

Chapter 1

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

- Leonardo da Vinci¹

1.1. Introduction

Throughout history animals have been and still are being employed positively to help humans in many ways. For example, animals are useful for transporting goods and heavy loads over land and mountains,² protecting humans and their property, delivering important messages during war,³ and even affording them companionship. Animals are therefore kept alive for these reasons. Animals have also been used and are still exploited in that they were and are killed for food and clothing,⁴ are used for certain entertainment purposes⁵ and in experiments.⁶

Exploitation occurs where unfair advantage⁷ is taken of people or animals in an unjust or cruel way for one's own gain.⁸ The most common forms of animal exploitation are cases of animals being used for commercial and scientific purposes. These include, but are not limited to, animal experimentation,⁹ breeding animals for food, and also to situations where animals are intentionally harmed or killed in certain 'sports', such as being hunted for 'fun', dog fighting and cock-fighting. Abuse of animals often occurs when they are being

¹ (1452 – 1592) quoted in Pickover *Animal Rights in South Africa* (2005) 168.

² Cooper *Animals In War* (2000) 199-212.

³ For example, homing pigeons used in World War I. Cooper *Animals In War* 96 – 112.

⁴ For example, fur, leather, snakeskin and also other accessories such as shoes, handbags, belts and wallets, as per Grant *The No-Nonsense Guide to Animal Rights* (2006) 89 - 102.

⁵ Such as hunting, fishing and racing. Grant *The No-Nonsense Guide to Animal Rights* 50 – 56.

⁶ Animals are often used to test for allergic reactions and the effectiveness of various ingredients and end products such as cosmetics, medicine/drugs, household detergents and so on. De Grazia *Animal Rights: A Very Short Introduction* (2002) 98 – 116.

⁷ In other words, they have either not consented to or are forced into accepting being used as 'slaves'.

⁸ "Exploitation." *The Concise Oxford Dictionary of Politics* (2003).

⁹ The United States of America Food and Drug Administration (FDA) has reported that up to 92 out of every 100 drugs that are successfully tested on animals, go on to fail the human clinical trial phase, due to dangerous side effects that are only noticed on humans. (e.g. birth defects, organ failure and even death) <http://www.stopanimaltests.com/us-fda.asp> (accessed 09/06/2008).

exploited, for example, “Factory farmed animals are generally kept in overcrowded, poorly ventilated and dirty conditions...”¹⁰

Factory farms “... operate just like any other efficient factory production line. They are highly mechanised and do not need a lot of staff. The difference is that the goods being processed are live animals rather than cars or televisions.”¹¹ It is estimated that 25 billion animals (excluding fish) are slaughtered every year worldwide for food consumption.¹² As of 11 November 2010, there is an estimated human population of just under 6,9 billion.¹³ Therefore it is submitted that for every one person, there are three and a half animals slaughtered every year.

The Animal Welfare Movement and the Animal Rights Lobby have differing views on what constitutes exploitation of animals. The Animal Rights Lobby believes that the following human uses of animals are exploitative:¹⁴

1. Animals used as food (for both humans and animals [pet food]);
2. Animal hides, skin and fur used to make clothing and fashion accessories;
3. Animals used in research;
4. Animals used in the entertainment industry, i.e. in movies and advertisements;
5. Other forms of ‘entertainment’ in which animals are used, for example, hunting, fishing, bull fighting, animal acts in circuses, horse and greyhound racing, animals kept in zoos, as well as fish and marine mammals kept in aquariums and marine parks;
6. The use of certain terms when referring to animals, for example, ‘vermin’, ‘pests’, ‘it’, ‘that’ and ‘thing’;
7. The property status of animals; and
8. ‘Puppy mills’ and the sale of animals at auctions and sale yards, as well as the trade in wild animals.

¹⁰ Pickover *Animal Rights in South Africa* 166.

¹¹ Pickover *Animal Rights in South Africa* 155.

¹² Grant *The No-Nonsense Guide to Animal Rights* 28.

¹³ <http://www.census.gov/main/www/popclock.html> (accessed on 11/11/2010).

¹⁴ DeGrazia *Animal Rights: A Very Short Introduction*; Grant *The No-Nonsense Guide to Animals Rights*; Pickover *Animal Rights in South Africa*.

The Animal Welfare Movement views greyhound racing and puppy mills as exploitative,¹⁵ and advocates for the humane treatment of animals in and regulation of the following practices:¹⁶

1. Animals used as food;
2. Animal hides, skins and fur used to make clothing and fashion accessories;
3. Animals used in research;
4. Animals used in the entertainment industry and for any other ‘entertainment’ purposes as listed above; and
5. This movement does not contradict the property status of animals.

Both the Animal Welfare Movement and the Animal Rights Lobby advocate against the cruel treatment, neglect and abuse of all animals.¹⁷

1.1.1 ‘Speciesism’ and the link to human abuse

In the 1970’s, Richard D. Ryder¹⁸ coined the term ‘Speciesism’ which is sometimes used to describe the abuse of animals. ‘Speciesism’ and is defined as human intolerance or discrimination based on species, generally manifested in the form of cruelty and/or exploitation of animals.¹⁹ Many studies have confirmed that there is a link between animal abuse and ‘human’ abuse, as well as a connection between animal abuse and violent criminals and crime.²⁰ These studies conclude that where there is animal abuse, there may also be child or spousal abuse, and that there is an increased risk that people who abuse

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Ryder coined the term over 35 years ago. Ryder “All beings that feel pain deserve human rights” *The Guardian*, 6 August 2005 (www.guardian.co.uk/uk/2005/aug/06/animalwelfare (accessed 22/06/2009)).

¹⁹ “Speciesism” *The American Heritage Dictionary of the English Language* 4th edition (2007).

²⁰ The United States Federal Bureau of Investigation (FBI) has noted that both serial murderers and rapists have a history of animal abuse, torture and killing (Animal abuse and youth violence, *The FBI Law Enforcement Bulletin*, 1 April 2002 [http://www.fbi.gov/publications/leb/2002/april2002/april02leb.htm#page_25] accessed on 5/08/2010).

“Animal Cruelty, Human Violence Linked in Humane Society Study” United States Department of Health & Human Services *Administration for Children & Families* July/August 2001 Volume 2 Number 4.

Finkelstein “Canary in a Coal Mine: The Connection Between Animal Abuse and Human Violence” 2003 *Bellwether* 58 Fall.

Van Heerden “The Link Between Animal-Abuse & Human Abuse” South African Animal Law Review Workshop 13 August 2009.

Linzey (ed) *The Link Between Animal Abuse and Human Violence* (2009).

animals will eventually become violent criminals or commit violent crimes such as rape and murder. It is further suggested by these studies that the prevention or early detection of animal abuse will lead to the prevention and detection of ‘human’ abuse and violent crimes and criminals. The South African National Council of Societies for the Prevention of Cruelty to Animals (NSPCA) website²¹ contains some useful information about the animal/human abuse link.²² The NSPCA has acknowledged that there is a growing amount of evidence that confirms the link between violence towards animals and violence towards humans and has introduced the First Strike Campaign into South Africa, which was originally created by the Humane Society of the United States. The aim of the First Strike campaign is to strengthening collaboration between animal welfare shelters, law enforcement officials, social workers, veterinarians, educators and others to create and implement strategies to reduce animal cruelty and family violence.²³

In recent times, there are a few countries that have afforded animal welfare issues some recognition in their constitutions²⁴ or that have guaranteed legal rights to some animals, however limited.²⁵ In most legal systems, animals are still often considered things or objects that can be owned, sold or traded, i.e. animals are seen as property (legal objects).

