

A LEGAL ANALYSIS OF ANIMAL RIGHTS IN KENYA

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DECLARATION

I, the undersigned, do declare that this dissertation, which I submit for the degree of Bachelor of Laws (LLB) in the Faculty of Law at Riara University, is my own original work and has not been previously submitted by myself or another person for any education award at another University. All sources of information relied upon have been correctly cited and acknowledged by myself.

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First and foremost, I thank Almighty God for the gift of life and well-being, and the strength to endure the rigors of researching and writing, which is not an easy adventure but through endurance, patience, focus and determination I'm indebted to this achievement.

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Thirdly, I thank Ms Shako for taking me through my proposal and ensuring that I complied with all standards set.

Finally, I thank my parents who saw potential in me and decided to take me to law school and their moral support and unfailing encouragement that kept me moving.

I remain entirely liable for any mistakes through commission and omission in this work.

DEDICATION

To my Father, Mr Peter Karanja and my Mother, Mrs Florence Karanja. For your love and care towards me which knows no bounds.

LIST OF ABBREVIATIONS

ANAW	Africa Network for Animal Welfare.
ASPCA	American Society for the Prevention of Cruelty to Animals.
KSPCA	Kenya Society for the Protection and Care of Animal.
OIE	World Organisation for Animal Health.
RSPCA	Royal Society for the Prevention of Cruelty to Animals.
UDAW	Universal Declaration of Animal Welfare.

ABSTRACT

This thesis is about animal rights in Kenya as well as the various issues arising in this field especially the welfare of domestic and domesticated animals. The preservation of the environment and the harmonious existence with nature requires that animal rights are protected and respected. In order for a society to grow as a whole the animal welfare policies and legislation must be re-evaluated and restructured to suit the evolving society and technology. Some of the animal welfare policies and legislation include: The Constitution of Kenya, 2010, The Prevention of Cruelty Act 1962, Kenya Veterinary Policy, National Livestock Policy Session Paper no. 2 of 2008 and the Universal Declaration on Animal Welfare.

The Prevention of Cruelty to Animals Act creates for cruelty offences against owners who mistreat their pets as well as allows for animals that are sick or injured to be humanely killed in the event that it would be cruel to keep it alive. The Act also provides for various animal rights especially those of domestic animals. Animal rights, with regards to domestic and domesticated animals, have been left in the dark for a period of time and are hardly protected which has therefore reflected in society today. Furthermore, Kenya fails to recognize the Universal Declaration on Animal Welfare which has proved to be detrimental to the society the essay will identify the issues that arise due to this.

This research will also analyse whether animal rights are absolute or are subject to their owners wishes and wants, whether the legislation available in Kenya as well as international laws are sufficient or whether they need to be modified and it will also compare different systems, that is the United Kingdom and Kenya in order to review whether there any commonalities or strategies that can be used across the countries. It also seeks to find practical solutions and recommendations to the issues facing the preservation and protection of animals.

TABLE OF AUTHORITIES

NATIONAL LAWS OF KENYA

The 2010 Constitution of Kenya.

The Prevention of Cruelty to Animals Act CAP 360.

The Rabies Act CAP 365.

NATIONAL LAWS OF UK

The Animal Welfare (England and Wales) Act 2006.

The Welfare of Animals (Northern Ireland) Act 2011.

The Animal Health and Welfare (Scotland) Act 2006.

The Animals (Scientific Procedures) Act 1986.

NATIONAL LAWS OF SOUTH AFRICA

Constitution of the Republic of South Africa No. 108 of 1996.

The Animal Protection Act No. 71 of 1962.

Animals Matter Amendment Act 1993.

CONVENTIONS/TREATIES

The Treaty for the Establishment of the East African Community, 2000.

TABLE OF CASES

Barker v RSPCA [2018] EWHC 880.

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CHAPTER ONE

INTRODUCTION

‘An animal's welfare is compromised if it does not enjoy the five fundamental freedoms, which include: freedom from hunger or thirst; freedom from thermal or physical discomfort; freedom from pain, injury and disease; freedom from fear and distress and freedom to indulge in normal behaviour patterns.’¹ More often than not, these rights and freedoms are violated which is the case in instances of: bestiality, animal abuse, killing of animals to perform rituals, for instance witchcraft among others, these are just but a few of the injustices that animals have faced since time in memorial.

The main purpose of this thesis is to create awareness on the issues facing animal welfare in Kenya today and also to find practical solutions that are both applicable in the country today and transformative. It will examine whether the laws put in place in order to protect and preserve animal rights are sufficient and whether offences against these laws should be criminal in nature or tortious. This essay will therefore shed more light on this area of law, which for some time now has been neglected. It will also enable a positive change in the society.

A policy is the general principles by which a government is guided in its management of public affairs or the legislature in its measures while legislation is the act of giving or enacting laws. The Fourth Schedule of the Constitution of Kenya, 2010 provides for the function of the National Government in protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular the protection of animals and wildlife. The Constitution of Kenya 2010 enabled the enactment of the Prevention of Cruelty to Animals Act which was one of the laws that was adopted from the British Law after independence. This Act ensures that the rights and welfare of animals are protected and also provides the penalties for people who contravene this Act. It is the only legislation that deals with the rights of animals.

The Prevention of Cruelty to Animals Act, Section 2 defines an animal to mean a living vertebrate animal including any; mammal, bird, reptile, amphibian and fish. Animals may be classified into four categories which include; companion and domestic animals, wild and

¹ Magoa, EG and Wabacha, JK, ‘An Overview of Animal Welfare Issues in Kenya’ (2005) 1 <<http://erepository.uonbi.ac.ke/>> accessed 2 March, 2019.

exotic animals, livestock and other domesticated animals; and animals as products.² The Act further describes an owner to include any person having the charge, custody or control of an animal.

An issue therefore arises, whether owners have absolute rights over an animal and whether there are functional methods that ensure that the welfare and rights of animals are preserved and protected. This thesis is important as it will look into the gaps in the legal system with regards to animal rights as well as critically analyse the systems in place in Kenya, their practicability and areas to improve on as compared to the systems in Britain and America.

1.1 BACKGROUND OF THE STUDY

Animal rights and welfare has been an issue of debate whereby some schools of thought are of the view that animals do not have rights that ought to be protected whereas other schools dispute this argument. Some of the arguments that led to the establishment of animal rights and their enforcement in law include: animals do not respect our (human) rights. ‘We do not require that humans respect our rights before we acknowledge their rights.’³ Likewise, animals ought to be treated the same as their rights do exist despite the fact that sometimes they may pose a threat to human beings as well as each other.

Another argument was that ‘no animal has rights because animals do not understand rights. These arguments failed due to the fact that one needs not to understand something in order for one to have something, that is; young children have kidneys and livers despite the fact that they may not understand what kidneys and livers are; likewise, young children are unaware of what rights are but that doesn’t negate the fact that they have rights so the same goes for animals.’⁴

A religious theory argues that animals have no souls hence they need not have rights; this therefore brought out two points that is, a logical and theological argument. The logical argues that ‘asking who has an immortal soul is logically irrelevant to asking who has rights while the theological perspective argues that because animals do not have a life after they die, we should do everything in our power to ensure that this, their only life, is as long and good

² Pamela D. Frasch and Sarah M. Kutil, *Animal Law In A Nutshell* (1st edition, West Academic Publishing 2010) 4.

³ Ibid 2.

⁴ Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowan and Littlefield Publishers, Inc. 2004) 65.

as possible.’⁵The above arguments backed with others led to the fight for animal rights which in turn led to the creation of legislation and policies on animal rights.

UK was the first country in the world to implement laws protecting animals when an Act to Prevent the Cruel and Improper Treatment of Cattle was passed by Parliament in 1822. This pushed more countries to establish legislation on animal rights; for example, in Kenya, the Prevention of Cruelty to Animals Act was enforced in 1962 as one of the many laws that had been adopted from the UK and revised in 1983 while in 1966 the Animal Welfare Act was signed into law in America being one of the few federal animal protection laws. With laws, came the establishment of various animal organizations that helped enforce the laws put in place as well as protect animal rights.

In 1824, the Royal Society for the prevention of cruelty to Animals was founded in England, it being the very first animal welfare charity. ‘It rescues and cares for thousands of animals, from pets to wildlife and after the animals have been fully rehabilitated they're either released back into the wild if that's where they came from or are found new and loving homes.’⁶ It therefore ensures the protection of animal rights and their welfare. The American Society for the Prevention of Cruelty to Animals (ASPCA) was founded in 1866 on the ‘belief that animals are entitled to kind and respectful treatment at the hands of humans and must be protected under the law.’⁷

In Kenya, the Kenya Society for the Protection and Care of Animals (KSPCA) focuses on the protection of animals, that is, domestic and domesticated animals.⁸ It started sometime after 1910 when some ladies took pity on the oxen bringing goods into Nairobi from the surrounding districts and was at that time known as the East African Society for the Prevention of Cruelty to Animals. The organization exists to promote the protection of animals, prevent cruelty to animals and to rescue and relieve animals from all manner of suffering.

⁵ Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowan and Littlefield Publishers, Inc. 2004) 65.

⁶ Royal Society for the Prevention of Cruelty to Animals <<https://www.rspca.org.uk/>> [accessed 2nd March, 2019].

⁷American Society for the Prevention of Cruelty to Animals <<https://www.aspc.org/>> [accessed 27 February, 2019].

⁸ Kenya Society for the Protection and Care of Animals <<https://kspca-kenya.org/>> [accessed 27 February, 2019].

In Africa, the Africa Network for Animal Welfare (ANAW) focuses on the humane treatment of all animals for human welfare and as such promotes the understanding and appreciation that animals are sentient beings; they have feelings, emotions and respond to psychological and physiological changes in the environment. Animal rights and welfare has therefore existed over time and it continues to be an issue that is constantly manifesting and evolving hence this thesis will pick up from what has been done over the years. It will establish whether or not the current laws and policies in place, in Kenya, are sufficient and it will also provide possible solutions to any gaps found.

1.2 PROBLEM STATEMENT

There exist gaps in the law as to the protection, preservation and enforcement of animal welfare and rights. The Constitution of Kenya, 2010 provides for the protection of animals which is the duty of the National Government but it has failed in the achievement of this and the Government is very lax with issues to do animal rights, more so domestic and domesticated animals. This issue has a negative impact on the society; such as, the fact that animals killed on the roads are not disposed of appropriately may lead to an outbreak of various diseases as well as shed negative light on the country. This thesis will therefore address this problem and aims at providing practical and transformative solutions to this effect.

This problem affects individuals, organizations and the society as a whole. Individuals are affected as the improvement of these laws would also improve the conditions in which owners would keep their pets and livestock which in turn benefits both owners and the animals. Animal organizations, such as; Kenya Society for the Protection and Care of Animals (KSPCA), will also be affected as they mainly deal with the protection of animals hence the improvement of the laws and policies in place would lead to the increase in the number of animal rescue shelters which would in turn help the National Government in protecting animals as well as reduce the pressure placed on the few existing animal shelters in Kenya.

This problem also affects the society as the conditions in which animals are kept and treated reflects greatly on the society and this may lead to either positive or negative perception of Kenya's environment in the International arena thus affecting our relations with other countries. Animal welfare is a global matter but this thesis will deal with animal rights and welfare in Kenya specifically as well as provide a comparative analysis of the systems put in

place in Kenya as well as in Britain and America. Unfortunately, this issue has existed since time in memorial and it has only worsened over the years pass. It is therefore necessary that the issue be solved as soon as possible.

It is therefore important for this problem to be solved as it will ensure that the laws and policies put in place to protect animals are adhered to and respected which will in turn improve the living standard of citizens as well as ensure the preservation of the environment. This thesis proposes that the Prevention of Cruelty to Animals Act 1962 be repealed and amended and that the laws be less ambiguous. It also proposes that Kenya be signatory to the Universal Declaration of Animal Welfare and that more institutions be established to ensure that animal rights are protected and preserved. Lastly it proposes that offences against animal rights be treated with the seriousness they deserve and heftier penalties be issued.

1.3 JUSTIFICATION OF THE STUDY

This research paper looks into animal rights and welfare, specifically domestic and domesticated animals, as it is an issue that has been neglected over time, yet it greatly affects the society today. The main purpose of this thesis is to create awareness on the issues facing animal welfare in Kenya today and also to find practical solutions that are both applicable in the country today and transformative. It will examine whether the laws put in place in order to protect and preserve animal rights are sufficient and look into the gaps in the legal system with regards to animal rights as well as critically analyse the systems in place in Kenya, their practicability and areas to improve on as compared to the systems in UK and South Africa.

This topic is relevant because the preservation of the environment and the harmonious existence with nature requires that animal rights are protected and respected thus enabling society to grow as a whole. Furthermore, animal welfare deals with aspects of our daily living even though it may go unnoticed, that is, it affects businesses such as butchereries which also have a great effect on the health of the consumers (the public), it affects the agricultural sector and it also affects individuals in terms of how they keep and care for their pets, amongst others. This thesis is therefore important because it will shed more light on this area of law which will in turn enable a positive change in the society.

