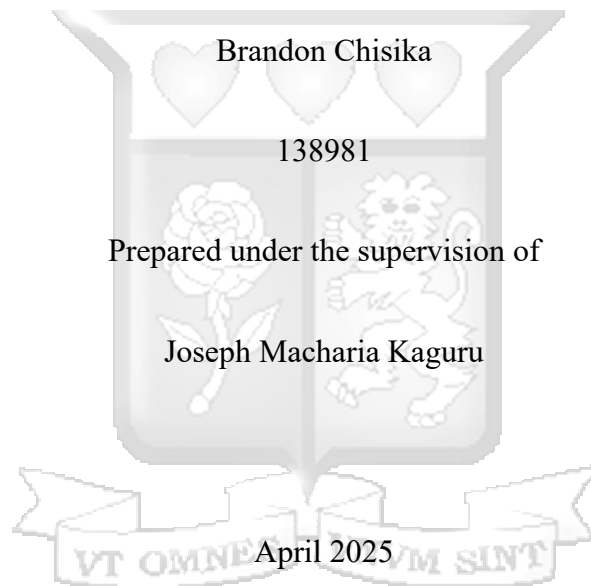


# **PET ANIMAL WELFARE: A CRITIQUE OF THE LEGAL FRAMEWORK**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree,

Strathmore University Law School

By



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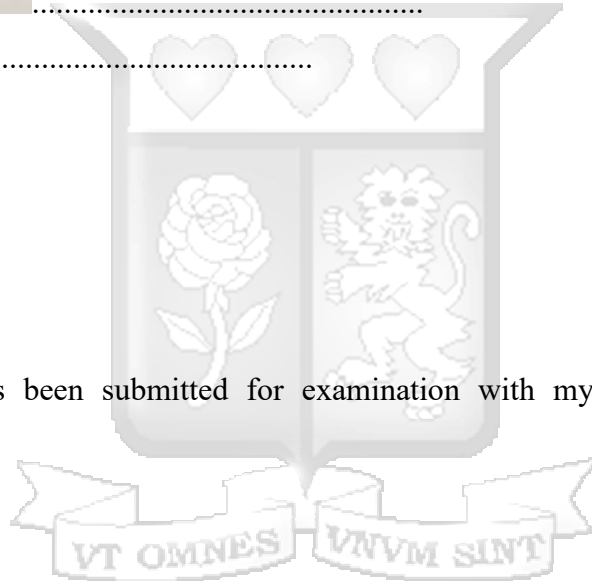
### Declaration

I, BRANDON CHISIKA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



Signed:.....

Date:.....04/04/2025.....



This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

Joseph Macharia Kaguru

Date:.....04/04/2025.....

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>3</b>
<b>List of Cases.....</b>	<b>5</b>
<b>List of Legal Instruments .....</b>	<b>5</b>
<b>Abstract.....</b>	<b>5</b>
<b>CHAPTER ONE .....</b>	<b>7</b>
<b>INTRODUCTION.....</b>	<b>7</b>
<b>1.1 Background .....</b>	<b>7</b>
<b>1.2 Problem Statement .....</b>	<b>10</b>
<b>1.3 Purpose of the study .....</b>	<b>10</b>
<b>1.4 Research questions .....</b>	<b>11</b>
<b>1.5 Research objectives .....</b>	<b>11</b>
<b>1.6 Hypothesis.....</b>	<b>11</b>
<b>1.7 Literature review .....</b>	<b>12</b>
<b>1.8 Theoretical framework.....</b>	<b>14</b>
<b>1.9 Research methodology .....</b>	<b>16</b>
<b>1.10 Limitations of the study.....</b>	<b>17</b>
<b>1.11 Chapter breakdown.....</b>	<b>17</b>
<b>DETAILED ANALYSIS OF THE LEGISLATIVE FRAMEWORK SURROUNDING PET WELFARE IN KENYA .....</b>	<b>18</b>
<b>2.1 The Constitution of Kenya.....</b>	<b>18</b>
<b>2.2 Prevention of Cruelty to Animals Act (1962).....</b>	<b>19</b>
<b>2.3 Nairobi City County Dog Control and Welfare Act.....</b>	<b>21</b>
<b>2.4 The Penal Code.....</b>	<b>22</b>
<b>2.5 Conclusion.....</b>	<b>23</b>
<b>CHAPTER THREE.....</b>	<b>24</b>
<b>REVIEWING THE INEFFECTIVENESS OF THE LEGAL FRAMEWORK SURROUNDING PET WELFARE IN KENYA.....</b>	<b>24</b>
<b>3.1 The Constitution of Kenya.....</b>	<b>24</b>
<b>3.2 Prevention of Cruelty to Animals Act.....</b>	<b>26</b>
<b>3.3 Nairobi City County Dog Control and Welfare Act.....</b>	<b>27</b>
<b>3.4 The Penal Code.....</b>	<b>27</b>
<b>3.5 Conclusion.....</b>	<b>28</b>
<b>CHAPTER FOUR.....</b>	<b>29</b>
<b>COMPARATIVE ANALYSIS REGARDING THE STATE OF PET WELFARE BETWEEN KENYA AND THE UNITED KINGDOM.....</b>	<b>29</b>

**4.1 Effectiveness of the pet legal framework in the UK..... 29**

**4.2 Legislative framework surrounding animal welfare in the United Kingdom. .... 31**

**4.2.1 Animal Sentience Act (2022). .... 31**

**4.2.2 Animal Welfare Act (2006). .... 32**

**4.2.3 Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019. .... 34**

**4.3 Conclusion..... 35**

**CHAPTER FIVE..... 36**

**FINDINGS AND RECOMMENDATIONS..... 36**

**5.1 Findings ..... 36**

**5.2 Recommendations ..... 37**

**BIBLIOGRAPHY..... 39**



## List of Cases

Castrol Koome v Republic

## List of Legal Instruments

The Constitution of Kenya, 2010.

Prevention of Cruelty to Animals Act, 1963.

Nairobi County Dog Control and Welfare Act, 2016.

Penal Code.

Animal Welfare and Protection Bill.

Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Animal Welfare Act.

Animal Sentience Act.

Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019.

Animal Welfare (Service Animals) Act 2019.

## List of Abbreviations

CITES - Convention on International Trade in Endangered Species of Wild Fauna and Flora

CoK - Constitution of Kenya

PCAA - Prevention of Cruelty to Animals Act

RSPCA - Royal Society for the Prevention of Cruelty to Animals

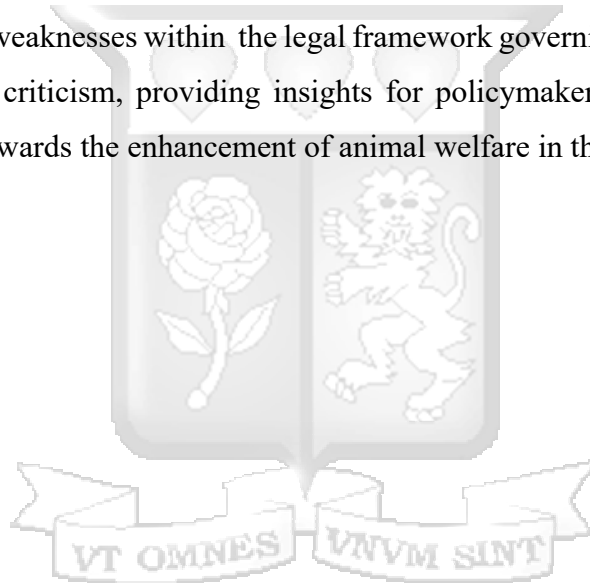
UK - United Kingdom

UKFAWC - United Kingdom Farm Animal Welfare Council

UNEA - United Nations Environmental Assembly

## Abstract

This research delves into the intricate legal landscape that governs the protection of animal welfare in Kenya, specifically companion animals, examining the nation's commitment to safeguarding the welfare of pets within its borders. The study thoroughly analyses the existing Kenyan legal framework, regulations and international commitments that contribute to the protection and promotion of animal welfare. It proves that the legal framework is grossly underwhelming and ineffective in addressing contemporary challenges facing the state of companion animal welfare in Kenya. Ultimately, this analysis aims to contribute to a better understanding of the weaknesses within the legal framework governing animal rights in Kenya through constructive criticism, providing insights for policymakers, legal practitioners and advocates working towards the enhancement of animal welfare in the country.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Background

‘The only justifiable stopping place for the expansion of altruism is the point at which all whose welfare can be affected by our actions are included within the circle of altruism. This means that all beings with the capacity to feel pleasure or pain should be included; we can improve their welfare by increasing their pleasures and diminishing their pains.’<sup>1</sup> This quote reflects the position of Peter Singer, moral philosopher and professor of bioethics on animal welfare, emphasizing the vitality of taking ethical measures to enhance the state of animal welfare.