Historically, views of and attitudes towards animals have not remained static. Over the ages, animals have variously been viewed as soulless machines,²⁶ as instinctual, unfeeling and unintelligent beings.²⁷ Human attitudes have shifted through a period of dominating and exploiting animals,²⁸ to the notion that humans have a God-given right to treat animals anyway that they see fit,²⁹ on to isolated modern ideas suggesting that animals deserve to be awarded legal rights,³⁰ alternatively that they are sentient beings.³¹ It is submitted that

²¹ www.nspca.co.za.

²² Under the education link – First Strike South Africa (<http://www.nspca.co.za/page.aspx?Id=13&CateId=13&Category=Education> [accessed 12/11/2011]).

²³ <http://www.humanesociety.org/>

²⁴ See for example, Article 80 of the Federal Constitution of the Swiss Confederation of 1999 and Article 20A of the Constitution of the Federal Republic of Germany of 1949. These Articles will be discussed in Chapter 6.

²⁵ See McNeil Jr “When Human Rights Extend to Nonhumans” *New York Times*, 13 July 2008 (www.nytimes.com/2008/07/13/weekinreview/13mcneil.html?ex=1216699200&en=4e8fa5d6a11b8343&ei=5070&emc=eta1 (accessed on 22/06/2009)).

²⁶ Descartes (1596-1650) in Linzey & Clarke *Animal Rights. A Historical Anthology* (2004) 14.

²⁷ Schopenhauer (1788-1860) in Linzey & Clarke *Animal Rights. A Historical Anthology* 37.

²⁸ Aristotle (384-322 B.C.) in Linzey & Clarke *Animal Rights. A Historical Anthology* 56.

²⁹ St. Thomas Aquinas (1225-1274) “... the subjection of other animals to man is proved to be natural.” in Linzey & Clarke *Animal Rights. A Historical Anthology* 60.

³⁰ See the books, *Speciesism* (2004), written by Dunayer; and *Animal Rights. A Historical Anthology* (2004), written by A. Linzey & P.B. Clarke.

³¹ See Dunayer *Speciesism* (2004).

although attitudes and views have altered generally over the years, many of the ‘outdated’ attitudes and views still prevail.

1.2. South Africa

The following example is one of ‘Speciesism’ and how it was dealt with in terms of the current South African law. In Early 2009, an Eastern Cape teacher, working in the Mount Ayliff area,³² was charged with seven counts of contravening the Animal Protection Act.³³ This man allegedly set out to punish his dog, by dragging it behind his car for 1.5 kilometres after it had allegedly bitten the man’s child. The man then untied the dog and threw it into the bushes and left it to die. After the Society for the Prevention of Cruelty to Animals (SPCA) was called and the dog found, they had to euthanize the dog due to the extent of its injuries.³⁴

Several blogs³⁵ have been created around this issue and as Leonardo da Vinci suggested in his quote above, most of the bloggers state that the man responsible for this cruelty must be punished and sent to jail. Others are worried that he is in a position of authority over children; they say that if this man is capable of such cruelty to an animal, then surely he is capable of being just as cruel to children. Many bloggers have also said that the man should be fired from his teaching position.³⁶

The Eastern Cape teacher pleaded guilty to animal cruelty and was sentenced on the 15 July 2009. He was given a fine of R1500 or 9 months imprisonment.³⁷ If he commits a similar offence in the next 5 years he will be jailed for 5 years or pay a R3000 fine.³⁸ Many bloggers were unhappy with this sentence and wondered what this man will do to his child and any other children in his care if he is capable of such calculated cruelty to an animal.³⁹ There are

³² Mgwayu “Teacher drags dog 1.5km as ‘punishment’” *Daily Dispatch*, 28 January 2009, 1.

³³ Act 71 of 1962.

³⁴ [http://www.nspca.co.za/other.aspx?Id=&Category=&page=News&nId=98&Title=DOG DRAGGER IN COURT](http://www.nspca.co.za/other.aspx?Id=&Category=&page=News&nId=98&Title=DOG+DRAGGER+IN+COURT) (Accessed on 20/06/2009).

³⁵ Such as the *Daily Dispatch* blog at <http://blogs.dispatch.co.za/dispatchnow/2009/01/28/man-charged-for-dragging-dog-behind-car/#comment-29338> and <http://blogs.dispatch.co.za/dispatchnow/2009/02/11/dog-drag-teacher-appears-in-court/> (accessed on 28/01/2009).

³⁶ *Ibid.*

³⁷ <http://blogs.dispatch.co.za/dispatchnow/2009/07/15/dog-drag-teacher-sentenced/> (accessed on 27/09/2009).

³⁸ *Ibid.*

³⁹ *Ibid.*

many studies that have confirmed a link between animal abuse and child/spousal abuse.⁴⁰ This link between animal abuse and child/spousal abuse will be discussed later on.

An example of contentious disparities in practice can be seen in the recent decision of the Eastern Cape Parks Board⁴¹ to allow hunters to shoot the white rhinoceros, which has the status of endangered species.⁴² There was a public outcry over the culling of these rhinos; the public asked why the Eastern Cape Parks Board did not rather relocate these white rhinos instead of killing them. It was reasoned that killing these animals could further endanger this species to extinction and restrict genetic diversity for this species.⁴³

In South Africa, the primary legislation in this regard is the Animal Protection Act 71 of 1962. Sections 2 & 2A of this Act contain a list of common offences committed against animals, as well as the punishment for being found guilty of committing these offences. Section 2 deals with 'general' offences such as overloading the animal, kicking or killing an animal, and the punishment for the contravention of section 2 is either a fine or imprisonment that may not exceed 12 months. Section 2A deals with issues relating to staging animal fights for the purposes of entertainment or gambling and the contravention of this section is punishable by a fine or imprisonment that does not exceed two years. Both of these sections will be critically examined in more detail in later chapters.

1.3. Foreign Jurisdiction

The primary focus of this study is the law of South Africa. However, four foreign jurisdictions have been chosen to illustrate the differing levels of animal protection around the world. The four jurisdictions which have been chosen are the United States of America, Switzerland, India and Kenya.

One of the reasons for choosing the USA is because information on animal welfare legislation is easily accessible. The second reason for examining the USA is that it is a developed country.

Switzerland was selected for the purposes of this thesis as it is the first country to include protection of animal welfare in its Constitution. A comparison between Switzerland and the

⁴⁰ *Op cit* note 20.

⁴¹ Cadman "Rhino Hunt Raises Questions" *Daily Dispatch*, 14 May 2009, 7.

⁴² www.cites.org/eng/resources/ID/index.php (accessed on 23/06/2009).

⁴³ See blog at <http://blogs.dispatch.co.za/dispatchnow/2009/05/20/rhino-hunt-still-on/> (accessed on 28/05/2009).

other jurisdictions could reveal differences in the levels of protection with regard to animal welfare.

