

# “Dignity, Freedom and Justice for All” - Why are Animals the ‘Egg-ception?’ International Human and Non-Human Animal Rights Day

Cheslyn Ceaser, 10 December 2023

*“It is not enough to love animals; we must actively protect and preserve them.*

*It is our duty and responsibility as custodians of this planet.” – Dalphne Sheldrick*

## INTRODUCTION

The 10<sup>th</sup> of December 2023 marks **International Human Rights Day**, and the 75<sup>th</sup> anniversary of one of the most important human rights related global pledges, the Universal Declaration of Human Rights (“UDHR”).<sup>1</sup> This day is celebrated annually, with this year’s theme being “**Dignity, Freedom, and Justice for All**”.<sup>2</sup> While dedicated to the celebrating the rights of human beings, the 10<sup>th</sup> of December also marks **International Animal Rights Day**, emphasizing the broader recognition of rights for all sentient beings who are deserving of the same protection as humans.<sup>3</sup>

International Animal Rights Day is often recognised with demonstrations exposing animal exploitation; the public mourning of animal victims lost at the hands of humans; and calls for enhanced animal protection. To mark the significance of this day for both human and non-human animals, this blog will discuss the relationship between animals and humans with specific reference to the one of the most consumed and impacted non-human animal species – the chicken. Furthermore, this blog will speak to Animal Law Reform South Africa’s (“ALRSA”) specific work in this area including exciting research towards better legal protection for chickens and more accountability for those within the egg supply chain in South Africa.

## WHAT IS INTERNATIONAL HUMAN RIGHTS DAY?

International Human Rights Day arose from the UDHR. The UDHR was proclaimed by the United Nations General Assembly on 10 December 1948 and set out fundamental human rights

<sup>1</sup> <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

<sup>2</sup> <https://www.un.org/en/observances/human-rights-day#:~:text=2023%20Theme%3A%20Dignity%2C%20Freedom%2C,more%20guaranteed%20across%20the%20globe>.

<sup>3</sup> <https://www.worldanimalprotection.org/our-campaigns/sentience/animal-awareness-days/international-animal-rights-day/>.

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to be universally recognised and protected for the first time in human history.<sup>4</sup> The UDHR arose as a result of the atrocities experienced by the human population during the Second World War;<sup>5</sup> a war characterised by millions of people enduring tremendous suffering, confinement and a death toll of between 40 and 50 million.<sup>6</sup> Furthermore, an undeterminable number of non-human animals suffered as the result of this war, with at least one species going extinct.<sup>7</sup>

The UDHR, in its preamble, recognises the inherent dignity and the equal and inalienable rights of all as the basis for realising global freedom, justice and peace.<sup>8</sup> Among the articles of the UDHR, article 3 provides “[e]veryone has the right to life, liberty and security of person”; article 4 states “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” and article 5 prohibits any person from being subjected from torture or “cruel, inhuman or degrading treatment or punishment”.<sup>9</sup> Furthermore, article 19 states “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media regardless of frontier” and article 25 provides “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”.

The UDHR informed legal developments in various jurisdictions with the spirit of universal human rights being evident in the highest laws of many countries, including in South Africa. The Constitution of the Republic of South Africa, 1996 (the “**Constitution**”)<sup>10</sup> contains founding values which include *inter alia* human dignity, equality and the advancement of human rights and freedoms.<sup>11</sup> The Constitution also provides specific rights akin to those contained in the UDHR and expands on its aims. Examples of specific rights in the South African Constitution include the right to freedom of expression (which includes freedom of the press and other media, and freedom

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<sup>4</sup> <https://www.un.org/en/observances/human-rights-day#:~:text=2023%20Theme%3A%20Dignity%2C%20Freedom%2C,more%20guaranteed%20across%20the%20globe.>

<sup>5</sup> <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/#:~:text=The%20UDHR%20was%20adopted%20by,for%20freedom%2C%20justice%20and%20peace.>

<sup>6</sup> <https://www.britannica.com/event/World-War-II/Forces-and-resources-of-the-European-combatants-1939.>