Animal welfare refers to the physical and emotional state of an animal that is impacted by the environment in which the animal lives and works, human attitudes and practices and resources available to it.<sup>2</sup> This implies that animal welfare means the physical and mental state of an animal in relation to the conditions in which it lives.<sup>3</sup> It directly relates to the state of an individual animal, regarding attempts to cope with its environment, including the absence of directly human induced physical and psychological suffering, as well as the satisfaction of its biological, including physiological, ethological and social needs.<sup>4</sup> Animal welfare constitutes various factors which are usually dynamic in nature but form the state of the animal’s overall health when balanced as required.<sup>5</sup> For companion animals like domestic cats and dogs, commonly referred to as pets, animal welfare is presented in terms of how they are taken care of both physically and mentally by their legal owners.

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<sup>1</sup> Hampton L, ‘An Introduction to Utilitarianism’, Utilitarianism.net, –<  
[https://utilitarianism.net/pdf/Peter\\_Singer\\_Utilitarianism\\_net.pdf](https://utilitarianism.net/pdf/Peter_Singer_Utilitarianism_net.pdf) >

<sup>2</sup> ‘What is Animal Welfare’ The Brooke Organisation, pg 3.

<sup>3</sup> <https://www.woah.org/en/what-we-do/animal-health-and-welfare/animal-welfare/>

<sup>4</sup> Objective, United Nation Convention on Animal Health and Protection (UNCAHP), 23<sup>rd</sup> August 2018.

<sup>5</sup> Mogo M, Wabacha K, Mbithi F and Kiama G, ‘An overview of animal welfare issues in Kenya’ 29 *A Journal of the Kenya Veterinary Association* 1, 2005, 48.

As important as it is to ensure the survival and thriving of the human species, it is equally vital to make sure that the state of animal welfare is protected and promoted for a myriad of reasons. The first and very obvious reason is because of the benefit that we accrue from animals. Animals being our primary source of nutrition should be more than enough incentive for us to create an enabling environment for their protection. Moreover, animals form part of our collective communities and can experience pain, fear, hunger and a wide range of other emotions just like humans, thereby deserving of equal protection. Pets, for example, are a great source of comfort and happiness to their owners and by virtue of this alone, they should be subject to the highest attainable standards of care and protection.

The basic premise surrounding the propagation of animal welfare is the idea that animals are capable of sentience just like human beings.<sup>6</sup> Animals are emotional and intelligent beings that deserve to live freely without being entirely tied to the utility they provide to human beings and in the unfortunate event that they are, they should be accorded rights exclusive to them to enable their humane treatment by people and promote their flourishing.<sup>7</sup>

The history of animal welfare in Kenya and its evolution has been shaped by various cultural, societal and a few legislative developments. Traditionally, there were norms established that worked majorly in favour of animal welfare through peaceful coexistence.<sup>8</sup> Even though there were no codified laws to explicitly guide this human - animal interaction, animals were widely considered as vital components of the ecosystem thus their well being was intertwined with the well being of humans.<sup>9</sup> A progression in time saw a more codified development in the policies regarding animal welfare especially in relation to land use and wildlife management.<sup>10</sup>

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<sup>6</sup> Broom D, 'Animal welfare: concepts and measurements' *Journal of Animal Sciences*, 1991, 2 [https://www.researchgate.net/publication/21376625\\_Animal\\_Welfare\\_Concepts\\_and\\_Measurement](https://www.researchgate.net/publication/21376625_Animal_Welfare_Concepts_and_Measurement) in November 1991.

<sup>7</sup> Kleinhappen T, John E A, Pike T W, Wilkinson A and Burman O H P, 'Animal welfare: a social networks perspective' *Science Progress*, 2016, 77 [https://www.researchgate.net/publication/301558004\\_Animal\\_welfare\\_A\\_social\\_networks\\_perspective](https://www.researchgate.net/publication/301558004_Animal_welfare_A_social_networks_perspective) in March 2016.

<sup>8</sup> Akama J S, "THE EVOLUTION OF WILDLIFE CONSERVATION POLICIES IN KENYA." *Journal of Third World Studies* 15, no. 2 (1998): 103–17. < <http://www.jstor.org/stable/45193766> >.

<sup>9</sup> Ministry of Environment and Forestry, *Sixth national report to the convention on biological diversity*, 2020, 283.

<sup>10</sup> Ministry of Wildlife and Tourism, 'Sessional Paper No.1 of 2020 on Wildlife Policy', June 2020, 1.

In Kenya, this development saw the country adopt laws from the colonial period that were aimed at preventing cruelty against animals through the enactment of the Prevention of Cruelty to Animals Act (PCAA) in 1962.<sup>11</sup>

For pets exclusively, their ownership has skyrocketed and these animals have grown popular over the years amongst the Kenyan demographic. A recent survey carried out in 2023 demonstrated the significance of pet ownership in Kenya with over 54% percent of Kenyans having a household owned pet, and 36% of the population having at least two pets.<sup>12</sup> With these figures, the need to facilitate the protection and well being of such animals surely arises.

At an international level, Kenya is committed to the international standards set for the protection of animals including pets and this is evident through its adherence to conventions such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This convention binds countries that are party to it and to ensure that ethical trade practices involving the specimens of wild animals, exotic animals and plants are promoted to secure the survival of endangered species.

In recent years, Kenya has witnessed an increased emphasis on animal welfare in response to evolving societal attitudes and concerns.<sup>13</sup> The United Nations Environment Programme (UNEP) between 2021 and 2022 adopted a resolution aimed at enhancing the sustainable development of the environment and animal welfare. UNEP initiated a report that consolidates the nexus between animal welfare, the environment and sustainable development with Kenya cosigning this resolution.<sup>14</sup> Efforts to strengthen the legislative framework continue, reflecting a dynamic and adaptive approach to the changing landscape of animal protection.<sup>15</sup> With all this progress however, Kenya still falls significantly behind in the national state of animal

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<sup>11</sup> Muigua K, 'The Law on Prevention of Cruelty Against Animals in Kenya, TheLawyerAfrica, 2021, <<https://thelawyer.africa/2021/11/12/prevention-of-cruelty-on-animals-in-kenya/>>

<sup>12</sup> Gray E, '10 Kenya pet industry statistics in 2025: trends, market size & FAQ, 7 January 2025. [https://www.dogster.com/statistics/pet-industry-statistics-kenya?utm\\_source=chatgpt.com](https://www.dogster.com/statistics/pet-industry-statistics-kenya?utm_source=chatgpt.com) on 7 January 2025.

<sup>13</sup> Intergovernmental Authority for Development (IGAD), *Kenya National Animal Welfare Strategy*, 2017 - 2022, 9.

<sup>14</sup> UNEP, *Animal welfare-environment-sustainable development nexus*, UN A/ EA.5/Res.1.

<sup>15</sup> Intergovernmental Authority for Development (IGAD), *Kenya National Animal Welfare Strategy*, 2017 - 2022, 9.

welfare and still has a long way to go in terms of enacting effective legislation to elevate the state of animal welfare.

## 1.2 Problem Statement

The state of animal welfare has been stagnant for quite a while as a result of constant disregard and neglect for animal rights even after the enactment of the Prevention of Cruelty to Animals Act. The existing legislation is not comprehensive enough to effectively ensure that the welfare of pet animals is protected, thereby being undervalued and making its application difficult. This has resulted in companion animals being mistreated with cases of their abandonment, cruelty and torture on the rise.

## 1.3 Purpose of the study

This study investigates the efficiency of the existing laws relevant to the promotion and protection of animal welfare, particularly pet animals. The relevance of this study is evident taking into consideration the fact that animals play an undeniable integral role in Kenya's basic social, economic and ecological systems. Subsequently, it is clear that the welfare and protection of animals in this regard is important to enable the sustainable balance and development of these systems.