India was selected not only because it is a developing country but also because of its religious background and beliefs. With these two factors in mind, a comparison between this country and the other jurisdictions will also reveal if there are any differences in the level of animal welfare between a country with strong religious beliefs and the other countries whose religious beliefs are not as strong.

Kenya was selected because it is a developing African country and to see whether this country has an African perspective on animal welfare legislation.

1.4. Objectives of the Study

The purpose of this study is to determine the current legal position of animals in South Africa. This study seeks to determine whether animals are sufficiently legally protected and to make submissions for the future development of legislation governing animals. Both national and provincial animal legislation in South Africa, national legislation in the four other jurisdictions, as well as case law will be examined for exploring the topic.

The animal related legislation that is discussed in this thesis will concern the welfare of animals only. This is also not a comparative study, as the foreign jurisdictions were chosen as a lens through which to look at and discuss South African animal welfare legislation. The foreign jurisdictions were chosen specifically as their animal welfare legislation falls within particular categories that are discussed fully in the later chapters.

1.5. Definitions

It is, at this stage, useful to define terms and concepts as they appear in the chapters that follow.

1.5.1. The Term “animal”

When discussing the legal position and legal protection that is available to animals, an animal is defined in the animal welfare laws that are examined in chapters five and six. However, when referring to an animal outside of these chapters, an animal is defined as:

“Any member of the kingdom Animalia, a group of many-celled organisms that differ from members of the two other many-celled kingdoms, the plants and the fungi, in several ways. Animals have developed muscles, making them capable of spontaneous movement, more elaborate sensory and nervous systems, and greater levels of general complexity. Unlike plants, animals cannot manufacture their own food, and thus are adapted for securing and digesting food. In animals, the cell wall is either absent or composed of material different from that of the plant cell wall. Animals account for about three-quarters of living species.”⁴⁴

When using the term ‘animal’⁴⁵ we will be referring to both domesticated and wild animals. A domesticated animal is defined as a population of animals that has had its behaviour, life cycle, or physiology systemically altered as a result of being under human control for many generations.⁴⁶ A wild animal is defined as an undomesticated animal living in a natural and unrestrained state.⁴⁷

1.5.2. Animal Welfare

The Animal Welfare Movement advocates that animals are legal objects and as was stated above, this movement advocates the welfare of animals. It argues that animals should be treated humanely (reduce pain and suffering to a minimum) in the various situations that humans use animals, such as in laboratory experimentation, the entertainment industry, and in other activities/areas where humans and animals interact.⁴⁸

1.5.3. Animal Rights

Animal Rights Lobby advocates that animals should be awarded legal rights and/or personality,⁴⁹ which implies that animals should not just be treated humanely, but also be given awarded limited or full legal personality. The movement further argues that all forms of animal ‘exploitation’ should be stopped. In other words, the movement would like to see

⁴⁴ *The Encyclopædia Britannica* (2007).

⁴⁵ We will only be looking at vertebrate animals as most legal systems only recognise vertebrate animals in the scope of their animal related legislation. Vertebrate animals are traditionally classified into seven classes. These classes are Agnatha (jawless fish), Chondrichthyes (cartilaginous fish), Osteichthyes (bony fish), Amphibia (amphibians), Reptilia (reptiles), Aves (birds) and Mammalia (mammals). “vertebrate.” *The Encyclopædia Britannica* (2007).

⁴⁶ *The Encyclopædia Britannica* (2007).

⁴⁷ “wildlife” *The American Heritage Dictionary of the English Language* 4th edition (2007).

⁴⁸ Dunayer *Speciesism* 58-73.

⁴⁹ Sunstein in *Animal Rights. Current Debates and New Directions* 11.

a ban on animal experimentation and on using animals in the entertainment industry and commercial industries.

1.6. Literature Review

This section contains a summary of the sources used in this study, which in-depth research will emerge in later chapters. This study will be conducted mainly through a review of current literature, as the debate about animal rights and/or animal welfare has generated a fairly large body of writing, and a review of this literature will provide some understanding and clarity about the current status of the animal welfare and/or animal rights debate.

A critical analysis of the current legislation and case law will also be undertaken with regard to animal welfare and/or rights in South Africa, as well as analysing the legislation and case law from the United States of America, Switzerland, India and Kenya. Other information that is relevant to this study, found in newspaper articles, the internet and media reports will also be reviewed and compared with legal writings.

Throughout history, the term ‘persons’⁵⁰ has developed from referring only to free men, then to women and further to include former slaves, and other previously excluded natural persons. The abolition of slavery and the success of the suffragette movement are examples of events that show us that humans can change both their perspectives and attitudes, informing changes in legal concepts and norms. In recent times, there are a few countries that have either included the protection of animals into their constitutions⁵¹ or which have awarded limited legal rights to certain animals’.⁵²

However, animals in most parts of the world are still often considered the same way as they have always been seen, i.e. as legal objects, as property and/or an exploitative resource that can be owned, sold or traded.⁵³ There are many factors that have led to this view and continue to enforce it. Their basis arises from several avenues, namely, historical, religious, cultural and economic factors. A term that sums up the above mentioned belief is called “speciesism.” This term was coined by Richard D. Ryder, an animal rights activist, in the

⁵⁰ Including the legal status that this term carries with it.

⁵¹ Section 80 of the Federal Constitution of the Swiss Confederation of 1999 (Switzerland) and Article 20a of the Constitution of the Federal Republic of Germany.

⁵² For example, Spain has recently awarded limited legal rights to the great apes. See McNeil Jr (2008) *When Human Rights Extend to Nonhumans*, <http://www.nytimes.com/2008/07/13/weekinreview/13mcneil.html> (date accessed: 25/07/2008).

⁵³ This can be seen in practices such as hunting animals for trophies, trading in wild animals, game farming and so on.

1970's and is defined as human intolerance or discrimination based on species, generally manifested in the form of cruelty against and/or exploitation of animals.

Animal cruelty is a widespread problem both in South Africa and the world at large. To combat this problem, most countries have enacted animal anti-cruelty legislation. However, despite all of the anti-cruelty legislation, the problem of animal cruelty still persists. From the research surrounding this topic, there are generally two arguments put forward that try and explain why this problem persists.

The first argument, which is usually argued by the Animal Welfare Movement,⁵⁴ is that the current legislation, rules and policies⁵⁵ may be ineffective due to the presence of legal loopholes and exceptions that are easily exploited as well as due to punishments that are too lenient.⁵⁶ Another reason put forward that the current anti-cruelty legislation is ineffective is that more rules and legislation is needed to regulate the use and treatment of animals.⁵⁷

The second argument is usually put forward by the Animal Rights Lobby.⁵⁸ The Animal Rights Lobby not only argues that the current legislation is ineffective, they also argue that the property status of animals contributes to the problem of animal cruelty. As animals are not being effectively protected by the law, Sunstein⁵⁹ believes that the problem of animal cruelty will persist as long as animals are viewed as "property." This can be seen by the way the South African courts have interpreted the anti-cruelty legislation in South Africa. As stated by Karstaedt,⁶⁰ according to the case law in South Africa, the legislature's intention with regard to animal anti-cruelty legislation, was not to actually protect animals, it was to protect the sensibilities of human beings from animal cruelty and to prevent the degeneration of human values.

