

**REALIZING ANIMAL RIGHTS AND WELFARE: AN ANALYSIS OF THE
EFFECTIVENESS OF LAWS ON THE PROTECTION OF DOMESTIC
ANIMALS IN KENYA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
BACHELOR OF LAWS DEGREE**

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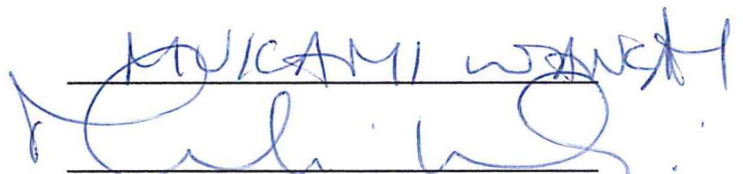
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DISSERTATION DECLARATION

I Abel Githiri Kimani, do hereby declare that this project is my original work and that to the best of my knowledge and belief, has not been previously in its entirety or in part been submitted to any other university or institution for academic credit. Other works cited or referred to are accordingly acknowledged.

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ABBREVIATIONS

AACL	Animal Anti-Cruelty League
AWERB	Animal Welfare and Ethical Review Body
DPP	Director of Public Prosecutions
FAWC	Farm Animal Welfare Council
KSPCA	Kenya Society for the Protection and Care of Animals
NCSPCA	National Council of Societies for the Prevention of Cruelty to Animals
SPCA	Society for Prevention of Cruelty to Animals
RSPCA	Royal Society for the Protection and Care of Animals
UK	United Kingdom

LIST OF AUTHORITIES

Constitution of Kenya (2010)

Kenyan Statutes

Animal Diseases Act CAP 364 Laws of Kenya

Branding of Stock Act CAP 357 Laws of Kenya

Crops and Livestock Production Act CAP 321 Laws of Kenya

Fertilizers and Animal Foodstuffs Act CAP 345 Laws of Kenya

Meat Control Act CAP 356 Laws of Kenya

Prevention of Cruelty to Animals Act No. 42 of 1962

Rabies Act CAP 365 Laws of Kenya

Veterinary Surgeons Para-Professionals Act CAP 366 Laws of Kenya

United Kingdom Statutes

Animal Welfare Act 2006

Performing Animals (Regulations) Act of 1925

Pet Animals Act 1951 (as amended in 1983)

Breeding and Sale of Dogs (welfare) Act 1999

Animal (Scientific Procedures) Act 1986

South African Statutes

Animal Protection Act 71 of 1962

Performing Animals Protection Act 24 of 1935

Societies for the Prevention of Cruelty to Animals Act 169 of 1993

Cases

National Council of Societies for the Prevention of Cruelty to Animals v Openshaw 2008

ZASCA 78 (RSA); [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA)

ABSTRACT

Throughout human history, animals have been used to improve the life of human beings in several ways. The products they produce such as milk and meat by cows and goats have been used by man as his form of sustenance. Other animals such as dogs and cats provide companionship. In addition to these, you have the donkey and horses that carry heavy loads as well as transport human beings. For these animals to effectively carry out their role they require some certain level of welfare. This paper seeks to find a justification for the entitlement of animals to animal welfare. In doing this, it will look at what rights animals are entitled and why they are entitled to those rights. In addition to this, it will look at the rise of animal welfare movements throughout history. It will then look at the current state of animal welfare law in Kenya with reference to the Constitution of Kenya 2010 as well as the current legislation in place, there will be a deeper inspection of the gaps in the law as well as implementation of that law. A comparative study will then be made with the legal framework on animal welfare in the United Kingdom and South Africa. In conclusion, after the findings of the paper have been made, this paper will seek to provide recommendations to the current animal welfare framework in Kenya.

CHAPTER ONE

“Truly man is the king of beasts, for his brutality exceeds them. I have from an early age abjured the use of meat, and the time will come when men such as I will look upon the murder of animals as they now look on the murder of men”.

- Leonardo da Vinci¹

1.1 INTRODUCTION

Throughout history animals have been used to improve human conditions in a variety of ways. Animals are used to transport goods and heavy loads, protect humans and their property and even act as companions. Furthermore, animals are slaughtered for food and other products used for clothing,² research and other numerous uses.³

While animals have been useful in the ways mentioned above, they have also been subjected to a number of abuses which include: neglect, malicious physical injury, starvation, manhandling during transportation, overcrowding in small spaces, overloading, inhumane treatment at slaughter and inhuman methods of animal identification.⁴ In many cases, the improper treatment of animals has led to reduced productivity of the affected animals.

In the Constitution of Kenya 2010, under the Fourth Schedule it is the mandate of the National government to protect animals and wildlife in order to ensure a durable and sustainable system of development⁵ as well as formulate agricultural policy⁶ and veterinary policy.⁷ In addition to this under the same schedule the County government is charged with animal control and welfare which include licensing of dogs and providing facilities for the accommodation, care and burial

¹Pickover M, *Animal Rights in South Africa*, Double Storey Books, Cape Town, 2005,168

² For example, fur, leather, snakeskin and also other accessories such as shoes, handbags, belts and wallets, as per Grant *The No-Nonsense Guide to Animal Rights*, New Internationalist, 2006, 89 - 102

³ Animals are often used to test for allergic reactions and the effectiveness of various ingredients and end products such as cosmetics, medicine/drugs, household detergents and so on. De Grazia *Animal Rights: A Very Short Introduction*, Oxford University Press, USA, 2002, 98 – 116

⁴ Mogoia EGM, Wabacha JK, Mbithi PMF, Kiama SG, Animal Welfare Issues in Kenya, *A journal of the Kenya veterinary Association, Volume 29, (2005), 2*

⁵ Fourth Schedule part 1 no.22, *Constitution of Kenya, (2010)*

⁶ Fourth Schedule part 1 no.29, *Constitution of Kenya, (2010)*

⁷ Fourth Schedule part 1 no.30, *Constitution of Kenya, (2010)*

of animals.⁸ The Constitution therefore provides for measures geared towards the care and protection of animals. Hence the need for adequate welfare laws to cater for the rights entitled to animals in furtherance of sustainable development in Kenya.

1.2 Thesis statement

The lack of effective enforcement of laws protecting domestic animals has led to animal abuse in Kenya and subsequent low animal productivity. In pursuing the above statement, the research will seek to answer the following research questions:

1. What is the legal status regarding the protection of animal rights and welfare in Kenya?
2. What are the current mechanisms of enforcement of the laws relating to animals?
3. What measures are required to improve the protection of animal rights and welfare in Kenya?

1.3 Significance of study

This study will highlight the level of protection for domestic animals and the need, for legal change. This study will also provide suggestions and proposals on what needs to be changed and how the proposed changes can be implemented.

1.4 Definition of terms

Animal welfare-

This refers to the physical and psychological state of an animal as regards its attempt to cope with the environment. It is a human responsibility that encompasses all aspects of well-being including proper housing, management, nutrition disease prevention and human slaughter.⁹

⁸ Fourth Schedule part 2 no. 7, *Constitution of Kenya, (2010)*

⁹ Edwards DJ The role of the veterinarian in animal welfare; a global perspective, *Proceedings of the Global Conference on Animal Welfare, World Organization for Animal Health Initiative, Paris, (2004), 27-32.*

Animal rights-

This implies that animals should not just be treated humanely, but also be awarded limited or full legal personality. The movement further argues that all forms of animal ‘exploitation’ should be stopped. In other words, the movement would like to see a ban on animal experimentation and on using animals in the entertainment industry and commercial industries.¹⁰

1.5 Literature review

In writing about the entitlement of animals to certain rights, animals have been found not to be entitled to certain rights because they lack rationality. It is with this basis that the Natural law theorists state that animals do not have a moral consideration and therefore not entitled to any rights.¹¹

Bentham opposed this through utilitarian principle of law and advocated for the interests of animals to be protected. This was owing to the fact that animals could experience pain. However, the interests of animals in the utilitarian approach would still have to be balanced with those interests of humans and where those of human beings outweighed those of animals, animals would be subjected to suffering. Bentham stated that if such suffering was for the benefit of a human interest then the suffering to the animal was allowable. If the balance were otherwise, that is, if the pain was inflicted without sufficient benefit, then he thought it was merely cruelty.¹² Singer also subscribed to the utilitarian theory of law but went a step further and digressed from Bentham’s view when he stated that pain should be given equal consideration with like interests in the balancing test and if an animal can suffer that suffering must be taken into account like that of humans. This is what Singer refers to as the principle of equal consideration in the balance of pain of pleasure.¹³

In pursuit of the rights entitled to animals, in 1965, the British government commissioned an investigation into the welfare of farmed animals and therefore proposed that all animals should have the freedom to stand up, lie down, turn around, move themselves and stretch their limbs.