This research aims at improving animal welfare at both a local and national level and ensuring accountability in the sectors of law in charge of enforcing and implementing animal laws. At the tail end of this thesis, the reader will not view domestic animals in the same light

as before that is, as beasts and savages without any legal rights, but rather he/she will understand the rights animals have and the means of protecting their rights. This study is therefore unique because this field of law has been ignored and unattended to over a long period of time especially in Kenya.

1.4 HYPOTHESIS

Some of the assumptions that this thesis will bring out include:

- a) That animals have rights that ought to be protected and preserved.
- b) That animal rights cases are not tried and settled in the courts.
- c) That the preservation and protection of animal rights will ensure the growth and transformation of the society as well as the nation.

1.5 LIMITATIONS OF THE STUDY

There may be time constraints as this thesis is required by the end of April, meaning that it has been worked on for only three months. This is an issue as more time would allow for a more in-depth research and it would also enable the researcher to look into various other issues that challenge animal welfare in Kenya. There is also limited access to data because most authors and other researchers in Kenya focused on wild and exotic animal rights and welfare, whereas this thesis shall focus on domestic and domesticated animals. This therefore makes it harder to acquire information on this issue as it has been neglected over time and some of the research done is based on the past and is not up to date.

1.6 LITERATURE REVIEW

The superiority complex of humans is what led to the large number of issues of animal cruelty and injustices. Animals were classified as property and property laws were created to protect humans from losing their 'high statuses' but these laws failed to acknowledge and protect animals from mistreatment and cruelty. It is because of this that many people today share the notion that animals, such as livestock, naturally fall into the category of property.

As time passed and societies evolved, legislation was drafted with the aim of protecting animals, whether deemed to be property or not, from being mistreated by human beings. Laws were created to protect animals from inhumane acts as well as to preserve and protect their rights. However, countries still face various issues when it comes to the protection and preservation of animal rights despite the existence of animal laws as animals are viewed as property of human being due to the selfish nature of human beings.

This line of thought opened the arena for many animal rights and welfare activists thus the great animal debate began. Peter Singer began his argument by stating that, 'if there are any rights possessed by all human beings, those rights are also possessed by non-human animals. For any rights possessed by all human beings cannot be possessed in virtue of such special human characteristics as rationality, autonomy, self-consciousness, the ability to enter into contracts, or to reciprocate, or anything of this sort. Such a basis for rights would leave out those humans who, through infancy or congenital disability, never have had and in some cases never will have these special characteristics.'⁹

His position was greatly influenced by the Kant - Regan debate whereby; Kant, a rationalist, argued that, 'man and generally any rational being exists as an end in himself, not merely as a means, that rational beings possess "absolute worth," and that therefore they are entitled to treatment as ends.'¹⁰ Whereas Tom Regan, who is a natural rights theorist, disputed Kant's argument by elaborating the distinction between moral agents (those who are capable of making rational, moral judgments) and moral patients (those who cannot make such formulations but who are nevertheless entitled to be treated as ends)¹¹, and further argued that human moral patients need not be treated as ends, which to him is unacceptable.

Gary Francione, another animal rights activist, advocates for an immediate end to the classification of animals as property, but he does accept that initiatives that achieve incremental change towards this goal may also be beneficial, provided that such changes result in a diminution of the property status of animals.¹² In his text, Francione provides a set of criteria for measuring whether an initiative recognises that animals have more than extrinsic or conditional value alone, and is thus an incremental step towards the abolition of the property status of animals.

The step focuses on, the extent to which the initiative involves prohibitions of significant institutional activities (as opposed to traditional welfarist regulations requiring 'humane' treatment within these activities) and the extent to which the initiative recognises that animals have interests that are not tradable or able to be ignored merely because humans will benefit

⁹ Peter Singer, 'Animal Liberation or Animal Rights?' (1987) 9-10 < <http://www.jstor.org/stable/2790301>> accessed on 1st May, 2019.

¹⁰ Kant, "Theory of Ethics," in Kant Selections, ed. Theodore M. Greene (New York: Scribner's, 1927), 308-309.

¹¹ Josephine Donovan, 'Animal Rights and Feminist Theory' (1990) 354 < <https://www.jstor.org/stable/3174490>> accessed on 2nd May, 2019.

¹² Miah Gibson, 'The Universal Declaration of Animal Welfare' (2011) 540.

from doing so.¹³ By doing so, animals ought to be granted the same rights as human beings hence they move from property-hood to ‘legal personhood’.

These arguments have largely been criticised by animal welfare activists who support the proper treatment of animals but hold that animals are still to be regarded as man’s property; that is, larger cages instead of no cages. Carl Cohen is one of the most prominent philosophical advocates of the view that nonhuman sentient animals, do not, and cannot, have moral rights. Many who enjoy and profit from the infliction of pain, suffering and death on animals, especially those in the vivisection industry, strongly applaud his efforts at attempting to defend the moral propriety of their outlook and deeds.¹⁴

The animal advocacy camps are therefore yet to agree on the matter and the debate, as to whether animals should be regarded as ‘personhoods’, still carries on. Animal law theorists have generally aligned themselves with one of these two approaches when advocating for an improvement in the treatment of animals within the current legal framework, or arguing that there cannot be any significant improvement in the treatment of animals, or reduction in animal cruelty, until animals are recognised as having their own inherent value, rather than existing as merely the property of human beings.

This thesis therefore seeks to look into the various ways animal rights are infringed specifically in Kenya and provide practical and transformative solutions that will ensure the enforcement of animal rights. It also advocates for the animal rights camp whereby the classification of animals as property is done away with and new laws and systems are introduced for the greater good of animals as well as society. Furthermore, this study will compare the systems put in place in Britain and South Africa to those in Kenya and analyse whether the said systems can be transplanted into the Kenyan laws and if they will prove practical and applicable to Kenya’s society.

1.7 THEORETICAL FRAMEWORK

Many theories have been propounded in order to fight for animal rights and protect animals from cruelty and mistreatment globally. This study acknowledges a number of applicable theories such as; utilitarianism, animal ethics theory, consumer demand theory and the feminism theory. However, the study is premised on the utilitarianism theory, which is the

¹³ Gary L Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (Columbia University Press, 2008) 50-53.

¹⁴ C. Cohen and Tom Regan, *the Animal Rights Debate* (Rowman and Littlefield Publishers Inc. 2001) 2.

main theory relied on by animal rights activists. The utilitarianism theory has greatly guided the enactment of the laws present globally on animal rights and welfare and as such it is important to understand it in order to have a clear legal analysis of animal rights.

1.7.1 Utilitarianism

This theory proposes that the moral consequences of an action depend on the amount of pleasure that is to be derived from it. It argues that the true goal of society ought to be the achievement of the greatest happiness of the greatest number and that the most desirable life is one of simple pleasures controlled by rational prudence.

Kant, a rationalist, argued that, 'man and generally any rational being exists as an end in himself, not merely as a means, that rational beings possess "absolute worth," and that therefore they are entitled to treatment as ends.'¹⁵ It is on the basis of their rationality that humans are identified as moral agents who are therefore entitled to such natural rights as to be treated as ends. In order to promote animal rights Tom Regan, who is a natural rights theorist, disputed Kant's argument by elaborating the distinction between moral agents (those who are capable of making rational, moral judgments) and moral patients (those who cannot make such formulations but who are nevertheless entitled to be treated as ends).¹⁶

Regan makes his case by countering Kant's theory that human moral patients (those who are severely retarded, infants, or others unable to reason) need not be treated as ends, which to him is unacceptable. Therefore, if one accepts both moral agents and moral patients as entitled to the basic respect implied in the notion of rights, Regan argues, it follows that nonhuman moral patients (animals) must be included in the category of those entitled to be treated as ends. He further stated that to argue otherwise is speciesist; that is, it arbitrarily assumes that humans are worth more than other life-forms.¹⁷ Regan therefore argued that treating animals as ends is a matter of justice and not kindness.

The arguments by both Kant and Regan sparked the utilitarian animal rights theory with its main compounder being Peter Singer. Utilitarian animal rights theorists insist on the capacity to feel or the capacity to suffer as the criterion by which to determine those who are entitled

¹⁵ Kant, "Theory of Ethics," in *Kant Selections*, ed. Theodore M. Greene (New York: Scribner's, 1927), 308-309.

¹⁶ Josephine Donovan, 'Animal Rights and Feminist Theory' (1990) 354 < <https://www.jstor.org/stable/3174490> > accessed on 2nd May, 2019.

¹⁷ Pamela D. Frasch and Sarah M. Kutil, *Animal Law In A Nutshell* (1st edition, West Academic Publishing 2010) 27.

to be treated as ends. Peter Singer began his argument by stating that, ‘if there are any rights possessed by all human beings, those rights are also possessed by non-human animals. For any rights possessed by all human beings cannot be possessed in virtue of such special human characteristics as rationality, autonomy, self-consciousness, the ability to enter into contracts, or to reciprocate, or anything of this sort. Such a basis for rights would leave out those humans who, through infancy or congenital disability, never have had and in some cases never will have these special characteristics.’¹⁸

Both Bentham and Rousseau advocate that natural rights, or entrance into Kant's kingdom of ends, be accorded to creatures who can feel. Their assumption is that the common condition that unites humans with animals is sensibility, the capacity to feel pain and experience pleasure.¹⁹ The utilitarian position proceeds from this premise to establish that if a creature is sentient, it has interests that are as equally worthy of consideration as any other sentient creature's interests when humans make decisions about their well-being. In Singer's words, “The capacity for suffering and enjoyment is a prerequisite for having interests.”²⁰

The essence of the utilitarian animal rights position is that pain and suffering are bad and should be prevented or minimized, irrespective of the race, sex, or species of the being that suffers. Singer stated that, “if a being suffers, there can be no moral justification for refusing to take that suffering into consideration therefore the principle of equality requires that its suffering be counted equally with the like suffering of any other being.”²¹ Animal rights therefore means the right of a sentient creature to have its interests in remaining unharmed considered equally when weighed against the interests of another sentient creature.²²

As a utilitarian, Singer insists that an awareness of consequences can and should influence the evaluation of an individual's fate in any given situation. This leads him to admit that, ‘there could conceivably be circumstances in which an experiment on an animal stands to reduce suffering so much that it would be permissible to carry it out even if it involved harm

¹⁸ Peter Singer, ‘Animal Liberation or Animal Rights?’ (1987) 9-10 < <http://www.jstor.org/stable/2790301>> accessed on 1st May, 2019.

¹⁹ Josephine Donovan, ‘Animal Rights and Feminist Theory’ (1990) 356 < <https://www.jstor.org/stable/3174490>> accessed on 2nd May, 2019.

²⁰ Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowan and Littlefield Publishers, Inc. 2004) 65.

²¹ James M. Henslin, *Life in Society* (2nd edn, Southern Illinois University 2007) 226.

²² Peter Singer, ‘Ethics and Animal Liberation,’ In *Defence of Animals*, (New York: Basil Blackwell, 1985) 1-10.

to the animal [even if] the animal were a human being.’²³ This means that where choices are made among competing pleasures, those choices may depend on something other than the mere estimates of the quantities of likely pleasures. The consequences should therefore benefit the greater of society.

Nevertheless, there are weaknesses to this theory. One is that a precise value standard for decision making or weighing of interests is not provided, which allows unacknowledged prejudices to intrude. Second, it requires a quantification of suffering, a “mathematization” of moral beings, which falls back into the scientific modality that legitimates animal sacrifice. Thus, while it recognizes sensibility or feeling as the basis for treatment as a moral entity, it remains locked in a rationalist, calculative mode of moral reasoning that distances the moral entities from the decision-making subject, reifying them in terms of quantified suffering.²⁴

This thesis therefore supports the utilitarian animal rights theorists approach to animal rights and seeks to classify animals as “personhood” rather than property at the mercy of human beings. If Kenyan laws and the legal framework governing animal laws are repealed and restructured in a manner that views animals as more than property then the interests of society, that is agricultural needs, population etc. will be greatly improved hence ensuring maximum pleasures for both human beings and animals which will further ensure peaceful coexistence between the two.

1.8 RESEARCH OBJECTIVES

This study seeks to accomplish the following objectives;

1. To understand the difference between animal rights and animal welfare.
2. To analyse the legal framework of animal rights and welfare in Kenya.
3. To compare the legal systems, with regards to animal rights, between Kenya, UK and South Africa.
4. To suggest possible and practical solutions to the issue on animal rights in Kenya.

1.9 RESEARCH QUESTIONS

This study seeks to answer the following questions;

1. How does the concept of animal rights differ from animal welfare?
2. How is the legal framework on animal rights in Kenya structured?

²³ Peter Singer and Tom Regan, ‘the Dog in the Lifeboat: An Exchange,’ (1985) 57.

²⁴ Josephine Donovan, ‘Animal Rights and Feminist Theory’ (1990) 358 < <https://www.jstor.org/stable/3174490> > accessed 2 May, 2019.

3. How does the Kenyan legal system compare to the systems in U.K and South Africa?
4. Why do we need to solve the issues facing animal rights in Kenya? And how do we do so?

