help build a society that believes in a standard for animals.

In South Africa we are a variety of religions most religions accept and belief that animals should be protected and reserved. Types of people to religion of animals would be in such a variety that freedom of religion will become something that you already believe. Vegans believe – Hunters believe – Every pet owner – Every Farmer – and the believe of the general public. Veganism represents a philosophy and way of living which seeks to exclude—as far as is possible and practicable—all forms of exploitation of, and cruelty to, other animals for food, clothing or any other purpose; and promotes the development and use of animal-free alternatives for the benefit of humans, other animals and the environment. Hunters believe it keeps nature at a healthy balance of which the available habitat can support (carrying capacity). For many wildlife species, hunting also helps to maintain populations at levels compatible with human activity and land use. Wildlife is a renewable natural resource with a surplus and hunters harvest that surplus Every pet owner believes that all animals should be handled with responsibility, love and care. Farmers believe in the well being of animals that animals are sentient beings It follows that their interests should be considered when making decisions concerning them.

Only in exceptional circumstances could you argue that it is in an animal’s interests to be killed, for example, if they are seriously ill or injured and in great pain. The overwhelming majority of animals that are killed and used for food do not fall into this category, so being killed or used is not in their interests and violates their rights. The believe of the general public within South Africa within its morality believes that animals should be treated humanely. What I am proposing is believing about animals in your way but respecting animal welfare which is not a change in beliefs for most South Africans.

Animals have the right to equal consideration of their interests. For instance, a dog most certainly has an interest in not having pain inflicted on him or her unnecessarily. We therefore are obliged to take that interest into consideration and to respect the dog’s right not to have pain unnecessarily inflicted upon him or her. However, animals don’t always have the same rights as humans, because their interests are not always the same as ours and some rights would be irrelevant to animals’ lives. For instance, a dog doesn’t have an interest in voting and therefore doesn’t have the right to vote, since that right would be as meaningless to a dog as it is to a child.\footnote{Eg: <http://www.peta.org>}

Since freedom to religion is a Human Right in South Africa and a group of people with the same belief can become a religion. In terms of the South African Council for Churches - The South African Council of Churches (SACC)\footnote{Eg: <http://www.derebus.org.za/equality-for-all-religions-and-cultures-in-the-south-african-legal-system/>} is the facilitating body for a fellowship of 25 Christian churches, together with one observer-member and associated para-church organisations. Founded in 1968, the SACC includes among its members Protestant, Catholic, African Independent, and Pentecostal churches, representing the majority of Christians in South Africa. SACC members are committed to expressing jointly, through proclamation and programmes, the united witness of the church in South Africa, especially in matters of national debate.

In order to lay a strong foundation for an open and rights-respecting democracy, legislation must also give effect to the constitutional right of access to information held by private bodies that is needed to protect or exercise a right; establish a legal framework for public access to meetings of governmental bodies; cultivate a culture of openness by requiring government agencies to be open.

The doctrine of entanglement was defined as the ‘reluctance of the courts to become involved in doctrinal disputes of a religious character’ (Taylor v Kurtstag NO and Others 2005 (1) SA 362 (W) at para 39). It was observed in Singh v Ramparsad and Others 2007 (3) SA 445 (D) at para 50 that: ‘Our courts have tried assiduously not to get entangled in doctrinal issues and it can be safely accepted that “the doctrine of non-entanglement” is part of our law.’ In De Lange v Presiding Bishop,\footnote{Methodist Church of Southern Africa and Another 2015 (1) SA 106 (SCA)} at para 39 the SCA pointed out that: ‘A court should only become involved in a dispute [involving religious doctrine] where it is strictly necessary for it to do so. Even then it should refrain from determining doctrinal issues in order to avoid entanglement.’