¹⁰Sunstein, *Animal Rights, Current Debates and New Directions*, Oxford University Press, 2004, 11

¹¹Blosh M, ‘The history of animal welfare law and the future of animal rights’, Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 11

¹² Bentham J, *Introduction to the Principles of Morals and Legislation*, published 1789, reprinted in J.H. Burns and H.L.A. Hart, *An introduction to the principles of morals and legislation*, Athlone Press, London, 1970, 1

¹³ Singer P, *Animal Liberation*, Random House, New York, 2001, 13

These became known as the five freedoms.¹⁴ In 1993 the United Kingdom Farm Animal Welfare Council (FAWC) decided that the original freedoms concentrated too much on space requirements and on comfort seeking aspects of behaviour, to the exclusion of other relevant elements of animal welfare such as good food, health and safety.

The expanded five freedoms now established by FAWC are freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express normal behavior and freedom from fear and distress.¹⁵ The Five Freedoms have been widely accepted as a statement of fundamental principles of animal welfare. They serve as a useful framework for the assessment of whether animals' basic welfare needs are being met on farms, in markets, during transport, in lairages (holding pens for animals waiting slaughter) and during slaughter.¹⁶

In the African context, few measures have been put in place to ensure the interests of animals are protected. Masiga stresses that inadequate measures have been put in place to ensure that animals enjoy these five freedoms. He states that unlike in developed countries, few African countries have specialized vehicles to transport animals and in most cases animals such as birds are loaded in the boot of a vehicle or on the back seat of bicycle.¹⁷ To compound the situation most livestock and bird markets do not have loading facilities, nor are there any feeding and watering points along the stock routes to the slaughterhouses. In urban areas, the methods used to control stray and abandoned animals are often cruel. The animals are poisoned, strangled, or killed by blows to the head with a hammer.¹⁸ Masiga reaches the conclusion that African countries need to develop and implement policies and legal frameworks that address animal welfare issues and at the same time encourage compliance through community education and awareness.¹⁹

¹⁴These are also known as Brambell's Five Freedoms, a reference to the author of the commissioned investigation report (Professor Roger Brambell)

¹⁵Vapnek J, Chapman M, 'Legislative and regulatory framework options for animal welfare', *Developed by Law Services Food and Agriculture Office of United Nations legal Office (2010)*, 6

¹⁶Vapnek J, Chapman M, 'Legislative and regulatory framework options for animal welfare', 6

¹⁷ Masiga WN, Munyua SJM, Global perspective on animal welfare: Africa, *Science and Technical Review of the Office International des Espizooties, (2005)*, 579

¹⁸Grandin T, Farm animal welfare during handling, transport and slaughter, *Journal of the American Veterinary Medical Association, (1994)*, 204

¹⁹ Masiga WN, Munyua SJM, Global perspective on animal welfare: Africa, 580

In Kenya the legal framework that deals with the protection of animals is The Prevention of Cruelty to Animals Act.²⁰ It covers all living vertebrate animals²¹ and deals with the offences against animals as well the control of research that involves animals. This Act commenced in 1962 and was last revised in 2012. The current legislation as it is does not cover all the five fundamental freedoms such as freedom to express normal behaviour and freedom from pain and injury that are required to safeguard an animal's basic welfare and also lacks a proper framework for enforcement of provisions under the Act. We therefore see that there are inadequate laws protecting domestic animals.

As a result of this, Mogoa states that there has been a prevalence of animal welfare abuse in Kenya which has led to neglect, malicious physical injury, starvation, confinement, manhandling during transportation, overcrowding, overworking, inhumane treatment at slaughter and inhumane methods of animal identification.²² In addition to this, Mogoa further states that a decline in animal welfare standards has now been recognized in certain sectors such as in intensive pig and poultry production which has led to reduced productivity.²³ Some challenges to a good animal welfare environment have been stated as speciesism prejudices of human dominion over animals, ignorance and lack of awareness.²⁴ These have therefore hindered the well-being of animals in the Kenyan society.

The National Livestock Policy²⁵ states that animals are entitled to humane care but does not enumerate the rights an animal is entitled to or the role of institutions in enforcing these rights. It does however mention that there is inadequate training in animal welfare and supervision as well as incapacity to monitor and minimize cruelty to animals hence showing an emphasis on the need for enforcement of laws that protect animals.²⁶

²⁰ Act No. 42 of 1962

²¹ Section 2, *Prevention of Cruelty to Animals* (Act No.42 of 1962)

²² Mogoa EGM, Wabacha JK, Mbithi PMF, Kiama SG, *Animal Welfare Issues in Kenya*, 2

²³ Mogoa EGM, Wabacha JK, Mbithi PMF, Kiama SG, *Animal Welfare Issues in Kenya*, 4

²⁴ Ochwang D, Ministry of Livestock Development Ministerial Task Force on Animal Welfare, *Department of Veterinary Anatomy and Physiology*, (2012), 2

²⁵ Ministry of Livestock Development, *sessional Paper No. 2 of 2008*

²⁶ Ministry of Livestock Development, *sessional Paper No. 2 of 2008*, National Livestock Policy, 26

The government of Kenya has made certain strides in the promotion of animal welfare in Kenya but with regards to wildlife and protection of habitats. This has been done by making offences such as poaching an economic crime with long jail terms and the launch of the master plan for the conservation and management of water catchment areas which offers a comprehensive implementation framework that takes into account the role of National and County Governments.²⁷ In spite of these milestones in the field of animal welfare, little has been done by the government to provide a legal framework and supportive enforcement measures for animal welfare protection for domestic animals.

Under the Constitution of Kenya 2010, the National government is mandated to protect animals with a view of establishing a durable system of development²⁸ as well as formulate agricultural policy²⁹ and veterinary policy.³⁰ The County government also has the function of animal control and animal welfare which includes licensing of dogs and facilities for the accommodation, care and burial of animals.³¹ Therefore from these we find a constitutional basis for having laws that cater for the protection of domestic animals as well as a framework for enforcement of these laws.

1.6 Research methodology

The methodology of this research will be qualitative and will involve a review of current literature, as the debate about animal welfare has generated a large body of literature, and reviewing the literature will provide understanding and clarity about the current status of the animal welfare and provide a basis and a lens for looking at the Kenyan situation.

The study will also involve the carrying out of investigations into various organizations in Kenya that deal with the protection and welfare of animals such as the Kenya Society for the Protection

²⁷ Report of the Pan African Animal Welfare Alliance Conference, *Mainstreaming Animal Welfare in Africa's Development, Nairobi, 2nd – 4th September 2013*, 13

²⁸ Fourth Schedule part 1 no.22, *Constitution of Kenya* (2010)

²⁹ Fourth Schedule part 1 no.29, *Constitution of Kenya*, (2010)

³⁰ Fourth Schedule part 1 no.30, *Constitution of Kenya*, (2010)

³¹ Fourth Schedule part 2 no.7, *Constitution of Kenya* (2010)

of Animals and other relevant organizations involved in domestic animal protection, so as to know how the current legal framework on protection of animals is being enforced.

A review of secondary material will also be undertaken of animal welfare legislation in foreign jurisdictions namely that of the United Kingdom and South Africa as well as other legal writings to provide a comparative assessment to that of Kenya.

1.7 Outline of chapters

The study will consist of five chapters:

Chapter One introduces various ideas and concepts which are briefly explained, as well as defining certain terms.

