

South African law classifies animals as objects or things ... Will Judge Cameron's minority judgment help pave the way towards a new legal dispensation for those born other-than-human?



Visionary judge

Already a household name for his outspoken support of human rights, gay rights and people living with HIV-Aids, **Judge Edwin Cameron**, refreshingly, seems aware that animals are in need of a sea change in our legal recognition of them.

Recently appointed to the highest court in the country – The Constitutional Court – Judge Cameron's sentiments on the issue are contained in an Appeal Court minority judgment he delivered, in support of an NSPCA attempt to obtain an interdict against feeding live prey to captive tigers.

http://www.supremecourtofappeal.gov.za/judgments/sca_2008/sca08-078.pdf

In the minority judgment, Judge Cameron stated that under prevailing legislation, animals were objects or things. "Though animals are capable of experiencing immense suffering, and though humans are capable of inflicting immense cruelty on them, the animals have no voice of their own. Like slaves under Roman law, they are the objects of the law, without being its subjects." Later, he noted that animals have "less voice" than most assault victims.

Dr David Bilchitz, Director of the Johannesburg-based **South African Institute for Advanced Constitutional, Public, Human Rights and International Law**, believes Judge

Cameron's judgement may pave the way for an evolutionary shift in the legal status of animals.

Explained Dr Bilchitz: "In his judgement, Cameron criticizes the view that animal protection legislation exists only to protect the sensibilities of people. Instead, he recognises that the purpose of animal welfare legislation is to protect the welfare of animals directly.



Dr David Bilchitz

This means that animals should not simply be regarded as objects but as beings with welfare needs of their own that ought to be protected in law.

"Dr Bilchitz added: "This is an important statement in our law. Our current classification of animals as objects or things is a nonsense that is not only outdated but which has never been true. We now need a courageous court of law to bring about a change in the legal status of those who are not human, to recognise them as subjects in their own right in law and that humans have binding obligations towards them to treat them with dignity and respect."

In December last year, Cape Town lawyer **Cormac Cullinan** who specialises in Environmental Law and Policy, said he believed that the legal classification around the world of humans and companies as subjects



Cormac Cullinan

with rights, and everything else as objects with no rights, was the root cause of Earth's destruction at the hands of man. Addressing an audience at *The Centre for the Book* as guest speaker of the **Environmental Law Association**, Cullinan said: "Slaves were once regarded by the law as objects – not subjects – and were exploited as a result. Today, Nature is in the same position.

"In terms of our law, Nature is a collection of objects to be treated as a vast larder of resources that exists specifically for the use of humans.

"We talk about genocide, homicide and so on. We need to understand that we are committing Ecocide on a grand scale."

Cullinan suggested that Earth was not a collection of objects but a community of subjects.

"We have to broaden our sense of community to include 'other than human,'" he said.

Louise van der Merwe, Regional Representative for **Compassion in World Farming**, has pointed out that she and the supporters of Compassion in World Farming have lobbied for more than a decade to have the South African Constitution amended to acknowledge the sentience of animals and to include a clause relating to our 'duty to care' for them.

"Yet we remain stuck in the notion that we cannot turn our attention to animal rights until such time as we have put the world aright for humans," she said.

"We fail to see that human rights and animal rights is one issue in that how we treat animals is a mirror reflection of who we are as individuals, as communities, as countries. Only when we accord animals their rightful status and treat them with decency, can we claim our constitutional right to dignity."

Note: An article by Dr Bilchitz, calling for fundamental rights for animals, including their right to dignity, will be published in an upcoming issue of the South African Journal of Human Rights.

Compassion in World Farming
- South African Office:
PO Box 825, Somerset West 7129
Tel. 021 852 8160
email: avoice@yebo.co.za
Websites: www.animal-voice.org
www.ciwf.org

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