<sup>7</sup> It is impossible to determine the number of non-human animal deaths that occurred during the Second World War. It is estimated that 10's of millions of animals suffered because of the war. Furthermore, the Wake Island rail, a flightless bird went extinct in 1944. More information available at <https://timeghost.tv/the-animal-casualties-of-ww2/#:~:text=At%20least%20one%20species%20went,were%20saved%20by%20the%20war> and <https://ukpetdrugs.co.uk/blog/a-history-of-animals-in-world-war-ii-remembrance-day-2022.>

<sup>8</sup> <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.>

<sup>9</sup> <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.>

<sup>10</sup> <https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf.>

<sup>11</sup> Section 1(a) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

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of scientific research);<sup>12</sup> the right to health care, food, water, and social security<sup>13</sup> and the right to an environment that is not harmful to health or well-being.<sup>14</sup> Animals are not directly mentioned in the bill of rights in the South African Constitution, but does this mean that they are not protected by its provisions? Does this mean that animals have no rights? Should they?

## WHAT IS INTERNATIONAL ANIMAL RIGHTS DAY?

International Animal Rights Day started as an event in 1998 and is intentionally celebrated on the same day as International Human Rights Day to highlight the connection between animal and human rights. This day is observed globally and is dedicated to raising awareness about the importance of non-human animal rights and advocating for the ethical and humane treatment of non-human animals.<sup>15</sup> It serves as an annual reminder of human responsibility towards non-human animals as voiceless, sentient beings deserving of respect, compassion, and protection from cruelty and exploitation. The underlying belief of this day's observance is rooted in the belief that protecting animal rights is essential for a just and compassionate society.<sup>16</sup>

While this day has remained of limited influence legislatively in comparison to the UDHR, the spirit surrounding the day is increasingly being felt in relation to the way humans treat animals under their control through the actions of activists and animal organisations advocating for the ethical and humane treatment of animals. Around the globe, advocates are creatively using other means to advance the animal protection and rights movement. The Open Wing Alliance (“**OWA**”)<sup>17</sup> (initiated by the Humane League<sup>18</sup>) for instance, is a coalition that works together toward a shared goal: to end the abuse of chickens worldwide, including through eliminating cruel battery cages from our world. In the African region, OWA have recently released their “**2023 OWA Africa Ranking Report**”<sup>19</sup> which ranks companies operating in Africa that use or provide eggs and egg products to the public based on their cage-free egg status. This work is important in recognising and advancing the welfare and rights of chickens used in the egg industry (and other

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<sup>12</sup> Section 16(1)(a) and (d) of the Constitution respectively.

<sup>13</sup> Section 27 of the Constitution.

<sup>14</sup> Section 24 of the Constitution.

<sup>15</sup> <https://www.awarenessdays.com/awareness-days-calendar/international-animal-rights-day-2023/>.

<sup>16</sup> Ibid.

<sup>17</sup> <https://openwingalliance.org/>.

<sup>18</sup> <https://thehumaneleague.org/>.

<sup>19</sup> Open Wing Alliance:

<https://assets.ctfassets.net/ww1ic0z745y7/yWx4voX2A3cVFzIoFU00N/9c712088e44d44dfbca300e97bbd59c0/owa-23-africa-ranking-report-final-8.29.pdf>.

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industries) as well as duties of those who own these animals or have them under their care. But in the absence of direct protective provisions in law, where does this leave animals such as chickens?

In South Africa, the environmental right in the Constitution provides that:

*“everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.*<sup>20</sup>

Even though animals are not directly mentioned, the courts have led the way in respect of further developing and advancing this environmental right to include animals and recognise their intrinsic value and sentience. In the landmark judgment of *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*<sup>21</sup> (the “**NSPCA Case**”), the court interpreted the right to the environment to include animal welfare. It said that “[t]his integrative approach correctly links the suffering of individual animals to conservation and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values”.<sup>22</sup> Furthermore, the court referenced the earlier case of *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*<sup>23</sup> which acknowledged that animals are worthy of protection, not only because of the reflection that this has on human values, but because animals “*are sentient beings that are capable of suffering and experiencing pain*”.