1.10 RESEARCH METHODOLOGY

The method relied on to collect data for this thesis is the qualitative method. It will employ both primary and secondary researches. It will mainly rely on secondary research collected from library research and internet searches concerning the subject topic. Books, journals and articles on the subject will be of importance together with legislation from Kenya and other jurisdictions. This will enable the understanding of animal rights in Kenya as well as any improvements that ought to be made.

1.11 CHAPTER BREAKDOWN

This dissertation is presented in five chapters arranged as follows: -

Chapter one titled introduction deals with the background of animal rights and welfare as well as information from different writers with regards to this topic. It also identifies the reasons why the research is necessary.

Chapter two titled animal advocacy movement traces the origins of animal rights and animal welfare and explains the difference between the two concepts.

Chapter three titled the regulatory framework of animal rights in Kenya gives an analysis of the systems put in place to ensure animal welfare and rights are respected and protected in Kenya.

Chapter four titled comparison of the regulatory frameworks on animal rights compares the legal systems in place between Kenya, UK and South Africa.

Chapter five titled recommendations and conclusion suggests possible solutions to the issues facing animal rights and welfare in Kenya.

CHAPTER TWO

THE ANIMAL ADVOCACY MOVEMENT

2.1 INTRODUCTION

This chapter will look into the animal advocacy movement and explain its main branches, which include; the animal rights movement and the animal welfare movement, with the aim of enabling the reader to understand the two distinct concepts which are vital in understanding the systems put in place. The chapter will also analyse their criticisms in order to enable the full understanding and appreciation of the movement thus preventing any confusions from arising.

2.2 BACKGROUND OF THE ANIMAL ADVOCACY MOVEMENT

For a long time, the law has treated animals as the property of humans. A key word in the common law tradition law students is “chattel”, which is related to the word “cattle” and means an item of personal property that is movable.²⁵ Human beings believe themselves to be the superior species hence any other species that do not classify as humans are subject to and may be controlled in any manner that is deemed fit by them. However, changes in beliefs about animals extend back to the growth of towns and mercantile values in the midst of the aristocratic, agrarian societies of sixteenth- and seventeenth-century Europe. A new urban middle class appeared, and by the nineteenth century it had changed daily life in Western Europe.

As urbanization removed many people from their direct dependence on animals as a resource, except as a means of transportation, close experience with animals other than pets declined. The bourgeois wife in town had fewer chickens to feed or cows to milk, so that her appreciation of animals came from her pet dogs.²⁶ By 1700, people were naming their pets, pets appeared regularly in paintings; and some even received legacies when their owners died. When pets died, they (unlike farm animals) were never eaten; often they were buried in style, with epitaphs written by their owners. As the family home and its members became privatized and idealized, so did the family pet. This new attitude toward animals had a distinct basis in social class.²⁷

²⁵ Paul Waldau, *Animal Rights What Everyone Needs To Know* (Oxford University Press 2010) 82.

²⁶ James M. Henslin, *Life in Society* (2nd edn, Southern Illinois University 2007) 226.

²⁷ *Ibid.*

Torturing and killing of cats was an old European tradition: a favourite pastime at many holidays was to set cats on fire, largely to hear their terrible “caterwauling.” These actions dramatized the conflict between the traditional view of animals and the emerging sensibility of the wealthy classes.²⁸ The new moral sensitivity began in the rising middle classes, but quickly conquered much of the aristocracy, and eventually although not widely until the twentieth century the labouring classes. In each case, its apostles were mainly women, priests, and the occasional philosopher who articulated the changing beliefs.²⁹

Intersectionality, which emerged out of critical race feminism, is a theory that stresses that experiences of injustice are always already the products of multiple hierarchies working in layered and intertwined tandem.³⁰ The animal advocacy is dominated by women who have experienced gendered and intersectional issues, both within the movement and from outside. Responses to the movement and women activists within it are also strongly shaped by traditional gendered roles as well as the reason/emotion divide that has been foundational othering logic for multiple marginalized groups, both human and animal.³¹ It is because of this that the animal advocacy movement also stems from the feminist movement.

The nineteenth-century expansion of industry and cities in Britain and America accelerated the speed of bourgeois moral sensibilities, including sympathy for animals, across all social classes.³² This led to the establishment of the animal advocacy movement. The animal advocacy movement comprises of two distinct groups, those who argue for animal rights and those who argue for animal welfare. The animal rights movement (also referred to as the ‘abolition’ movement) sees the use of animals as the key problem, and seeks to challenge the current legal status of animals as property in order to secure fundamental rights for animals which are absolutely protected and cannot be sacrificed to a higher, ‘human’ need.³³

Animal law theorists and activists have generally aligned themselves with one of these two approaches when advocating for an improvement in the treatment of animals within the current legal framework, or arguing that there cannot be any significant improvement in the

²⁸ James M. Henslin, *Life in Society* (2nd edn, Southern Illinois University 2007) 226.

²⁹ Ibid.

³⁰ Maneesha Deckha, ‘PETA and the Feminist Ethics of Animal Advocacy’[2008] 38.

³¹ Maneesha Deckha, ‘Animal Advocacy, Feminism and Intersectionality’[2013] 58-60.

³² James M. Henslin, *Life in Society* (2nd edn, Southern Illinois University 2007) 227.

³³ Voiceless, ‘What is Animal Law?’ (2009) 4 < <http://www.voiceless.org.au/html> > accessed on 28th April, 2019.

treatment of animals, or reduction in animal cruelty, until animals are recognised as having their own inherent value, rather than existing as merely the property of human beings.

2.3 ANIMAL RIGHTS MOVEMENT

The animal rights camp envisions a set of "personhood" rights which all humans and some non-humans possess. While such rights may mean different things to different species, at a minimum they shield their holders from gross insults to the body, such as imprisonment, nontherapeutic injections, and, of course, murder. While animal rights advocates may also seek the interests of animals for utilitarian reasons, their belief in a political right separates them from the welfare camp.³⁴

The animal rights camp suggests that what is needed is a transformative shift in the way we see animals, a shift from "legal thing-hood" to "legal personhood." Animals recognized as holding personhood rights would enjoy immunity "from serious infringements upon their bodily integrity and bodily liberty." They would also hold the right to have their interests represented in court, a guarantee that could protect their interests in times of future apathy.³⁵

For most of the activists, involvement in animal rights issues was associated with a major shift in thinking to a worldview in which there is a fundamental equality between humans and other species, a change which has both moral and behavioural implications.³⁶ This movement bases its foundation on reason, emotions; either positive or negative, as well as morality. Activists are therefore aligned to any of the three reasons when advocating for animal rights. It is impossible to completely separate them as they are dependent regardless of which stand activists take.

The basic principles of animal rights thinking are a major departure from traditional categories of kindness and cruelty. First of all, most harm perpetrated on animals and most animal suffering is not a result of cruelty, but rather grows out of "normal" animal use.³⁷ For example; most researchers are not cruel nor are they sadists, they just seek to accomplish a greater goal or seek to create new inventions but in the process of this many animals that are taken for experiments end up hurt and dead.

³⁴ Tom Regan, *The Case for Animal Rights* (University of California Press, 2nd edn, 2004) 186.

³⁵ Robert R.M. Verchick, 'A New Species of Rights' (2001) 210.

³⁶ Harold. A Herzog Jr, "The Movement is My Life": The Psychology of Animal Rights Activism' (1993) 106.

³⁷ Rollin B.E, 'Animal welfare, animal rights and agriculture' (1990) 3456.

In *Animal Legal Defense Fund v. Department of Environment Conservation*, [1985] a group of animal rights attorneys attempted to prosecute the use of the steel-jawed trap for trapping under the anticruelty laws the judge in dismissing the case, remarked that were it within his power to do so; he would ban the steel-jawed trap. But the way the animal cruelty laws are written, they do not cover things like the steel-jawed trap that are aimed at satisfying a human “need” and at economic benefit. Therefore, he stated that, the only way to address such cases is to change the law through legislation. Therefore one basic feature of animal rights thinking is to concern itself with animal suffering, whether or not the source of that suffering is cruelty, which typically it is not.³⁸

Second, the proper treatment of animals is seen in animal rights theory as a demand of justice and fairness, not as a matter of kindness or good will. This is true even of philosophers who philosophically question the cogency of “rights”. Just as the women’s movement would not accept as a slogan “be kind to women,” so, too, the new animal movement rejects kindness as the relevant category. The feeling is that moral obligations to animals follow logically as an inevitable extension from moral ideas we already have about people in society.³⁹

Animal rights activists act as moral entrepreneurs, igniting and then building on moral outrage. They appeal to widespread beliefs about the similarities between humans and animals, the love of pets as part of the family, and anxieties about encroaching instrumentalism. And they use shocking images of common practices that violate deeply held sentiments about decency and justice to convert people to the cause.⁴⁰ Many animal rights activists have written articles as well as taken videos of how animals are used in experiments in order to enable the rest of the world to help fight for this cause.

Some scholars have argued that animals do not have rights because they do not respect human rights. This therefore raises the issue whether people who do not respect others’ rights should be entitled to any. ‘We do not require that humans respect our rights before we acknowledge their rights.’⁴¹ Many are the times that human beings put their rights above others and end up infringing on their counterparts’ rights yet it does not negate the fact that they are still entitled to their rights. Likewise, animals ought to be treated the same as their

³⁸ Rollin B.E, ‘Animal welfare, animal rights and agriculture’ (1990) 3456.

³⁹ Ibid 3457.

⁴⁰ James M. Henslin, *Life in Society* (2nd edn, Southern Illinois University 2007) 227.

⁴¹ Ibid, 226.

rights do exist despite the fact that sometimes they may pose a threat to human beings as well as each other.

A religious theory states that animals have no souls hence they need not have rights; this therefore brought out two points that is, a logical and theological argument. The logical argues that ‘asking who has an immortal soul is logically irrelevant to asking who has rights while the theological perspective argues that because animals do not have a life after they die, we should do everything in our power to ensure that this, their only life, is as long and good as possible.’⁴² The above arguments backed with others led to the fight for animal rights which in turn led to the creation of legislation and policies on animal rights.

2.4 CRITICISMS

The animal rights camp has faced the most critique over time. It is argued that, although abolishing the property status of animals is a necessary step towards the achievement of an animal rights agenda whereby animals are regarded as the moral equals of humans, it is by no means a sufficient one. That is, there are a number of reasons to suppose that without any additional changes, animals would continue to be exploited even if their property status were abolished.

In the first place, not all animals are regarded as the property of private citizens, yet this has not prevented them from being mercilessly exploited. Wild animals, for example, fall into this category. While there are various ways in which ownership of wild animals can and has been conferred, animals in the wild are not owned by private citizens. Despite this fact, wild animals are not regarded as possessors of rights. Conversely, it should be noted that there are cases where domestication, and therefore ownership, has had positive implications for wild animals. It might be suggested that animal species with little or no chance of surviving in the wild, are kept in zoos with very good records of environmental enrichment, benefit from human ownership.⁴³

The second argument in support of the view that abolishing the property status of animals is not sufficient to prevent their continued exploitation focuses on the traditional left-wing critique of the concept of rights. Even for humans, there is a world of difference between proclaiming the existence of rights and upholding them in practice. Thus, despite the fact that

⁴² Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowan and Littlefield Publishers, Inc. 2004) 65.

⁴³ Robert Garner, ‘Political Ideology and the Legal Status of Animals’ (2002) 82.

governments throughout the world proclaim human rights, this has not ensured that human exploitation and suffering has been eliminated. This is not surprising given the context of the vastly unequal nature of modern societies where “for the majority, rights are merely abstract, formal entitlements with little or no de facto purchase on the realities of social life.”⁴⁴

According to Carl Cohen, a human being remains part of the human community and thus, of the moral community despite having the capacities to make moral choices or not. He says that because he is a human, he is part of the moral community and therefore, has rights. However, he attaches the capacity to have rights to humans for the precise reason that they have certain capacities which make them human; logically beings without these capacities cannot be considered bearers of rights.⁴⁵ Therefore he argues fallaciously for animal experimentation with the assumption he believes to have proved- that the capacity to choose allows humans to be bearers of rights.⁴⁶

Cohen overly depends upon the seeming presence of an intuitive grasp of the difference in moral status of an animal and human. This is explicitly clear in the example of one’s car hitting a squirrel on one hand and the child on the other. Cohen says that in hitting a squirrel, though one feels uncomfortable, one hopes that ‘it was caused no great suffering and you drive on’ while in case of a human child, you are to intuitively known to stop and rush the human child to the hospital, doing everything to express your regret over the act of running over the child with a car.

However, such an intuitive grasp is non-existent; keeping in mind that intuition is highly tied to the kind of conditioning one has gone through. For a person born and brought up in a forest or in a highly nature-sensitive environment, it would not be okay to simply hope that the squirrel had died without suffering- maybe, moreover, for all that we know, he might be more sensitive towards a squirrel than towards a child. Thus, the argument for moral status of animals as being simply incapable of holding rights cannot be argued on the basis of our intuition.⁴⁷

Additionally, it has been argued that there is a difference between moral and legal rights. Those who have capacity to be moral can be attributed moral rights while those who are not

⁴⁴ Rollin B.E, ‘Animal welfare, animal rights and agriculture’ (1990) 3458.