Chapter Two will discuss the rise of the animal welfare movements throughout history as well as look at early animal welfare legislation and the persons responsible for the evolution of animal welfare legislation.

Chapter Three will deal with an assessment of the legal framework of laws that protect animal's rights and welfare in Kenya.

Chapter Four will look at two foreign jurisdictions in relation to their animal welfare laws, namely the United Kingdom and South Africa to provide a comparative assessment with the laws in Kenya.

Chapter Five will summarize each chapter as well as the findings of the research and conclude this thesis.

1.8 Limitations of study

There is inadequate material with regards to Kenyan animal welfare.

CHAPTER TWO

2.1 The rise of animal welfare movements throughout history as well as the early animal welfare legislation and the persons responsible for the evolution of animal welfare legislation

In writing about the entitlement of animals to certain rights, animals have been contrasted with human beings to see if they are entitled to any rights. The main difference between animals and humans include language and rationality. While language can be disputed with various instances of animals that seem to communicate among themselves such as apes, rationality is harder to contest as no animals apart from human beings are said to be self-aware or use intellect. It is with this basis that the Natural law theorists state that animals do not have a moral consideration and therefore are not entitled to any rights due to their lack of self-awareness.³²

The idea that there is a defining characteristic that separates all humans from animals can be traced back to Aristotle who observed all living things constructed a hierarchy based on the type of form, or soul, each organism presented. He stated that animals can grow, reproduce, are mobile and have sensation. Humans also had all these characteristics but in addition were capable of thought and reflection. This superiority of humans over animals is what drove thinkers such as Aquinas to justify the killing and eating of animals for human sustenance.

Other thinkers have related cruelty to animals with its moral effects to human beings. John Locke has stated that cruelty against animals should be prevented not because of the harm to the animal but rather the effect of the cruelty on the person tormenting the animal.³³ Kant also agreed with this view and stated that children who were cruel to animals would as adults transfer that cruelty to humans. Kant, however, still held fast the belief that animals were not moral agents and humans did not owe animals any direct duty.³⁴ Thinkers such as Seneca and Pythagoras advocated for vegetarianism and believed that akin pleasure in butchering helpless animals only inspired men with cruelty.³⁵

³²Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012 at 11

³³Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012 at 14

³⁴ Fieldhouse H, "The Failure of the Kantian Theory of Indirect Duties to Animals" 2004, 2 Animal Liberation Philosophy and Policy Journal 1 at 4

³⁵www.animalrightshistory.org/timeline-antiquite/seneca.html accessed on 2nd December 2015

Primatt's writings are indeed significant because he broke away from looking at the differences between animals and human beings and instead focused on their similar traits. It is noteworthy that he suggested the unifying characteristic is the ability to feel pain. Primatt was perhaps the first to say that animals should be treated well because they can suffer.³⁶

Around the same time Rousseau was also using the common trait of sentience to show that animals are entitled to a moral standing. He did not advocate for them being fully entitled to Natural law but they should be entitled to some rights. At a minimum, he wrote in 1761, animals had a "natural right" to "not being wantonly ill-treated" by humans.³⁷ It should be noted that Rousseau's justification of an animal as a moral patient with the use of sentience of the being was a different approach to the traditional approach which sought to prevent animal cruelty as it was harmful to the moral agent (human beings).³⁸

Bentham through utilitarian principle of law also advocated for the interests of animals to be protected. Hence seeing that animals can suffer and experience pain, their interests should be protected under law. However, the interests of animals in the utilitarian approach would still have to be balanced with those interests of humans and where those of human beings outweighed those of animals would be subjected to suffering. An example that Bentham gives is that of vivisection of animals in the nineteenth century which involved the cutting of animals without the use of anesthesia. Bentham stated that if such suffering was for the benefit of a human interest then the suffering to the animal was allowable. If the balance were otherwise, that is, if the pain was inflicted without sufficient benefit, then he thought it was merely cruelty.³⁹

Singer who also subscribed to the utilitarian theory of law but went a step further and digressed from Bentham's view when he stated that pain should be given equal consideration with like interests in the balancing test and if an animal can suffer that suffering must be taken into

³⁶Primatt H, *A Dissertation on the Duty of Mercy and Sin of Cruelty to Brute Animals*, London T. Cadell, 1776, 5-6

³⁷ Jean-Jacques Rousseau. *The Social Contract and Discourses*, [preface](1761), Translated by GDH Cole, London and Toronto: J.M. Dent & Sons, 1923

³⁸ Jean-Jacques Rousseau. *The Social Contract and Discourses*, [preface](1761)

³⁹ Bentham J, *Introduction to the Principles of Morals and Legislation*, published 1789, reprinted in J.H. Burns and H.L.A. Hart, *An introduction to the principles of morals and legislation*, Athlone Press, London, 1970, 1

account like that of humans. This is what Singer refers to as the principle of equal consideration in the balance of pain and pleasure.⁴⁰

2.2 Early animal welfare legislation

The earliest pre-nineteenth century legislation that touched on animal welfare was enacted in 1641 in Ireland by Thomas Wentworth which was an Act that prohibited putting a plough by a horse's tail or to pull the wool off the sheep instead of shearing.⁴¹

Nineteenth Century

The influence of the utilitarian theory led to an attempt at legislative protection for animals. The first attempt was narrowly written bills that targeted the sport of bull-baiting, the practice of setting dogs to harass and attack a tethered bull. The first legislative attempt to extend protection to animals was in England in 1800 which was a bill aimed at prohibiting bull-baiting. The bill, however, did not become law as it lacked support from members of the legislature who enjoyed the sport.⁴²

In 1809, Lord Thomas Erskine introduced an entirely different type of bill, entitled "*An Act to prevent malicious and wanton Cruelty to Animals.*" This bill addressed the issue of cruelty to domestic animals. In his speech when the bill was tabled in Parliament, he focused on the similarities that animals have with human beings and stated that animals do suffer because just like human beings they have the ability to feel pain and pleasure. He also added that cruelty to an animal does not only lead to its suffering but also hardens the heart and diminishes the humanity of the person inflicting the pain on the animal.⁴³ By saying this it can be seen that Lord Erskine agrees with the thoughts of Bentham, Kant and Locke. This bill also received a lot of opposition from the Members of Parliament then as it was believed that the protection of animals would lead to undue restriction on human behaviour.

⁴⁰ Singer P, *Animal Liberation*, Random House, New York, 2001 *England from the Earliest Period*, 13

⁴¹ www.animalrightshistory.org/library/wen-thomas-wentworth/1635ireland.html accessed 2nd December 2015

⁴² *The Parliamentary History of to the Year 1803*, vol. 35 at 202, covering the debate on April 2, 1800. Available online at <http://books.google.ca/books?id=AlcxAAAIAAJ&q=pulteney#v=snippet&q=bullbaiting&f=false> accessed 2nd December 2015

⁴³ Lord Erskine on the Second Reading of the Bill for Preventing Malicious and Wanton Cruelty to Animals. 14 Hansard HL Deb 15 May 1809, 553-571, 563

The next attempt to pass legislation prohibiting cruelty was made in 1821 by Dick Martin. Opposition to this bill followed the same lines as that of 1809 and the bill eventually failed to be passed. Undaunted, Martin tried again the following year. This time the opposition was even more perfunctory and the bill, perhaps to the surprise of long-time opponents, passed. One factor that led to the passing of the bill was the popular support for the bill by members of the public upon seeing the abuse of cattle and overloaded horses on the streets.⁴⁴ Magistrates, clergymen, businessmen and concerned citizens submitted more than thirty petitions in support of Martin's bill.⁴⁵ Many supporters drew an analogy with the anti-slavery movement. They pointed out the property status of both human slaves and animals, and argued that this legal status sanctioned the brutal treatment dished out by their owners.⁴⁶

Martin's Act, formally titled *An Act to Prevent the Cruel and Improper Treatment of Cattle*, applied to only a limited number of species, namely horses, sheep, oxen and "other cattle".⁴⁷ The text of the *Martin's Act* set forth a procedure that generally followed the established practice for other criminal offences. Convictions for animal cruelty were to be treated the same as any other crime. The law simply substituted a victim-animal in the place of a human victim. The offences in the Act were rather general and were stated as wanton or cruel abuse to an animal.⁴⁸