It is further argued by the Animal Rights Lobby that these "intentions" of the legislature are fuelled by ideas and beliefs that come from a "system that allows us to view animals as

⁵⁴ Such as the National Society for the Prevention of Animal Cruelty.

⁵⁵ The rules and policies that are used by the different sectors that use animals. For example, the food (meat) industry and animals used in the field of science.

⁵⁶ Dunayer *Speciesism* 58-73.

⁵⁷ www.nspca.co.za.

⁵⁸ Such as Singer 'Ethics Beyond Species and Beyond Instincts' in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004); Regan 'The Struggle for Animal Rights' in Linzey & Clarke (eds) in *Animal Rights. A Historical Anthology* (2004); and Wise *Rattling the Cage. Toward Legal Rights for Animals* (2000).

⁵⁹ Sunstein "Introduction. What are Animal Rights?" in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 11.

⁶⁰ Karstaedt "Vivisection and the Law" (1982) 45 *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 349.

resources.”⁶¹ Regan argues that beliefs like this must be changed so as to effectively protect animals. This change is complicated and involves many people from many different fields such as education, politics, the media and other publications.⁶²

Both arguments give suggestions and proposals on what needs to change and why it should be changed. For example, the arguments suggest that the current legislation should be reviewed and the legal loopholes need to be closed. However, these arguments usually fail to suggest how one would go about implementing these changes to ensure that they are effective. This thesis will try to uncover the most effective ways to ensure that these legal loopholes are closed and not exploited.

Another suggestion, which is favoured by the Animal Rights Lobby, would be to include animals’ interests in a country’s constitution and/or to grant legal rights to animals. This move would greatly improve an animal’s standing before the law and it would also ensure that their welfare is enforced and protected. Examples of this suggestion can be seen in many European countries, which have taken great steps in promoting and protecting animal interests. Both Germany and Switzerland have included the protection of animals in their respective constitutions, and Spain has voted in favour of awarding limited rights to the great apes – gorillas, orang-outangs, chimpanzees and bonobos.⁶³

1.7. Significance of the Study

This study will highlight the level of protection for animals and the need, if any, for legal change. This study will also provide specific suggestions and proposals on what needs to be changed, what does not need to be changed and how to implement these changes.

1.8. Research Question

Are animals sufficiently protected by the animal welfare laws of South Africa and if not, how can these laws be improved?

⁶¹ Regan “The Struggle for Animal Rights.” in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 176.

⁶² *Ibid.*

⁶³ See McNeil Jr (2008) *When Human Rights Extend to Nonhumans*, <http://www.nytimes.com/2008/07/13/weekinreview/13mcneil.html> (date accessed: 25/07/2008). Spain is still in the process of enacting legislation to give effect to the granting of limited legal rights to the great apes.

1.9. Hypothesis of the Study

The hypothesis of this study is that animals in South Africa are not adequately protected from cruelty, neglect and abuse.

1.10. Research Methodology

This study will be conducted firstly through a review of current literature, as the debate about animal rights has generated a large body of literature, and reviewing the literature will provide understanding and clarity about the current status of the animal rights and/or welfare debate. The use of blogs in this chapter was done to reveal the sentiments of ‘lay persons’ or ‘non-legal persons.’ These sentiments are important in that they reflect the current beliefs and *mores* of society.

A critical analysis of the current animal welfare legislation and animal case law will be undertaken from the United States of America, Switzerland, India and Kenya, to provide a comparative assessment with regard to animal rights and/or welfare in these countries, as well as South Africa. Other information that is relative to this study, found in magazine and newspaper articles, the internet and media reports will also be analysed with legal writings. The popular perspective goes to the heart of a privacy question to be addressed in this work: does current legislation adequately reflect the attitudes of the society that it is meant to reflect/serve.

1.11. Outline of chapters.

This study consists of eight chapters:

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

Chapter Two briefly discusses the rise of the animal rights and animal welfare movements throughout history. It also canvasses early animal welfare legislation and the persons responsible for the evolution of animal welfare legislation.

Chapter Three considers the distinction between animal rights and animal welfare. The question of whether ‘the environment’ should be awarded rights along with animals is also noted though not examined. The chapter also considers whether human rights and ‘rights’ for animals, are compatible notions.

Chapter Four reviews international and regional sources of animal welfare/rights law, as well as rules and conventions that have been enacted to protect wild and domestic animals.

Chapter Five examines the laws relating to animal welfare in the four selected foreign jurisdictions, namely the United States of America, Switzerland, Kenya and India. Both legislation and case law are referred to in order to illustrate the various issues raised.

Chapter Six deals with the legal protection of animals in South Africa and therefore the discussion examines the position of relevant government departments in relation to animals. Legislation and case law is examined to illustrate the current legal position.

Chapter Seven brings together all of the investigated suggestions that are put forward by various writers, as well as developments in foreign countries, with regard to animal welfare and protection. Submissions concerning regard to animal welfare and protection will also be included.

Chapter Eight will summarise each chapter and consolidate this thesis with the concluding remarks and proposals.

Chapter 2 – Brief History on the Animal Rights and Animal Welfare Movements

Cowardice asks is it safe? Expedience asks is it political? Vanity asks is it popular?
But the conscience asks is it right?

- Martin Luther King⁶⁴

Humans can change their values, views and attitudes to reflect the changing realities confronting society. For example, the legal status of humans in the West as legal subjects has changed from being confined to free European men to gradually being extended to include women and non-whites.⁶⁵ Other examples are the abolition of slavery and the conferment of equal rights on both white women and non-whites with white men.⁶⁶ Even though the legal status of humans has changed over time, the same cannot be said for animals. It is submitted that animals are still regarded more or less as they have always been seen by humans, i.e. as property/legal objects. However, there is an increasing sentiment around the world that either advocates for animal welfare or for animal rights.⁶⁷

This chapter will investigate and illustrate the development of the animal welfare movement and that of the animal rights lobby, as well as the ideas, beliefs and theories that were brought forward with regard to justifying the creation of the animal welfare movement and animal rights lobby. This chapter will also investigate a sample of early laws regarding animals, and a sample of the people and events throughout human history that may have had an influence on the development of the ideas underpinning the animal rights and/or animal welfare movements of today.

From the period of 1500 to the present day, an examination of people and early laws will be confined to those with British or American origin, as these two foreign jurisdictions have

⁶⁴ In Pickover *Animal Rights in South Africa* 139.

⁶⁵ Dunayer *Speciesism* 99.

⁶⁶ *Ibid.*

⁶⁷ See the World Animal Day website at <http://www.worldanimalday.org.uk/>, which contains information about events and programmes that have occurred around the world every year, to raise public awareness of animal issues and interests. The World Animal Day was started in 1931 and is held on the 4th October every year.

similar legal origins to that of South Africa. People and events that are examined in this chapter have been divided and placed in randomly chosen time periods.

2.1. 3000 BC – 1000 AD

There were many civilizations and empires in this period, such as the Ancient Egyptians, Greeks, Romans, Persians and Indians.⁶⁸ In this study we have chosen India because it is one of the modern foreign countries we will compare with South Africa; and the Ancient Romans because they have had a large influence in shaping the Western world in many respects, especially Western legal systems.