⁴⁵ Nobis, N, ‘Carl Cohen’s “Kind” Arguments for Animal Rights and Against Human Rights’ (2004) 2.

⁴⁶ Ibid.

⁴⁷ Nobis, N, ‘Carl Cohen’s “Kind” Arguments for Animal Rights and Against Human Rights’ (2004) 2.

capable of being moral in this sense but do have the capacity to experience the world and have interests towards pleasure and away from pain can be rightly attributed legal rights. This would allow the below stated conflicts with his idea of brain-damaged and biologically challenged human beings having moral rights to be rectified.⁴⁸

It is evident the animal rights camp seeks to abolish the 'property-hood' attached to animals and put in place legislation that protects animals just as human beings are protected. This becomes difficult as many people are of the view that animals should be used for the benefit of human beings. The animal welfare camp stems from this line of thought as they advocate for protecting animals in so far as their benefit to human beings is not lost. This is the main weakness of the animal rights movement.

2.5 ANIMAL WELFARE MOVEMENT

The animal welfare supporters (also referred to as 'reformists') highlight the treatment of animals as the primary concern. They seek better regulation of animal treatment within a framework that continues to characterise animals as the property of human beings. The welfare model does not ban exploitation of animals but prescribes acceptable limits to that exploitation by prohibiting unnecessary pain and suffering.⁴⁹

The animal welfare camp focuses on furthering the "interests" of human and nonhuman animals in the context of a human-dominated society. Such advocacy often takes the shape of identifying and correcting societal wrongs that hinder the interests of humans and nonhumans, however those interests are defined. Animal welfarists justify their cause on utilitarian grounds, but they do not presuppose formal rights on the part of nonhuman animals.⁵⁰ Animal welfare initiatives are therefore those that advocate for better living conditions for animals while they are being instrumentally treated.

Animal welfarists call for extension of the range of human concepts of justice and fairness beyond the boundaries of human society and question the assumption that procedures employed in animal production should be determined on economic grounds alone.⁵¹ They rely on three main theories which include; the divine command, rational egoism and

⁴⁸ C. Cohen and Tom Regan, *the Animal Rights Debate* (Rowman and Littlefield Publishers Inc. 2001)9.

⁴⁹ Jonathan R Lovvorn, 'Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform' (2005-06) 133.

⁵⁰ Gary L. Francione, 'Rain without Thunder: The Ideology of Animal Rights Movement' (1996) 12-14.

⁵¹ J.F Hurnik, 'Animal Welfare: Ethical Aspects and Practical Considerations (1990) 1829.

utilitarianism. The divine command theory is derived from a supernatural authority as expressed in and understood from scriptures. Interpretation of these documents is very central to traditional understanding of “rights” and “wrongs”.⁵²

The rational egoism theory stresses that the best way to achieve the most good or happiness in a society is to follow individual goals and desires. Those who emphasize producers' self interest in animal well-being, as a prerequisite for profitability, often have this concept in mind. On the other hand, the utilitarian theory emphasizes the need to assess each of our actions according to the principle of how much "harm" or "benefit" these actions generate. An action is morally acceptable if the benefit outweighs the harm.⁵³

Animal welfare advocates focus on identifying and maximizing animal interests, or what economists call “preferences”. Because they assume any animal would prefer physical comfort to pain and emotional contentment to distress, welfarists spend much energy attempting to measure the degree to which animals are capable of experiencing pain and of having emotional lives. This focus often leads to a kind of empathetic response in which humans develop a closer relationship with the rest of the animal world based on their belief in shared experiences and, perhaps even a shared purpose. These arguments emphasize themes of connection and community, sometimes enriched by aesthetic or spiritual ideas.⁵⁴

An animal's welfare is compromised if it does not enjoy the five fundamental freedoms, which include: freedom from hunger or thirst; freedom from thermal or physical discomfort; freedom from pain, injury and disease; freedom from fear and distress and freedom to indulge in normal behaviour patterns.⁵⁵ The concept of the “five freedoms” reflects a more ethical view than a science-based approach. A country is therefore said to maintain animal welfare when each of the freedoms are protected and respected.

Freedom from fear and distress is a typical anthropocentric construct. Fear is an emotion produced by the perceptions of impending danger and is normal in appropriate situations. It is a vital evolutionary legacy that leads an organism to avoid the threat.⁵⁶ The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture defined distress as, “a state

⁵² Ibid, 1829.

⁵³ J.F Hurnik, ‘Animal Welfare: Ethical Aspects and Practical Considerations (1990) 1830.

⁵⁴ Robert R.M. Verchick, ‘A New Species of Rights’ (2001) 212.

⁵⁵ Magoa, EG and Wabacha, JK, ‘An Overview of Animal Welfare Issues in Kenya’ (2005) 1.

⁵⁶ S.M Korte and J.M Koolhaas, ‘Psychology and Behaviour’ (2007) 423.

in which an animal cannot escape from or adapt to the internal or external stressors or conditions it experiences, resulting in negative effects on its well-being”.

Second, one might expect that natural selection will shape a body for maximum health and longevity. Unfortunately, this is not always true. Health is not the outcome of natural selection, maximal reproduction is. If a mutation causes a disease, but yields a net increased reproductive success, it will be selected for.⁵⁷ Scholars have therefore argued that fitness and welfare do not correlate as something can benefit reproductive success but may cause poor animal welfare.

Third, freedom from pain, injury or disease is a utopia. For example, pain is a natural defence mechanism that helps to protect organisms from potential threats and dangerous substances. Pain, nausea, fever, vomiting and diarrhoea are products of natural selection.⁵⁸ Although they produce suffering, they are defence mechanisms that protect organisms.⁵⁹ Fourth, intuitively it is appealing to improve animal welfare by respecting the nature of the animals. However, one has to realize that due to natural selection, nature is by no way a paradise. For instance, mice from some laboratory lines can survive as long as three years, while free-living wild mice are likely to die much earlier from disease, competition, or predators.⁶⁰

Fifth, freedom of hunger or ad libitum food availability in farm animals and zoo animals also produces problems. Freedom from hunger together with an impoverished environment may disturb mental health as reflected by stereotypic and compulsive behaviours in zoo, circus and farm animals. Quantitatively this is the world's largest animal welfare problem. In addition, mammals that are fed a restricted calorie diet live longer. Thus, longevity and hunger are part of a healthy mammal's life.⁶¹

The concept of animal welfare is therefore important because, there is a growing sense that animal welfare science is at an impasse, and that ethical and scientific questions about animal welfare have become hopelessly entangled; scientific methods are misused by those who seek to obtain so-called “objective” measurement of that which they preconceive to be stress whereas there is growing evidence that stress hormones are also involved in healthy

⁵⁷ Nesse R, ‘Proximate and Evolutionary Studies of Anxiety, Stress and Depression: Synergy at the Interface’ (1999) 895–903.

⁵⁸ Williams G.C and Nesse R.M, ‘The Dawn of Darwinian Medicine’ (1991) 20.

⁵⁹ Ibid.

⁶⁰ S.M Korte and J.M Koolhaas, ‘Psychology and Behaviour’ (2007) 424.

⁶¹ J.F Hurnik, ‘Animal Welfare: Ethical Aspects and Practical Considerations (1990) 1829.

adaptation; the welfare state of a sentient animal is a very complex affair and cannot be embraced by any single scientific discipline; and animal welfare should not be based on homeostasis, because not constancy or freedoms, but stability through change and capacity to change are crucial to good health.⁶²

2.6 CONCLUSION

This chapter therefore explains the difference between animal rights and animal welfare. Animal rights advocates for animals from a point of legal personhood. This means that animals should be bestowed the same rights and freedoms as human beings are since they too are sentient beings and are similar to human beings; for example, animals just like human beings need food, water and air to survive and they also feel pain as well as other emotions. The fact that they cannot ‘reason’ like human beings do, does not negate the fact that animals are entitled to rights (no cages). On the other hand, animal welfare recognises these similar features but argues that animals are subject to human beings as they are ‘property’ and as such should be treated well in the course of their “use” (have larger cages). Despite the two camps stemming from the utilitarian theory, they advocate for different ideologies but the most successful of them has been the welfare camp. This is because human beings are not willing to give up their “superior” status and classify animals as personhood hence most animal laws, both local and international, provide for the protection of animals to the extent at which they satisfy human beings and not more.

⁶² S.M Korte and J.M Koolhaas, ‘Psychology and Behaviour’ (2007) 425-426.

CHAPTER THREE

REGULATORY FRAMEWORK ON ANIMAL WELFARE

3.1 INTRODUCTION

This chapter gives an analysis of the laws put in place to ensure animal welfare and rights are respected and protected in Kenya. It lays the foundation of the legal framework on animal welfare in Kenya and looks into the international and national laws in place in relation to animal welfare. The chapter will also take into account the decisions of the courts in all matters animal welfare. It therefore aims to enable ones' understanding of the law with regard to the issue of animal welfare and look at the loopholes, if any, in the current legal system.

3.2 INTERNATIONAL LAWS

The need to fight animal diseases at global level led to the creation of the Office International des Epizooties (OIE) through the international Agreement signed on January 25th 1924. In May 2003 the Office became the World Organisation for Animal Health but kept its historical acronym OIE. The OIE is the intergovernmental organisation responsible for improving animal health worldwide.⁶³ The main objectives of the OIE include: transparency; scientific information; international solidarity; sanitary safety of international trade; promotion of veterinary services; and food safety and animal welfare.⁶⁴

A majority of the content of the World Organisation for Animal Health (OIE's) guiding principles for animal welfare are covered in Kenyan legislation, albeit without specific reference to the OIE. Provisions related to the transport of animals are contained in the Prevention of Cruelty to Animals (Transport of Animals) Regulations 1984 and Section 8 of the Prevention of Cruelty to Animals Act 1962 includes requirements for the humane slaughter of animals for human consumption amongst others. However, the Act is lacking in animal welfare provisions regarding killing methods and actively encourages the use of poison.⁶⁵

The World Organisation for Animal Health standards have been used in framing the legislation used in Kenya as well as other countries globally. Relevant authorities are in place to improve animal welfare in Kenya, and full transposition of the OIE standards and guiding principles should be possible. Unfortunately, there exists no international treaty that binds

⁶³ The World Organisation for Animal Health (OIE) < <https://www.oie.int/about-us/>> accessed on 17th August, 2019.

⁶⁴ Ibid.

⁶⁵ World Animal Protection < <https://api.worldanimalprotection.org/>> accessed on 5th August, 2019.

countries in relation to animal welfare and as such there are only enforcement mechanisms (fines and imprisonment) for those of the OIE's standards which are incorporated in legislation.

The first international Pan African Animal Welfare Alliance Conference was held in Nairobi in September 2013. It works to unite animal welfare organisations across Africa to enable collective work on policies, legislation and practices to improve animal welfare. The conference was attended Kenyan government officials, who committed to addressing the shortcomings in animal welfare in Kenya, and stated that a review of the Prevention of Cruelty to Animals Act 1962 was underway. The suggested inclusion of the Kenya Society for the Protection and Care of Animals and the OIE in the legislation development process shows that the government acknowledges the importance of engaging with relevant stakeholders to improve the quality of policy and legislation.⁶⁶

However, there are no enforcement mechanisms put in place to ensure that animal welfare is protected globally which causes a barrier in the international arena as to what is acceptable and what is not. There exists many treaties, such as; The Convention on Biological Diversity, which seeks to promote the protection of the environment and the wildlife, contained therein, but says nothing about the welfare of individual animals. Thus, it is clear that while the environmental perspective of the importance of wildlife as part of ecosystems is well accepted, the conditions of life and death of individual animals at the hands of humans around the world are not yet a focus of legal drafting.⁶⁷

It is important to note that The Universal Declaration on Animal Welfare is a proposed formal international acknowledgment of a set of principles giving animal welfare due recognition among governments and the international community. An expression of support for the UDAW demonstrates a government's commitment to working with the international community to improve animal welfare.⁶⁸ Unfortunately, The Government of Kenya has not pledged in principle support for the Universal Declaration on Animal Welfare and as such is not legally bound by any rules or regulations set out by UDAW irrespective of whether or not such laws are important for the promotion of animal welfare.

⁶⁶ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 5th August, 2019.

⁶⁷ David S Favre, 'An International Treaty for Animal Welfare' [2012] 245.

⁶⁸ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 10th August, 2019.

Furthermore, Article 108 of The Treaty for the Establishment of the East African Community which provides for plant and animal diseases control, states that, “The Partner States shall: (a) harmonise policies, legislation and regulations for enforcement of pests and disease control; (b) harmonise and strengthen regulatory institutions; (c) adopt common mechanism to ensure safety, efficacy and potency of agricultural inputs including chemicals, drugs and vaccines; and (d) co-operate in surveillance, diagnosis and control strategies of trans-boundary pests and animal diseases.”⁶⁹

This treaty therefore acts as a check and balance for the Government in that Kenya has ratified this treaty, so it is legally bound by it and must ensure that the prescribed safety nets are adhered to. If the Government fails to ensure the said requirements are met then the issue can be taken up at the East African Court of Justice, whose role is to ensure the adherence to law in the interpretation and application of and compliance with this Treaty, thus making it mandatory for the State to abide by the prescribed laws.