It reasoned that ‘a proper respect for freedom of religion precludes our courts from pronouncing on matters of religious doctrine’. The difficulty that comes with adjudicating religious disputes was highlighted in Prince v President, Cape Law Society, and Others 2002 (2) SA 794 (CC)\footnote{Eg: <http://www.derebus.org.za/equality-for-all-religions-and-cultures-in-the-south-african-legal-system/>} at para 42 where Ngcobo J (as he then was) observed that: ‘Human beings may freely believe in what they cannot prove’ and that although ‘their beliefs are bizarre, illogical or irrational to others, or are incapable of scientific proof, [this] does not detract from the fact that these are religious beliefs for the purposes of enjoying the protection guaranteed by the right to freedom of religion’ and they ‘should not be put to the proof of their beliefs or faith.’

The doctrine also draws from the widely accepted principle that a state (and its organs) should be a-religious to ensure religious freedom and equality.\footnote{Wildlife Society of SA v Minister of Environmental Affairs & Tourism of the RSA 1996/9 BCLR 1221 (Tk)}

As conclusion your morality as a person includes the moral sense that refers first and foremost to our predisposition to evaluate some actions as virtuous, or morally good, and others as evil, or morally bad. Morality, thus, consists of the urge or predisposition to judge human actions as either right or wrong in terms of their consequences for other human beings. Thus, being able to protect your animal with your own right. Being able to participate in creating a better world for other beings.
INTRODUCTION

Many people are under the misconception that the existence of law achieves justice; or that it reflects the morality of society. Often however, it does neither of those things.

The area of “animal law” is a good example of these failures. Despite the importance of animals and the general concern and care society has for them – this is not replicated in the legal system. The various branches of government have been neglectful towards protecting animals and necessary reform is desperately required.

These and other issues were raised in the Legal Panel (the “Panel”) as part of the Cape Town Animal Conference at the University of Cape Town. The Panel was the final session of the Conference and was organized by Animal Law Reform South Africa (“ALRSA”) and sponsored by the Center for Animal Law Studies (“CALS”). The title of the Panel was:

“Justice for Animals: The role of law in protecting nonhuman animals”.

The Panel sought to highlight animal law as a thriving field in the country as well as probe into the complex relationship between the law and nonhuman animals. The topics covered included: the current status of animals in law; animals and the South African Constitution; wildlife crimes in Africa; the role of the government in the protection of animals; translating activism efforts into law; recent developments and what the future of this field may look like. The Panel discussion was followed by a Q&A session by the delegates that attended.

The Presenters collectively had decades of experience in the protection of both nonhuman and human animals. These presenters included: Professor David Bilchitz (Director – the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC) and Director – ALRSA); Jim Karani
(Attorney – Lawyers for Animal Protection in Africa); Sarah Kvalsvig (Consultant – Cullinan and Associates Inc) and Dr. Andrew Rowan (President – Wellbeing International). The session was moderated by Mr. Tony Gerrans (Executive Director – Humane Society International – Africa) on behalf of ALRSA.

Below is a summary of what was discussed by the experts.

Speaker 1: Professor David Bilchitz

Professor Bilchitz quoted Alice Walker, a novelist and poet: “The animals of the world exist for their own reasons, they were not for human, anymore then black people were made for whites or women for men”.

What the American poet said represents the end point of a long period of evolution around ethics in relation to animals. Ethical evolution has been reflected in the development of our law in South Africa in relation to animals. Prof. Bilchitz asked the question - What are the opportunities to ensure that there are concrete changes in the lives of animals rather than simply rhetoric at an abstract level? Philosophically, Descartes’ argued that animals lacked the ability to suffer. This led to impunity when it came to the way animals were being treated - with wide spread abuse.

The South African legal system draws on Roman-Dutch sources, which recognized that all and only humans are legal persons. In other words, only humans are capable of holding rights – including common law rights. However, throughout history, not all humans have been considered as persons. Examples include slaves - who were treated as objects. After World War II and the Holocaust, there was a change. This led to a recognition that all humans have a worth or dignity and they should be recognized as bearers of fundamental rights.

Yet, despite these recognitions for humans, animals still remain confined to the category of legal objects. Animals were not regarded as beings capable of having legal rights or duties. Where there is a clash between human and animal interests, animals will always lose.

