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# ANIMALVOICE

Official mouthpiece in South Africa for Compassion in World Farming

**23<sup>rd</sup> May 2013...**

**In an historic milestone on the road to all-inclusive justice, the walls of the Constitutional Court Auditorium in Johannesburg resound with voices speaking out for animals...**

**Increasing Our Compassionate Footprint**

**COMPASSION**   
in world farming

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# Top lawyers in South Africa put

**Compassion in World Farming (SA)** co-sponsored two seminars during May 2013. Entitled **Animals and the Law - Does the law afford sufficient protection to animals?**, the seminars were held at the University of Cape Town on 13<sup>th</sup> May 2013, and at the Constitutional Court auditorium on 23<sup>rd</sup> May 2013. They were co-sponsored by **Green Campus Initiative** at the University of Cape Town, the **University of Johannesburg**, the **South African Institute for Advanced Constitutional, Public, Human Rights and International Law**, and by **Abo Akademi University** in Finland.

Below is a synopsis of the proceedings...



**Professor David Bilchitz** is **Professor of Law at the University of Johannesburg**, **Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law** and **Secretary General of the International Association of Constitutional Law**.

He said that scientific and moral understanding of

animals had shifted since the passing of the Animals Protection Act in 1962. In the new constitutional order, statutory reform needed to enshrine and reflect our revised understanding of the sentience and intrinsic worth of animals in their own right. Animal protection laws needed urgently to reflect this change in ethos.

He said courts in relatively early cases regarded the aim of Animal Protection legislation as being to protect people from acts of cruelty towards animals that would offend their finer feelings and sensibilities. Today we understand, he said, that strong sensibilities against animal cruelty are underpinned by an underlying belief and understanding that animals suffer and deserve protection in their own right and for their own sakes.

*Compassion in World Farming* wishes to thank **Professor David Benatar**, and **Dr Elisa Galgut**, of the Department of Philosophy at the University of Cape Town, for their help in facilitating the ground-breaking seminars and workshop on **Animals and the Law**.

"It is with this understanding that we need to use a new legal infrastructure to address the conflict between humans and animals and the shocking abuse of animals that is taking place in the world today.

"Recognition of the value of animals and their entitlement to respect and decent treatment needs to be instantiated in law and statutory reform may be the best way to achieve lasting change for them," Professor Bilchitz said.

*"Statutory reform must enshrine and reflect our revised understanding of the sentience of animals."*

"...Animal welfare is not just about animals being free from 'unnecessary' pain and suffering, whatever 'unnecessary' means; it is also about a positive state of well-being... the sense that it's good to be alive."

- Philip LyMBERG, CEO: *Compassion in World Farming*



# their minds together for non-Humans

**Advocate Paul Hoffman SC** is a director of the *Institute for Accountability in Southern Africa* ([www.ifaisa.org](http://www.ifaisa.org)).

He said that basic human rights, as guaranteed to every South African citizen in the SA Constitution's Bill of the Rights, are being violated by an official mind-set towards animals that is 'stuck in the past'.

**"The Animals Protection Act of 1962 was informed by a value system that is different to the value system of the South African Constitution. We urgently have to adjust our laws to support the values entrenched in our Constitution so that they are inherently humane, non-violent and recognise animal sentience. We need to emphasize the importance of humane education in the entire process.**

*"The basic human rights of every South African citizen are violated by our current treatment of animals."*

**"Any policy on animals must be cognisant of, and incorporate our constitutionally guaranteed right to**

- human dignity (cruelty to animals is in conflict with a sense of human dignity)
- psychological integrity (cruelty to animals is psychologically damaging to humans)
- freedom from violence (cruelty to animals is a form of violence)
- the right to associate freely (companion animals often play a vital role in human well-being)
- the right to an environment which is not harmful to health and well-being (animal neglect and misery is harmful to human health and well-being)

**"Our current treatment of animals conflicts with and offends every one of these rights."**

**Dr Birgitta Wahlberg**, Researcher, *Department of Law, Abo Akademi University*, Finland.

Finnish research specialist in animal welfare legislation in Europe, Dr Birgitta Wahlberg is editor of the new internet-based publication *Global Journal of Animal Law* (see [www.gjal.abo.fi](http://www.gjal.abo.fi)). Her doctoral thesis was on '*Legislation and Supervision of the Welfare of Farm and Slaughter Animals*', and she is co-author of '*Nonhuman Animals Legal Status Now and in the Future*' (soon to be published). Dr Wahlberg has spent the last six months in South Africa to further her research.