2.1.1. The Romans

The Romans considered animals⁶⁹ as ‘things’ (legal objects) and the first person to make the division of law between things and persons was the second century jurist, Gaius.⁷⁰ As is the case today, in general persons had rights and things were the object of those rights. The Roman law of property dealt with all objects/things that were classified as property, such as slaves and animals. The idea that a human had a legal right to deprive animals of their lives was said to be so ingrained in Roman thought that it never required justification and was always assumed to be natural.⁷¹

There was no anti-cruelty law protecting animals; nevertheless, the Romans did have laws with regard to animals. Animals were firstly categorised as either wild or domestic. Wild animals included those that had an innate or natural *feritas*⁷² or animals that were generally not owned.⁷³ However, a wild animal could be owned and if such an animal caused any damage, the owner could be held liable for the damage, but only if the wild animal was owned at the time the damage was caused.⁷⁴ Domestic animals were those that were usually owned and, as a species, did not show *feritas* although individually they might show such tendency.⁷⁵ A domestic animal that showed *feritas*, was considered to be acting *contra*

⁶⁸ *Ibid.*

⁶⁹ As well as women, children, slaves and the mentally ill.

⁷⁰ Wise *Rattling the Cage. Towards Legal Rights for Animals.* (2000) 31.

⁷¹ Wise *Rattling the Cage. Towards Legal Rights for Animals* 32.

⁷² Wildness or savageness.

⁷³ Ashton-Cross (1953). Liability in Roman Law for Damage caused by Animals. *The Cambridge Law Journal*, 11, pp 395-403 doi:10.1017/S000819730000595X.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

*naturam*⁷⁶ for its species, but was still considered a domestic animal.⁷⁷ A domestic animal could act *fortiori*, which was a temporary lapse into *feritas* but was also nevertheless considered as a domestic animal.⁷⁸

There were several legal remedies with regard to animals. The first remedy was an action against the owner of the animal as contained in the Twelve Tables for the mischief done by an animal.⁷⁹ This remedy allowed an injured person to take action against the owner of the animal to recover damages caused by the animal.⁸⁰ The owner either had to pay the damages or surrender the animal to the injured person.⁸¹

This remedy is similar to *actio de pauperie*. However, with *actio de pauperie* both patrimonial damages and satisfaction could be claimed.⁸² Another action, called the *actio de pastu*, allowed the injured person to claim damages from an owner whose animals caused damage or loss by grazing.⁸³

Despite what many Romans thought about animals, there were many philosophers of that time who advocated, among other things, vegetarianism, as well as abstaining from slaughtering and eating animals and animal sacrifice. These philosophers also criticised the cruel treatment to which many animals were subjected. One of these philosophers was Seneca (4 BC-65 AD) who was also known as Seneca the Younger.⁸⁴ Seneca was a Roman philosopher, dramatist and statesman and was also the tutor of the ancient Roman Emperor Nero and later became his advisor.⁸⁵ Seneca was inspired by Pythagoras and Sextius to abstain from eating animal flesh. Pythagoras and Sextius believed that “there was food enough for man in the world without shedding blood; and that the taking pleasure in butchering helpless animals, only inspired men with cruelty.”⁸⁶

⁷⁶ That is “against its nature.”

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Thomas *Textbook of Roman Law* (1976) North-Holland Publishing Company: Amsterdam 382 -383.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Neethling *Law of Delict* (2006) 331.

⁸³ Neethling *Law of Delict* 332.

⁸⁴ “Lucius Annaeus Seneca.” The World Book Encyclopedia. (2010) Volume 17.

⁸⁵ *Ibid.*

⁸⁶ www.animalrightshistory.org/timeline-antiquity/seneca.htm (accessed on 09/07/2009).

Plutarch (46-120 AD) was a Greek historian, essayist, biographer and Middle Platonist who later became a Roman citizen.⁸⁷ Plutarch abstained from eating animal flesh and believed that animals had a soul and reason.⁸⁸

Plotinus (205-270 AD) was an ancient Roman philosopher whose writings have inspired many Christian, Jewish and Islamic mystics.⁸⁹ Plotinus believed that animals had a soul, reason and a life of true happiness, and also refused medical treatment that was derived from animals, as well as abstained from eating animal flesh.⁹⁰

Even though Ancient Rome considered animals as ‘things’, there were still some people (as illustrated above) who believed that animals were more than that, and that animals even had souls. Many of these philosophers also abstained from eating animal flesh and held the belief that people who were cruel to animals were more likely to be cruel to their fellow man. Many of these beliefs are still reflected in the thoughts of animal rights activists of today and there is a growing amount of evidence that confirms that there is a link between violence towards animals and violence towards other humans.

2.1.2. India

Let us now consider conceptions and treatment of animals in Ancient India, and take our cue specifically from the ancient religion of Jainism. Jainism is considered to be one of the oldest religions in the world, and is still practiced today. Jainism started in the region which includes the present day states of India, Pakistan, Bangladesh, Nepal, Bhutan, Sri Lanka and the Maldives. Jainism is a religion which prescribes, amongst other things, non-violence to all living creatures/beings. Jainists believe, any given living creature may carry the soul of a relative (the law of karma).⁹¹ An extract from the Akaranga Sutra, a sacred Jainist text, sets out the injunction:

“The Arhats⁹² and Bhagavats⁹³ of the past, present, and future, all say thus, speak thus, declare thus, explain thus: all breathing, existing, living, sentient creatures

⁸⁷ "Plutarch." The World Book Encyclopedia. Volume 15.

⁸⁸ www.animalrightshistory.org/timeline-antiquity/plutarch (accessed on 09/07/2009).

⁸⁹ "Plotinus." The World Book Encyclopedia. Volume 15.

⁹⁰ *Ibid.*

⁹¹ "Jainism." The World Book Encyclopedia. Volume 11.

⁹² An Arhat is defined as one who has attained enlightenment. ("arhat." The Encyclopædia Britannica (2007).

⁹³ Member of the earliest recorded Hindu sect, representing the beginnings of theistic, devotional worship and modern Vaishnavism (worship of Vishnu). ("Bhāgavad- Gita." The World Book Encyclopedia. Volume 2.

should not be slain, nor treated with violence, nor abused, nor tormented, nor driven away.”⁹⁴

This sentiment with regard to living creatures is to be found in other Indian religions also. The ‘Laws of Manu’ is a compilation of ancient sacred laws and customs that are held by those who practice Brahminism,⁹⁵ and is thought to have been compiled between 500 BC-200 BC. Chapter Five of the Law of Manu contains several verses⁹⁶ which state that to obtain heavenly and endless bliss, one must abstain from injuring and causing the death of any living creature and one must also abstain from eating meat.⁹⁷

To offer another example, King Ashoka, an Indian Emperor who ruled between 273 BC-232 BC, became a Buddhist and a vegetarian. He issued several edicts⁹⁸ that, amongst other things, promoted kindness towards and protection of animals, as well as curtailing the killing and sacrifice of animals. Under the influence of King Ashoka’s edicts, Buddhist and Hindu societies had an upsurge of vegetarianism. The feeling that life must not be unnecessarily destroyed arose and as a result animal sacrifice was abandoned.⁹⁹

Many of these views are similar to that of the Roman philosophers that were discussed above and are therefore reflected in the beliefs of many animal rights activists.