3.3 NATIONAL LAWS

Article 2 of the Constitution of Kenya, 2010 states that, “(1) The Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government and (6) any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” All the treaties that are ratified by Kenya are therefore part of the law in Kenya hence Kenya has an obligation to abide by rules and regulations put in place and as such any offences committed are punishable as per the respective treaty in so far as it is not inconsistent with the Constitution. This ensures that animal welfare is respected and protected domestically as any treaty ratified by Kenya form part of the laws of Kenya and as such have a binding and enforcing effect within the State.

The Constitution of Kenya 2010, The Fourth Schedule Part 1 22(b) provides for one of the functions of the National Government as, “Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—protection of animals and wildlife.” The Department of Veterinary Services, a sub-department of the Ministry of Livestock Development, is responsible for animal welfare. It aims to prevent and control animal diseases to safeguard human health, improve animal welfare, increase livestock productivity and facilitate domestic and

⁶⁹ The Treaty for the Establishment of the East African Community, 2000.

international trade.⁷⁰ Unfortunately there are no other officials mentioned as having involvement from other ministries in implementing the animal welfare policies.

An Animal Welfare Policy and Legislation Ministerial Taskforce was appointed on 24 July 2012 by the Ministry of Livestock Development for the development of animal welfare policy and legislation in Kenya. The taskforce was appointed to review animal welfare legislation and address the challenges in the regulation and enforcement of current welfare laws.⁷¹ According to Gazette Notice no. 10614, the members of the taskforce were to serve for a period of one year with effect from the date of appointment. However, there has not been any subsequent revision to animal welfare legislation or relevant publications indicating developments or progress with their objectives and there is a lack of evidence of further activity of the taskforce since its formation.

The Prevention of Cruelty to Animals Act 1962 recognises the ability of animals to suffer. Although sentience is not fully recognised, protection from suffering is the underlying objective of relevant legislation.⁷² The existing legislation not only acknowledges this, but also aims to prevent, not just punish, conducts by which this could be undermined. The Prevention of Cruelty to Animals Act 1962, which applies to all vertebrate animals: mammals, birds, reptiles, amphibians and fish, outlines acts which are considered cruel and are therefore prohibited.

Section 3(1) of the Prevention of Cruelty to Animals Act, 1962 states that, “A person shall be guilty of an offence of cruelty if he: (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal. It has been approximated that about a third of the donkeys in Kenya are in poor welfare status arising from human abuse and misuse which emanate from strong myths, in-humane traditional practices, and malnutrition with over half of this population being used for work in transport and tillage operations.⁷³ Such actions are in contravention of the Act yet few are the times that these laws are enacted hence donkey mistreatment has been and still continues to be an issue that Kenya struggles with.

⁷⁰ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 13th July, 2019.

⁷¹ Ibid.

⁷² World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 13th July, 2019.

⁷³ Kenya Network for Draft Animal Technology < <https://www.kendat.org/about-kendat/> > accessed on 17th July 2019.

Section 3(1) (c) of the Act further states that, “A person shall be guilty of an offence of cruelty if he: conveys, carries, confines or impounds an animal in a manner or position as to cause that animal unnecessary suffering.”⁷⁴ The Prevention of Cruelty to Animals (Transport of Animals) Regulations 1984 contain requirements on the humane transport of animals, including provisions on safe unloading and loading, overcrowding, vehicle construction and care during transport.

Many are the times that consumption animals, such as chicken and cattle, are over-loaded in trucks and transported to the slaughter house. This cause: stress; bruising which is the most insidious and significant production waste in the meat industry; trampling which occurs when animals go down due to slippery floors or overcrowding and suffocation amongst other health issues.⁷⁵ It is therefore important to take necessary precautions when transporting animals, for example; flocks of birds should be subdivided in small numbers in crates and use of plastic crates, which can be stacked on top of each other on a vehicle and which can easily be washed after use is recommended.

The framework set out in the Prevention of Cruelty to Animals Act 1962 provides evidence of human resource allocated to implement the legislation. The law provides that the Minister of Livestock Development may, after consulting with the Kenya Society for the Prevention at Cruelty to Animals, appoint authorised officers for the purposes of the Act, but there appears to be no publicly available evidence of such appointed authorities or previous engagement with this NGO. Kenya is on the 34% rank for government effectiveness and rule of law is just over 20% on the Worldwide Governance Indicator. This suggests that there may be structural barriers to improvement in this area.⁷⁶

An owner, with respect to the Prevention of Cruelty to Animals Act 1962, includes any person having the charge, custody or control of an animal. Section 3 of the Prevention of Cruelty to Animals Act 1962 ensures that companion animals are covered by the cruelty offences and owners who permit acts of cruelty to their animals are guilty of cruelty offences. This bestows an obligation on owners of companion animals to ensure their safety and protection of animal rights while under their care and custody. Section 24 of the Act further

⁷⁴ The Prevention of Cruelty to Animals Act, 1962.

⁷⁵ Guidelines for Humane Handling, Transport and Slaughter of Livestock < <http://www.fao.org/>> accessed on 28th July, 2019.

⁷⁶ World Animal Protection < <https://api.worldanimalprotection.org/>> accessed on 15th July, 2019.

provides for the liability of owners to an offence where they fail to comply with or act in contravention of the provisions of the Act.⁷⁷

Section 25 of the Prevention of Cruelty to Animals Act 1962 empowers authorities to humanely destroy a diseased or severely injured animal without the owner's consent where it would be cruel to keep it alive. This is subject to Section 7 of the Rabies Act, which permits authorised personnel within a rabies control area to "shoot or otherwise destroy" any stray cat or dog found in a public place, or which is suspected of being infected with rabies. This therefore enables performance of the Government's duty as provided for in Part 2 1(d) of the Forth Schedule which states that, "the functions and powers of the county are- agriculture, including: plant and animal disease control."⁷⁸

However, humane killing methods are not necessitated in the legislation, and the use of poison is allowed in the case of an outbreak or suspected outbreak of rabies, although authorities are advised in Section 7A(2) to take precautions to prevent injuries to persons and animals other than diseased animals or those suspected of being diseased when laying poisons.⁷⁹ This raises alarms as the inclusion in legislation of inhumane methods of disease control suggests that there are barriers to improvement in this area especially since the law seems to be contradictory and neglects the main aspect of inhumane treatment of animals.

Section 3(3) of the Prevention of Cruelty to Animals Act 1962, provides that breach of the anti-cruelty provisions is punishable with a fine not exceeding three thousand shillings or to a term of imprisonment not exceeding six months, or to both. Furthermore, Section 32 of the Act gives the police power to seize animals or vehicles. "An officer may detain or seize an animal that appears to be unfit for work due to disease, injury or ill-treatment and a person found working an animal deemed unfit to work may have that animal seized or detained and be liable for the costs of any necessary veterinary treatment."⁸⁰

Section 7 of the Prevention of Cruelty to Animals Act 1962, refers specifically to captive animals that are set free for the purpose of hunting or coursing. Under this section it is an offence to liberate an exhausted or injured animal, or liberate an animal in a place exposing it to immediate attack by another animal. The Prevention of Cruelty to Animals (Transport of

⁷⁷ The Prevention of Cruelty to Animals Act, 1962.

⁷⁸ The Constitution of Kenya, 2010.

⁷⁹ Rabies Act Cap 365.

⁸⁰ The Prevention of Cruelty to Animals Act, 1962.

Animals) Regulations 1984 can also be applied to the transport of captive animals, and includes provisions on care during transport.

Unfortunately, there does not appear to be legislation dealing specifically with the detailed welfare considerations of keeping animals in captivity. There are still few cases of individuals who release birds with the aim of hunting them as a sport. The breach of the prohibition on hunting a released animal in section 7 of this Act is punishable with a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding three months, or to both.

In light of whether this legal provision is effective in acknowledging animal welfare as a mainstream concern; it is important to acknowledge that, although there is some existing animal protection legislation applicable to animals in captivity, the government is encouraged to introduce specific legislation for animals in various captive settings, with guidelines on housing and husbandry.⁸¹ Whilst the general cruelty provisions prevent certain acts of cruelty, legislation outlining minimum standards for facilities would be beneficial so as to ensure that animals are kept in a way that satisfies their physiological and ethological needs.⁸²

The Prevention of Cruelty to Animals Act 1962, Section 8(1) provides that, “any person who, whether in any slaughterhouse or abattoir or in any place than a slaughterhouse or abattoir, and whether for human consumption or not, slaughters an animal: (a) in such a manner as to cause it more suffering than is necessary; or (b) in the sight of any another animal awaiting slaughter, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding three months or to both.”

This provision proves difficult to comply with as the celebratory culture in Kenya calls for the slaughtering of animals; such as, cows, goats and chicken, in order to prepare ‘*nyama choma*’ which is a tradition. The slaughtering of such animals is usually done by sleeting open of the throat which causes immense suffering to the animals. This method of slaughtering was long abolished and faster and painless methods were incorporated but since not everyone has access to the tools used then this is mostly used. Hardly any consideration for the animals is given and there is constant illegal slaughtering of animals with little to no recourse taken.

⁸¹ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 20th July, 2019.

⁸² Ibid.

However, Section 8 of the Prevention of Cruelty to Animals Act 1962 contains an exemption to the prohibition on slaughter causing unnecessary suffering, which allows such slaughter provided that it is done by religious methods for private consumption and outside a slaughterhouse thus indicating that there are some cultural barriers to improvement in this area.⁸³ The lack of mandatory education or training of those involved in the industry presents a further barrier to improving animal welfare for farm animals, as does the lack of capacity to monitor and minimise cruelty to animals.⁸⁴ Without humane education and enforcement, it is difficult to progress farming methods towards transposition of good international standards as well as ensuring that animal welfare is protected.

Part III of the Prevention of Cruelty to Animals Act 1962, 'Control of Experiments' provides various restrictions on animal experimentation. Experiments referred to in the legislation include "any experiment performed on an animal and calculated to give pain, but does not include an operation".⁸⁵ The Act provides a criminal offence for anyone without a licence to perform an experiment on an animal. The Act restricts purposes of experiments. The licence holder must justify its research as including one of the following aims: advancement of human or animal health; discovery of new scientific knowledge; or testing of an earlier discovery.⁸⁶

Persons performing experiments are required to comply with the anti-cruelty provisions of Section 3 of the Prevention of Cruelty to Animals Act 1962 except where to do so would frustrate the purpose of the experiment. The Permanent Secretary of the Ministry for Livestock Development is responsible for granting experimental licences. Guidance and codes of practice are envisaged by the Act, enabling the relevant institutions to incorporate animal welfare policies into practice.⁸⁷

Section 13 of the Prevention of Cruelty to Animals Act 1962, states that, "a person, other than a licensee, who performs an experiment, is guilty of an offence and liable to a fine not exceeding 3,000 shillings or to a term of imprisonment not exceeding six months or to both." Section 14 further states that, "a person who performs an experiment other than in accordance

⁸³ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 20th July, 2019.

⁸⁴ Ministry of Livestock Development (2008) Nation Livestock Policy, Session paper no. 2 of 2008 <<http://www.reconcile-ea.org/downloads/National%20Livestock%20Policy.pdf>> accessed on 13th July, 2019.

⁸⁵ The Prevention of Cruelty to Animals Act, 1962 Section 2.

⁸⁶ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 20th July, 2019.

⁸⁷ Ibid.

with the terms of his licence is guilty of an offence and liable to a fine of up to 2,000 shillings and/or up to three months imprisonment.”⁸⁸

In relation to the protecting animals used for draught and recreation, Section 4 of the Act prohibits causing, promoting or assisting the fighting or baiting of an animal while Section 9 of the Act prohibits the infliction of pain or terror during training of animals for exhibition. It is a criminal offence to excessively use whips or goads, or training appliances that apply heat or electric shocks to the animal.⁸⁹ Additionally, Section 10 of the Act prohibits specified public performances involving animals. Many activities connected with rodeos are criminal offences, including throwing or casting ropes on unbroken or untrained animals, riding, wrestling or fighting untrained animals and riding an animal using an appliance to stimulate the intention of throwing the rider.⁹⁰

The legislation recognises a number of threats to the welfare of draught animals and animals used in entertainment. In order to make the welfare of these animals of mainstream concern in Kenya, communication from the government is encouraged to promote and implement the legislation on animals in this category. Fortunately, there are a number of projects in the country undertaken by NGOs to promote welfare of draught animals and it is noted that the National Donkey Day has received government support and it may be that further progress is possible.⁹¹

3.4 JUDICIAL PRECEDENCE

In *May v Republic*, the appellant owned some fifty horses, twelve mules and six zebroids which she kept on land owned or occupied by her at Nanyuki and also kept four dogs there. The appellant left Kenya early in July, 1978, for a holiday in Europe, and returned later in the year. During her absence, these animals were neglected and suffered greatly. This was reported to the Kenya Society for the Protection and Care of Animals, who caused the animals to be inspected by their Nanyuki representative and by the District Veterinary Officer for Laikipia. As a result of what they reported, the Society obtained a custody order under Section 26 of the Act. It was held that it may have been that the appellant was let down by her employees and friends, from whom she may have expected better things, but no sufficient or reasonable cause or excuse for the commission of the offences charged against her

⁸⁸ The Prevention of Cruelty to Animals Act, 1962.