Said Dr Wahlberg: **"In Europe the law acknowledges animals as sentient beings and arguably, Europe has the best animal protection legislation the world has to offer. Even so, Europe is using animals to an ever greater degree and I dare to say that we are causing animals more suffering than ever before. Instead of an effective protection and promotion of their welfare (and thereby ours) we have managed mainly to reconstruct in law the suffering we cause them."**

**"Most importantly, we need fundamentally to change our perception of nonhuman animals and our behaviour towards them. We have to make sure that the laws are not only written with this understanding, but are also put into force effectively with this understanding. Then the animal laws can truly have a positive impact on our lives."**

**"If we could agree and truly understand that firstly, it is fundamentally a form of injustice to**

*...continue overleaf*



*“Despite the best animal protection laws in Europe, the animals have not benefited.”*

take a life and secondly, that it is fundamentally a form of violence to kill or slaughter another living being, our approach towards animals and the way we use them for human purposes, would have to change and thereby the legislation concerning animals as well. For example, instead of talking about not causing animals 'unnecessary suffering', we would have to motivate what is 'necessary use' and we would have to justify this 'necessary use' in order for the animals to be used at all. This is the way towards achieving a non-violent approach in our law.”

*“At the end of the day, it all depends on us changing our perception, and the only limitation to changing our perception, is our own thinking.”*

*“To treat animals well or not to use them as we do today is not in opposition to human welfare. On the contrary.”*

***Piglets are routinely castrated without anaesthetic. This piglet's extended neck denotes pain that is extreme. This is called 'opisthotonus'.***

Photo Courtesy: Dr Birgitta Walhberg



## ***The way we keep pigs...***



Photo Courtesy: Dr Birgitta Walhberg



***Piglets' tails are docked to prevent tail-biting due to stress and keeping the piglets in overcrowded barren confinement. Sweden, Norway and Finland have banned tail docking due to the immediate as well as long-term pain that results (Pig Progress Vol 28, No. 10, 2012)***



Arthur van Coller, Senior Lecturer at the University of Fort Hare's Nelson R Mandela School of Law, said:

“Factory farming methods have resulted in the terrible suffering of sentient non-human animals. This exploitation has, in part, been facilitated by the status of non-human animals in law and their grossly inadequate legal protection.

“Those that exploit animals have removed animals from the view of society.

“The law recognises only two clearly separated entities namely ‘persons’ and ‘things’.

*“The exploitation of animals has been removed from the view of society.”*

“Animals are classified as ‘things’ or legal objects that exist as the absolute property of humans. Thus, in law, animals do not have, nor are they capable of having legal rights and duties. They possess no interests that merit protection and animals are only a means to an end as determined by the property owner, while humans have the right to control, manage, or consume things under the legal concept of ‘title to property.’

“It is obvious that sentient animals are not inanimate objects but currently the law does not distinguish between them and inanimate objects or things.”

## The way forward...

The lawyers formally decided:

- to respond to the Department of Agriculture’s draft *Animal Care* policy document and request active participation in developing it further so that it reflects the ethos and values of the SA Constitution and a humane, caring society for all;
- to ensure that the new *Animal Care* policy document reflects, inter alia, the latest scientific research on the link between animal abuse and human violence, the vital need to nurture empathy in learners, the problematic nature of animal research, the environmental impact of factory farming and its impact on public health;
- to ensure legal clarity on what constitutes ‘necessary use’ of animals and emphasize the three R’s of animal welfare, namely Reduce, Replace, Refine;
- to form a group of academics and researchers who are concerned for non-humans and make expert recommendations in relation to them and the modification of animal policy and legislation;
- to meet again on 28<sup>th</sup> August at a *Critical Animal Studies* conference at the University of Cape Town.



Illustration by Hein Botha

# How the law has failed farmed animals:

## 23 years of thwarted attempts to find justice



Presented by **Louise van der Merwe**, South African Representative for *Compassion in World Farming*, at the seminar ***Animals and the Law*** held at the **Constitutional Court Auditorium** on 23 May 2013. The seminar took place under the auspices of the University of Johannesburg, the *South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)* and *Abo Akademi University* in Finland.

**T**wenty-four years ago – with my youngest child just six months old – my husband and I bought a small-holding so we could give our family a rural upbringing. Part of that would be to have some hens scratching in the garden, providing us with eggs.