Passing of the law would mean nothing unless it was actually enforced and prosecutions were carried out. The Royal Society for the Protection and Care of Animals lobbied for better enforcement of the Act.⁴⁹ A challenge the Act faced was on what specific acts could be defined as cruel. Whether acts such as overloading of animals could be considered as beating, abusing an

⁴⁴Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 33

⁴⁵ Kathryn Shevelow. *For the Love of Animals: The Rise of the Animal Protection Movement* (New York: Henry Holt and Co., 2008, 251

⁴⁶ Kathryn Shevelow. *For the Love of Animals: The Rise of the Animal Protection Movement* (New York: Henry Holt and Co., 2008, 230

⁴⁷Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 34

⁴⁸ Section 1 of *An Act to Prevent the Cruel and Improper Treatment of Cattle 1822*

⁴⁹ Arthur William Moss. *Valiant Crusade: The History of the R.S.P.C.A.* London: Cassell, 1961, 6.

animal.⁵⁰ The difficulty in interpretation led to lax enforcement. This led to animal advocates seeking amendments such as inclusion of specific acts such as overloading goods on an animal as a specific offence.⁵¹

In 1849, the amendments were consolidated into an act for the *More Effectual Prevention of Cruelty to Animals*.⁵² It had specific offences such as ill-treatment, over-drive, torture, cruelly beat and to overload any animal.⁵³ This Act and all its amendments was what was used as the main piece of legislation protecting the welfare of domestic animals and was adopted by several former colonies of the United Kingdom including Kenya.⁵⁴

Twentieth Century

In a further pursuit of the rights entitled to animals, in 1965, the British government commissioned an investigation into the welfare of farmed animals and therefore proposed that all animals should have the freedom to stand up, lie down, turn around, move themselves and stretch their limbs. These became known as the five freedoms.⁵⁵ In 1993 the United Kingdom Farm Animal Welfare Council (FAWC) decided that the original freedoms concentrated too much on space requirements and on comfort seeking aspects of behaviour, to the exclusion of other relevant elements of animal welfare such as good food, health and safety.

The expanded five freedoms now established by FAWC are freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express normal behavior and freedom from fear and distress.⁵⁶ The Five Freedoms have been widely accepted as a statement of fundamental principles of animal welfare. They serve as a useful framework for

⁵⁰Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 35

⁵¹Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 35

⁵²An Act for the More Effectual Prevention of Cruelty to Animals, 1849, Victorian. c 92, 12-13

⁵³Section 1 of An Act for the More Effectual Prevention of Cruelty to Animals, (1849)

⁵⁴Blosh M, 'The history of animal welfare law and the future of animal rights', Unpublished LLM Thesis University of Western Ontario London, Ontario, Canada, 2012, 38

⁵⁵These are also known as Brambell's Five Freedoms, a reference to the author of the commissioned investigation report (Professor Roger Brambell)

⁵⁶Vapnek J, Chapman M, 'Legislative and regulatory framework options for animal welfare', *Developed by Law Services Food and Agriculture Office of United Nations legal Office (2010)*, 6

the assessment of whether animals' basic welfare needs are being met on farms, in markets, during transport, in lairages (holding pens for animals waiting slaughter) and during slaughter.⁵⁷

In the African context, few measures have been put in place to ensure the interests of animals are protected. Masiga stresses that inadequate measures have been put in place to ensure that animals enjoy these five freedoms. He states that unlike in developed countries, few African countries have specialized vehicles to transport animals and in most cases animals such as birds are loaded in the boot of a vehicle or on the back seat of a bicycle.⁵⁸ To compound the situation most livestock and bird markets do not have loading facilities, nor are there any feeding and watering points along the stock routes to the slaughterhouses. In urban areas, the methods used to control stray and abandoned animals are often cruel. The animals are poisoned, strangled or killed by blows to the head with a hammer.⁵⁹ Masiga reaches the conclusion that African countries need to develop and implement policies and legal frameworks that address animal welfare issues and at the same time encourage compliance through community education and awareness.⁶⁰

In Kenya, the legal framework that deals with the protection of animals is *The Prevention of Cruelty to Animals Act*.⁶¹ It covers all living vertebrate animals⁶² and deals with the offences against animals as well the controlling of research that involves animals. The current legislation as it is does not cover all the five fundamental freedoms that are required to safeguard an animal's basic welfare and also lacks a proper framework for enforcement of provisions under the Act. Therefore we see the laws that protect animals in Kenya are inadequate.

From this, Mogoia states that there has been a prevalence of animal welfare abuse in Kenya which has led to neglect, malicious physical injury, starvation, confinement, manhandling during transportation, overcrowding, overworking, inhumane treatment at slaughter and in inhumane

⁵⁷Vapnek J, Chapman M, 'Legislative and regulatory framework options for animal welfare', 6

⁵⁸ Masiga WN, Munyua SJM, Global perspective on animal welfare: Africa, *Science and Technical Review of the Office International des Epizooties*, (2005), 579

⁵⁹Grandin T, Farm animal welfare during handling, transport and slaughter, *Journal of the American Veterinary Medical Association*, (1994), 204

⁶⁰ Masiga WN, Munyua SJM, Global perspective on animal welfare: Africa, 580

⁶¹ Act No. 42 of 1962

⁶² Section 2, *Prevention of Cruelty to Animals* (Act No.42 of 1962)

methods of animal identification.⁶³ In addition to this, Mogoia further states that a decline in animal welfare standards has now been recognized in certain sectors such as in intensive pig and poultry production which has led to reduced productivity.⁶⁴ Some challenges to a good animal welfare environment have been stated as speciesism prejudices of human dominion over animals, ignorance and lack of awareness.⁶⁵ These have therefore hindered the well-being of animals in the Kenyan society.

⁶³ Mogoia EGM, Wabacha JK, Mbithi PMF, Kiama SG, Animal Welfare Issues in Kenya, 2

⁶⁴ Mogoia EGM, Wabacha JK, Mbithi PMF, Kiama SG, Animal Welfare Issues in Kenya, 4

⁶⁵ Ochwang D, Ministry of Livestock Development Ministerial Task Force on Animal Welfare, *Department of Veterinary Anatomy and Physiology*, (2012), 2

CHAPTER THREE

3.1 Legal framework on the protection of animal's rights and welfare in Kenya

In Kenya, under the **Constitution of Kenya 2010**, the National government is mandated to protect animals with a view of establishing a durable system of development⁶⁶ as well as formulate agricultural policy⁶⁷ and veterinary policy.⁶⁸ The County government also has the function of animal control and animal welfare which includes licensing of dogs and facilities for the accommodation, care and burial of animals.⁶⁹ Therefore from these we find a constitutional basis for having laws that cater for the protection of domestic animals as well as a framework for enforcement of these laws.

In Kenya, the main piece of legislation that deals with the protection of animals is **The Prevention of Cruelty to Animals Act**.⁷⁰ This Act commenced in 1962 and was last revised in 2012. It covers all living vertebrate animals⁷¹. Part Two of the Act deals with the offences to animals and states that acts such as to cruelly beat, torture, over-load or over-ride an animal are illegal.⁷² Section 4 of the Act makes the promotion of animal fighting or baiting of an animal illegal. Section 6 of the Act makes the use of traps and devices that cause unnecessary suffering to an animal illegal. Section 10 of the Act prohibits the use of untrained animal or any animal stimulated by cruel means in performances or exhibitions. Section 11 prohibits the distribution to the public of films that show cruelty to animals. Part Three of the Act deals with the control of experiments involving animals and licensing of experiments that require animals.⁷³ Under section 37 of the Act, the Cabinet Secretary of Agriculture, Livestock and Fisheries has the power to make regulations that cater for the welfare of animals protected under the Act. The maximum fine imposed under the legislation is two thousand shillings and the maximum term of imprisonment for a person who is guilty of an offence under this Act is three months. Under section 29 of the Act, the maximum amount of damages that an aggrieved party may receive is six hundred shillings.