⁸⁹ *Ibid.*

⁹⁰ The Prevention of Cruelty to Animals Act, 1962.

⁹¹ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 5th August, 2019.

emerged from the evidence hence she was rightly convicted on all the counts of actions amounting to cruelty contrary to Section 3(1) of the Prevention of Cruelty to Animals Act, 1962.⁹²

In *Garama Kahindi Mzungu v Republic*, the complainant suspected that the appellant and two others, who have since died, had stolen his four goats. He reported the matter to the village elder and with the help of members of the public, they went to the suspect's hide out. The suspects led them to the slaughter area where they found the skins and intestines of the goats. The appellant was then sentenced to serve 10 years imprisonment which was later substituted into three years' imprisonment from date of conviction upon appeal.⁹³

3.5 CONCLUSION

This chapter has analysed the regulatory framework on animal welfare in Kenya as well as looked at precedence set by the courts in order to help understand the applicability of the laws set out. Through this analysis, it is clear that animal welfare is a key problem facing the country as the laws put in place are often neglected due to the social and cultural barriers. The laws therefore need to be amended and more enforcement mechanisms should be established.

⁹² *May v Republic* [1979] eKLR.

⁹³ *Garama Kahindi Mzungu v Republic* [2011] eKLR.

CHAPTER FOUR

COMPARISON OF THE REGULATORY FRAMEWORKS ON ANIMAL WELFARE

4.1 INTRODUCTION

This chapter will analyse the regulatory framework on animal welfare in: the United Kingdom (UK) and South Africa (S.A) and in so doing, compare these frameworks to that of Kenya. It will highlight the similarities and differences, if any, between these systems and the Kenyan system in order to enable a comprehensive analysis of the animal welfare issue on both an international and national level.

4.2 THE UNITED KINGDOM (UK)

The Universal Declaration on Animal Welfare is a proposed formal international acknowledgment of a set of principles giving animal welfare due recognition among governments and the international community. An expression of support for the UDAW demonstrates a government's commitment to working with the international community to improve animal welfare.⁹⁴ The UK government has supported the global campaign for the UDAW by participating in the Manila Conference in 2003 where a foundation text for the UDAW was agreed, support for the European Union support and for a 2007 motion of support for the declaration which was agreed at a plenary of the World Animal Health Organisation (OIE).⁹⁵

Furthermore, in 2009 the 27 Agriculture Ministers of the European Council unanimously approved a statement on the UDAW encouraging the European Commission to support and initiate further international initiatives to raise awareness and create a greater consensus on animal welfare, and inviting the Member States and the Commission to support the UDAW initiative.⁹⁶ On the other hand, The Government of Kenya has not pledged in principle support for the Universal Declaration on Animal Welfare and as such is not legally bound by any rules or regulations set out by UDAW irrespective of whether or not such laws are important for the promotion of animal welfare.

The government has been active in promoting the declaration and the importance of animal sentience and animal protection at international fora, although the government departments

⁹⁴ World Animal Protection < <https://api.worldanimalprotection.org/>> accessed on 22nd August, 2019.

⁹⁵ Ibid.

⁹⁶ Council Conclusions on a Universal Declaration on Animal Welfare <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/agricult/106877.pdf> accessed on 22nd August, 2019.

responsible for animal protection in the UK do not mention the UDAW on their websites. The government has introduced legislation relating to each of the six categories of animals highlighted in the UDAW and has highlighted the importance of animal protection to the public, for example, in its Coalition Agreement that sets out the government's programme.⁹⁷ This therefore provides a firm foundation for action to improve animal welfare and for the UK to campaign internationally for high animal welfare standards hence there are no significant barriers to improvement here. Similarly in Kenya, although the government has demonstrated support for the UDAW, UK has not yet taken the form of a formal pledge of in principle support.

The Animal Welfare Act, 2006 (England and Wales) Section 1(1) defines an animal to mean a vertebrate other than man. Section 2 of this Act further provides that, 'an animal is a "protected animal" for the purposes of this Act if: (a)it is of a kind which is commonly domesticated in the British Islands, (b)it is under the control of man whether on a permanent or temporary basis, or (c)it is not living in a wild state.'⁹⁸ Therefore wild animals are only protected by this Act when they are in captivity or otherwise under the control of man. Cap 360 Laws of Kenya, on the other hand, protects both domesticated and wild animals meaning that the welfare of individual animals can be considered as well as the conservation value of entire species.

Section 4 of the Animal Welfare Act 2006 and of the Welfare of Animals Act (Northern Ireland) 2011, and section 19 of the Animal Health and Welfare (Scotland) Act 2006, prohibit causing animal suffering. Although the word "cruelty" is not used, the conduct prohibited encompasses cruel acts and the case law from the previous Protection of Animals Act 1911 (which did use that language) is still considered relevant under the current legislation.⁹⁹ These Acts therefore recognises the ability of animals to suffer and acts towards minimizing this. Similarly, The Prevention of Cruelty to Animals Act 1962, Laws of Kenya, recognises the ability of animals to suffer and also aims to prevent, not just punish, conducts by which this could be undermined.

Section 4(1) of these Acts prohibit causing an animal unnecessary suffering by an act or failure to act, when the person knows or ought reasonably to know that the act or failure to

⁹⁷ HM Government, The Coalition: Our Programme for Government <https://www.gov.uk/government/uploads/system/uploads/attachment_data/> accessed on 22nd August, 2019.

⁹⁸ Animal Welfare Act, 2006.

⁹⁹ World Animal Protection <<https://api.worldanimalprotection.org/>> accessed on 22nd August, 2019.

act would cause the suffering or be likely to do so.¹⁰⁰ While Section 4(2) creates an additional offence where a person is responsible for an animal, another person causes unnecessary suffering by an act or failure to act, and the person responsible permitted it to happen or failed to take reasonable steps to prevent it.¹⁰¹ The respective governments of England, Scotland, Wales and Northern Ireland have also introduced Codes of Recommendations under the primary legislation, that give practical advice to help owners and keepers to understand the welfare needs of their animals and their legal obligations.¹⁰²

In England and Wales, an offence under Section 4 of the Animal Welfare Act 2006 is punishable with imprisonment of up to 51 weeks and/or a fine of up to £20,000. The court also has powers to confiscate animals and to make disqualification orders.¹⁰³ Similar provisions exist in the Welfare of Animals Act (Northern Ireland) 2011, with penalties of up to six months imprisonment and/or a fine up to the statutory maximum for summary conviction and up to two years imprisonment and/or a fine for conviction on indictment, and in the Animal Health and Welfare (Scotland) Act 2006, with penalties of up to 12 months imprisonment and/or a fine up to £20,000.

This ensures animals are kept under good and standard living conditions which are similar to Kenya whereby the Act creates for an offence for owners as well as other persons to treat an animal cruelly. The difference arises whereby in the UK animal suffering covers both cruelty and any other forms of suffering whereas in Kenya, the Act mainly focuses on cruelty, with the addition of other few forms of suffering. The UK laws therefore provide a ‘larger blanket’ to ensure that animal welfare is protected unlike the laws of Kenya as they encompass a larger scope of animal welfare and also provide heftier punishments than Kenyan laws hence deterring citizens from committing such acts.

The UK coalition government has policy promoting high standards of farm animal welfare¹⁰⁴, and there is extensive legislation and guidance covering the welfare of animals used in farming, including on rearing, transport and slaughter. Farm animals are protected under the Animal Welfare Act 2006 (for England and Wales), the Animal Health and Welfare Act (Scotland) 2006 and the Welfare of Animals Act (Northern Ireland) 2011. However, in

¹⁰⁰ Animal Welfare Act 2006 and the Welfare of Animals Act 2011.

¹⁰¹ Ibid.

¹⁰² World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 26th August, 2019.

¹⁰³ Animal Welfare Act, 2006.

¹⁰⁴ HM Government, The Coalition: Our Programme for Government <https://www.gov.uk/government/uploads/system/uploads/attachment_data/> accessed on 26th August, 2019.

Kenya, no such Act has been enacted to deal in matters purely farm animals yet a number of citizens own cattle especially considering that most of the cultures in Kenya hold farm animals(cattle) in high regard and a source of wealth.

Additionally there are Codes of Recommendations for various species, providing guidance to farmers and industry. Although these are not legally binding they do have evidential value under the primary legislation: section 14(4) of the Animal Welfare Act 2006, section 16 of the Welfare of Animals Act (Northern Ireland) 2011 and section 37 of the Animal Health and Welfare (Scotland) Act 2006 provide that, in proceedings under each of the respective Acts or secondary regulations, failure to comply with a code may be relied upon as tending to establish liability and compliance may be relied upon as tending to negative liability. The Codes of Recommendations have been valuable in providing guidance to those involved in the farming industry, and have assisted the promotion of animal welfare legislation and promoted good practice.

In relation to transport of farmed animals, European Union Regulation 1/2005 on the protection of animals during transport and related operations, which makes provision for space and maximum journey times, has direct effect in the UK. The same occurs in Kenya as there are regulations put in place that highlight the necessary requirements that need to be met by owners when handling animals. For example, The Prevention of Cruelty to Animals (Transport of Animals) Regulations 1984 contains requirements on the humane transport of animals, including provisions on safe unloading and loading, overcrowding, vehicle construction and care during transport.

The use of animals in experiments and testing is governed across the UK by the Animals (Scientific Procedures) Act 1986. Section 3 of the Animals (Scientific Procedures) Act 1986 prohibits carrying out regulated procedures on vertebrates or cephalopods without a licence. A regulated procedure is one that may cause that animal a level of pain, suffering, distress or lasting harm equivalent to, or higher than, that caused by the introduction of a needle in accordance with good veterinary practice.¹⁰⁵ The Home Office's Animals in Science Regulation Unit oversees the implementation of the Animals (Scientific Procedures) Act

¹⁰⁵ Animals (Scientific Procedures) Act, 1986.

1986, producing an annual report including statistics on the numbers of animals used in scientific research.¹⁰⁶

The same is observed in Kenya, in that Persons performing experiments are required to comply with the anti-cruelty provisions of Section 3 of the Prevention of Cruelty to Animals Act 1962 except where to do so would frustrate the purpose of the experiment. The Permanent Secretary of the Ministry for Livestock Development is responsible for granting experimental licences. Guidance and codes of practice are envisaged by the Act, enabling the relevant institutions to incorporate animal welfare policies into practice.¹⁰⁷ This therefore ensures that optimal animal welfare is achieved in both Kenya and the UK.

The general anti-cruelty provisions under Section 4 of the Animal Welfare Act 2006 and the Welfare of Animals Act (Northern Ireland) 2011, and Section 19 of the Animal Health and Welfare (Scotland) Act 2006 apply to companion animals. Section 9 of the Animal Welfare Act 2006 and the Welfare of Animals Act (Northern Ireland) 2011, and Section 24 of the Animal Health and Welfare (Scotland) Act 2006 also create a duty of care, requiring that a person who is responsible for an animal takes such steps as are reasonable in the circumstances to ensure that the needs of that animal are met to the extent required by good practice. The same applies in Kenya as the Prevention of Cruelty to Animals Act bestows an obligation on owners of companion animals to ensure their safety and protection of animal rights while under their care and custody.

Additionally there are Codes of Practice which provide guidance, relating to dogs, cats, rabbits, and horses, ponies and donkeys. Although these are not legally binding they do have evidential value under the primary legislation: Section 14(4) of the Animal Welfare Act 2006, Section 16 of the Welfare of Animals Act (Northern Ireland) 2011 and Section 37 of the Animal Health and Welfare (Scotland) Act 2006 provide that, in proceedings under each of the respective Acts or secondary regulations, failure to comply with a code may be relied upon as tending to establish liability and compliance may be relied upon as tending to negative liability.¹⁰⁸ The existing legislation is effective to make companion animal welfare a mainstream concern of society. UK therefore lays a lot of emphasis on ensuring that animal welfare of companion animals are protected as compared to the Kenyan legislation.

¹⁰⁶ Home Office Animals in Science Regulation Unit, *Annual Report* (2012) 20.

¹⁰⁷ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 28th August, 2019.

¹⁰⁸ Ibid.