If its findings and recommendations are taken keenly into account, the study is aimed at improving the relationship between animals and human beings through legislative initiative. The study will directly improve the state of well being of animals by using legal action to enhance the manner in which human beings treat them. For one, this study will have a drastic improvement in the state of life of pets. A cultivated habit of properly treating animals translates to a society placing the health of its ecological system at the centre of attention during an age where little or no regard is given to the ecosystem.<sup>16</sup> Reversing the effects of climate change and reducing the extinction of animal species in the long run is the result of implementing this study.

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<sup>16</sup> Kang'ethe P, 'Animal Welfare: What is it about?' Farmkenya, 29 April 2022, <  
<https://www.standardmedia.co.ke/farmkenya/article/2001444346/animal-welfare-what-is-it-about> >

#### 1.4 Research questions

The means to achieve the purpose of this study will be demonstrated through an expansive discussion of the following research questions:

1. What is the legal framework governing pet protection and welfare in Kenya?
2. How ineffective is the law that is meant to protect the welfare of pet animals in Kenya?
3. What fundamental takeaways can we get from how the United Kingdom employs legislative means to promote pet animal welfare?
4. What suggestions and reforms can be proposed from the findings of the study to improve the state of animal welfare for pets in Kenya?

#### 1.5 Research objectives

This study is aimed at critically interrogating the effectiveness of the current legal framework surrounding the protection and promotion of pet animal welfare. Specifically, the research study is aimed at achieving the following objectives:

1. To analyse the legal framework that surrounds the protection of pet animals in Kenya;
2. To highlight the ineffectiveness of the legal framework tasked with the protection of pet animals in Kenya;
3. To assess the legislative solutions applied by the United Kingdom in implementing pet welfare protection and assess how they fill the gaps left by the Kenyan legal framework in their aim to protect the welfare of pet animals;
4. To provide possible reforms to the legislative framework to enhance the state of pet animal welfare in Kenya.

#### 1.6 Hypothesis

My theory for this study is that the current legal framework is both inadequate and inefficient in its pursuit for promoting the welfare of pet animals in Kenya.

## 1.7 Literature review

The following pieces of literature give insight into the state of animal welfare, the challenges and the different approaches taken to deal with such challenges to enhance the welfare of animals;

### *1. An Overview of Animal Welfare Issues in Kenya (EG Mogo):*

The authors of this article propose that the abuse of animal welfare is a significant concern within Kenya, demonstrated by the prevalence in offences against animals due to the lack of adequate legislation and policy measures to ensure that the welfare of animals is taken care of. The authors define animal welfare as the physical and psychological state of an animal with regards to its environment and the ability to cope with the said environment. This definition lays the basis upon which legislation aimed at promoting animal welfare is to be derived from. The authors suggest that the welfare of an animal has been tampered with if the animal is not subject to the following five freedoms;

- Freedom from hunger or thirst.
- Freedom from thermal or physical discomfort.
- Freedom from pain, injury and disease.
- Freedom from fear and distress.
- Freedom to indulge in normal behavioral patterns.

The authors discuss that the prevalence in animal welfare abuse is a result of several factors with the main one being inadequacy in legislative and policy provisions. Other factors that came into play were inadequate training in animal welfare, insufficient capacity to monitor and minimise cruelty and inadequate supervision of service providers. There is acknowledgement of existing legislation to help promote animal welfare, with the PCAA being the most comprehensive piece of legislation denoting cruelty offences and prescribed sentences. This piece of legislation alone however is not adequate for the required purpose and there is need for more legislation to aid in tackling animal welfare abuse.

As a solution, the authors propose educational measures to be imposed to various sectors directly affecting the welfare of animals. For example, adequate training should be facilitated for veterinarians and animal scientists who have immense knowledge regarding animal

welfare. Their training should be deeply rooted within the educational principles of animal welfare as they have very crucial positions to hold in terms of enabling the environment for animal welfare to thrive.

The authors also propose the introduction of animal welfare education formally into the education system to facilitate the protection of animal welfare within the country, especially at institutions of higher education. They suggest that this would form a viable basis for animal welfare within the education system. They particularly propose the introduction of animal welfare education into the veterinary curriculum in Kenya and argue that dedicated training is necessary to equip veterinary professionals with the skills to assess animal welfare and address related challenges.

The analysis by the authors gives insight into practical solutions that may be adopted to deal with the challenges that hinder the promotion of pet animals in Kenya.

## *2. The Place of Animal Rights in Kenyan Law: Prospects and Challenges (K Muigua):*

This paper by Kariuki Muigua assesses the legal status granted to animals with regards to whether an ‘animal rights’ approach is taken or whether an ‘animal welfare’ approach is taken to protecting animals. In his assessment, the author makes a distinction between animal rights and animal welfare, stating that the former approach to protecting animals involves giving animals absolute protection through rights while the latter proposes an approach that involves still using animals but treating them in a humane manner. The author’s argument is that Kenya has adopted the animal welfare approach to protecting animals through legislative frameworks and policy measures by ensuring that animals are treated well and humanely even in their utility provision to human beings.

In his assessment of these two approaches, the author is keen to note that there is a fundamental divergence in opinion between advocates for animal welfare and advocates for animal rights. Advocates for animal rights are completely against the idea of using animals in any way, arguing that animals are sentient beings that deserve their explicit protection through having their own legal rights. Advocates for animal welfare however argue that animals can be used

for the benefit of humans but this use has to be moderated and in consideration of the animals' well being.

The author also explores various arguments for the protection of animal rights and welfare. He considers the concept of animals having inherent value and therefore deserving of rights to enhance their protection. He also examines the concept of utilitarianism and how it validates the protection of animal rights by proposing that if animals provide a net positive to the human population then they should be protected by default.

### 1.8 Theoretical framework

There are notably two distinct schools in the advocacy of better conditions for animals. Even though commonly used interchangeably, each term represents a different concept. The first school of thought may be termed as '*Advocacy for Animal Welfare*' while the other school of thought is widely referred to as '*Advocacy for Animal Rights*'.<sup>17</sup>

#### *Animal Welfare*

Scholars and activists that advocate for animal welfare dwell on the treatment of animals by human beings as the issue. They champion for the better treatment of animals by using tools such as campaigns and demonstrations to create awareness and employ legislative procedures to ensure enforcement of the same within the umbrella of the law. This school of thought allows for the use of animals but argues that this should be done in a regulated way to ensure that animals enjoy their fundamental rights (as developed by the United Kingdom Farm Animal Welfare Council [UKFAWC]); freedom from hunger and/or thirst, freedom from discomfort, freedom from pain, freedom from injury or disease, freedom from stress and distress and freedom to express normal behaviour. The animal welfare school of thought is popular amongst famous scholars such as Jeremy Bentham and Ruth Harrison, the author of *Animal Machines* (1964) who exposes the animal cruelty that takes place in factory farming.<sup>18</sup> This

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<sup>17</sup> Muigua K, 'The Place of Animal Rights in Kenya: Prospects and Challenges' Published Ph.D Thesis, University of Nairobi, Nairobi, 2020, 3.

<sup>18</sup> Harrison R, 'Introduction' in Ruth H *Animal Machines*, Vincent Stuart Publishers Ltd, London, 1964, 35.

study adopts the concept of animal welfare by presenting the claim that animals may be used for the benefit of human development and nourishment but done in regulation.

### Animal Rights

On the other hand, individuals and bodies that advocate for animal rights argue that the use of animals is indeed the problem.<sup>19</sup> They, in contrast, propose that using animals is the problem rather than how the animals are treated and claim that the use of animals should be abolished altogether.<sup>20</sup> The logic behind this school of thought is that animals are independent sentient beings with their own inherent value just like human beings and the label on them as ‘property’ should be abolished. Otherwise, much cannot be done to protect the welfare of animals if legislation already terms them as property. This school of thought is familiar with scholars such as Peter Singer in his famous book *Animal Liberation*(1975) and is all for the idea that the ownership of animals should be completely abolished.

### Utilitarianism

The theoretical framework of utilitarianism implies that the decision to make on whether to protect animals or not is one that is collectively beneficial for the largest number of people. In this case, animal advocacy will be pegged on making decisions that are generally beneficial to animals which are considered more useful to human beings than others are.<sup>21</sup> Logically, animal advocacy is aimed at promoting the welfare of all animals in general but it is only wise to shed light on animals that are in need of this protection more and pose more benefits to human beings in the grand scheme of things than others do.