Other cases involving animal welfare and protection more generally include *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism*<sup>24</sup>; *Ex Parte: The Minister of Justice: In re Rex v Mason*<sup>25</sup>; *R v Smit*<sup>26</sup>; *R v Moato*<sup>27</sup>; *S v Edmunds*<sup>28</sup>, *Smuts and Another v Botha*<sup>29</sup> and *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*

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<sup>20</sup> Section 24 of the Constitution.

<sup>21</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

<sup>22</sup> Ibid at para 58.

<sup>23</sup> (2008) (5) SA 339 (SCA).

<sup>24</sup> [2009] ZAFSHC 68.

<sup>25</sup> 1940 AD 75 at 81.

<sup>26</sup> 1929 TPD 397.

<sup>27</sup> 1947 (1) SA 490 (O).

<sup>28</sup> 1968 (2) PH H398 (N).

<sup>29</sup> (887/2020) [2022] ZASCA 3; 2022 (2) SA 425 (SCA) (10 January 2022).

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(the “**Lion Bones Case**”).<sup>30</sup> These and other cases are instrumental to in the work done by animal organisations in the country who advocate for the ethical and humane treatment for all animals, including ALRSA.

## AN ANIMAL BEFORE A FOOD SOURCE? THE CASE OF THE CHICKEN

Chickens are viewed by many purely as a source of food - whether through meat products or through the production of eggs. They are exploited on a mass scale by producers and hatcheries; sold from wholesalers to companies and individuals *via* retailers; and served as menu options at restaurants and fast-food outlets or hotels. Nearly 1 billion chickens alone are killed for meat and meeting the demand for eggs in South Africa has resulted in approximately 26 850 egg layer hens being kept in South Africa. Unfortunately, most people are unaware that around 86% of these layer hens find themselves confined in appalling battery cages across the country,<sup>31</sup> which are extremely cruel to these sentient beings. Other common practices found within the egg industry include beak trimming and de-beaking;<sup>32</sup> de-toeing or toe clipping<sup>33</sup>; overstocking<sup>34</sup> and the killing of baby male chicks on a mass scale (chick culling).<sup>35</sup> These cause great suffering to chickens, and often go unprosecuted and without any consequences.

The current conditions of layer hens in the industry have been met with opposition from various animal organisations, particularly in respect of cage confinement. Despite accepting funding from the largest integrated poultry producer in the country,<sup>36</sup> the National Council of Societies for the Prevention of Cruelty to Animals (“**NSPCA**”) for instance, have stated “*battery cages offer extreme confinement, with each hen having less living space than a standard A4 piece of paper*”.<sup>37</sup> Furthermore, they

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<sup>30</sup> [2019] ZAGPPHC 337.

<sup>31</sup> <https://www.eggssouthafrica.org/>.

<sup>32</sup> Injurious pecking is regarded as the act of pecking by confined chicken at others. In an effort to avoid this, the beaks of chicks younger than 10 days are trimmed using a hot blade. Due to the sensitivity of these chicks’ beaks and its underlying purpose of being used in exploration of the environment rendered useless due to cage confinement, the act of de-beaking or beak-trimming is incredibly cruel and harmful to the bird and causes unreasonable pain and hindering their natural behaviour.

<sup>33</sup> De-toeing or toe clipping is the amputation of the ends of a bird’s toes to eliminate the toenails. This is done to reduce carcass scratching.

<sup>34</sup> Due to the requirements to produce as many animals and products as possible with the least amount of resources, many animals are often overstocked in spaces unsuitable to house so many animals. This leads to a plethora of welfare issues and can increase injury, diseases, mortality rates and cause other issues.

<sup>35</sup> Due to their inability to produce eggs, male chickens are regarded as waste by the egg industry and often killed, often on the day that they are born. Up to eight billion male Chicks born in the egg industry are killed worldwide every year.

<sup>36</sup> <https://nspca.co.za/meadow-feeds-assists-nspca/>.

<sup>37</sup> <https://nspca.co.za/nspca-refutes-layer-hen-cage-sizes-in-south-africa/>.