⁶⁶ Fourth Schedule part 1 no.22, *Constitution of Kenya* (2010)

⁶⁷ Fourth Schedule part 1 no.29, *Constitution of Kenya*, (2010)

⁶⁸ Fourth Schedule part 1 no.30, *Constitution of Kenya*, (2010)

⁶⁹ Fourth Schedule part 2 no.7, *Constitution of Kenya* (2010)

⁷⁰ Act No. 42 of 1962.

⁷¹ Section 2, *Prevention of Cruelty to Animals* (Act No.42 of 1962)

⁷² Section 3, *Prevention of Cruelty to Animals* (Act No.42 of 1962)

⁷³ Section 16, *Prevention of Cruelty to Animals* (Act No.42 of 1962)

There several other statutes that deals with the welfare of animals in Kenya. Among them are the **Veterinary Surgeons Para-Professionals Act**⁷⁴ which makes provision for the training, registration and licensing of veterinary surgeons and veterinary Para-professionals, to provide for matters relating to animal health services and welfare. Under section 13, the Act states that no person can practice as a veterinary surgeon or veterinary Para-surgeon unless they registered and licensed under this Act. Section 15 provides the requirements for registration of a veterinary surgeon while section 17 provides those for a veterinary Para-professional. We therefore see that this Act ensures that the proper animal health and welfare services are given by individuals who are professionally qualified and meet the requirements under the Act.

There is the **Animal Diseases Act**⁷⁵ which deals with the control of diseases to animals. Section 4 of the Act states that animals that are infected with diseases should be put in a boma or a separate room from the other animals to prevent the spread of the disease. Furthermore, according to section 8 the Director of Veterinary Services may prohibit by notice in the gazette for such time as he/she thinks fit the importation of animals, carcasses, hides, wool, hair and meat in order to control the spread of an animal disease. Under the same section, any person that contravenes this section is guilty of an offence. From this Act we see that animal health is therefore protected.

In addition to the above, there is the **Meat Control Act**⁷⁶ which deals with control over slaughterhouses and under section 3 of the Act the Cabinet Secretary of Agriculture, Livestock and Fisheries is given the power to provide for the licensing, control and regulation of slaughterhouses and of premises where meat is processed in any manner for human consumption. This requires that animal health standards as well as welfare standards are maintained for those animals that are to be slaughtered for their meat and animal products.

The **Rabies Act**⁷⁷ provides for the suppression of rabies. Under section 3 of the Act an Administrative Officer, Veterinary Officer and a Police Officer have the power to seize stray

⁷⁴ CAP 366 Laws of Kenya

⁷⁵ CAP 364 Laws of Kenya

⁷⁶ CAP 356 Laws of Kenya

⁷⁷ CAP 365 Laws of Kenya

dogs and stray cats and to put them in a rabies control area. Under the same section those officers with the approval of the Director of Veterinary Services have the power to shoot or destroy any stray dog or stray cat suspected of having rabies. The Director under section 8 of the Act has the power to make regulations for the control of dogs or cats when there is an outbreak or expected outbreak of a disease.

There is also the **Crops and Livestock Production Act**⁷⁸ which deals with the control of crop production and livestock as well as livestock products. Under section 4 of the Act, the Secretary of Agriculture, Livestock and Fisheries has the power to make rules regarding the promotion and improvement of the quality of the livestock in any area and preventing losses from disease or other cause. This therefore requires the Secretary to make rules that ensure the maintenance of good health and welfare of the animals.

The **Branding of Stock Act**⁷⁹ which makes provision for the registration of brands of horses, cattle, camels, sheep and goats. The purpose of branding is to ensure that the quality of animal products can be traced back to their origin and ensures that owners of defective meat products are held liable for the sub-standard products.

The **Fertilizers and Animal Foodstuffs Act**⁸⁰ which deals with the regulation, the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs. The Act, under section 2A establishes an Agriculture and Animal Foodstuff board that regulates the production, manufacture and packaging of animal foodstuffs⁸¹. Therefore any company that carries out the business of manufacturing animal foodstuff are required to register with the board.⁸²

In addition to the above Acts, there is also the **National Livestock Policy**⁸³ which states that animals are entitled to humane care but does not enumerate the rights an animal is entitled to or

⁷⁸ CAP 321 Laws of Kenya

⁷⁹ CAP 357 Laws of Kenya

⁸⁰ CAP 345 Laws of Kenya

⁸¹ Section 2B(a) *Fertilizers and Animal Foodstuffs Act* CAP 345 Laws of Kenya

⁸² Section 2B (f) *Fertilizers and Animal Foodstuffs Act* CAP 354 Laws of Kenya

⁸³ Ministry of Livestock Development, *sessional Paper No. 2 of 2008*

the role of institutions in enforcing these rights. It does however mention that there is inadequate training in animal welfare and supervision as well as incapacity to monitor and minimize cruelty to animals hence showing an emphasis on the need for enforcement of laws that protect animals.⁸⁴ The current **Veterinary Policy**⁸⁵ also highlights the animal welfare as an integral part of animal health and production and manifests on physical and psychological wellbeing, better performance, improved market access, safe and mutually beneficially companionship. The Policy also states the mandate of the National and County governments as per the Constitution in the promotion of animal welfare.⁸⁶ However, the policy does not deal with how animal welfare is meant to be implemented and enforced.

Some County governments have also formulated certain by-laws in relation to animal. These by-laws are drafted with the assistance of the Department of Veterinary Services.⁸⁷ Some examples of these by-laws include the Animal Control By-Laws of 2009 which deals with the licensing of dogs, cats and poultry in Nairobi in order to control their population within the city of Nairobi. There are also the Kericho Urban District Council (Domestic Animals and Pound) By-laws, 1962 and the Municipal Council of Kitale (Control and Licensing of Dogs) By-laws, 2008 that also deals with the licensing of pet and farm animals within those respective counties.⁸⁸ It should be noted that these by-laws only address the licensing and registration of pet and farm animals within a given area but do not deal with the welfare that those animals are entitled to.

3.2 Bodies involved in the welfare of animals in Kenya

Ministry of Agriculture, Livestock and Fisheries

The Ministry of Agriculture, Livestock and Fisheries is part of the executive branch of the government charged with the formulation of policy with regards to the promotion of animal welfare. Under the ministry, there is a Directorate of Veterinary Services which aims to prevent

⁸⁴ Ministry of Livestock Development, *sessional Paper No. 2 of 2008*, National Livestock Policy, 26

⁸⁵ Ministry of Agriculture, Livestock and Fisheries, April 2015.

⁸⁶ Ministry of Agriculture, Livestock and Fisheries, *Veterinary Policy*, April 2015, 32

⁸⁷ Ministry of Agriculture, Livestock and Fisheries, *Veterinary Policy*, April 2015, 64

⁸⁸ Ministry of Agriculture, Livestock and Fisheries, *Veterinary Policy*, April 2015, 64

and control animal diseases and pests to safeguard human health and improve animal welfare.⁸⁹ There is also the Directorate Livestock Policy, Research and Regulation which are specialized departments under the ministry that deal with policy-making and the regulation of animal welfare for livestock to ensure optimal productivity of livestock and ensure that there is a high quality of livestock products.⁹⁰ These Directorates also seek to work with County governments on the formulation of policies that promote animal welfare in their counties.⁹¹

Kenya Society for the Protection and Care of Animals (KSPCA)

The Kenya Society for the Protection and Care of Animals is a charitable organization in Kenya that deals with domestic animals. Their main work is the rescue and rehabilitation of abandoned and injured domestic animals. The organization also carries out teaching programs on the importance of animal care and welfare.⁹² They also assist the poor to manage their animals better so as promote their productivity and benefit them as well. They also carry out neuter campaigns of dogs and cats to control the population of stray dogs and cats.⁹³ This organization, however, struggles to carry out its objectives as it has inadequate funds and relies on donations.⁹⁴

3.3 Analysis of legal framework

From the framework above, at first glance there are many Acts that deal with domestic animals in Kenya but a deeper inspection shows that the legislation is inadequate. The inadequacy of laws protecting animals has been attributed to speciesism prejudices of human dominion over animals as people have considered animals as mere property that is only meant to satisfy their

⁸⁹<http://www.icipe.org/avid/index.php/partners/dvs> accessed on 7th December 2015

⁹⁰<http://www.kilimo.go.ke/index.php/ministry-organizational-structure/> accessed on 7th December 2015

⁹¹<http://www.kilimo.go.ke/index.php/ministry-organizational-structure/> accessed on 7th December 2015

⁹²<http://www.kspca-kenya.org/about-us/#top> accessed on 7th December 2015

⁹³<http://www.kspca-kenya.org/about-us/what-we-do/> accessed on 7th December 2015

⁹⁴<http://www.kspca-kenya.org/about-us/#top> accessed on 7th December 2015

needs and requires little to no maintenance. In addition to this, ignorance and lack of awareness are also believed to have been attributed to inadequate animal welfare laws.⁹⁵

Firstly, the Prevention of Cruelty to Animals Act does not state the rights that animals are entitled to. This would include the right to a diet, right to a suitable environment where the animal can exhibit normal behaviour patterns and the right to be protected from pain, suffering or injury.