The theory of utilitarianism was initially explained to suit the concept of animal advocacy by Peter Singer. Singer submits that the interest of animals holds the same weight as the interest

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<sup>19</sup> Rollin B E, ‘Animal Welfare, Animal Rights and Agriculture’, *Journal of Animal Science*, 1990, 3457 –< [https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1040&context=acwp\\_awap](https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1040&context=acwp_awap) >

<sup>20</sup> Goldstein H, ‘What’s The Difference Between Animal Rights and Animal Welfare?’, *World Animal Protection US*, 11 June 2021, –< <https://www.worldanimalprotection.us/latest/blogs/whats-difference-between-animal-rights-and-animal-welfare/> >

<sup>21</sup> Hampton L, ‘An Introduction to Utilitarianism’, *Utilitarianism.net*, –< [https://utilitarianism.net/pdf/Peter\\_Singer\\_Utilitarianism\\_net.pdf](https://utilitarianism.net/pdf/Peter_Singer_Utilitarianism_net.pdf) >

of human beings.<sup>22</sup> His submission is derived from the claim that fundamental rights and freedoms are not granted to humans because of the level of intelligence since this will leave out beings that are deserving of basic human rights even though they are not capable of achieving the highest levels of intelligence, for example infants, extremely retarded or sick people or even intoxicated people. It is therefore illogical as well to allocate freedoms to animals based on their intellectual and sentience levels. Animals should be granted fundamental freedoms merely on the basis of possessing life in the same regard that humans possess their basic fundamental rights and freedoms.

The study encompasses both utilitarianism and animal welfare (rather than animal rights) as the theoretical framework guiding its constitution. Animal welfare seems to be a more practical and achievable concept to support considering factors such as the prevailing cultural environment as well as the ease of implementation.

### 1.9 Research methodology

The research methodology that will be employed in conducting this study will be qualitative in nature. The study will encompass primary and secondary sources of data. Major reliance will be accorded to the secondary sources from books, articles and journals from other scholars on the same topic.

This study will also incorporate an international comparative study with another country on how effective its legislative framework has been in the advocacy for animal welfare. The comparative study will feature the successes of the United Kingdom and how helpful localising some of these methods could be to the cause of animal welfare. A comparative study analysis with a country containing generally similar socio - economic conditions is vital as this would aid in the implementation process of policies with the knowledge of what worked well and what failed miserably. It would also be very helpful in identifying challenges experienced by other countries in the process and formulate solutions on how to deal with them better.

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<sup>22</sup> Hampton L, 'An Introduction to Utilitarianism', Utilitarianism.net, –<  
[https://utilitarianism.net/pdf/Peter\\_Singer\\_Utilitarianism\\_net.pdf](https://utilitarianism.net/pdf/Peter_Singer_Utilitarianism_net.pdf) >-

### 1.10 Limitations of the study

This study may be limited by the very few available academic writing pieces that discuss the state of pet welfare in Kenya. With barely any relevant academic or judicial sources to refer to, the study may not be as comprehensive as it ought to be. The study is therefore more useful in terms of shedding light on the legal situation of pet welfare in Kenya rather than an in depth and comprehensive assessment of the same.

### 1.11 Chapter breakdown

The presentation of this study will be in the format of chapters. Each chapter will attempt to address the various aspects of the study as outlined below;

Chapter one will contain the introduction of the dissertation and will introduce the topic by giving a brief background on the history and evolution of animal welfare and pet protection. This chapter will also outline the aims and objectives of the study as well as a literary analysis of academic work about animal welfare.

Chapter two of the dissertation will entail a description of the legal framework that governs pet welfare in Kenya.

Chapter three will discuss the ineffectiveness of the legislative framework governing pet welfare in Kenya.

Chapter four will contain a comparative analysis of the United Kingdom's legislative framework and how effectively it has been employed to make the state extremely pet friendly.

Chapter five will be the final chapter containing the findings of the study and the recommendations.

## **CHAPTER TWO**

## **DETAILED ANALYSIS OF THE LEGISLATIVE FRAMEWORK SURROUNDING PET WELFARE IN KENYA**

This chapter will highlight the legal framework that surrounds the protection of pet animal rights in Kenya. The laws tasked with the protection of animal rights range from domestic legislations to international laws that have been ratified and adopted within the local legal framework. This chapter will analyse the provisions of these laws in relation to their promotion of pet welfare in Kenya.

### 2.1 The Constitution of Kenya.

#### *Environment suitable for animals.*

Even though the Constitution does not explicitly state ‘animal rights’ or ‘animal welfare’, its provisions lay the general legal basis for the protection of the environment and animals as well as their welfare and habitat. Under article 42 of the constitution, provision is made for every single person to enjoy the right to a clean and healthy environment.<sup>23</sup> This provision includes the protection of ecosystems for the benefit of present and future generations through legislative and other measures, which are properly elaborated under articles 69<sup>24</sup> through to article 72.<sup>25</sup> The provision of article 42 basically presupposes that a clean and healthy environment, including an effectively sustained ecosystem and biodiversity, is a constitutionally prescribed right which should be prioritised and upheld as such other constitutional provisions. This provision, read together and applied with article 69 is applicable across the board to include domestic animals, particularly pets and companion animals. Article 70 of the constitution provides for the legal redress mechanisms for dealing with violations in regards to environmental rights.<sup>26</sup>

#### *Formulating laws to promote pet welfare.*

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<sup>23</sup> Article 42, *Constitution of Kenya* (2010).

<sup>24</sup> Article 69, *Constitution of Kenya* (2010).

<sup>25</sup> Article 72, *Constitution of Kenya* (2010).

<sup>26</sup> Article 70, *Constitution of Kenya* (2010).

Article 185(2) of the Constitution provides county governments the authority to formulate laws that are necessary for the performance of their functions.<sup>27</sup> Within part 2 of the fourth schedule of the constitution, county governments are mandated to promote animal welfare and control. The consolidation of these two pieces of legislation separates the functions of the national government with those of the county government in terms of promoting animal welfare. The national government is thereby tasked with promoting wildlife animal welfare whereas the county government is mandated to promote the welfare of domestic animals including pets. The primary means that is disposable to the county government for this performance is through legislative power via the county assembly.

## 2.2 Prevention of Cruelty to Animals Act (1962).

Enacted in 1962 just before Kenya gained independence, the Prevention of Cruelty to Animals Act originated from the British government's attempt to regulate the manner in which humans treated domestic and captive animals. The act was retained even after Kenya gained independence in 1963 and is still applicable within the legal regime till date. The act is widely considered the primary law protecting the welfare of animals in Kenya and has been pivotal in being the overarching piece of legislation used to protect pets and companion animals. The law acknowledges that animals can suffer pain and injury. The Act is enacted 'to make better provision for the prevention of cruelty to animals; to control experiments on animals; and matters incidental thereto and connected therewith.'

### *Cruelty offences against pets.*

The PCAA creates offences in relation to crimes against animals for acts such as animal fighting and sport hunting within Part 2 of the Act. Section 3 specifically details the acts and omissions amounting to guilt of an offence of pet cruelty including causing suffering to the animal, abandoning it or even underfeeding or denying water to an animal owned by the accused.<sup>28</sup> Subsection 2 of the same section prescribes criminal liability to an individual found guilty of the offences detailed in subsection 1 while subsection 3 specifies the liability being the payment of a fine not exceeding three thousand shillings or an imprisonment term not

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<sup>27</sup> Article 185(2), *Constitution of Kenya* (2010).