4.3 JUDICIAL PRECEDENCE

In *Ward v RSPCA*, RSPCA inspectors attended Mr Ward's smallholding to find two horses in a severely distressed condition, with a worm infestation. Veterinarian advice had not been sought following failed attempts to home treat. The farmer was convicted of unnecessary suffering pursuant to section 4 of the Animal Welfare Act 2006, and disqualified from owning, keeping, participating in the keeping of, or controlling or influencing the way horses or cattle are kept for a three year period, pursuant to section 34 of the Animal Welfare Act 2006. The defendant brought an appeal to the Crown Court and the High Court in respect of the disqualification. The High Court dismissed the appeal and held that the Animal Welfare Act 2006 was intended to promote the welfare of animals and part of the mechanism of protection is the order of disqualification following convictions for offences under the Act.¹⁰⁹

In *R (on the application of Gray and another) v Aylesbury Crown Court*, Mr Gray appealed against the police seizure of 115 horses from his horse trading premises, pursuant to section 18 of the Animal Welfare Act 2006. Gray had been convicted of numerous counts of cruelty, specifically under sections 4 and 9 of the Animal Welfare Act 2006. Mr Gray argued that an offence under sections 4 and 9 required either actual knowledge or a form of constructive knowledge that the animal was showing signs of unnecessary suffering, and that negligence was not sufficient. It was held that the plain effect of section 4(1) of the Act is to impose criminal liability for unnecessary suffering caused to an animal either by an act or omission which the person responsible knew would, or was likely to, cause unnecessary suffering, or by a negligent act or omission. Further, it was held that section 9(1) of the Act sets a purely objective standard of care which a person responsible for an animal is required to provide.¹¹⁰

In *Barker v RSPCA*, 6 dogs were kept in crates for 21 hours a day in a cluttered environment. They suffered from fleas and were in poor health. The eldest suffered from an untreated disease and there were no concerns for a pet terrapin. The RSPCA told the owners the dogs needed flea treatment and the house needed cleaning. They also suggested the dogs be sterilized and arranged to collect the dogs for sterilisation at a later date. The owners took steps to follow the advice, but the Vet requested to carry out the sterilisation expressed concern. An RSPCA Inspector attended the property. Due to the flea infestation the dogs were not returned to the owners. The eldest was put down due to her ill health and the others

¹⁰⁹ *Ward v RSPCA* [2010] EWHC 347.

¹¹⁰ *R v Aylesbury Crown Court* [2013] EWHC 500.

were taken to a kennel. At an interview under caution, the owners stated they were intending to continue the flea treatment and admitted the eldest dog should have been taken to a vet sooner. By the time the matter reached the Magistrates' Court, two offences were alleged under Section 9 of the act. The first related to a failure to seek appropriate medical care for the eldest dog, and the other related to the failure to address the flea infestation in relation to the other dogs. The Magistrates' disqualified both owners from keeping animals for seven years and made a deprivation order, removing their animals from their care. They were also required to pay prosecution costs. This decision was affirmed on appeal to the High Court.¹¹¹

4.4 ANALYSIS

In UK, there are not considered to be any significant barriers to improving animal welfare given political will to do so. Although the various Animal Welfare Acts are applicable to vertebrate animals, described in the explanatory notes to the Animal Welfare Act 2006 as “the only demonstrably sentient animals”¹¹², the Acts provide for extension of the legislation to cover invertebrates in the future if the governments are satisfied on the basis of scientific evidence that these too are sentient. Each of the relevant governments has demonstrated political will to protect animals, for example, through the introduction of new Animal Welfare Acts following public consultation.¹¹³ Kenya, on the other hand, although the existing recognition of the ability of animals to suffer is positive and the government has expressed desire to improve animal protection legislation, there is no allocation of a responsible authority for the development of further policy or legislation in the country, and no evidence of allocation of financial resource to develop or enact provisions on sentience.

With regards to laws against causing animals suffering, there are concerns about the government budget available for activities associated with animal health and welfare in the UK but these do not appear to be insurmountable and the government has demonstrated a strong desire for improvement in this area. The Chair's introduction in the 2012/2013 report of the Animal Health and Welfare Board for England, which gives advice to the Department for Environment, Food and Rural Affairs on all strategic animal health and welfare policy, refers to “a time of unprecedented budgetary constraints”, but the accompanying introduction from the Minister of State for Agriculture and Food comments that budgetary pressures “present us with an opportunity to think innovatively about why and how government and

¹¹¹ *Barker v RSPCA* [2018] EWHC 880.

¹¹² Animal Welfare Act 2006, Explanatory Notes, Commentary on Sections (section 1).

¹¹³ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 28th August, 2019.

others undertake the things they do across the animal health and welfare agenda and to work together to identify smarter ways of doing them”.¹¹⁴

This is different from the laws in Kenya in that the government recognised in a policy paper that existing legal and policy provisions do not adequately specify the roles for relevant institutions, such as the Department of Veterinary Services, the Kenya Veterinary Board, the Kenya Society for the Prevention of Cruelty to Animals and the Attorney General Chamber and advised that the Prevention of Cruelty to Animals Act would be reviewed to develop supporting framework to address animal welfare issues, monitor and mitigate animal abuse, increase awareness on the importance of animal welfare, and promote training in animal welfare issues.¹¹⁵

Additionally, with regard to companion animals in the UK, local authorities are responsible for many aspects of enforcement, for example, collection of stray animals. Concern has also been expressed about a lack of funding for local authorities in the face of government spending cuts in a time of austerity.¹¹⁶ The RSPCA also expressed concerns that the number of Inspectors appointed by local authorities under the Act has not been as great as first thought and that many local authorities are unclear of the role of Inspectors, what training they require and how they should be appointed. In Kenya, the improvement of the welfare of this category of animals does not appear to be a priority for government at present.

UK is very advanced in the protection and maintenance of animal welfare globally and has ensured that high standards of protection of its animals are maintained. In Kenya, the only legislation that applies to animal welfare is the Prevention of Cruelty to Animals Act as government policies do not deal with animal welfare. The Cap 360 is basic, imposes low fines, and contains no stipulations as to what is considered to be cruelty towards animals. Since this law is based on British law, Kenya can therefore adopt a number of lessons from UK. Kenya can borrow the following from the system in place in UK.

Firstly, the enactment of different statutes that deals with the different categories of animals in order to ensure that their needs and rights are protected. Secondly, the government should

¹¹⁴ The Animal Health and Welfare Board for England's Annual Report, 2012- 2013.

¹¹⁵ World Animal Protection < <https://api.worldanimalprotection.org/>> accessed on 28th August, 2019.

¹¹⁶RCVS Response Animal Welfare Post Legislative Scrutiny 21 February 2011 <<http://www.rcvs.org.uk/document-library/rcvs-response-animal-welfare-post-legislative-scrutiny>> accessed on 15th September, 2019.

create policies that deal with animal welfare so as to enable the enforcement of the Act as well as ensure maintenance of animal welfare. The government should also educate the public on animal welfare granted animals play a huge role in the different cultures of the State. By doing so, the Kenyan framework on animal welfare will develop and incorporate all animals thus ensuring the harmonious existence between the people and the environment.

4.5 SOUTH AFRICA

It is important to note that, just like Kenya, neither the South African government nor any of its ministries has pledged in principle support for the UDAW. Support for the UDAW would be a first step into integrating animal protection considerations into different discussion tables, becoming a soft law source for decision makers interested in improving animal protection in the country. The government is encouraged to pledge in principle support for the UDAW as this would promote good models of animal welfare policy and help to introduce animal welfare into decision making processes for other policies.¹¹⁷

The Fourth Schedule Part A of the Constitution of the Republic of South Africa provides for one of the functional areas of concurrent National and Provincial legislative competence to include animal control and diseases. South Africa, which has a devolved government just like Kenya, makes it the responsibility of both the National and Provincial governments to ensure animal control and diseases. Furthermore, the Fifth Schedule Part B provides for the exclusive function of the provincial government to license dogs.¹¹⁸ Likewise, the Constitution of Kenya, 2010 provides for the duty of both the national and county governments to ensure animal welfare. Both States therefore have devolved governments and provide for the duty to ensure animal welfare at both the levels of government.

Section 2(1) of the Animal Protection Act 1962 refers to causing animals unnecessary suffering and includes reference to infuriating and terrifying animals. The legislation therefore shows recognition of elements of animal sentience with respect to both physical and psychological negative elements.¹¹⁹ However, there is no formal recognition of animal sentience in legislation or policy. This causes challenges with respect to cultural attitudes to animals and the continuation of practices, such as cultural ceremonies involving animals that

¹¹⁷ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 28th August, 2019.

¹¹⁸ Constitution of the Republic of South Africa No. 108 of 1996.

¹¹⁹ World Animal Protection < <https://api.worldanimalprotection.org/> > accessed on 28th August, 2019.

can involve considerable animal suffering.¹²⁰ The same is observed in Kenya as The Prevention of Cruelty to Animals Act 1962(Kenya) recognises the ability of animals to suffer but sentience is not fully recognised in any legislation.

The Animal Protection Act 1962(South Africa) Section 2(1) provides the acts of cruelty that are prohibited. This is a detailed list that includes deliberate acts such as overloading, causing unnecessary suffering by confining, chaining or tethering, abandonment, and also acts of negligence such as unnecessarily denying food or water, deliberately or negligently keeping in a dirty or parasitic condition or failing to procure veterinary assistance.¹²¹ Section 10 further provides that, ‘the Minister may make regulations relating to: methods of confinement and accommodation for any animal, whether travelling or stationary; any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal; confiscation of animals, destruction and recovery of expenses; other implementation purposes.’¹²² The same is observed in Kenya as provided for in the Prevention of Cruelty to Animals Act 1962.

With regards to protecting animals used in farming, the anti-cruelty provisions of section 2(1) of the Animal Protection Act 1962 apply. The humane handling of animals for human consumption is provided for in the Meat Safety Act 2000 but there is no detailed legislation protecting the welfare of farm animals in transport and at slaughter. Just like in Kenya, cultural barriers hinder progress, specifically with respect to informal slaughter, ritual slaughter and sales of farmed animals at live markets in informal settlements.¹²³ Kenya, on the other hand, has improved and better legislation in that there are Regulations in place which contain requirements on the humane transport of animals and slaughter.

Section 2(1) of the Animal Protection Act 1962 applies to animals used in scientific research, although none of the examples of prohibited conduct are specific to animals used in scientific research. There appears to be no specific legislation addressing the welfare needs of animals used for scientific research, making the current legislation insufficient for the protection of this category of animals.¹²⁴ The South African National Standard for the care and use of animals for scientific purposes is a non-binding standard. This standard encompasses all

¹²⁰ Sebastian Berger, ‘Culture Clash Over Bull-Killing Ritual’ *the National* (South Africa, 8th December 2009) 4.

¹²¹ World Animal Protection< <https://api.worldanimalprotection.org/>> accessed on 28th August, 2019.

¹²² The Animal Protection Act No. 71 of 1962.

¹²³ World Animal Protection< <https://api.worldanimalprotection.org/>> accessed on 28th August, 2019.

¹²⁴ Ibid.

aspects of the care and use of animals for medicine, biology, agriculture, veterinary and other animal science as well as industry and teaching and includes all sentient vertebrate animals, eggs, foetuses and embryos and higher invertebrates such as cephalopods and decapods.¹²⁵ There is no legal requirement to have ethical approval for research that involves animals in South Africa unless it impacts on human health, presenting a further barrier to progress.

On the other hand, Part III of the Prevention of Cruelty to Animals Act (Kenya) 1962, 'Control of Experiments' provides various restrictions on animal experimentation. Experiments referred to in the legislation include "any experiment performed on an animal and calculated to give pain, but does not include an operation".¹²⁶ The Act provides a criminal offence for anyone without a licence to perform an experiment on an animal. The Act restricts purposes of experiments. The licence holder must justify its research as including one of the following aims: advancement of human or animal health; discovery of new scientific knowledge; or testing of an earlier discovery.¹²⁷ From this analysis, it is clear that Kenyan laws aim to ensure animal welfare for animals used in experiments unlike South Africa hence ensuring that the five freedoms are enjoyed.

Section 2 of the Animal Protection Act 1962 outlines examples of prohibited conducts such as; ill-treating, cruelly beating, neglecting, confining an animal in a way that causes suffering, deliberately or negligently keeping an animal in a dirty or parasitic condition, goading or terrifying an animal, and abandoning an animal deliberately or without reasonable cause in circumstances likely to cause unnecessary suffering.¹²⁸ Furthermore, there exists the Performing Animals Protection Act 1935 which protects dogs used for safeguarding. There is a rising dog population in South Africa with 37% of households reported to keep companion animals in 2011.¹²⁹ It would therefore be appropriate to develop guidance or secondary legislation specific to the welfare needs of companion animals. Kenya lacks a separate Act that purely deals with companion animals hence fails to take into account any unique circumstances that may arise given the nature of ownership of companion animals.

Breach of the anti-cruelty provisions of the Animal Protection Act 1962 is punishable with fines, imprisonment, confiscation, and banning animal ownership. Part 4 of the Performing

¹²⁵ Bert Mohr, 'The Current Status of Laboratory Animal Ethics in South Africa' (2013) 48-51 <http://altweb.jhsph.edu/pubs/journals/atla/41_1/41_4Mohr-Discussion.pdf> accessed on 29th August, 2019.

¹²⁶ The Prevention of Cruelty to Animals Act, 1962 Section 2.

¹²⁷ World Animal Protection <<https://api.worldanimalprotection.org/>> accessed on 20th July, 2019.

¹²⁸ Ibid.

¹²⁹ World Organisation for Animal Health, *Sub-Regional Representation for Southern Africa* (2011) 11.