Animal protection legislation was developed through the first major law passed in England in 1822, to protect against the horrific cruelty that was occurring.

In South Africa, after the creation of the the Union government, animal welfare legislation was passed through the enactment of the Prevention of Cruelty to Animals Act in 1914. The 1947 judgment of R v Moato, stated that the aim of this legislation (the 1914 Act) was not to elevate animals to legal personhood, but rather to clearly stop a legal person from acting with cruelty against animals because of the feelings and sensitivities of other humans. Such justifications also often sought to connect harm to animals with harms to humans.

Whilst this rationale is inadequate, Professor Bilchitz explained some of the areas of work done by Animal Law Reform South Africa, include connecting animal wellbeing with social justice for humans. This is necessary because these concepts are not at odds with one another. He spoke about the interconnectedness between the protection of humans and animals, and similarly the connections between the abuse of animals, and the abuse of humans (particularly women and children) and the studies in this regard showing a clear link. Other examples included slaughterhouse workers and the major impact on them of continuously killing animals.

When South Africa became a Republic, the 1914 act was replaced by the Animals Protection Act of 1962, (amended in 1993), which remains the predominant piece of animal legislation in the country. The main offences of the Act

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3 R v Moato 1947 (1) SA 490 (O) (Moato).
seek to prevent the “unnecessary suffering” of animals. Despite the existence of this Act, one of the major questions that needs to be asked is – “What difference does the act actually bring about in the status of animals?”.

Philosopher Joel Feinberg stated that it was hard to account for the strong sensibility against cruelty, in the absence of the belief that animals deserve protection in their own right: “The very people whose sensibilities are invoked in the alternative explanation, a group that no doubt now includes most of us, are precisely those who would insist that the protection belongs primarily to the animals themselves, not merely to their own tender feelings. Indeed, it would be difficult even to account for the existence of such feelings in the absence of a belief that the animals deserve the protection in their own right and for their own sakes.”

This represents a change from the previous approach towards animal protection as not just being for the protection of humans (as in R v Moato).

This change can be seen from the comments in the 2016 NSPCA case. In delivering its judgement, the Constitutional Court referred to the Lemthongthai judgement by the Supreme Court of Appeal, which stated “…constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.” The Court went further by stating that animals have intrinsic value as individuals and animals thus must be protected and their interests need to be considered. It stated that the “rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of hu-

In the NSPCA case, the court utilised concepts from an article written by Prof. Bilchitz – “Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interest of Animals”, which among other issues highlighted the connection between animal welfare and conservation. In the article, Professor Bilchitz explored two approaches to environmental law – the “aggregative approach” and the “integrative approach”. The aggregative approach focuses on the overall species and the benefits for humans of utilising wild animals (for instance). For example, this approach allows the sacrifice of the individual animals for the benefit to humans or, in some instances, for conservation (i.e. we may allow the hunting of a few animals, if it helps the conservation of more animals).

The courts having agreed that this approach is problematic - adopted the second approach. This integrative approach recognises a close relationship between individuals and species. This means that one cannot promote a whole species by treating individuals with disrespect.

An ethics of respect to others is the only sure way to build conservation for the future. Prof. Bilchitz argues that the aggregate approach is self-defeating, that it fails to achieve the very same thing it wishes to achieve, which is the conservation of animals in the long run.

There has been a major shift in the evolution of the law, but it remains at a high-level. As the Constitutional Court

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did, so did Judge Kollapen in the High Court in Pretoria recently acknowledge that animal welfare and conservation were linked in the decision relating to the lion bone quotas. Bilchitz asked then – how do we move from the abstract concepts of animals as having ‘intrinsic value’ to creating more concrete benefits for them?

One approach would be to undertake statutory reform. The Animals Protection Act of 1962, was introduced during the era of apartheid in South Africa – however, post-apartheid, the government has essentially adopted the same dominant approach towards animals, exploiting them as much as it can. There is no decolonial view of our treatment of animals, but this needs to be rethought and changed and this needs to be enshrined in the statutes. Furthermore, our government needs to go back to the drawing board in integrating a different and respectful approach towards animals in its policies.