The Act under section 23⁹⁶ gives the power to prosecute offences under this Act to the Director of Public Prosecutions as well as anyone whom he gives consent to do so but for such prosecutions to be successful would need veterinarians who have the capabilities and expertise to gather and collect evidence. Their role in prosecutions is not mentioned. Furthermore, as mentioned earlier under the Act, the Cabinet Secretary has the power to make regulations on the manner in which animals should be transported, the manner in which animals should be kept and the manner that animals should be supplied with food, water and shelter while being transported. In spite of this being in the Act no regulations or codes of practice have been formulated so as to enforce these provisions of the Act. In addition to this, the fines and penalties imposed should be revised as they are too low to cause deterrence of potential offenders.

Under the Rabies Act, the police have the power to seize stray dogs and cats and put them in a Rabies control area. This measure is not enforced as in the urban areas there are several stray dogs and cats that can spread the disease and are also in danger of being poisoned, strangled or killed by a hammer by those who consider them as irritants or a threat to their health.⁹⁷ In addition to this certain requirements such as licensing of dogs and cats as stated in various urban centres has not been carried out making it difficult to know who is responsible for the loitering animal or if those animals are stray.

⁹⁵Ochwang D, Ministry of Livestock Development Ministerial Task Force on Animal Welfare, *Department of Veterinary Anatomy and Physiology*, (2012), 2

⁹⁶ Act 42 of 1962

⁹⁷Masiga WN, Munyua SJM, *Global perspective on animal welfare: Africa*, 580

The other pieces of legislation that touch on animals mainly deal with animal products and ensure that such products are safe for human consumption but do not deal with the welfare of those animals. By ensuring that the welfare standards of animals are maintained, this will increase the productivity of the animals. It has also been recognized in certain sectors such as the pig and poultry sector that a decline in animal welfare standards has led to a decline in productivity.⁹⁸ This therefore shows the economic importance of enforcing animal welfare standards to farm animals.

The Directorates under the Ministry of Agriculture, Livestock and Fisheries seek to work with county governments to formulate policy that promotes animal welfare but no county policies promoting animal welfare have been passed by any county after the promulgation of the 2012 Constitution. When it comes to KSPCA, it is the major body that deals with the welfare of animals in Kenya. Unfortunately it has inadequate nationwide influence as it only has two offices in Mombasa and Nairobi.⁹⁹ In addition to this, the policies the organization drafts on animal welfare are not binding and have not been considered in the current legislation. They are only enforced by those who decide to do so.

In conclusion, we see that the current legislation as it is does not cover all the five fundamental freedoms that are required to safeguard an animal's basic welfare and also has an inadequate framework for enforcement of provisions under the pieces of legislation mentioned above.

⁹⁸Mogoa EGM, Wabacha JK, Mbithi PMF, Kiama SG, Animal Welfare Issues in Kenya, 4

⁹⁹<http://www.kspca-kenya.org/contact-us/> accessed on 5th January 2016

CHAPTER FOUR

4.1 Legal framework on animal welfare in other jurisdictions

4.2 United Kingdom

4.21 Legislation

In the United Kingdom the principal legislation on animal welfare is the **Animal Welfare Act 2006**. The Act defines an animal as a vertebrate other than man and under the same section allows for invertebrates to be protected as long as it can be proved that they feel pain or suffer.¹⁰⁰ Section 2 provides for animals to be protected under this Act which are animals normally domesticated in the British islands, animals under the control of man or animals not in a wild state.

The second part¹⁰¹ of the Act covers the offences against animals such as unnecessary suffering to an animal, mutilation, docking of dogs' tails, administration of poisons to animals and fighting of animals. The third part of the same Act covers promotion of welfare and imposes on the owner of the animal the duty to promote welfare. In addition to this section 9 of the Act states the needs that should be catered for to ensure that an animal's welfare has been taken care of. They include the need for a proper diet, the need for a suitable environment and the need to be housed separately from other animals. This is geared to promoting the welfare of the animal. Part four covers the licensing and registration of activities involving animals.¹⁰²

Part six of the Act covers animals in distress and gives the inspector or constable powers to do what is necessary to stop the animal from suffering where he reasonably believes that the animal is under distress or pain.¹⁰³ Part seven covers enforcement measures and gives the constable powers to seize animals that he reasonably believes have been in fighting as stated in part three of the Act.¹⁰⁴

Under the same part, an inspector or constable can apply to the Justice of Peace for a warrant to enter a given premises and if necessary may use force so as to stop the commission of an

¹⁰⁰ Sections 1 of *Animal Welfare Act 2006* Chapter 45 Laws of United Kingdom

¹⁰¹ *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹⁰² Section 13 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹⁰³ Section 18 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹⁰⁴ Section 22 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

offence under this Act.¹⁰⁵ Part eight of the Act covers prosecution of offences and gives the local authority power to prosecute offences under the Act¹⁰⁶ as well as provide time limits for prosecutions which is set at before the end of three years beginning on the date the offence was committed and at the end of the period of six months beginning on the date that the prosecutor has gathered all evidence he believes to his knowledge will be enough to justify proceedings.

Under part five of the Act, powers exist for secondary legislation and codes of practice to promote the welfare of animals. There are codes of practice on the welfare of dogs, cats, horses and privately kept non-human primates.¹⁰⁷ There are also various guides printed by the UK government on the welfare of cats and dogs during journeys and guides on how to keep pets safe.¹⁰⁸

In the Act, the highest fine that can be imposed on a person who has committed an offence is a fine not exceeding twenty thousand pounds and/or imprisonment for a term not exceeding fifty one weeks or both.¹⁰⁹ The Court may make an order depriving a person of ownership of a species of animals that he has previously abused.¹¹⁰ Under section 34(2) of the Act, a person who is guilty of an offence under this Act may be disqualified by the Court from owning an animal, from keeping an animal, from participating from keeping an animal and from being party to an arrangement under which he is entitled to control or influence the way in which animals are kept.

In addition to the Animal Welfare Act, there are also other pieces of legislation that protect the welfare of domestic animals. Among them include the **Performing Animals (Regulations) Act of 1925** which regulates the training and exhibition of performing animals and requires trainers and exhibitors to register with the local authority. There is also the **Pet Animals Act 1951 (as amended in 1983)** that regulates the welfare of animals that are sold as pets and requires owners of pet shops to be licensed by the local council.

There is also the **Breeding and Sale of Dogs (Welfare) Act 1999** which requires a person who owns an establishment where dogs are bred and carries on the business of breeding dogs to

¹⁰⁵ Section 23 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹⁰⁶ Section 30 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹⁰⁷ <https://www.gov.uk/guidance/animal-welfare-legislation-protecting-pets> accessed on 1st December 2015

¹⁰⁸ <https://www.gov.uk/guidance/animal-welfare-legislation-protecting-pets> accessed on 1st December 2015

¹⁰⁹ Section 32(1) *Animal Welfare Act* Chapter 45 Laws of United Kingdom

¹¹⁰ Section 33 *Animal Welfare Act* Chapter 45 Laws of United Kingdom

register with the local council. The council in granting the license ensures that the dogs have proper accommodation, adequate food and water and that all reasonable steps are taken to ensure the prevention and spread of diseases among the dogs.