Animals Protection Act 1935 gives powers of entry and inspection to the police, with fines of up to 4000 rand or imprisonment for up to a year for obstruction of these duties. Contravention of the requirements of the Act is also punishable with a fine of up to 4000 rand or imprisonment for up to a year, and a repeat offender may also have their license suspended for up to a year. Similar consequences are provided for in the Prevention of Cruelty to Animals Act (Kenya) 1962 thus deterring people from committing such offences and also punishing those who fail to abide by the laws.

4.6 ANALYSIS

In South Africa, Section 4 of the Animals Matter Amendment Act 1993 mentions that the Minister of Justice may from time to time, with the concurrence of the Minister of State Expenditure, appropriate funds to a society for costs incurred relating to the removal, custody, disposal or destruction of an animal, but this is not a regular or formal financial arrangement. A lack of human and financial resource may therefore present barriers to progress. There are also challenges with respect to cultural attitudes to animals and the continuation of practices, such as cultural ceremonies involving animals that can involve considerable animal suffering.

The same occurs in Kenya as the celebratory culture in Kenya calls for the slaughtering of animals; such as, cows, goats and chicken, in order to prepare '*nyama choma*' which is a tradition. The slaughtering of such animals is usually done by sleting open of the throat which causes immense suffering to the animals. This method of slaughtering was long abolished and faster and painless methods were incorporated but since not everyone has access to the tools used then this is mostly used. Hardly any consideration for the animals is given and there is constant illegal slaughtering of animals with little to no recourse taken.

Although South Africa is more developed and advanced it lacks a well enacted framework with regards to animal welfare and as such is similar to Kenya. Despite the fact that South Africa has legislation to prevent animal cruelty, it is not clear whether there are human and financial resources set aside for this purpose. It has also been reported that enforcement by public authorities is ineffective or non-existent and that in general, capacity is limited for several reasons ranging from a lack of resources, training, attitudes and inadequate

penalties.¹³⁰ South Africa and Kenya are therefore at a levelled playing field when it comes to the protection and maintenance of animal welfare.

With regards to companion animals, there is a lack of financial resources and understanding of animals on the part of those owning or responsible for the care of companion animals represents a barrier to improvement. However, some animal protection organisations are involved in running programmes to assist animal owners in poor areas, for example, Community Led Animal Welfare, which suggests that improvement may be possible. Proposals for new legislation on animal welfare and animal protection, as mentioned in the Department of Agriculture, Forestry and Fisheries' current strategic plan may also present opportunities for improvement in this area.¹³¹ South Africa is therefore taking steps to ensure the protection of companion animals which is more than Kenya has done for this sector.

4.7 CONCLUSION

It is evident from the above analysis that Kenya, United Kingdom (UK) and South Africa adhere to the animal welfare camp in their legal frameworks and systems. UK has greatly improved its legislation to ensure that the five freedoms of animal welfare are protected. It is therefore well developed in this field and can be said to have attained one of the highest forms of animal welfare maintenance. South Africa, which is one of the most developed countries in Africa, has similar rules and regulations with regards to animal welfare as Kenya does and in some aspect is lacking in ensuring animals welfare unlike Kenya which is less developed. Kenya can therefore borrow a lot from UK in order to improve on its legislation thus ensuring protection and maintenance of animal welfare across the country.

¹³⁰ World Animal Protection< <https://api.worldanimalprotection.org/>> accessed on 15th September, 2019.

¹³¹ World Animal Protection< <https://api.worldanimalprotection.org/>> accessed on 15th September, 2019.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

This thesis started with the assertion that animals have rights and such their rights ought to be protected. Chapter two traces the origins of the Animal Advocacy Movement and further explain its two main branches; animal rights and animal welfare, as well as difference between the two concepts. It noted that the Animal Rights Movement advocates for animals from a point of legal personhood meaning that animals should be bestowed the same rights and freedoms as human beings are since they too are sentient beings and have similar features to human beings whereas the Animal Welfare Movement recognises these similar features but argues that animals are subject to human beings as they are ‘property’ and as such should be treated well in the course of their “use”. It also analysed the criticisms faced by both movements. Furthermore, it established that the Animal Welfare Movement has been the more successful of the two.

Chapter three focuses on Kenya’s regulatory framework on animal welfare. It acknowledged that Kenya is a member State of the World Organisation for Animal Health (OIE’s) and as such has incorporated OIE’s guiding principles when drafting its laws. Furthermore, Kenya has ratified the Treaty for the Establishment of the East African Community which advocates for animal welfare thus ensures that the prescribed safety nets, in relation to animal welfare, are adhered to as it is legally binding. With respect to the national laws, it is the responsibility of the Government, both national and county, to ensure animal welfare is protected. Additionally, it highlighted that the Prevention of Cruelty to Animals Act 1962 outlines the various offences, with regards to animal welfare, and their punishments. This chapter therefore elaborates the ways animal welfare is achieved as well as the challenges and barriers to achieving animal welfare.

The discussion, in chapter four, provides a comparative analysis of the legal framework on animal welfare in UK and South Africa. It established that, the United Kingdom (UK) is well developed and advanced on issues to do with animal welfare. The laws in place in UK therefore ensure maximum achievement of animal welfare across the globe. From the analysis of South Africa, it is evident that the laws in South Africa and Kenya are very similar despite the higher development rate of South Africa. This therefore poses an issue as the opposite should be observed since South Africa is the most developed State in Africa. It is

therefore evident, from the analysis in this chapter, that the United Kingdom (UK) has greatly improved its legislation to ensure that the five freedoms of animal welfare are protected whereas South Africa has similar rules and regulations with regards to animal welfare as Kenya does and in some aspect is lacking in ensuring animals welfare unlike Kenya.

From the foregoing chapters, the following conclusions can be made:

1. The Animal Advocacy Movement has two main camps which comprise of the; Animal Rights Camp and Animal Welfare Camp. These two camps are different and advocate for different ideologies and also have their criticisms. Furthermore, the more successful of the two camps has been the Animal Welfare Camp.
2. Animal welfare is a key problem facing Kenya as the laws put in place are often neglected due to the social and cultural barriers. The laws therefore need to be amended and more enforcement mechanisms should be established.
3. The United Kingdom has an advanced regulatory framework on animal welfare whereas South Africa can be said to have slacked on the maintaining animal welfare. Kenya can therefore borrow a lot from UK in order to improve on its legislation thus ensuring protection and maintenance of animal welfare across the country.

5.2 RECOMMENDATIONS

In light of the above conclusions, the following recommendations are made with the hope that if they are adopted the perception of animals as nothing more than ‘property’ will change and the animal rights approach with regard to animals as ‘legal personhood’ will be adopted. It also aims to ensure the maintenance of animal welfare by ensuring that the five freedoms, animals are entitled to, are respected. Most importantly, the government has a major role to play in ensuring animal welfare in the country. Moreover, all the recommendations herein should be adopted together to enable the realisation of animal rights and welfare as well as their promotion and protection.

5.2.1 Changes to the Laws

Currently, the Prevention of Cruelty to Animals Act is the only legislation put in place that deals with animal welfare. It is therefore not sufficient in tackling all of the animal welfare issues and as such the amendment of the current Act and passing of new laws are in order to ensure maintenance of animal welfare which will, in the long run, have a positive impact on the society.

a) Amendment of the Law

Currently the Prevention of Cruelty to Animals Act 1962 is the only legislation that deals with animal welfare. It is recommended that some provisions of this Act be amended in order to ensure the fulfilment of the five freedoms necessary for animal welfare. The Act provides for offences against animals as misdemeanours and as such provides for punishments of at most six months imprisonment and fines. The Act should be amended to provide for offences against animals as felonies because, as it was earlier established, animals ought to be regarded as 'legal persons'. By doing so, people will be deterred from committing such acts as the consequences are severe and thus ensure that animal rights and freedoms are respected and protected. Additionally, this will change peoples' perspectives of animals as property to the recognition of animals as 'legal personnas'. In turn, this will enable a positive change in the society as animals and people will co-exist harmoniously.

b) Enactment of new Laws

Generally, animals can be classified into four categories namely: companion and domestic animals, wild and exotic animals, livestock and other domesticated animals; and animals as products.¹³² The Prevention of Cruelty to Animals Act fails to take into consideration these different categories but rather views all animals (with the exception of wild animals) as one. This is detrimental to animal welfare because just like human beings, different animals have needs that are unique to their nature. It is therefore recommended that the Government enact new legislation that will protect the rights and freedoms of the different categories of animals.

For example; the Government should enact an Act purely for companion animals. This would ensure that the living standards of pets are maintained and that they get their required vaccines against diseases which in turn would prolong their life span as well as reduce the risk of transmission to human beings. This Act would also help reduce the number of stray animals in the streets as such an Act would also be the foundation basis for the establishment of rescue organizations and animal shelters. Such shelters would ensure that the pets' physical and psychological needs are met and thus provide a trusting and safe environment for their adoption.

Additionally, an Act should also be created to deal with livestock. Livestock such as; cattle, sheep, goats etc. are largely owned as they form a huge part of the cultures in Kenya. An Act

¹³² Pamela D. Frasch and Sarah M. Kutil, *Animal Law In A Nutshell* (1st edition, West Academic Publishing 2010) 4.

governing the ownership, maintenance, living standards and transportation of such animals would enable the protection and maintenance of their welfare as certain conditions and requirements would have to be met in order to ‘own’ such animals. This would prevent owners from bringing their cattle to graze in the urban areas as proper grazing fields would be created. This would therefore improve the agricultural sector as well as prevent congestion of urban towns hence ensuring sustainable development of the country as pollution would also be minimized.

5.2.2 Establishment of Enforcement Mechanisms

The Constitution of Kenya 2010, The Fourth Schedule Part 1 22(b) provides for one of the functions of the National Government as, “Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—protection of animals and wildlife.” It is therefore the responsibility of the Government to establish enforcement mechanisms, for example; creations of animal parks, rescue centres, ensure availability and accessibility of veterinary services amongst others. Currently the Kenya Society for the Protection and Care of Animals (KSPCA) is the only rescue centre in Kenya that focuses on the protection of animals, that is, domestic and domesticated animals.¹³³ The organization exists to promote the protection of animals, prevent cruelty to animals and to rescue and relieve animals from all manner of suffering.

It is therefore recommended that the Government liaise with private organizations in order to put up more rescue centres for animals, preferably in each County, in order to help care for the stray and abandoned animals as well as those rescued from abusive owners. Additionally, if more mechanisms are put in place to ensure animal welfare then this will prevent the congestion of town as the necessary requirements for livestock and such other animals will be catered for in their respective environments thus limiting the migration of people with their livestock from rural to urban areas in search of food which in turn ensures the cleanliness of the cities as well as easy movements without worries of hitting animals on the roads as is the current case. The Government can also ensure good health of animals and prevention of contagious diseases like rabies, by setting up and funding veterinary offices across the country thus ensuring that owners are able to access such health care services for their animals.

¹³³ Kenya Society for the Protection and Care of Animals < <https://kspca-kenya.org/> > [accessed 11th September, 2019].

5.2.3 Creation of Awareness and Educating the Public

Animal welfare is an issue that has been neglected over time, yet it greatly affects the society. This is so due to the lack of awareness and education of the public in relation to this matter. A large number of the country's population own animals whether companion or livestock. Despite this, many still lack the necessary information on the freedoms that animals are entitled to in order to maintain animal welfare. It is therefore recommended that the Government take steps to educate the public on animal welfare in order for public attitudes toward animal welfare to improve with growing social affluence. This can be achieved by introducing an animal welfare subject in the current education system as well as conducting rallies that explain the importance of ensuring animal welfare. Furthermore, veterinaries can hold conferences and discussions with the public especially in rural areas, where a vast majority of people own cattle and other livestock, in order to inform them on the ways of improving animals' living conditions as well as the significance of having a veterinary conduct health checks on their livestock. This in turn ensures the protection and maintenance of animal welfare country-wide.

5.3 Final Remarks

This thesis has argued for the need to deal with the issue of animal welfare and also advocates for the personification of animals rather than their proprietary perspective. It explained the difference between the animal rights and animal welfare movements and proved that the adapted movement is the animal welfare movement which focuses on expanding and improving the living conditions of animals. It is through this movement that most laws are enacted and enforced, Kenya being one of the many countries that applies this movement in the enactment of its laws. The thesis established that the shift to the animal rights movement would be most ideal in protecting animals and ensuring that they live a better life and in better conditions, however, this would take longer to adopt. The thesis further analysed the regulatory framework in Kenya and compared its system to those of UK and South Africa. By doing so, it suggests that the laws governing animal welfare should be amended and more laws ought to be enacted in order to ensure maintenance of animal welfare in the country. It also calls for the Government to establish more enforcement mechanisms in order to ensure that the five freedoms entitled to animals are protected and respected by all persons. Lastly it suggests the education of the public on animal welfare and the steps of ensuring the said in order to enable the maintenance of animal welfare within the country. The actualization of the above suggestions would eradicate the issues facing animal

welfare which is important because the preservation of the environment and the harmonious existence with nature requires that animal rights and freedoms are protected and respected thus enabling society to grow as a whole.

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