We bought 20 chickens from *Vredebest Farm* in Paarl. To my shock and dismay – when we got back home and opened the crates containing the 20 chickens – I saw that their beaks had been cut off. I immediately phoned the SPCA to tell them of this atrocity only to learn that, at that stage, factory farming was not yet part of the SPCA focus. I was also to learn that debeaking was practised the world over and that maiming of chickens, pigs, cattle, sheep – the list goes on – was a prerogative we had assumed for ourselves with no thought whatsoever for the sentience and suffering of animals in the food chain.

Today I will not focus on the immense horrors which billions of farmed animals are subjected to every minute of every day, nor the many attempts of Compassion and its supporters to get retailers like *Pick n Pay* and *Shoprite Checkers* to play a role in phasing out the various abominations. Our attempts to relieve the suffering of farmed animals have been strenuous and multi-faceted - but this

evening, I will focus on our attempts to find recourse in the Law – failed attempts every one of them!

### January 1992:

Humanity for Hens (as we were called in those days) / Louise van der Merwe files a complaint with the Paarl police on the grounds that the largest egg laying company in South Africa at the time, Lemoenkloof Plase, operated in (gross) violation of the Animals Protection Act in three respects:

- **No animal may be kept in inadequate space**
- **No animal may be maimed**
- **No animal may be caused unnecessary suffering.**

After 18 months of deliberation, **Attorney General Adv Frank Kahn**, advised us as follows: “Having considered the police docket, and all the surrounding circumstances, the Attorney-General has decided not to institute a prosecution.” The law did not require him to give reasons. **Frank Kahn** took this decision despite the fact that an opinion by **Adv. Bennie Griesel SC** (later to become a judge), stated that we had a *prima facie case*.

To see debeaking, go to:

<http://www.animal-voice.org/index.php/video-gallery>

### 8<sup>th</sup> May 1996:

Despite the submission of 25 000 signatures (at a time when we had to do petitions by hand) for the inclusion of animal well-being in the new Constitution, **Mr Cyril Ramaphosa**, chairperson of the Constitutional Assembly, officially adopts South Africa's new Constitution – but animals are left out.

### 1998:

A supporter takes undercover footage at a pig farm in the Western Cape. The pigs are in sow stalls, a system that is now outlawed across Europe for its inhumanity but remains completely legal here in SA. An Animal Welfare Inspector is asked to visit the farm with a view to our laying a charge of animal cruelty on the grounds of..

- **Inadequate space (the width of the stalls is just 600cm)**
- **Maiming – the pigs tails are docked**
- **Unnecessary suffering – the pigs all show signs of depression and stereotypical behaviour.**

The inspector finds nothing wrong with the way the pigs are being kept.

Please see <http://www.animal-voice.org/index.php/video-gallery>

#### 1998 – 2005:

Parliament is deluged with petitions from our supporters requesting an amendment to the SA Constitution to acknowledge animals as sentient beings with intrinsic value. We specifically request that a 'duty to care' clause be included in regard to our relationship with the environment and animals. *Dr Pallo Jordan, then Chairman of the Constitutional Review Committee, complained about being deluged with our postcard petitions totaling 100 000 signatures.*

#### 4<sup>th</sup> August 2006:

Our petitions pay off! We have a hearing with the Constitutional Review Committee! With high-ranking officials in the Department of Agriculture in attendance, **Dr Manie Schoeman**, chairman of Parliament's Constitutional Review Committee, asks:

**"The question is whether animals are sufficiently protected by current legislation. If not, would it be sufficient for current legislation to be reviewed and strengthened? Or should the protection of animals be entrenched within the Constitution in order to give it political sway?"**

He adds: "We can have all the acts (to protect animals) in the world but if they are not applied, what does it help?"

**Dr Schoeman** ruled that the Department of Agriculture should re-evaluate all legislation relating to animals. Shortly thereafter, **Dr Schoeman** was relieved of his duties as chairman of the Constitutional Review Committee.

#### 2006:

In cooperation with the *Legal Alliance for Animal Welfare (LAAV)*, we formally complain to the Advertising Standards Authority alleging that the *County Fair* label on chicken products fails to comply with the SA Advertising Code in that it is neither honest nor truthful and is likely to mislead consumers. LAAV argues that a reasonable consumer would assume from the label that the chicken had been reared in a free range environment, had eaten natural food

and had grown to adulthood. In reality, the *County Fair* product had been:

- **Intensively farmed in crowded conditions**
- **Fed growth-promoting antibiotics**
- **Exposed to artificial lighting 23 hours out of 24 to encourage eating**
- **Slaughtered at just 40 days, never having been exposed to a free range environment**



However, on 23 June 2006, the ASASA dismissed the complaint on the grounds that the label was not misleading. A reasonable shopper, it said, would look for the words 'free range' on packaging and, in their absence, would assume that the product was not free range.