2.2. 1000 AD – 1500 AD

During this period, St. Francis Assisi stands out for his relationship to animals.

St. Francis of Assisi (1181 – 1226) was the founder of the Order of Friars Minor, also known as the Franciscans; he became the patron saint of animals, the environment and Italy.¹⁰⁰ St. Francis believed that animals had a soul and had sophisticated mental abilities. “All things of

⁹⁴ Akaranga Sutra, Book 1, Fourth Lecture, Called Righteousness, First Lesson. (<http://www.sacred-texts.com/jai/sbe22/sbe2220.htm>) [accessed on 4/1/09].

⁹⁵ A type of Hinduism practiced by the Brahmin (priestly) caste of India.

⁹⁶ Chapter V of the Law of Manu, verses 46 – 51. (<http://www.sacred-texts.com/hin/manu/manu05.htm>) [accessed on 4/1/09].

⁹⁷ *Ibid.*

⁹⁸ Such as the Fourteen Rock Edicts, Minor Rock Edicts and the Seven Pillar Edicts. Each of these edicts describe the expansion of Buddhism and proclaim the beliefs of King Ashoka about Buddhism and dharma. These beliefs focused mainly on social and moral precepts, such as respect for animal life and kindness to prisoners. "rock edicts." The Encyclopædia Britannica (2007).

⁹⁹ *Ibid.*

¹⁰⁰ "Saint Francis of Assisi." The World Book Encyclopedia. Volume 7.

creation are children of the Father and thus brothers of man. ... God wants us to help animals, if they need help. Every creature in distress has the same right to be protected.”¹⁰¹

Many stories are told about St. Francis and his love for animals, as well as stories about how he would often save animals from humans who meant to kill them and how he would free animals that were caught in traps. “Not to hurt our humble brethren is our first duty to them, but to stop there is not enough. We have a higher mission - to be of service to them wherever they require it.”¹⁰²

A well known legend of St. Francis is the legend of the wolf of Gubbio in which the saint is said to have tamed a wolf that was terrorizing the townsfolk. St. Francis then made a pact between the townsfolk and the wolf, in which they were to feed the wolf and the wolf would stop terrorizing them and their flocks.¹⁰³ Many people regard St. Francis of Assisi as an early animal rights activist, which can be seen from the manner in which he treated animals and from the way he urged other people to treat animals with respect and love.¹⁰⁴

Another example involves Rabbi Nachmanides (1194 – 1270), also known as Rabbi Moshe ben Nachman. He was a Spanish-Jewish physician and Torah scholar.¹⁰⁵ Rabbi Nachmanides advocated a vegetarian diet as he believed that God did not permit Adam and Eve to kill an animal and eat its flesh.¹⁰⁶ Rabbi Nachmanides believed that the reason for this was that:

“Living creatures possess a moving soul and a certain spiritual superiority which in this respect make them similar to those who possess intellect (people) and they (animals) have the power of affecting their welfare and their food and they flee from pain and death.”¹⁰⁷

This period illustrates the views of two religious men, a Saint and a Rabbi, who advocated that God not only created animals with a soul and as “brothers of man,” but that they should be treated with respect and not killed for food.

¹⁰¹St. Francis of Assisi at <http://all-creation.franciscan-anglican.com/quotes.htm> (6/1/2009).

¹⁰²St. Francis of Assisi at <http://all-creation.franciscan-anglican.com/quotes.htm> (6/1/2009).

¹⁰³“Saint Francis of Assisi.” The World Book Encyclopaedia. Volume 7.

¹⁰⁴www.americancatholic.org/Features/Francis/ (accessed on 09/07/2009).

¹⁰⁵www.jewishvirtuallibrary.org/jsource/biography/Nachmanides.html (accessed on 11/07/2009).

¹⁰⁶www.jewishveg.com/torah.html (accessed on 11/07/2009).

¹⁰⁷ *Ibid.*

2.3. 1501 AD – 1700 AD

In this period, the earliest known anti-cruelty legislation was enacted in Ireland by Thomas Wentworth (1593 – 1641), the First Earl of Strafford. The law was called “An Act against Plowing by the Tayle, and pulling the Wooll off living Sheep.”¹⁰⁸ This act prohibited cruelty to horses and sheep in that no person was permitted to plough with horses by their tails or to pull the wool off the sheep instead of shearing.

In colonial America, the Massachusetts Body of Liberties of 1641 was a code of laws compiled by Nathaniel Ward (1578 – 1652), a Puritan who had fled from England in 1634. It was the first code of laws in the Massachusetts Bay Colony. The Massachusetts Body of Liberties established the exclusive rights of the Massachusetts General Court to legislate and dictate the ‘Countenance of Authority.’¹⁰⁹ The Body of Liberties established, amongst other things, estate tax, monopolies, security of private property and it legalised slavery.¹¹⁰ The Body of Liberties also dealt with animals and contained the first anti animal cruelty law in what was to become the United States of America, in that it forbade “Tirranny” and “Crueltie” and also stated that cattle must get rest while on a long-range cattle drive.¹¹¹

John Locke (1632 – 1704) was an English philosopher and his ideas and writings had great influence on, amongst others, the American revolutionaries and Jean-Jacques Rousseau.¹¹² Locke argued that animals can feel pain and that to harm them was morally wrong. Despite this, however, he believed that the right not to be harmed belonged to the owner of the animal and not to the animal itself. Since animals were considered as legal objects they could not have any rights of their own. Locke also believed that it was important for children to be taught not to be cruel to animals. He argued that:

“... for the custom of tormenting and killing beasts will, by degrees, harden their minds even towards men; and they who delight in the suffering and destruction of inferior creatures, will not be apt to be very compassionate or benign to those of their own kind.”¹¹³

¹⁰⁸ Annexure A contains a copy of the Act (www.animalrightshistory.org/library/wen-thomas-wentworth/1635-ireland.htm [accessed on 09/07/2009]).

¹⁰⁹ "The Body of Liberties." The Encyclopaedia Britannica (2007).

¹¹⁰ *Ibid.*

¹¹¹ Annexure B contains a copy of the section of the Act. (www.animalrightshistory.org/timeline-renaissance/war-nathaniel-ward.htm [accessed on 09/07/2009]).

¹¹² "John Locke." The World Book Encyclopaedia. Volume 12.

¹¹³ Locke ‘Cruelty is Not Natural’ in Linzey & Clarke (eds) *Animal Rights. A Historical Anthology* 119-121.

This period introduced two of the first known animal anti-cruelty legislation in Europe and America and John Locke stated his belief that cruelty to animals would eventually lead to violence towards man. However, Locke and many other people believed that it was not the animal that had a right not to be harmed, but rather, it was the owner who had this right. It was therefore the right of the owner that these first known anti-cruelty legislation sought to protect.

