

BLOG: AN ETHICAL PERSPECTIVE ON SOUTH AFRICA'S REGULATORY FRAMEWORKS GOVERNING ANIMALS IN RESEARCH

Dr. Yolandi M. Coetser, 24 April 2022¹

INTRODUCTION

When South Africans think of issues around animals, we think first think about our wild animals – rhino horns, lion bones, zebra skins. Perhaps, in the collective consciousness, we also think about animals as food – the pork chop on the braai, the well marinated steak, biltong during the rugby match. It is not often that we think of South Africa as a place where animal experimentation takes place. Often, when South Africans think of animal experimentation, we imagine some far off place where bunnies are being prodded and poked by faceless humans in white lab coats. Of all the issues that face animals in the South African context, the issue of animal use in scientific research is not the first topic that jumps to mind.

However, the use of animals for scientific research is a reality on South African soil. While it might not be millions of animals who are used for scientific research, it is nevertheless the case that there are a significant number of animals used in this space in South Africa. It is estimated that at least 100,000 animals are used annually for scientific research in South Africa (Mohr, 2013, p. 50), but the exact number is unknown. This research often occurs in facilities that focus on biomedical sciences such as the South African Medical Research Council (SANRC) and the National Institute for Communicable Diseases (NICD).

CURRENT LEGISLATIVE FRAMEWORK

In South Africa there is not one law that deals with animal research nor that governs animal used in research. Rather, there is a complex framework consisting of laws, guidelines, rules, and national standards that govern the use of animals in scientific research. In this post, I will briefly explore this complex framework and highlight some of the salient moral problems with this framework.

South Africa probably has one of the most comprehensive governance frameworks in the SADC region and possibly Africa too (Mohr et al., 2017, p. 338). In this framework (as with most legal systems around the globe), animals are seen as legal objects, not legal subjects. Animals therefore enjoy no direct rights in South Africa (Wilson, 2019, p. 38). Animals are seen as corporal property which entails that they might be used, destroyed, and exploited at the discretion of the owner (Youens, 2001, p. 23). Animals are, however, marginally protected by animal welfare legislation,

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**Dr. Yolandi M. Coetser (BA Journalism (UJ), BA Hons Philosophy (UJ), MA Philosophy (UJ), Dlitl et Phil
Philosophy (UJ), MEd Information Communication Technology (UJ – completed, not yet conferred))**

School of Philosophy, North West University

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and there are some prohibitions against animal cruelty (South African Veterinary Council, 2016, p. 31; Youens, 2001, p. 23). However, as Amy P. Wilson (2019, p. 39) points out, “navigating the regulatory landscape leads one on quite an adventure” and these regulations are “composed of the Constitution (supreme law), national laws, provincial laws, local laws, soft laws and private arrangements.” But complexity does not always equal adequacy – animals are not being offered the protections they deserve.

The central act that addresses the treatment of animals is Animals Protection Act, 1962 (APA) (South African Government, 2020a), which does not prohibit scientific and cosmetic testing on animals. There was a proposed amendment to this act brought forward by the African Christian Democratic Party in 2017, which would have criminalised the testing of cosmetics on animals, which was later withdrawn. Currently there is a proposed amendment to the APA which seeks to provide for a new offence related to the testing of a cosmetic on an animal and the to the Foodstuffs, Cosmetics and Disinfectants Act, 1972 which seeks to create an offence for the selling or manufacturing of a cosmetic that has been tested on an animal in the Republic. This amendment remains a proposal, at this stage. As it stands, however, the Animals Protection Act, 1962 merely deals with criminal offences relating to animals and so it does not ensure sufficient protection and care of animals.

In addition to the Animals Protection Act, 1962, any private or public institution that wants to conduct research using animals are governed by institutional Animal Ethics Committees (AECs). These individuals and organisations are also overseen by the South African Veterinary Council (SAVC), a regulatory body whose constitution is laid down by the Veterinary and Para-Veterinary Professions Act No 19 of 1982. This body administers ethical rules, monitors professional practice standards and/or statutory transgressions (South African Veterinary Council, 2016, p. 20).

The SAVC authorises persons to perform scientific clinical procedures on animals - in other words, individuals planning on conducting research on animals are given personal licenses to perform certain procedures. A presiding veterinarian must confirm the competence of this person. Any animal research facility needs to be registered with the SAVC and these facilities are then held to a set of minimum standards that relate to infrastructure, procedures, welfare, ethical review, and so on.

Furthermore, when a project requires the use of animals, the institution’s AEC needs to provide permission. The AEC needs to conduct an ethical review as well as overseeing animal care and welfare there are a variety of legislation that governs this process, namely, specifically, Rules Relating to the Practicing of Veterinary Professions (Department of Agriculture, Forestry and Fisheries, 2015) as set in place by the Department of Agriculture, Forestry and Fisheries (now the Department of Agriculture, Land Reform and Rural Development), as well as the National Health Act 61 of 2003 (South African Government, 2020a; 2020b) and the Ethics in Health Research: Principles, Processes and Structures, 2015, (South African Medical Research Council, 2020), as set in place by the Department of Health.