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acknowledge that the sole purpose of this cage confinement is stated to maximise profit and productivity, with little to no consideration for the welfare of these animals.<sup>38</sup>

Research on the effects of cage confinement of layer hens have revealed a plethora of negative effects on the lives of these non-human animals including that layer hens are forced to stand, sleep, and stick their heads through the wire structure they are confined to. This results in physical harm, including foot disorders, including toe pad hyperkeratosis and overgrown claws due to not being able to engage in ground-scratching behaviours that naturally keep their nails short.<sup>39</sup> Furthermore, due to this confinement, layer hens have restricted biological function and have an added risk of developing disease osteoporosis in their wings and legs.<sup>40</sup> The use of battery cages leads to numerous other issues including harms associated with the accumulation of excretion; failure to meet their nutritional needs; inability to express their natural behaviours; inability to move and rest and unnatural egg production resulting in a reduced life span.<sup>41</sup> What's worse, is the public is largely unaware that they support these practices, and may even be deceived into thinking that these animals live happy lives, and are humanely treated.

If such practices were done to humans, they would be in direct contravention with the UDHR, specifically in respect of article 3 (life, liberty, and security of person); article 4 (the prohibition to be held in slavery or servitude) and article 5 (the prohibition on being subjected from torture, cruel, inhuman, or degrading treatment or punishment). However, when they are done to animals such as chickens, there are minimal consequences.

In 1970, Richard D. Ryder, coined the term “speciesism” to describe the distinction in treatment between humans and non-human animals, often to the detriment of non-human animals.<sup>42</sup> The term is further defined in Merriam-Webster Dictionary as “*prejudice or discrimination based on species, especially discrimination against animals*”; and “*the assumption of human superiority on which speciesism is based*”.<sup>43</sup> This form of human favouritism in placing their needs and wants above those of other

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<sup>38</sup> Ibid.

<sup>39</sup> <https://thehumaneleague.org/article/battery-cages>.

<sup>40</sup> Baxter MR. The welfare problems of laying hens in Battery Cages. Vet Rec. 1994 Jun 11;134(24):614-9. doi: 10.1136/vr.134.24.614. PMID: 7941260.

<sup>41</sup> More information available at <https://www.animallawreform.org/wp-content/uploads/2023/08/Laying-Down-The-Facts-Report.pdf>.

<sup>42</sup> <https://thehumaneleague.org/article/speciesism>.

<sup>43</sup> <https://www.merriam-webster.com/dictionary/speciesism#:~:text=1,on%20which%20speciesism%20is%20based>.



species informs how society interacts with and views animals under human control and extends to the level of protection afforded to the different groups of animals.

This distinction of species and the necessity for their protection, however, is one that does not seem to have a logical basis, particularly in respect of chicken as they are currently used by humans. Not only are chickens sentient and capable of suffering and experiencing pain, they have been proven to have their own social hierarchy and necessity to interact with each other, understand complex relationships between objects or individuals in their world and capable of feeling empathy.<sup>44</sup> Furthermore, chickens, much like all animals, including human-animals, experience the need to have their nutritional needs met, enjoy a suitable physical environment; remain healthy; express their natural behavioural interactions and have experiences generally free from fear and distress. This is known as the Five Domains.<sup>45</sup>

International Human Rights Day and International Animal Rights Day celebrate human values and principles for all as well as the necessity to advocate for the ethical and humane treatment of animals. In recognition of this, we should support the sentiment expressed in the *Lion Bones Case* which holds significant value in South Africa's relationship with the egg supply industry and these animals: “[s]imply put, if a as a country, we have decided to engage in trade [in lion bone], which appears to be the case for now, then at the very least, our constitutional and legal obligation that arise from section 24, ...request the consideration of animal welfare issues”. Similarly, if we as a society are going to use chickens for the purpose of producing food, should we not consider their well-being? Do we not owe them obligations and duties of care?