#### 21<sup>st</sup> February 2011:

We file a Class Action Complaint as provided for in Section 4 of the new Consumer Protection Act, purported to be the most progressive in the world. We charge that some current methods of animal production are "unconscionable and unethical or improper to a degree that shocks our conscience and offends us personally, as reasonable people." We say that at the very least we want labels that reflect the methods of production.

More than two years later, on 17<sup>th</sup> April 2013, we finally receive a reply from **\*Mr Andisa Potwana**, Director of Consumer and Competition Law

and Policy at the Department of Trade and Industry. He says *inter alia*:

"In the Consumer Protection Act (Act 68 of 2008) the "unconscionable conduct" referred to in Consumer Protection is the one directed by the supplier to the consumer and not the one directed by the supplier to the animal. Similarly, when a supplier treats its workers poorly but there are no complaints regarding the quality and supply of the goods supplied to the consumer, the regulation of such conduct would fall under the Department of Labour as such and is not regulated under the Consumer Protection Act even though the consumer ultimately consumes products derived from such 'unconscionable conduct'."

Today, as I stand here, I contend that our most intimate contact with our environment and the animals in it, is through what we swallow and put into our bodies. When we don't understand the violence that rips our society apart, let us look no further for an answer than the words of author **Milan Kundera**. He said:

**"Mankind's true moral test, its fundamental test (which lies deeply buried from view), consists of its attitude towards those who are at its mercy: animals. And in this respect mankind has suffered a fundamental debacle, a debacle so fundamental that all others stem from it."**

I thank you.

**Animal Voice would like to link up with attorneys in Pretoria who may be prepared to take the Consumer Commission on review if they agree that in the light of Mr Potwana's reply, (see above)\* consumer protection and the access to information rights of consumers are not being dealt with as contemplated in section 7(2) of the constitution. Please contact Louise at [avoice@yebo.co.za](mailto:avoice@yebo.co.za)**

# Prosecutor calls on communities to help fight animal abuse

**Shaina Naidoo** dreamed of becoming a lawyer from the age of 8! Today, this *Miss Earth South Africa* regional finalist (Western Cape) is studying towards a *Master of Laws* specializing in Marine and Environmental Law, and is a prosecutor at Wynberg Magistrate's Court in Cape Town. She is determined to play a role in finding legal recourse for abused animals.

Speaking in an exclusive interview with *Animal Voice*, Shaina said: "It is scary to think that as human beings, some of us are capable of treating animals so badly. Part of the problem is that people view animals as 'things'. In fact the law categorizes animals as 'things'. We should start right there in changing the legal categorization of animals from 'things' to 'sentient beings'. This, in itself, will be a positive step in shifting the mindset of people to understand that an animal is a life and, as with all lives, deserves to be treated with decency."

The second part of the problem, she said, was that people did not report acts of animal cruelty to the police. "If it is not reported, we cannot act on it."

Shaina said a recent positive development was the National Prosecuting Authority's formation of an *Environmental Forum* which included prosecutors, police, the SPCA, environmental management inspectors and other stake-holders.

"We meet quarterly and are trying to build better lines of communication between all parties. This includes the need for acts of animal cruelty to be viewed as crimes and dealt with as the crimes they are."

"My message is clear," she said. "If you witness acts of cruelty to animals, phone the police and lay a formal complaint. Without the communities speaking up, we, as a prosecuting authority, are powerless to put things right. But, with help from communities the law is an excellent tool to help curb abuse. People need to know that to stand up against suffering, neglect and cruelty is right, and not-to-care is wrong."

Ready to do battle in court, feisty Public Prosecutor **Shaina Naidoo** is also a Miss Earth Regional Finalist.

*Animal Voice* editor **Louise van der Merwe** wishes to thank supporters for their role in helping her achieve the award presented to her by the City of Cape Town on *World Environment Day*, 5th June 2013, for her work in *Humane Education*.

## What an honour!

That's Louise on the right, holding her trophy and certificate, and on the left is **Lindie Buirski** who is head of *Capacity Building, Training and Education* at Cape Town's *Environmental Resource Management Department*.

The award was presented as part of the City's Environment Day celebrations in recognition of Louise's "outstanding contribution and commitment to humane education and environmental awareness in the City of Cape Town."

Thank you Lindie!

Thank you, awesome City of Cape Town!