Many of the minimum standards listed in the above rules and legislations pertain to facility appearance and cleanliness, equipment and so on. There are very few rules or guidelines that relate either directly or indirectly to animal welfare, which indicates a massive oversight in the current framework. Furthermore, an important document in South African National Standards for the

Dr. Yolandi M. Coetser (BA Journalism (UJ), BA Hons Philosophy (UJ), MA Philosophy (UJ), Dlit et Phil Philosophy (UJ), MEd Information Communication Technology (UJ – completed, not yet conferred))

School of Philosophy, North West University

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Care and Use of Animals for Scientific Purposes (SANS10386) (South African Bureau of Standards, 2008). Up until recently, this was the main standard in place. This document does not present a legal prerequisite but is often voluntarily adopted by many institutions. This document purports to elevate standards of animal care and use in South Africa to international standards and outlines the responsibilities of researchers and research institutions who make use of animals in research, as well as minimum standards of animal care and use. As an ethical guideline, it promotes the 3Rs: replacement, reduction, and refinement. Although the framework described above is comprehensive, it is not without its problems. This standard was updated in 2021 through SANS 10386:2021, entitled: “The care and use of animals for scientific purposes.” This standard needs to be purchased and is currently valued at R1,598.50. As Wilson says, “[a]lthough some standards are better than others and welfare provisions may be provided for, the non-binding nature and lack of sanction for noncompliance means they are of little value in providing genuine animal protection – and merely perpetuate the status quo” (2019, p. 43).

SOME (ETHICAL) SHORTCOMINGS OF THIS FRAMEWORK

There are indubitably a variety of shortcomings of this framework. I am not a legal expert, so cannot speak to any legal shortcomings with any authority. However, as a philosopher, there are at least two shortcomings that I can point to, although there are surely more.

The first shortcoming relates to the underlying values of AECs. Broadly, these committees use a consequentialist ethic, or, a cost-benefit-analysis. Roughly, this can be understood as weighing up the costs (in this case, the pain and eventual death of animals) with the potential benefit (the scientific finding or advancement that is expected to result from the experiment). The idea is that AECs should attempt to reduce the suffering, while at the same time maximising the benefit (Russell, 2012, pp. 128–129). However, as Elisa Galgut points out, AECs routinely “routinely undervalue the interests of animals” (2015, p. 7). This is possibly because there is an underestimation, or perhaps a lack of understanding, of the cognitive complexity of animals. Undervaluing animal interests is a typical characteristic of the broader society – there is a “social tolerance of many forms of animal abuse and exploitation” (Galgut, 2015, p. 8). Not only are animal interests undervalued, but human interests are overvalued. The human benefits of animal research are often shown to be paltry (Russell, 2012, p. 128). As Pound et al. argue “[t]here is little evidence to support the view that animal research has contributed to the treatment of human disease” (2004, p. 514).

A second shortcoming of the current framework is that animals remain ‘legal objects’. In most legal systems, animals are seen as ‘things’, which means they do not have any rights, however, they enjoy some legal protection against cruel treatment (Bilchitz, 2009, p. 40). A legal subject, on the other hand is an entity that can have rights, duties and capacities, and therefore enjoys legal protection. Legal subjects are also known as ‘legal persons’, which is currently possessed by all humans, and no animals (Wise, 2010, p. 5). Interestingly, a juristic entity is also seen as a legal person, and this ascription of personhood to entities (juristic personhood) proves that legal personality is ‘legal fiction’, and the “determination of who has this status has major implications for those included as well as those excluded”, argues one of the directors of Animal Law Reform South Africa, David Bilchitz (2009, p. 42). Bilchitz holds that if “some animals are moral patients

Dr. Yolandi M. Coetser (BA Journalism (UJ), BA Hons Philosophy (UJ), MA Philosophy (UJ), Dlit et Phil Philosophy (UJ), MEd Information Communication Technology (UJ – completed, not yet conferred))

School of Philosophy, North West University

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and are capable of having certain rights, then this means that they should also be recognised as persons in our law unless there is some good reason to deny them this status” (Bilchitz, 2009, p. 43).

From the above, it should be apparent that animal law in South Africa still has a long way to go – it is apparent that the view that animals are mere objects and not deserving of moral or legal consideration. While South Africa has a comprehensive framework for the scientific use of animals that follows global standards, it is not adequately enforceable, and remains unreflective of the moral permissibility to use animals in the first place. There needs to be serious engagement with the overall attitude towards animal interests and the moral imperative to expand our understanding of their capacities.

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