## ALRSA WORK FOR CHICKENS: “LAYING DOWN THE FACTS” PROJECT

In August 2023, ALRSA released its Report entitled “**Laying Down the Facts – the Animal Welfare Standards of the Companies Providing Your Favourite Foods**” (the “**Initial Report**”).<sup>46</sup> The Initial Report emerged from ALRSA's Corporate Accountability Programme, aimed at *inter alia* compelling corporates and relevant stakeholders to disclose information relating to their supply chains and practices relating to chickens. Specifically, it aimed to improve transparency, to raise public awareness around, and educate the public on, farmed animal issues in South Africa such as, animal cruelty, the lack of, and inadequacies with, regulation

<sup>44</sup> <https://www.scientificamerican.com/article/the-startling-intelligence-of-the-common-chicken1/>.

<sup>45</sup> <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/>.

<sup>46</sup> <https://www.animallawreform.org/wp-content/uploads/2023/08/Laying-Down-The-Facts-Report.pdf>.

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and oversight, consumer protection issues, intersections with environmental and human harms, and others. This Initial Report was envisioned as a measure to empower consumers and assist them with making more informed food choices. Furthermore, with the selection, analysis, and rating of 36 (or 3 dozen) selected stakeholders in the industry, the Initial Report aimed to assist in building momentum to obtain cage-free commitments from South African retailers, restaurants, and major brands to further advance the ethical and humane treatment of these animals.

The Initial Report explored six pillars considered to be imperative in achieving corporate accountability. These pillars are: animal welfare; environment; consumer protection; corporate and business; food safety and health; and social and rights. Within the framework of these pillars, ALRSA analysed relevant legislation, policies, and information in relation to the egg industry and the chickens impacted by it. The Initial Report also established rating criteria relating to current standards of welfare and compliance with law and policy in the country against which the relevant stakeholders across the egg industry, including well-known and lesser-known suppliers, producers, and retailers were rated.

The Initial Report serves as the first of its kind resource for non-profit organisations, consumers, industry, and activists in Africa to provide important statistical data and information more easily on law, standards, policy, and practices relevant to South Africa. While an animal's individual interests are negatively impacted by any sort of confinement and exploitation, as is their wellbeing and ability to flourish, incremental change is essential. Affording increased consideration and protection to animals is a small step in the right direction of the very long road towards better protection for chickens in the egg industry.

## ALRSA'S "SPREADING THEIR WINGS" PROJECT

ALRSA is currently working on the second report of this nature entitled "**Spreading their Wings: Exploring Corporate Accountability for Chickens in South Africa**". This follow-up report, to be published in 2024, will provide further analysis on two key pillars discussed in the Initial Report, namely the environmental and consumer protection pillars respectively. This "Supplementary Report" will further provide a follow-up on numerous stakeholders selected during the Initial Report in respect of their corporate accountability and transparency in their activities within the egg industry. The forthcoming report will also introduce new stakeholders which were previously not approached, analysed, or rated in the Initial Report. It will provide additional information on the activities of role-players in the egg supply chain including major retailers; fast food outlets and

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restaurants; wholesalers; hotels; egg producers and hatcheries and equipment manufacturers with a focus on the environment and consumer protection.

## CONCLUSION

It was once said that with great power comes great responsibility. On this day, many across the world celebrate the rights afforded to them simply by being human animals. These rights provide the basis for the potential of all humans to live a life free from the horrors inflicted in the past and ultimately fulfil the UDHR preambular goal of the attainment of inherent dignity and of the equal and inalienable rights of all as the basis for freedom, justice, and peace globally.

This right and power deriving from the UDHR, however comes with its own responsibility. As custodians for the planet and all who live in it, this day also serves as an annual reminder of our collective responsibility towards animals as sentient beings deserving of respect, compassion, and protection from cruelty and exploitation, especially when inflicted by our own hands. This responsibility is especially important in the lives of the billions of chickens currently suffering in horrendous confinement and exposure to harmful practices.

After all, how can we promote the rights of some and not others? If we are to achieve a truly just and compassionate society, how can we exclude some of its most vulnerable members -those without their own voice?

*“The idea that some lives matter less is the root of all that is wrong with the world.” — Paul Farmer*