2.4. 1701 AD – 1900 AD

A leading animal anti-cruelty activist in this period was Rev. Humphrey Primatt (1736-1779), an English theologian. He wrote a treatise called *A Dissertation on the Duty of Mercy and the Sin of Cruelty to Brute Animals*.

In it he argues:

“... a man can have no natural right to abuse and torment a beast, merely because a beast has not the mental powers of a man. For, such as the man is, he is but as God made him; and the very same is true of the beast.”¹¹⁴

Primatt further argues:

“But shape or figure is as much the appointment of God, as complexion or stature. And if difference of complexion or stature does not convey to one man a right to despise and abuse another man, the difference of shape between a man and a brute, cannot give any right to abuse or torment a brute. For he that made man and man to differ in complexion and stature, made man and brute to differ in shape or figure.”

It is said that this treatise is one of the most comprehensive discussions on the status of animals ever published.¹¹⁵ A last argument from Primatt:

“...the man of feeling and justice will not put another man to unmerited pain, because he will not do that to another, which he is unwilling should be done to himself. Nor will he take any advantage of his own superiority of strength, or of the accidents of fortune, to abuse them to the oppression of his inferior... Superiority of rank or station may give ability to communicate happiness, and seems so intended; but it can give no right to inflict... pain.”

¹¹⁴ Primatt ‘Differences do Not Justify Inequality’ in Linzey & Clarke (eds) *Animal Rights, A Historical Anthology* 124-125.

¹¹⁵ Linzey & Clarke (eds) *Animal Rights, A Historical Anthology* 191.

Lord Thomas Erskine (1750-1823) was a British statesman and advocate, and also an animal lover. The story is often told of an owner beating his horse when Erskine happened by. After Lord Erskine protested to the owner, the owner replied “Can’t I do what I like with my own?” Lord Erskine, grew angry at this comment (and he), took his walking stick and hit the owner, retorting “And so can I, this stick is my own!”¹¹⁶

On the 15th of May 1809, Lord Erskine made a speech¹¹⁷ in the House of Peers on the Second Reading of a bill that was aimed at preventing cruelty to animals. The Lords passed the bill, but it was then rejected in the House of Commons. Lord Erskine re-introduced the Bill later on with some changes and it finally passed through the Commons as Statute 3 Geo.IV.c.71.¹¹⁸ This law only applied to domestic animals.

Jeremy Bentham (1748-1832) is recognized as one of the earliest advocates of animal rights.¹¹⁹ He was also in favour of equal rights for women, the abolition of slavery, the abolition of physical punishment for both criminals and children, and the abolition of the death penalty. Bentham believed that animals felt pain similar to humans, and that it was this ability, the feeling of pain, that should be used as a benchmark for the treatment of animals and not their non-ability to reason. Bentham wrote:

“What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?”¹²⁰

It is submitted that the reasoning underlying this quote is true although animals may not be able to reason or speak like humans, there is a growing amount of scientific evidence that confirms that animals can feel pain and suffer just like humans.¹²¹ It is further submitted that

¹¹⁶ Perkins *Romanticism and Animal Rights* (2003) 18.

¹¹⁷ Extract from the speech by Lord Erskine in annexure C. (www.animalrightshistory.org/timeline-romantic/ers-lord-erskine.htm [accessed on 10/07/2009]).

¹¹⁸ Also known as an Act to Prevent the Cruel and Improper Treatment of Cattle of 1822.

¹¹⁹ "Jeremy Bentham." The World Book Encyclopedia. Volume 17.

¹²⁰ Bentham ‘Duty to Minimize Suffering’ in Linzey & Clarke (eds) *Animal Rights, a Historical Anthology* 135-136.

¹²¹ Rogers & Kaplan ‘All Animals are not Equal: The Interface between Scientific Knowledge and Legislation for Animal Rights’ in Sunstein & Nussbaum (eds) *Animal Rights: Current Debates and New Directions* (2004) 175-202.

humans should rather use the question of whether animals can suffer, when deciding the benchmark of the treatment and status of animals, and not their ability to reason or to talk.

Yet, another animal rights and human rights activist was an Irish Politician Richard Martin (1754-1834). Martin is credited as one of the leading founders of the Royal Society for the Prevention of Cruelty to Animals (RSPCA), which was founded in 1824 and which is considered to be the first animal welfare organization in the world.¹²² The establishment of the RSPCA is said to have inspired many other countries to establish similar animal welfare organizations such as the American Society for the Prevention of Cruelty to Animals and the Royal Society for the Prevention of Cruelty to Animals in Australia.¹²³

In 1822, Martin introduced an act into the United Kingdom Parliament, called an Act to Prevent the Cruel and Improper Treatment of Cattle.¹²⁴ This act was also popularly called Martin's Act. The Act banned cruelty to cattle, sheep and equines and is considered by many to be the first parliamentary act, in any country, to ban cruelty to animals.¹²⁵

Charles Lutwidge Dodgson, better known as Lewis Carroll (1832-1898), is the author of the well known children's story of *Alice in Wonderland*. Dodgson was known to support animal welfare charities¹²⁶ such as the RSPCA, the Dogs' Temporary Home¹²⁷ and the Metropolitan Drinking Fountain and Cattle Trough Association.¹²⁸

Dodgson opposed vivisection.¹²⁹ In 1875, he wrote in a popular magazine of the time, called the *Fortnightly Review*, an article entitled "Some Popular Fallacies about Vivisection." In the article, he stated his opposition to vivisection and logically demonstrated thirteen clear fallacies about vivisection. The main fallacies related to the pain that animals were supposedly unable to experience, as well as man's right to inflict this pain upon animals.

¹²² *History of the RSPCA* (1972) <http://www.animallaw.info/historical/articles/arukrspcahist.htm> (date accessed 27/09/2010).

¹²³ *Ibid.*

¹²⁴ Annexure D (www.animalrightshistory.org/timeline-romantic/mar-richard-martin.htm) [accessed on 10/07/2009].

¹²⁵ "animal rights." *The Encyclopædia Britannica* (2007).

¹²⁶ Woolf "Lewis Carroll - A Man Who Hated Vivisection, Alice in Wonderland Children's Writer Championed Animal Welfare" (Sep 9, 2008) at http://ukirishhistory.suite101.com/article.cfm/lewis_carroll_and_vivisection (accessed on 06/07/2009).

¹²⁷ Now called the Battersea Dogs' Home.

¹²⁸ The Metropolitan Drinking Fountain and Cattle Trough Association used to provide drinking troughs to animals who used to haul goods throughout Britain, but they now focus on Developing Countries. See <http://drinkingfountains.org> (accessed on 28/11/2009).

¹²⁹ Vivisection is defined as an operation on living animals for scientific research (under "animal experimentation" *The World Book Encyclopedia*. Volume 1.