This would mean filtering down to the Department of Environmental Affairs (now Department of Environment, Forestry and Fisheries of “DEFF”) and the Department of Agriculture (now Department of Agriculture, Land Reform and Rural Development “DALLRD”). DALLRD can do a lot more than it is currently doing, and one example of this is live export. The unnecessary trade and export of live animals on the oceans leads to significant cruelty and high mortalities due to lack of care and poor conditions. Hence, it is necessary that the government prohibit practices such as these.

We thus need to engage with: government structures around animals; how we develop and improve these; how civil societies may be effective; and education on conservation and animal welfare. We need to look at building movements and strategies around this, and take advantage of opportunities that now exist including statements in our jurisprudence and building these into concrete improvements for animals.

Professor Bilchitz concluded by highlighting that while there has been a radical shift in South African law in relation to animals - we are just at the beginning. We now need to draw out the constitutional implications of respecting animals.

Prof. Bilchitz ended with a quote from a court case from India that dealt with animals utilised in circuses which says that "though not homo sapiens they also beings entitled te dignified of existence and humane treatment, sans cruelty and torture." Therefore, it is important to note that it is not only our fundamental duty to show compassion to our animal friends but also to recognize and to protect their rights. “If humans are entitled to fundamental rights in the courts, he then asks then why not animals?”

Speaker 2: Attorney Sarah Kvalsvig

The second speaker of the Panel, attorney Sarah Kvalsvig, wished to highlight some issues about the regulation of wildlife in South Africa, and particularly, section 24 of the Bill of Rights in the South African Constitution. She referred to the state obligations in relation to this right, and the wording contained therein about reasonable legislative and other measures that promoted conservation and secured ecological sustainable development. She then
went on to speak about the big issues of the illegal wildlife trade, and, more specifically, the international trade in lion bones, the captive breeding of lions and trophy hunting. Recent investigations and the report\(^\text{13}\) by the EMS Foundation and Ban Animal Trading had showed that lion and tiger bones where mixed and exported out of South Africa.

Attorney Kvalsvig said that there were problems with the enforcement of law enforcement as well as the legal status of animals in South Africa. In the case of NSPCA v Openshaw\(^\text{14}\), Justice Cameron said in relation to animals, that: “Like slaves under Roman Law, they are objects of the law, without beings it is subjects”.

Ms. Kvalsvig then referred to the case where the NSPCA challenged the 2017 and 2018 quotas set by the Minister of Environmental Affairs, for the export of lion skeletons from South Africa.\(^\text{15}\) In its judgment, the court said that the Minister has not followed a proper consultative procedure, and (inter alia) because welfare was not considered, the decision to allow the export of lion and tiger bones was not rational.

The Gauteng High Court set aside the Minister’s quota decision, and these were declared unconstitutional and invalid. In its judgement, the court referred to the NSPCA case\(^\text{16}\) and stated that the Minister ought to have considered the welfare of captive lions in setting the quota for exported lion bones. Although the Constitutional Court had said that conservation and welfare are intertwined values, this was the first time that a court had said that welfare is legally relevant to a decision taken by an environmental authority under biodiversity.

Ms. Kvalsvig spoke a bit about what reform may look like in this area. She mentioned that the state’s reliance on access to information legislation to protect commercial interests in the wildlife industry must be challenged. She also suggested that reform could be in the form of new national legislation to change the status of indigenous animals, or even all animals. The effect of such legislation would be that wildlife could not be confined or harmed without justification, and what constituted an acceptable justification, would be clearly defined. This would deal with some of the problems and implementation of the

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\(^{15}\) Supra note 7.

\(^{16}\) Supra note 3.
existing legislation. The Animals Protection Act of 1962 only deals with wild animals under the control of humans or animals who are in possession of humans - and this act becomes a useless piece of legislation for wild animals, unless such animals happen to be captured.