<sup>28</sup> Section 3, *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

exceeding 6 months or both. Section 9 of the act creates the offense of handling pets with regards to training them in a cruel manner; the section makes it illegal to train a pet while inflicting pain or terror on them.<sup>29</sup>

#### *Liability for pet owners*

Section 24 of the act makes a provision to hold pet owners liable for permitting acts amounting to cruelty against their pets.<sup>30</sup> The same section describes ‘permitting cruel acts against animals’ as failing to exercise reasonable care and supervision in respect of the protection of the animal by the animal’s owner.<sup>31</sup>

#### *Custody of pets during trial*

The act extends its protection of pet animals to instances requiring custody of such animals in the event of pending proceedings involving the owners. Section 26(1) gives power to a magistrate with jurisdiction within the area where the crime against an animal is alleged to give an order authorizing someone else to take custody of the animal pending the judgement of the ongoing proceedings.<sup>32</sup> Section 28 of the same act gives the court the power to deprive any individual convicted of a crime as a result of an act amounting to cruelty against an animal(s) from owning or possessing any similar kind of animal for a period that the court sees fit.<sup>33</sup>

#### *Authority to promote pet welfare*

Finally, section 30 of the PCAA grants authority to any individual to take reasonable and necessary steps to prevent the commission of an act of cruelty against an animal in the event that it is evident that the act is reasonably imminent and summoning an authorized officer or police officer will cause unreasonable delay.<sup>34</sup>

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<sup>29</sup> Section 9, *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>30</sup> Section 24(1), *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>31</sup> Section 24(2), *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>32</sup> Section 26(1), *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>33</sup> Section 28(1), *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>34</sup> Section 30, *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

### 2.3 Nairobi City County Dog Control and Welfare Act.

The enactment of this act is for the purpose of promoting the welfare of dogs within the vicinity of Nairobi City County. The Act came into force in 2015 and is applicable majorly to a specific pet, the dog, which is the second most commonly owned pet within the confines of Nairobi City.<sup>35</sup>

#### *Ownership and Licensing*

Section 5 of the Act under Part (II) establishes the legal ownership of a dog within Nairobi City County requiring a license.<sup>36</sup> The act subsequently outlaws the ownership of a dog unless the owner is in possession of a licence. The implication of this section is effectively limiting the number of pet dogs that are in the possession of illegal owners who are less likely to take proper care of the animals including adhering to their proper medical treatment and ensuring that they receive adequate food and shelter. Licensing also enables the county government to easily keep track of these animals, their progress as well as identifying them and associating them with their owners. Section 8 makes a provision for the licensed owner to ensure that their dog is equipped with a visible identification tag which contains information regarding the licence label as well as the name and address of the owner.<sup>37</sup>

#### *Dog safety*

The provisions for the general welfare of the dog are found within part three of the act, with section 10 outlawing the possibility of an owner keeping a dog unless he/she has their property appropriately fenced to ensure that the dog is confined to the premises even in the absence of a leash.<sup>38</sup> The usefulness of this provision to the welfare of the dog is the assurance of its safety as well as the safety of anyone else around it.

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<sup>35</sup> Wall T, Pet food among top opportunities for US exporters to Kenya, Petfood Industry, 14 March 2024 <https://www.petfoodindustry.com/regions/africa/article/15666368/pet-food-among-top-opportunities-for-us-exporters-to-kenya#:~:text=Pet%20ownership%20in%20Kenyan,of%20pet%20owners%20owning%20them.> on 14 March 2024.

<sup>36</sup> Section 5, *Nairobi City County Dog Control and Welfare Act* (Act No 10 of 2015).

<sup>37</sup> Section 8, *Nairobi City County Dog Control and Welfare Act* (Act No 10 of 2015).

<sup>38</sup> Section 10, *Nairobi City County Dog Control and Welfare Act* (Act No 10 of 2015).

### *Basic dog requirements*

Section 11 of the same Act proceeds to provide for the basic requirements that a dog owner is obligated to provide for their pet. The Act requires the owner to provide for water, shelter and adequate space for movement for their pet.<sup>39</sup>

### 2.4 The Penal Code.

The penal code is the criminal code that prescribes criminal offences and their punishments for crimes by human beings against animals. The penal code serves as supplementary legislation, mainly prescribing legal punishments for offences such as cruelty, mischief and theft against animals.

### *Pets as being capable of theft*

The penal code introduces animals and any progeny of an animal as possessing the capability of being stolen under section 267.<sup>40</sup> This provision extends to pets and companion animals and outlaws the theft of any of these categories of animals. In the event that poultry or cattle are kept as companion animals, section 278 establishes the act of their theft specifically as a criminal offense.<sup>41</sup> These provisions protect and promote the welfare of pets by discouraging theft-related mistreatment or neglect. Moreover, section 289 creates the offence of killing an animal with the intent to steal and imposes criminal liability to the individual to have the same punishment as if he had stolen the animal.<sup>42</sup> This provision is applicable to domestic animals and animals in captivity, requiring humane treatment by the owner. The usefulness of this provision is evident especially in cases involving ‘exotic pets’ which are targeted specifically for the value of their body parts such as their skin or fur which would fetch a high bid within the black market. A report in the previous year for instance indicated that the World Animal Protection estimated 21% of the grey parrot population is poached every year to supply the illegal wildlife trade which is driven by the demand for exotic pets.<sup>43</sup> With these kinds of

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<sup>39</sup> Section 11, *Nairobi City County Dog Control and Welfare Act* (Act No 10 of 2015).

<sup>40</sup> Section 267, *Penal Code*.

<sup>41</sup> Section 278, *Penal Code*.

<sup>42</sup> Section 289, *Penal Code*.

<sup>43</sup> Chebet C, ‘Lifting the veil on illegal trade in African grey parrot in Kenya’, *The Standard*, December 2024 <https://www.standardmedia.co.ke/health-science/article/2001505433/lifting-the-veil-on-illegal-trade-in-african-grey-parrot-in-kenya> in December 2024.

numbers being put up, there is clearly a need for even more protection geared towards preserving exotic species of pets.

### *Criminalising unnatural acts against animals.*

Separate from the offence of theft and physical injury, the Penal Code also creates an offence of unnatural acts committed against animals. Under section 162(b), any person who has carnal knowledge of an animal is guilty of a felony and is liable to imprisonment for up to fourteen years in prison.<sup>44</sup> The impactfulness of this provision is demonstrated within the appellate case of *Castrol Koome v Republic*, whereby the appellant challenges the decision of a court which ruled a sentence against him on the basis of violating section 162(b) by having carnal knowledge with a cow.<sup>45</sup> The appeal was eventually denied and the accused was convicted. This case sheds light on the instances of sexual abuse imposed on companion animals and the attempt to secure justice for them through the law.

## 2.5 Conclusion

The above pieces of legislation demonstrate Kenya's willingness and devotion to the protection of companion animals within its jurisdiction. While Kenya has established multiple pieces of legislation aimed at upholding pet animal welfare, they remain grossly inadequate at delivering their intended purpose of effectively guarding animals from abuse, neglect and instances of cruelty. The laws are unable to limit varying cases of pet animal welfare abuse due to being limited quantitatively. Their question regarding the effectiveness of these laws lingers and as their flaws will be analysed in the next chapter, revelation can be made on how inefficient the provisions are in relation to promoting its purpose.

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<sup>44</sup> Section 162(b), *Penal Code*.

<sup>45</sup> *Castrol Koome v Republic* (2020) eKLR.

## **CHAPTER THREE**

### **REVIEWING THE INEFFECTIVENESS OF THE LEGAL FRAMEWORK SURROUNDING PET WELFARE IN KENYA.**

The aim of this chapter is to demonstrate the flaws consistent with the legislative framework tasked with the protection and promotion of pet welfare in Kenya. This involves actively pointing out the failures of the individual pieces of legislation which were initially analysed in the previous chapter. Demonstrating the failures of these legislations will be helpful in analysing the recommended changes to make in order to enhance the effectiveness of the legal framework.

#### 3.1 The Constitution of Kenya.

The Constitution of Kenya (2010) is the pinnacle of the legal framework in Kenya, acting as the supreme law of the Kenyan jurisdiction. As transformative as it is in protecting the rights of its citizens, their democracy and their heritage, the constitution largely lacks in its protection of animal welfare, specifically companion animal welfare. The constitution lacks in a variety of aspects analysed as follows;

##### *Focus on anthropocentrism.*

The constitution accords rights to animals to enhance their welfare on the basis that these rights either aid in the promotion of human welfare or are not inconsistent with the promotion of human welfare. The benefits accrued by humans are therefore at the forefront of propagation of animal welfare as per the constitutional provisions.

The detriments that accompany applying an anthropocentric philosophy to according pet animals their rights can be viewed through two different lenses:

1. Laws and regulations that are aimed at promoting companion animal welfare and are centered on the benefit of human beings may turn out to be contrary to the objectives and principles under which animal welfare is based upon.