In addition to the welfare of pet animals, the welfare of farmed animals are also covered not only in the Animal Welfare Act 2006 but also by its subsidiary legislation, the Welfare of Farmed Animals (England) Regulations 2007, under these regulations the welfare of poultry, cattle, pig, sheep, goats among other farm animals are covered.¹¹¹

There is also the **Animal (Scientific Procedures) Act 1986** which regulates the experimentation and testing of animals. It was last revised in January 2013 and makes provisions for issuing of licenses for people and organizations that want to carry out experiments on animals.¹¹²

4.22 Bodies involved in the welfare of animals in the United Kingdom

Department of Environment, Food and Rural Affairs

The Department of Environment, Food and Rural Affairs is in charge of the regulation of the welfare of domestic animals in the UK and is the body that has drafted the codes of practices on domestic animal welfare. It has several agencies under it dealing with the welfare of domestic animals including Animal and Plant health agency which identifies and controls new diseases in animals and carries out surveillance on new and emerging diseases.¹¹³ There is also the Veterinary Medicines Directorate which monitors and takes action on reports on bad effects of veterinary medicine as well as carrying out research on veterinary medicine.¹¹⁴ In addition to these, there is also the Veterinary Products Committee that advises the Department on veterinary medicinal products and animal feed additives.¹¹⁵

¹¹¹<https://www.gov.uk/guidance/animal-welfare> accessed on 1st December 2015

¹¹²<https://www.gov.uk/guidance/research-and-testing-using-animals> accessed on 1st December 2015

¹¹³<https://www.gov.uk/government/organisations/animal-and-plant-health-agency/about> accessed on 2nd December 2015

¹¹⁴<https://www.gov.uk/government/organisations/veterinary-medicines-directorate/about> accessed on 2nd December 2015.

¹¹⁵<https://www.gov.uk/government/organisations/veterinary-products-committee> accessed on 2nd December 2015.

The Home Office

The Home Office is the ministerial department that ensures visible, responsive and accountable policing in the UK hence it ensures implementation of animal welfare law in the UK. In addition to this, the Home Office regulates animal experimentation by carrying out the formal ethical evaluation and authorization of such projects. Each organization that carries out experiments on animals is required to have an **Animal Welfare and Ethical Review Body (AWERB)** whose tasks and participants have been set out by the Home Office. The Home Office has also formulated the Ethical Review Process guidelines 2001 on the best practices on animal experimentation.¹¹⁶

Royal Society for the Prevention of Cruelty to Animals

The Royal Society for the Prevention of Cruelty to Animals is a charitable organization that seeks to prevent cruelty to animals, promote kindness and alleviate their suffering. It was formed in 1824. It seeks to promote the welfare of pet animals as well as farmed animals by raising awareness on the welfare standards, advocating for such standards to be put into legislation and ensuring its enforcement. They also challenge the justification and necessity for experimentation on animals and advocate for welfare standards of laboratory animals worldwide.¹¹⁷

Upon an inspection of the legal framework as well as institutions that deal with animal welfare in the United Kingdom, it can be seen that it is indeed comprehensive and covers all aspects of animal welfare as well as ensuring that there is a provision of enforcement mechanism to ensure that these laws are implemented.

4.3 A comparative analysis between UK and Kenyan animal welfare law

It can be seen from the legislations of both countries that they contain offences that cause cruelty to animals but under the UK legislation the needs of animals that should be protected for its welfare to be promoted are also stated in its legislation. The UK Animal Welfare Act was last updated in 2006 and the fines and punishments revised. The Kenya Prevention of Cruelty to

¹¹⁶<https://www.gov.uk/guidance/research-and-testing-using-animals> accessed on 2nd December 2015.

¹¹⁷<https://www.rspca.org.uk/utilities/aboutus/mission> accessed on 2nd December 2015.

Animals Act is a 1962 Act and although it was revised in 2012 the fines and penalties are too low to cause deterrence.

In the UK the Department of Environment, Food and Rural Affairs has drafted various codes of practice and regulation on animal welfare as prescribed under the Animal Welfare Act 2006. These regulations and codes of practice are available on the website.¹¹⁸ In Kenya the power to make regulations dealing with animal welfare vests in the Cabinet Secretary of Agriculture, Livestock and Fisheries but they have not drafted such regulations therefore making the enforcement of animal welfare standards difficult.

In conclusion, in the UK several institutions play key roles in the framework of animal welfare law with the Department of Environment, Food and Rural Affairs charged with the making of policies and regulations of animal welfare, the Home Office is charged with the enforcement of these policies through the police. The Royal Society for the Protection and Care of Animals that is a charitable non-governmental organization that advocates for the upholding of animal welfare standards. Hence it can be seen that the presence of several institutions implementing animal welfare laws in the UK is what has enabled proper implementation of animal welfare laws.

In Kenya, we have the Ministry of Agriculture, Livestock and Fisheries that is charged with the making of policies and regulations on animal welfare but have drafted few of such. The police have a duty to enforce the provisions of the Act but there has been no department of the police that is known to enforce the animal welfare laws. The Kenya Society for the Protection and Care of Animals (KSPCA) is a charitable organization that advocates for the upholding of animal welfare standards but the organization has inadequate funds and few staff to carry out its mandate. Therefore, despite the efforts of the KSPCA, the inadequacy of other institutions especially those in the government have made it difficult to implement animal welfare laws as compared to those in the UK.

The UK framework shows the importance of institutional cooperation in the formulation and implementation of animal welfare law. There are different institutions that carry out different roles as seen from above so as to ensure enforcement of animal welfare laws. From this it can be

¹¹⁸ Regulations and codes of practice available at <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs> accessed on 5th January 2016

concluded that the Kenyan framework should consist of functioning institutions that efficiently carry out their mandate and hence lead to enforcement of animal welfare law in Kenya.

4.4 South Africa

4.41 Legislation

In South Africa there are two main pieces of legislation covering the welfare of animals, the Animal Protection Act¹¹⁹ and the Performing Animals Protection Act¹²⁰. There is also the Societies for the Prevention of Cruelty to Animals Act¹²¹ which regulates animal welfare associations.

The Animal Protection Act defines an animal as “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.”¹²² The definition of animal under this Act is very wide and as it also covers wild animals as long as they are under human control but does not cover invertebrate animals.

Section 2 and 2A of the Act cover the offences against animals which are kicking, maiming, starving and promoting animal fights. Persons convicted of contravening section 2 are liable to a fine that does not exceed four thousand rand or to a term of imprisonment that does not exceed 12 months; and persons convicted of contravening section 2A are liable to a fine or a term of imprisonment that does not exceed 2 years.

Under the Act, the court has the power to make several orders. It can order that an animal be destroyed if the Court is of the opinion that it would be cruel to keep such animals alive.¹²³ The Court may also make an order against convicted persons in terms of this Act, of depriving the owner of the ownership of the particular animal(s) they have abused,¹²⁴ or deprive ownership of a certain type or breed of animal.¹²⁵ A court also has the power to award damages where the

¹¹⁹ Act 71 of 1962

¹²⁰ Act 24 of 1935

¹²¹ Act 169 of 1993

¹²² Section 1 *Animal Protection Act* 71 of 1962

¹²³ Section 3(a) *Animal Protection Act* 71 of 1962

¹²⁴ Section 3(b) *Animal Protection Act* 71 of 1962

¹²⁵ Section 3(c) *Animal Protection Act* 71 of 1962

action of the convicted person has caused loss to any person or where such action has resulted in any person incurring veterinary expenses.¹²⁶

The Minister of Justice according to section 10(1) (b) and 10 (1) (c), enacted the Regulations Relating to the Seizure of Animals by an Officer of a Society for the Prevention of Cruelty to Animals (SPCA).¹²⁷ In terms of this Regulation, an officer of an SPCA may seize an animal if he is authorized in writing by a magistrate.¹²⁸ The animal may only be seized if there are reasonable grounds to assume that an animal needs immediate care or if it is reasonably necessary to prevent the cruelty or suffering of an animal.¹²⁹ Any person who removes an animal that was seized by an officer¹³⁰ or any person who hinders, obstructs or resists an officer in the exercise of their duty¹³¹ is guilty of an offence, and is liable to a fine not exceeding two thousand rand or a term of imprisonment not exceeding one year.¹³²

With regards to regulation on the experimentation of animals, South Africa has no legislation on it but the National Council of Societies for the Prevention of Cruelty to Animals in conjunction with the South African Bureau of standards published 'The care and Use of Animals for Scientific Purposes'.¹³³ This code promotes the humane and ethical care of animals for scientific and teaching purposes. It puts responsibilities on researchers, teachers and institutions over the welfare of animals that are experimented on. Hopefully elements of the code will be drafted into legislation.