Ms. Kvalsvig mentioned moved on to state that the realities of animal slaughter need to be challenged on the basis of human rights. She noted that in her work, she experienced a lot of problems with the government departments dealing within agriculture, environmental and fisheries departments, and that there was no proper directorate that dealt with welfare.

She also stressed the importance and role of local government - law does not have to only exist on a constitutional and statutory level, the local government can also be involved to take up some of these issues.

Attorney Kvalsvig said that we must create new legislation that actively promotes welfare, rather than trying to put the burden of proof on the state to prove the intention to cause unnecessary suffering. She spoke about legislation overseas, in the USA, where jurisdictions have passed “Desmond’s law”, where the court is entitled to appoint an advocate to protect the interests of animals in court proceedings.

According to Kvalsvig, the NSPCA does not believe the change of legislation will bring in a better framework. However, in looking for reform it becomes important that we need to put aside the views that divide us and present them to the legislature. Groups of organisations need to get together and agree on the principles that must guide such reforms and not get distracted by issues that divide.

Speaker 3: Attorney Jim Karani

Attorney Jim Karani spoke personally about being an animal lawyer and how this plays a role in his moral calling to work in this sphere. Jim spoke about his youth, where he grew up in a farm near a national park in Kenya. He said that his family would notice how the inhumane treatment of animals would reduce the number of wildlife at the park. He mentioned that in Kenya they have built a capacity in the area to improve the position of animals.

Karani spoke about some pressing current animal legal matters: including the exports of elephants to zoos and the captivity of animals. He said that these need to be questioned – both legally and morally – and the time for this is now!

Karani stated that most legal systems treat entities as either people or property. The law has always regarded animals as economic property, and this means that they would never have guaranteed the right or recognition as legal persons. He noted, however, that it was not only humans that could be legal persons and companies had long had legal recognition as such, being able to bear duties and act in court.

Jim spoke of the development of animal law, mentioning that in the past few years, animal lawyers had started winning court cases. In 2016, the biggest victory came from a judge in Mendoza in Argentina, where it was ruled that Cecelia, a chimpanzee, was a nonhuman person. The court said that she had been arbitrarily deprived of her freedom by being in the city zoo and was ordered to be taken to a sanctuary in Brazil. Quoting the language of the judiciary in this case is a good indication of the development of animal law - and where the law is shifting to. Notably, he said that it is important to understand how the judges interpret cases of dealing with animals and to ensure that they are balanced with society's expectations.

Karani noted that even if animals do not become legal agents, they must still have rights and must be defended. We (as humans) have a legal duty not to abuse any sentient entity. He noted that there are serious animal concerns in zoos. In Kenya, the laws have mostly closed these loops.

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17 Supra note 6.
19 Read more from the Nonhuman Rights Project Website here: https://www.nonhumanrights.org/blog/chimpanzee-cecilia/.
Jim stated that even if we agree that humans and animals are fundamentally different, this conclusion does not give us licence to abuse animals with no accountability. An animal does not need to have the same legal rights as a human; however legal duties and considerations must nonetheless be emphasized. This duty is due to their existence being significant: if they are in pain, humans have a collective duty to prevent it.

Jim stated that the conservation of animals and the environment even in the past years had not employed many lawyers. He spoke of one instance in Kenya where the Kenyan government has been sued on specific information in the country’s National Park, for failure to engage. The conservation lawyers requested an order from the court stating that if the government fails to engage and are quiet about decisions on animals, this on its own would automatically count as a decision by the government. He concluded by stating that it is important for the government to consider amending the laws regarding animals.

Speaker 4: Dr. Andrew Rowan

Dr. Rowan, President of the organisation called Wellbeing International, spoke about the study he had been conducting, since the 1980s on street dogs.

Globally there are approximately 800 to 1 billion dogs in the world and around half of these dogs are living on the streets in different parts of the world. Somewhere out there, someone could be providing food for these dogs. There are two types; the “street” dogs and “private” dogs he mentioned, and basically in the Philippines a dog tied up outside their house is a guide animal and in South Africa such dogs are associated with that household. A number of dogs in Africa according to statistics are “street” dogs because they escape from their respective homes.