2. Another challenge with applying the anthropocentric philosophy to giving animals specific rights is that there has to exist a standard of comparison to determine why human beings are superior to animals in the first place. Eventually and unsurprisingly, these standards set to support the pillars of the philosophy of anthropocentrism will be in favour of human beings as they are majorly arbitrary and subject to human conditioning.

The provisions of article 42 of the constitution denote a negative connotation against the protection of the environment and animals as their protection is not for the conservation of their own worth but for the utility that is enjoyed by humans during the protection of their welfare.<sup>46</sup>

*Failure to outrightly acknowledge animal sentience.*

Animal sentience is not recognised within the constitution. This means that the constitution fails to recognise animals as independent intelligent beings with the ability to experience emotions just like human beings. The effect of this is that the rights granted to companion animals will eventually end up accruing only as property rights since they are not formed on the basis of sentience recognition. Pets will therefore have their welfare promoted as the human being's property and not as individual beings that inherently deserve their own rights.

*Lack of explicit protection.*

The constitution is also faulty in the protection of pet welfare in the sense that it is extremely general in its accordance of rights. It fails to offer explicit provisions to protect the welfare of animals and just gives a general guidance of environmental protection rights whereby animal advocates and activists are forced to derive pet animal rights from. The constitution would be more beneficial if it accorded more specific rights to help in the advancement of animal welfare. Article 42 of the Constitution recognises the protection of animals very generally as part of the environment and leaves the explicit protection of pets to be derived and interpreted from other pieces of legislation.<sup>47</sup>

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<sup>46</sup> Chore T, 'Reconceptualising the right to a clean and healthy environment in Kenya: The need to move from an anthropocentric view to a bicentric view' *Strathmore Law Review*, Volume 4 Number 1, 2019, 74 <https://journal.strathmore.edu/index.php/lawreview/article/download/110/98/292> in June 2019.

<sup>47</sup> Article 42, *Constitution of Kenya* (2010).

Consequently, courts are allowed an extremely wide range of legal interpretation when it comes to matters concerning interpreting animal rights as well as liability against offenders.

### 3.2 Prevention of Cruelty to Animals Act.

This act was incorporated to protect animals from acts amounting to the crime of cruelty. It however lacks in the protection of companion animals in the following distinct ways;

#### *Inadequate definition of cruelty.*

The act under section 2 fails to precisely and accurately define what the term ‘cruelty’ means, not only in the preliminary description, but also in citing specific instances of cruelty.<sup>48</sup> The act fails to incorporate aspects such as emotional and psychological harm, unethical breeding practices and neglect which all amount to the welfare of companion animals.

#### *Limited scope of protection.*

The attempt made by the act towards the protection of pet welfare is primarily focused on protection and does not include welfare. For example, section 3 of the act makes provisions of acts that amount to cruelty but does not include compulsory veterinary treatment of companion animals whenever required. For example, the act fails to make provisions for the requirement of veterinary care in the protection of companion animals.<sup>49</sup> This demonstrates that the Act fails to incorporate complete aspects of companion animal welfare, of which healthcare is a primary and crucial aspect of.

#### *Outdated provisions.*

The PCAA struggles with the effectiveness of its implementation due to provisions that are impractical because of being extremely outdated. The implementation of minimum fines and short term sentences serves to promote leniency rather than deter cruel acts against animals by potential offenders. For example, the Act under section 3(3) imposes a maximum fine of three thousand kenyan shillings and a maximum term of imprisonment of six months only for acts amounting to cruelty against animals which seems to be extremely lenient and highly unlikely

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<sup>48</sup> Section 2, *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

<sup>49</sup> Section 3, *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

to deter criminals from committing cruel acts against animals.<sup>50</sup> There should be an amendment to impose more severe fines and stricter penalties in general with regards to the protection of companion animal welfare.

### 3.3 Nairobi City County Dog Control and Welfare Act.

This act was formulated specifically to cater for the welfare of dogs within Nairobi county and matters relating to their welfare. The act is majorly flawed in the sense that it is restricted to only one specific companion animal.

#### *Exclusive to only one species of pet animal.*

The act is specific only to dogs within Nairobi county, limiting its jurisdiction both geographically and to dogs only. The challenge that arises with this is that the piece of legislation excludes other geographical jurisdictions within Kenya and other species of companion animals from protection.

This potentially poses the danger of over legislation since this opens the doors for the enactment of similar legislations, all geared towards the protection of specific animal species or groups. This occurrence makes the proper implementation of these laws impractical and almost impossible.

### 3.4 The Penal Code.

The Penal Code is the country's criminal code that creates provisions for crimes and their subsequent punishments. The Penal Code lacks in its protection of companion animals by failing to provide specific provisions on their protection.

#### *Non recognition of animals as sentient beings.*

The Penal Code, just like most legislative instruments in Kenya in charge of protecting the welfare of companion animals, does not acknowledge animals as sentient beings. The penalties imposed on crimes against animals therefore translate to deterring crimes under the umbrella

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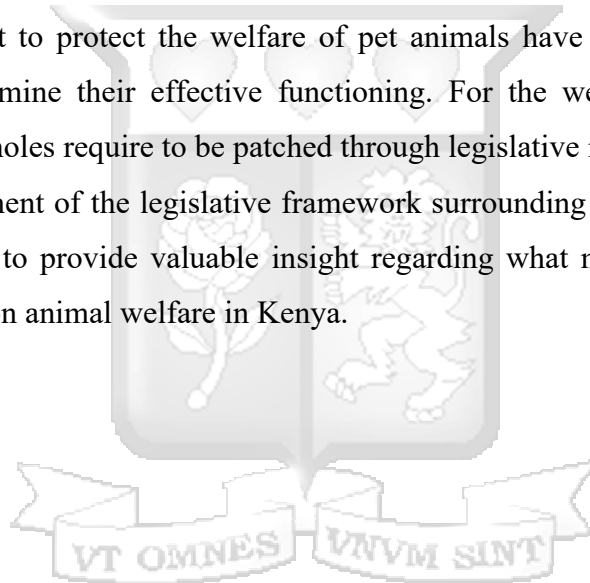
<sup>50</sup> Section 3(3), *Prevention of Cruelty to Animals Act* (Act No 12 of 2012).

of property law rather than imposing penalties on crimes committed against animals based upon their inherent worth. For example, section 267 of the Penal Code classifies animals as being capable of being stolen, directly implying that they are property rather than sentient beings.<sup>51</sup> Consequently, the penalties given are neither sufficient nor severe enough to cater to the welfare and protection needs of companion animals.

### 3.5 Conclusion.

Denoting from the above analysis, it may be fairly accurate to conclude that the framework is both fairly insufficient and not adequately comprehensive to protect pet animals in Kenya. The laws in Kenya meant to protect the welfare of pet animals have been revealed to contain loopholes that undermine their effective functioning. For the welfare of pets to be well protected, these loopholes require to be patched through legislative implementation.

An extensive assessment of the legislative framework surrounding pet welfare in the United Kingdom may serve to provide valuable insight regarding what may work to improve the situation of companion animal welfare in Kenya.



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<sup>51</sup> Section 267, *Penal Code*.

## **CHAPTER FOUR**

### **COMPARATIVE ANALYSIS REGARDING THE STATE OF PET WELFARE BETWEEN KENYA AND THE UNITED KINGDOM.**

This chapter will provide insight into adopting better pet welfare mechanisms in Kenya by conducting a detailed comparative study against the legal framework for pet animal protection in the United Kingdom.

#### 4.1 Effectiveness of the pet legal framework in the UK.

The UK applies a common law system which is similar to Kenya's legal framework. This implies that the development of law is primarily reliant on judicial decisions of cases that set precedence for cases of a similar nature. Legislation coupled with the court's interpretation is therefore a very key source of law for this kind of legal framework. This also means that any decisions made as a result of the court's interpretation of the law regarding animal welfare will set precedence for cases of such nature. Emphasis is thereby placed on judicial officers, especially magistrates and judges, to help in the development of the legal framework surrounding pet animal welfare.

The United Kingdom is well known for its efforts in conserving the environment and biodiversity. It is crucial to note that the UK currently employs the approach of animal welfare towards the protection of animals in the country, including pet animals, by ensuring that their use is absolutely humane and that the animals are treated with utmost respect and decency. Animal welfare legislation in the United Kingdom is as wide reaching and detailed as it is effective in protecting animals. As a clear demonstration of their commitment to promoting animal welfare, the UK has enjoyed success in a few aspects.