4.42 Bodies dealing with the welfare of animals in South Africa

National Council of Societies for the Prevention of Cruelty to Animals (NCSPCA)

This is the body established under the Societies for the Prevention of Cruelty against Animals Act therefore making it a statutory body. The Act states that the objects of the Council are to

¹²⁶ Section 4 *Animal Protection Act* 71 of 1962

¹²⁷ No. R.468, 14th March 1986

¹²⁸ Section 2(1) *Societies for the Prevention of Cruelty against Animals Act* No.R.468, 14th March 1986

¹²⁹ Section 2(1) *Societies for the Prevention of Cruelty against Animals Act* No.R.468, 14th March 1986

¹³⁰ Section 6(1)(a) *Societies for the Prevention of Cruelty against Animals Act* No.R.468, 14th March 1986

¹³¹ Section 6(1) (b) *Societies for the Prevention of Cruelty against Animals Act* No.R.468, 14th March 1986

¹³² Section 6(2) *Societies for the Prevention of Cruelty against Animals Act* No.R.468, 14th March 1986

¹³³ <http://www.nspca.co.za/other.aspx?Id=&CateId=&Category=&page=News&nId=95&Title=EXPERIMENTATIO>
N accessed on 2nd December, 2015

determine, control and co-ordinate the policies and standards of societies in order to promote uniformity, to promote co-operation among animal welfare societies across the country, to prevent the ill-treatment of animals by promoting their good treatment by man, to promote the interests of societies, to take cognizance of the application of laws affecting animals societies and to make representations in connection therewith to the appropriate authority.¹³⁴ This Act also establishes a board whose function is to manage and control the Council, to assist the Council to achieve its objects.¹³⁵ The Council is also in charge of registering animal societies in the country in accordance with section 8 of the Act. The Council may either grant or refuse the application or cancel the registration.¹³⁶

The mandate of the NCSPCA was also stated in the case of *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*¹³⁷ where the Court stated that the Council's objects goes beyond protecting animals and that they include "making representations about laws affecting animals and commenting on their sufficiency or insufficiency, the objects include also law revision and law reform."¹³⁸

Animal Anti-Cruelty League (AACL)

The AACL is a charity organization that was founded in 1956. They are an organization that gets involved with all aspects of animal welfare - provide shelter for abandoned animals, promote an efficient adoption programme, prosecute animal cruelty cases, run welfare hospitals for lower income groups, visit underprivileged areas with fully equipped mobile clinics and regularly address schools and clubs on the challenges of animal welfare.¹³⁹

In Conclusion, from the legal framework on animal welfare in South Africa, it can be seen that the legislation at first glance covers many issues on the welfare and protection of animals but does not cover the protection of laboratory animals and it also fails to prohibit experimental procedures conducted on these laboratory animals as there is no legally binding law on the issue.

¹³⁴ Section 3 *Societies for the Prevention of Cruelty against Animals Act* (ActNo.R.468, 14th March 1986)

¹³⁵ Section 2(3) *Societies for the Prevention of Cruelty against Animals Act* (Act No.R.468, 14th March 1986)

¹³⁶ Section 8 *Societies for the Prevention of Cruelty against Animals Act* (Act No.R.468, 14th March 1986)

¹³⁷ 2008 ZASCA 78 (RSA); [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA)

¹³⁸ 2008 ZASCA 78 (RSA); [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA), para. 35

¹³⁹ <http://www.aacl.org.za/> accessed on 2nd December 2015

The fines imposed under the Act may also need revision as they are inadequate and need to be harmonized with the current economic times.

4.5 An analysis of the legal framework of South African and Kenyan animal welfare legislation

It can be seen that in South Africa, there is an animal welfare organization with a nationwide influence. This is the National Council of Societies for the Prevention of Cruelty to Animals (NCSPCA) which is established under an Act of Parliament and coordinates with other welfare organizations to advocate for the promotion of animal welfare in the country. In Kenya, no animal welfare organization is established under an Act of Parliament like the NCSPCA in South Africa. This makes the mandate of these organizations in enforcing animal welfare principles difficult as they do not have a nationwide influence as compared to the NCSPCA in South Africa. In addition to this, the Directorates under the Ministry of Agriculture, Livestock and Fisheries seek to work with county governments to formulate animal welfare policy but there are few counties that have published county policies promoting animal welfare.

However, in South Africa, there is no legislation that protects animals that are used in experiments. There have been codes of practice on how to use animals in experiments but this do not have a binding influence as an Act would have. This can be contrasted with the Kenyan law that protects animals that are used in experiments.

Therefore, it can concluded that from the animal welfare legislation in Kenya and South Africa that such legislation does have gaps and is not as comprehensive as it should be. This can be attributed to the fact that there are higher policy considerations such as promotion of human rights and fight against poverty leading to animal welfare legislation taking a back seat.

CHAPTER FIVE

5.1 CONCLUSION

The foregoing study has shown that the basis of animal welfare stems from the fact that animals are sentient beings and can therefore feel pain and can suffer. From this, animal welfare legislation has developed over time which has led to animals being entitled to certain freedoms such as freedom to express normal behaviour patterns, freedom from fear and suffering and freedom from pain, injury and disease. It has also been seen that apart from being of benefit to animals. Animal welfare does also promote humanness in human beings.

In Kenya, there has been inadequate promotion of animal welfare. There has been the Prevention of Cruelty against Animals Act that has been in existence since 1962 but has not led to the efficient enforcement of animal welfare. This has been attributed to people having speciesism prejudices of human dominion over animals as animals are considered not to be entitled to any rights or freedoms. Ignorance as well as lack of awareness has also been linked to inadequate promotion of animal welfare.

A positive step has however been taken with the promulgation of the new constitution as it stipulates the duties of the National and County government in the promotion of animal welfare. Despite this being prescribed in law, it still needs to be put into practice so as to ensure it is effective. Therefore, to ensure the promotion of animal welfare laws requires institutions to carry out their mandate. This involves the making of regulations and policies by the Ministry of Agriculture, Livestock and Fisheries in consultation with animal welfare organizations such as the KSPCA. In addition to this, there should also be the enforcement of animal welfare law by the police. This would require the police to be educated on what constitutes animal cruelty. Prosecutions of offences that cause animal cruelty should also be carried out by the DPP (probably through the creation of a specialized unit) as it is stated in law with the aid of veterinarians who have the capabilities of collecting evidence to mount a successful prosecution.

Therefore, it is imperative that Kenya develops a consultative and a participatory robust legislation that recognizes that good animal welfare can bring benefits to people. Awareness and enforcement of legislation is particularly important in achieving long term and sustainable animal welfare standards. This would involve various institutions properly carrying out their

functions as stated above. The Ministry of Agriculture, Livestock and Fisheries drafting regulations and policies on animal welfare, the police enforcing these animal welfare regulations probably through the creation of a special unit that deals with offences that cause cruelty to animals and prosecution of these offences by the office of the Director of Public Prosecutions with the aid of the Veterinary Department who have the expertise to collect evidence to build a successful case against an offender. With strong institutions, animal welfare law will be efficiently implemented. Ultimately the duty remains with the individual to humanely treat his animal, because a happy healthy animal will definitely increase its productivity or companionship qualities (beauty, temperament in the case of companion animals) hence making it of benefit to the owner (the human being).

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