In South Africa, a national survey done by the University of Pretoria in 1992 shows that there were 106 dogs per 1 000 people. Dr. Rowan mentioned that the Wellbeing International organisation is very interested in developing a global dog campaign in converting the “street” dogs into “private” dogs and not roaming dogs. He said that the focus was a developmental programme to ensure domestic animals are taken care of. It is important to generate data on how many dogs are out there - this is a basic public health need which gives us an idea of how many dogs are hungry and are “street” dogs. Establishing an index provides us with a baseline number of the dogs and that this is a useful tool.

The revolution of technology has made it easier to collect data for purposes of determining how many dogs are out there in the streets and are in households, but more importantly it is to figure out how many dogs are out there that need to be sterilized. Dr. Rowan ended by saying to cut problems at their roots, engagement with government was necessary to figure out how many street and pet dogs are out there and that need to be taken care of by us humans.

Takeaways

The Panel concluded with the message on how it was important that we invited courts to build law in relation to animals and to take charge regarding the large-scale of animal cruelty. The courts need to lay down important legal principles, and where appropriate, follow what has
been done in relation to other social movements, such as the LGBT (Lesbian, Gay, Bisexual, Transsexual) movement. We need to change the way we treat and trade in animals – including wild animals.

The audience members asked a series of interesting questions ranging from: the progress being made in light of animal law; how long it might take for circuses to be banned; recent legislative developments to change wild animals to agricultural animals; the “sustainability” criteria of the wildlife trade and questions relating to the protection of baboons. The speakers and moderator provided their views and shared some of their experiences and insight.

For full recordings of the Legal Panel see links:


The Panel concluded the Cape Town Animal Conference
Looking Ahead

Thank you for reading our Publication, we hope that you enjoyed these perspectives as much as we did. With young activists such as those featured herein - as well as all of the advocates working tirelessly each day to ensure that non-human animals are accounted for - we trust that you, like us, see a promising future for animal protection in South Africa.

We look forward to further work on the Cape Town Animal Conference. For further information, please keep checking the official Facebook Page.

From our perspective, ALRSA believes that all animals have intrinsic worth and should have that worth protected. We recognise that animal suffering and exploitation does not only affect animals, but affects people too. Animal issues are fundamentally linked with human issues.

As one of our co-founders and directors, Professor Bonita Meyersfeld says:

“South Africans have led the way on innovative and groundbreaking law on human rights. It is the next natural step that we look at how the wellbeing of animals, the environment and human rights intersect to ensure both compliance with the South African Constitution and also a comprehensive commitment to social justice.”

While we had originally planned to hold an in-person Conference in 2020 in South Africa, due to the COVID-19 global pandemic and the uncertainty surrounding this, we have unfortunately taken the difficult decision to postpone it until the end of 2021 or early 2022. However, we are excited to announce the title for the Conference as well as request for Abstracts which will remain open until we make an announcement with a closing date. ALRSA together with the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), a Centre of the University of Johannesburg will be holding a ground-breaking conference on the theme: ‘Legal Evolution and the New Rights Revolution: Expanding the Sphere of Protection to Animals and the Environment’.
The Conference aims to place in focus the expansions of rights beyond the human sphere and the evolution of the law. As part of the Conference, there will be specific activities for students and lawyers. For the most up to date information, please continue to check our Facebook Page and Website. We look forward to welcoming you in Johannesburg when we are able to do this.

In addition to the Conference, we have a number of other initiatives and projects planned. We will continue to work to advance animal law through our pillars and work areas and engage with a variety of stakeholders – both in South Africa and beyond.

In closing, Professor David Bilchitz says:
“In his famous ‘I am an African’ speech delivered when our Constitution was passed, President Mbeki recognised a defining feature of African-ness as being the deep interconnection between humans and the manifold other animals which inhabit this Continent. In South Africa, we have an opportunity to lead the world in re-defining our relationship with other animals from being mired in exploitation to exhibiting a deep respect for their flourishing”.

- Animal Law Reform South Africa
www.animallawreform.org