Firstly, there has been a display of public support for animal welfare. For any functioning democratic entity, the public view almost always proves to be the mirror reflecting the effectiveness of its laws and policies. In the United Kingdom, public view has demonstrated its unwavering support for animal welfare with a survey highlighting that 85% of UK residents

view animal welfare as a vital national issue, which in turn contributes to stronger societal enforcement of standards. More importantly, over two thirds of the British public believe that political parties planning to pass more laws to promote animal welfare and protect animals from cruelty would have ‘the right priority’.<sup>52</sup> Following this, the government was elected on a 2019 manifesto to introduce tougher sentences for animal cruelty offences, introduce new laws for animal sentience, crack down on illegal puppy trade as well as introduce mandatory cat microchipping amongst others. This goes to demonstrate that a cultural background of public approval and support for animal welfare is just as essential in driving proper enforcement mechanisms as it is in inducing change through legislation.

Secondly, the UK has witnessed increased success in convictions for cases related to animal cruelty offences. The United Kingdom has seen a significant increase in the successful convictions of cases against animal cruelty offenders after strengthening penalties for animal cruelty in 2021 by raising the maximum sentence from six months to five years in prison.<sup>53</sup> With this, 1094 prosecutions have been recorded in the year 2022 for animal cruelty cases due to stricter monitoring and public reporting. The effectiveness of this procedure is evidenced by the 798 cases of successful prosecutions conducted which is a 35% increase from the previous year.<sup>54</sup>

Finally, the state of pet welfare has seen tremendous improvement in the UK. The state of pet welfare in the United Kingdom in terms of illegal transactions especially involving puppies has been effectively enhanced due to the implementation of the Lucy Law. The Lucy Law, enacted in 2019 and commenced in 2020, is a regulation which limits the sale of puppies and

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<sup>52</sup> Ivens S, ‘Polling reveals millions of Brits put ‘protecting animals from cruelty’ amongst top three most important policies that will influence their votes’ Humane Society International, 3 October 2023 <https://www.hsi.org/news-resources/polling-reveals-millions-of-brits-put-protecting-animals-from-cruelty-amongst-top-three-most-important-policies-that-will-influence-their-votes/> on 3 October 2023.

<sup>53</sup> Royal Society for the Prevention of Cruelty to Animals, *Written evidence submitted by the RSPCA (PWA0018)*, 24 March 2023, 10, <https://committees.parliament.uk/writtenevidence/119667/pdf/#:~:text=In%202022%20764%20convictions%20were,still%2041%25%20lower%20than%202019> on 24 March 2023.

<sup>54</sup> Royal Society for the Prevention of Cruelty to Animals, *Written evidence submitted by the RSPCA (PWA0018)*, 24 March 2023, 38, <https://committees.parliament.uk/writtenevidence/119667/pdf/#:~:text=In%202022%20764%20convictions%20were,still%2041%25%20lower%20than%202019> on 24 March 2023.

kittens as pets through unauthorised third parties in England. This legislation is meant to protect the welfare of pet animals by attempting to establish more transparent tracking mechanisms through restricting third parties who are not authorised to carry out commercial activities with puppies and kittens.

#### 4.2 Legislative framework surrounding animal welfare in the United Kingdom.

The Legislative framework in the UK takes a qualitative approach to protecting animals and their welfare. This means that the legislative instruments are relatively few but robust enough to cater for the needs of the state's animals' welfare. Unlike Kenya, the United Kingdom does not have a consolidated constitution but rather derives its laws from various statutes, conventions and judicial decisions. The following laws in that regard in the UK regulate and protect the welfare of pet animals;

##### 4.2.1 Animal Sentience Act (2022).

This Act was enacted in 2022 after UK's retraction from the European Union and was primarily enforced to ensure animal welfare is considered in policy decisions. The provisions of the act recognizes animals as beings with sentience. The Animal Sentience Act forms the basis upon which other legislations are reliant upon in terms of deriving provisions for pet protection and welfare. The Act under section 1 establishes an Animal Sentience Committee to review government policies and ensure they account for animal welfare.<sup>55</sup> It effectively recognises pets and animals in general as sentient beings capable of experiencing pain, joy and other emotions just like human beings. Contrary to the CoK, the Act provides for pets as sentient beings and this creates the effect of companion animals being accorded more than mere property rights for their protection.

Section 1 of the act establishes a committee known as the Animal Sentience Committee while section 2 of the Act provides for a core function of the committee being to review legislative and policy decisions made.<sup>56</sup> The review is conducted through a report and the report serves to indicate whether or to what extent the policy or legislative decision has an effect on the welfare

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<sup>55</sup> Section 1(1), *Animal Sentience Act*, (United Kingdom).

<sup>56</sup> Section 1, *Animal Sentience Act* (United Kingdom).

of animals.<sup>57</sup> The committee therefore assesses whether any legislative actions made promote the welfare needs of pets and animals in general in the UK.

Accountability against the government is established within section 3 of the act that requires a response from the Secretary of State three months after the report has been published.<sup>58</sup> The response requires an explanation of the legislative or policy decision made regarding the welfare of animals as well as addressing the matters brought up in the report. The committee is authorised to give recommendations to guide the implementation of legislative decisions while promoting the welfare of animals.<sup>59</sup>

A stark contrast is noted between this act and the CoK as this act does not base its pillars on the philosophy of anthropocentrism unlike the Kenyan Constitution. The rights accorded to pets are independent on whether they are simultaneously beneficial to human beings or not. This act also recognises animals as sentient beings while the CoK does not.

#### 4.2.2 Animal Welfare Act (2006).

This Act was introduced as a comprehensive law to consolidate older legislation like the Protection of Animals Act of 1911. The Act became officially effective in 2007. The act sets out legal duties for pet owners to meet and makes provisions for offences amounting to cruelty against animals. Equivalent to the PCAA in Kenya, the act safeguards the welfare of pet animals in a variety of ways. The act commences by demonstrating an aspect of specificity through defining the animals that are purview to its protection under section 1, denoting the animals to which the act applies and thereby giving explicit protection to such mentioned animals.<sup>60</sup>

Sections 4 to 8 make provisions meant to protect pets against harm or cruel acts. Section 4 provides for actions that amount to unnecessary suffering for animals.<sup>61</sup> The section proceeds to break down the offence into the different elements that amount to the offence such as the

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<sup>57</sup> Section 2(2), *Animal Sentience Act* (United Kingdom).

<sup>58</sup> Section 3, *Animal Sentience Act* (United Kingdom).

<sup>59</sup> Section 2(3), *Animal Sentience Act* (United Kingdom).

<sup>60</sup> Section 1, *Animal Welfare Act* (United Kingdom).

<sup>61</sup> Section 4, *Animal Welfare Act* (United Kingdom).

person causing the act and the act of suffering being considered unnecessary. Section 5 makes a provision for mutilation as a harmful offence against animals and the different circumstances that amount to mutilation.<sup>62</sup> Section 6 of the act provides for the specific act of docking a dog's tail as a harmful act amounting to an offence and a crime against the welfare of pets.<sup>63</sup> The aspect of specificity lacking in the PCAA is displayed within this section of the act that recognises docking of tails as an offence specific to dogs and thereby creates this provision to tackle the issue. The act creates the offence of administering poison to animals under section 7 and creates the offence of fighting of animals under section 8. These provisions evidently hold more clarity and are way more comprehensive than the provisions of the PCAA in terms of protecting pet animals from harm.

The Act also plays a pivotal role in promoting the welfare of pets in the UK by establishing a duty of care for pet owners to meet the welfare needs of their animals, including proper diet, environment and medical care. Section 9 establishes the offence of an individual responsible for a pet failing to provide for the needs of the pet under all reasonable circumstances.<sup>64</sup> Section 9(2) of the Animal Welfare Act establishes the needs of the pet that the owner is required to meet.<sup>65</sup> These needs are a suitable environment, a suitable diet, the need to exhibit normal behaviour, need to be housed with or apart from other animals and the animal's need for proper medical care. The Act extends its protection of animals by granting national authorities the mandate to formulate and implement policy decisions relevant to the promotion of animal welfare.<sup>66</sup>

Compared to the PCAA in Kenya, the scope of protection of the Act is not only limited to the protection of animals but it also extends to the promotion of their welfare as demonstrated in section 9.<sup>67</sup> To deal with outdated provisions, the act is constantly updated to enhance its effectiveness by replacing ancient law with contemporary laws that suit the modern state of animal welfare. The act for example has increased prison sentences for certain deliberate

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<sup>62</sup> Section 5, *Animal Welfare Act* (United Kingdom).

