26th Animal Law Conference
OCTOBER 12–14, 2018
CHICAGO, ILLINOIS
Animal Agriculture in South Africa

- Soils and climate
  - 13% of land suitable for cultivation
  - 69% viable for grazing only
- Livestock is the largest agricultural sector
Animal Agriculture in South Africa

- Soils and climate
- Land as a contested space
  - Colonization & apartheid
  - Racially based system of land allocation
Animal Agriculture in South Africa

- Soils and climate
- Contested space
- Major structural changes in agriculture
  - 1994: 60,000 commercial farms
  - 2013: 36,000 farms
  - Farm worker employment declined by nearly 50%
Food Industry Structure: Factory Farming Pervasive & Entrenched

• Vertically integrated local corporations with regional operations

• Farmed animal populations:
  
  14 million cows: 75% will spend a third of their lives in feed lots
  
  1.5 million pigs: 80% of 100,000 breeding sows are kept in intensive confinement

  Virtually all broiler chickens and laying hens are intensively farmed
Food Industry Structure:
Factory Farming Pervasive & Entrenched

- Vertically integrated local corporations with regional operations
- Farmed animal populations
- Numbers of animals killed for food each year
  - 1 billion (1,000,000,000) chickens
  - 2.8 million pigs
  - 6.8 million sheep
  - 2.9 million cows
Legal Framework: Constitutional Delegations

- Structure of government
  - Constitution
  - National
  - Provincial
  - Local jurisdictions
  - African customary law (traditional law)
Legal Framework: Constitutional Delegations

- Structure of government
- Schedules 4 and 5 determine authorities

Agriculture, environment, animal control and disease, nature conservation (some aspects) are concurrent national and provincial competencies

Abattoirs and veterinary services exclusive provincial competencies

Facilities for the accommodation, care and burial of animals, municipal abattoirs and pounds are local competencies
Legal Framework: Constitutional Delegations

• Structure of government
• Schedules 4 and 5.
• Key provisions in the Bill of Rights: Environment, freedom from violence, right to dignity

S10 Everyone has inherent dignity and the right to have their dignity respected and protected

S12(1)(c) Everyone has the right to freedom and security of the person, which includes the right ... to be free from all forms of violence from either public or private sources
Legal Framework: Constitutional Delegations

S24 Environment
• Everyone has the right—
• (a) to an environment that is not harmful to their health or wellbeing; and
• (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
  • (i) prevent pollution and ecological degradation;
  • (ii) promote conservation; and
  • (iii) secure ecologically sustainable development and use of natural resources
• while promoting justifiable economic and social development.
Legal Framework: Legislation, Regulations & Codes

- Animals Protection Act
- Provincial Ordinances
- Regulations
- Bylaws
- Voluntary Codes
Animals Protection Act

Definition:

“Animal” means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat, or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person.
Animals Protection Act

S2 Offences in respect of animals

(1) Any person who-

(a) overloads, overdrives, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks goads or terrifies any animal; or

(b) Confines, chains, tether or secures any animal unnecessarily or in such a manner or position so as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection from or shelter from heat, cold or weather ...
The Law Working in Practice: Reasons for Optimism

• 2016 Constitutional Court judgment in NSPCA v Minister of Justice:

• NSPCA can bring private prosecutions where NPA declines to prosecute, and

“...[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general”... (t)his obligation was especially pertinent because of our history. Therefore, the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals... [A]nimals 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 of experiencing pain”.
‘Animal welfare is connected with the constitutional right to have the “environment protected . . . through legislative and other means”. This 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.’
The Law Working in Practice: Reasons for Optimism

- NSPCA judgment
- Whistleblower protection
- Sentencing (dog fighting and poaching)
The Law (Not) Working in Practice: Obstacles and Challenges

- South African Police Services
- Long delays to access courts
- Standing issues
The Law (Not) Working in Practice: Obstacles and Challenges

- Undue political influence over the National Prosecuting Authority
- Thandi Modise 2014 animal cruelty case
- Ukweshwama bull killing
Cultural & Practical Complications

- Ubuntu and traditional practices
- Eating meat: Afrikaans and traditional African views
- Urban farm animals, informal slaughter
Cultural & Practical Complications

IMPORTANT NOTICE

WE ARE REMOVING PRODUCTS THAT MAY BE LINKED TO THE LISTERIOSIS OUTBREAK FROM OUR STORES. CUSTOMERS WHO BOUGHT ANY ENTERPRISE PRODUCT (INCL. BOKKIE, RENOWN, LIFESTYLE, MIELIEKIP), OR ANY RAINBOW READY TO EAT PRODUCTS (E.G., POLONY OR RUSSIANS CAN RETURN THE PRODUCT FOR A FULL REFUND.

Avian flu and Listeriosis
Land Reform: Challenges and Opportunities

- Human rights abuses, farm attacks, land invasions
Land Reform: Challenges and Opportunities

• Human rights abuses, farm attacks, land invasions
• Redistribution as restorative justice
Land Reform: Challenges and Opportunities

- Human rights abuses, farm attacks, land invasions
- Redistribution as restorative justice
- Political support for alternative farming methodologies?
Conclusions

- Existing legislation offers opportunities for welfare improvements
- Litigation not currently employed as a meaningful tool
- Untested constitutional remedies
- Legislative reform: Animals Protection Act
- Political Opportunities