<sup>63</sup> Section 6, *Animal Welfare Act* (United Kingdom).

<sup>64</sup> Section 9(1), *Animal Welfare Act* (United Kingdom).

<sup>65</sup> Section 9(2), *Animal Welfare Act* (United Kingdom).

<sup>66</sup> Section 12, *Animal Welfare Act* (United Kingdom).

<sup>67</sup> Section 9, *Animal Welfare Act* (United Kingdom).

animal cruelty offences to five years while introducing unlimited fines to combat the situation.<sup>68</sup> The act has also proven to be more specific hence more effective in its implementation to crimes that are specific to pets.

The Animal Welfare Act is considered one of the most effective domestic laws for tackling cruelty. By 2023, over 400 annual prosecutions were based on this Act with over 91.7% prosecution rate, indicating active enforcement.<sup>69</sup> Education campaigns based on the Act have increased awareness of animal welfare responsibilities amongst members of the public.

#### 4.2.3 Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019.

The Animal Welfare Regulations, popularly known as Lucy's Law is an act named after a rescue dog in the UK that effectively bans third-party sales of puppies and kittens. By cutting off third parties, the law makes it easier to track the welfare of pets since the only sellers and handlers of these pets have been authorised officially by the provisions of this legislation. The Act prevents commercial sales by pet shops and puppy farms, requiring animals to be purchased directly from breeders or adopted from rescue centers. Moreover, the piece of legislation provides for pets to have the right to grow and develop in a conducive environment provided for by the owner.

Over time, the welfare of pets, particularly puppies, has seen a drastic improvement in terms of their physical and medical safety as puppy smuggling has dropped by 40% and ethical breeding practices have been encouraged due to the Act's enactment.<sup>70</sup>

Compared to the Nairobi City County Dog Welfare and Control Act, Lucy's law is way more robust in terms of its scope of protection since it incorporates cats in its jurisdiction of

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<sup>68</sup> Collinson A and Sardo R, 'Increased maximum sentences for deliberate animal abuse: Part of the armoury of the criminal justice system in tackling violent crimes towards people and animals' Volume 1 *UK Journal of Animal Law* Issue 2, 2017, 29.

<sup>69</sup> House of Commons Hansard Report, 9 October 2024, Column 98WH.

<sup>70</sup> Ivens S, 'Polling reveals millions of Brits put 'protecting animals from cruelty' amongst top three most important policies that will influence their votes' Humane Society International, 3 October 2023 <https://www.hsi.org/news-resources/polling-reveals-millions-of-brits-put-protecting-animals-from-cruelty-amongst-top-three-most-important-policies-that-will-influence-their-votes/> on 3 October 2023.

protection as well as limiting the licensing of third party sales of pets, thereby significantly enhancing their safety.

#### 4.2.4 Animal Welfare (Service Animals) Act 2019.

This Act was introduced in 2019 as Finn's law after an incident involving a police dog named Finn was severely injured while protecting an officer. The Act provides additional legal protections for service animals by removing the "self-defense" argument in animal attacks. Consequently, one cannot apply self defense as an argument without proving the same in the event that an act of cruelty is performed against service animals in order to harm them or put them in harm's way.<sup>71</sup> The Act has been strongly supported by law enforcement and the public, leading to better protections for service animals.

The act is extended to apply to retired service animals that currently serve as pets to either their original service workers or people who have adopted them. The act therefore protects pets that initially served as service animals in various capacities from harm.

#### 4.3 Conclusion

The legal instruments employed in the UK to protect animals have proven significantly pivotal for the well being of pet animals. They are also relatively more comprehensive, hence more effective in their enactment. This is demonstrated not only by the opinion of the general public regarding the improved state of animal welfare, but also by the increased successful convictions on criminal cases related to animal welfare abuse. The legislative framework is constantly updated to reflect the current situations facing pet welfare in the UK, displaying a stark contrast to Kenya's outdated laws that don't provide adequate punishments for animal welfare offenders. Similar measures of legislation and policy ought to be upheld within the borders of Kenya to ensure that the rights and needs of pets are catered for through legislation as well.

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<sup>71</sup> Police dog Finn's law comes into force, BBC News, 8 June 2019, <https://www.bbc.com/news/uk-england-beds-bucks-herts-48510975> on 8 June 2019.

## **CHAPTER FIVE**

### **FINDINGS AND RECOMMENDATIONS.**

This chapter lays down and discusses the conclusion made from the research done on the topic in the previous chapters. The research findings will enable the development of logical recommendations which if employed will prove extremely useful in the attempt to uphold the welfare of pet animals in Kenya.

#### 5.1 Findings

The analytical research on the legislative framework governing the protection of pet animals in Kenya revealed the following key observations;

1. The legal framework regulating the protection of pet welfare in Kenya itself is grossly insufficient quantitatively. The major piece of legislation enacted for the welfare of pet animals in Kenya is the PCAA which is not nearly adequate for the protection of the welfare of all categories of pet animals in Kenya
2. The legislative framework meant for the protection of pet welfare in Kenya is not comprehensive enough to tackle the various challenges that hinder the effective performance of the laws. The enactment of the PCAA, even though noble, is not tailored enough legislatively to cover substantive cases of abuse of animal welfare. The act itself only provides a general umbrella catering for common instances of abuse of animal welfare, failing to account for particular instances that are specific to certain species of pets.
3. The failure within Kenyan law to incorporate the sentience of animals means that the only rights they can viably accrue are property rights which are not enough to cater for their protection and welfare. Since Kenyan law fails to identify pet animals as sentient beings, the only cases brought against offenders in a court of law take the approach of regarding the animals as their owners' property.

4. The implementation of the already enacted laws meant to protect the welfare of pets in Kenya has proven highly ineffective. This has been demonstrated by the continuous and rampant occurrences of animal cruelty cases even after the enactment of the PCAA.
5. The UK employs few but robust pieces of legislation to uphold the welfare of pet animals within the country. These legislations have proven to be way more effective than Kenya's legislation in protecting pet animals and promoting their welfare. Since these acts of Parliament are very comprehensive, they cater for a lot of loopholes left by Kenya's laws.

## 5.2 Recommendations

Following the findings above, the following recommendations may serve as possible better alternatives towards attempting to enhance the welfare of pet animals in Kenya;

1. Enactment and implementation of more legislation, such as the Animal Welfare and Protection Bill 2019, that is comprehensive and detailed about different animals that are considered pets and how their well-being should be upheld. Kenya should increase their legislative muscle for the protection of their pet animals' welfare so as to create a firm basis for reliance on the law in terms of promoting the welfare of these animals.
2. Inclusion of sentience within the legislative framework meant for the protection of pet animals in Kenya. Incorporation of sentience in the law primarily via the Constitution is bound to shift the design in which laws are interpreted in courts for the protection of the welfare of pets.
3. Proper legislation of laws meant to be enacted to ensure that they are comprehensive enough to cater for the various instances of animal welfare abuse across different kinds of pet animals. Proper legislation is crucial to the effectiveness of the law being enacted to properly protect pet animals in Kenya.
4. Amendment of existing laws to enhance their comprehensiveness by including aspects such as sentience and changing the penalties to harsher fines and sentences. This is an attempt to deter individuals that commit crimes amounting to cruelty against animals.
5. Incorporation of animal welfare into the education system in a bid to enhance how effective the laws enacted are in terms of protecting these animals. The sensitisation

- may address the root cause of cruelty against animals as well as create an avenue for better and more innovative solutions for young individuals to protect animals better.
6. Adoption of some of the legislative strategies employed by the United Kingdom in its attempt towards protecting pet animals. The UK has proven to be more effective in its legislative efforts to protect pet animals than Kenya. This may provide some insight as to what could be done to enable Kenya to get to similar heights in success in protecting its pet animals as the UK.
  7. Fostering partnerships with international organizations with the intention of finding better ways of enhancing the welfare of pet animals within Kenya.



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