Another fallacy was that vivisection had “no demoralizing effect on the character of the operator.” It is suggested that what Dodgson meant by this is that vivisection left the operator emotionless, and senseless to pain and suffering of others. Another fallacy that Dodgson noted was that vivisection would “never be extended so as to include human subjects.” As he wrote:

“... could they only realise the possible advent of a day when anatomy shall claim, as legitimate subjects for experiment, first, our condemned criminals—next, perhaps, the inmates of our refuges for incurables—then the hopeless lunatic, the pauper hospital-patient, and generally "him that hath no helper..."¹³⁰

Another person who was against vivisection was Frances Power Cobbe (1822-1904). Cobbe was an Irish writer, as well as a feminist theorist and an animal rights activist, and founded two organizations that opposed vivisection. In 1875, the Society for the Protection of Animals Liable to Vivisection (SPALV)¹³¹ was formed. This was the first organization in the world to campaign against vivisection. In 1898, she founded the British Union for the Abolition of Vivisection (BUAV).¹³² Both these groups are still active today. Cobbes also wrote for several London newspapers on the opposition to vivisection, as well as on suffrage and property rights for women.¹³³

Another activist was Edward Nicholson (1849-1912). He was an avid environmentalist, ornithologist and an internationalist. Nicholson was one of a group of people that led an initiative that later founded the World Wildlife Fund (WWF) in 1961,¹³⁴ and which is now called the World Wide Fund for Nature. The WWF is the largest international non-governmental organization which deals with, amongst other things, restoration of the environment and conservation and is active in over 90 countries and is involved in a multitude of ongoing projects, such as conservation and the restoration of the environment.¹³⁵

¹³⁰ www.animalrightshistory.org/timeline-victorian/car-lewis-carroll.htm (accessed on 10/07/2009).

¹³¹ Caine *Victorian Feminists* (1993) 103-149.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ The WWF came into existence after a declaration called the Morges Manifesto was signed on the 29th April 1961 (http://wwf.panda.org/who_we_are/history/ [accessed on the 12/02/12]).

¹³⁵ "Max Nicholson." *The Encyclopædia Britannica* (2007).

It is suggested that the WWF protects and promoted the interests of wild animals on a global scale.¹³⁶

Henry Stephens Salt (1851-1939) was an influential English writer who campaigned for social reform in schools, prisons and the better treatment of animals.¹³⁷ Salt is also acknowledged as being the man who introduced Mahatma Gandhi to the works of Henry David Thoreau.¹³⁸ In 1891, Salt founded the Humanitarian League, which sought, amongst other things, to ban hunting as a sport. One of Salt's publications is entitled *Animals' Rights Considered in Relation to Social Progress, with a Bibliographical Appendix*.¹³⁹

“An incalculable mass of drudgery, at the cost of incalculable suffering, is daily, hourly performed for the benefit of man by these honest, patient labourers in every town and country of the world. Are these countless services to be permanently ignored in a community which makes any pretension to a humane civilization? Will the free citizens of the enlightened republics of the future be content to reap the immense advantages of animals' labour, without recognizing that they owe them some consideration in return? The question is one that carries with it its own answer. Even now it is nowhere openly contended that domestic animals have no rights.”¹⁴⁰

This period was quite a busy one, which saw the creation of many animal anti-cruelty and anti-vivisection organisations (such as the RSPCA and the SPALV), the publication of books and articles about animal cruelty and vivisection and the introduction of the Act to Prevent the Cruel and Improper Treatment of Cattle. Many ideas and beliefs that are reflected in this period are similar to the ones discussed earlier, such as the idea that cruelty to animals will eventually lead to violence towards man.

2.5. 1901 to Present Day

During the past 110 years, much anti-cruelty legislation¹⁴¹ has been enacted throughout the world. However, many other important events, such as the formation of various animal welfare and animal rights groups, have occurred in this time. These have helped to expand and promote the animal rights and animal welfare movements.

¹³⁶ It was stated by Chris Hails, the Conservation Director of WWF International, that the ultimate goal of the WWF is to “build a future in which humans live in harmony with nature...” (http://wwf.panda.org/who_we_are/history/wwf_conservation_1961_2006/ [accessed on 12/02/12])

¹³⁷ <http://www.henrysalt.co.uk/> (accessed on 10/07/2010).

¹³⁸ *Ibid.*

¹³⁹ Salt *Animals' Rights Considered in Relation to Social Progress, with a Bibliographical Appendix*. (1892).

¹⁴⁰ Salt *Animals' Rights Considered in Relation to Social Progress, with a Bibliographical Appendix* 10.

¹⁴¹ Such as all the legislation that will be dealt with later in this thesis.

In 1975, Peter Singer (1946-) wrote and released a book called the *Animal Liberation*,¹⁴² which exposed the often cruel and cramped conditions that many farm animals face in factory farms. Singer argues that all beings that are capable of feeling pain should be given equal consideration. Singer's book is also believed to be the starting point of the animal rights movement in the United States of America.¹⁴³

A few years after Singer's book was released, a group of attorneys in the United States of America founded the Animal Legal Defence Fund (ALDF) in 1979. This organization is non-profit and aims at protecting the rights of animals as well as promoting and advancing animal rights through the legal system of the USA.¹⁴⁴

In 1980, an animal rights organization called People for the Ethical Treatment of Animals (PETA) was founded by Ingrid Newkirk and Alex Pacheco. PETA has four main areas of focus: factory farming, animal experimentation, fur farming and animals in entertainment. PETA is well known amongst animal rights advocates for its advertisements, undercover investigations, campaigns and the rescue of distressed animals.¹⁴⁵

Compassion over Killing (COK) is an organisation which was founded in 1995 by animal rights activist Paul Shapiro. COK campaigns against factory farming and promotes vegetarianism and is known for its investigations and exposés.¹⁴⁶

It is submitted that much has happened since 1995 throughout the world, such as new legislation,¹⁴⁷ investigations¹⁴⁸ and campaigns¹⁴⁹ that have led to several large companies changing some aspects of their activities, such as stopping testing chemicals and medicines

¹⁴² Singer *Animal Liberation* (1975).

¹⁴³ "Peter Singer." *The Encyclopædia Britannica* (2007).

¹⁴⁴ "Animal Legal Defense Fund." *The Encyclopædia Britannica* (2007).

¹⁴⁵ www.peta.org (accessed on 10/07/2009).

¹⁴⁶ "Subject Experts, Paul Shapiro." The Humane Society of the United States, http://www.hsus.org/about_us/board_and_staff/experts/experts/subject_experts_shapiro.html (accessed on 27/09/2010).

¹⁴⁷ Such as the European Unions' Action Plan on Animal Welfare. (http://ec.europa.eu/food/animal/index_en.htm [accessed on 11/07/2009]).

¹⁴⁸ Such as investigations into the conditions at factory farms. (www.peta.org and www.cok.net [accessed on 10/07/2009]).

¹⁴⁹ Such as Petas' anti-fur campaigns . (www.peta.org [10/07/2009]).

on animals.¹⁵⁰ Other campaigns have exposed abuse and cruelty to animals in factory farms that have led to a number of arrests and convictions.¹⁵¹

The purpose of this chapter was to illustrate that the ideas behind animal welfare and animal rights are neither recent nor absurd. As can be seen from the events discussed above, the animal rights and animal welfare movements have deep roots. They have also gained much publicity and a large following, with more and more people becoming aware of how animals are treated¹⁵² and that they are also agitating for better legislation and enforcement of anti-cruelty laws.

¹⁵⁰ For example, Revlon. In June of 1989, Revlon announced the completion of its 14 year program to eliminate animal testing in all phases of research, development and manufacturing of all its product (www.revlon.co.za [accessed on 17/03/2010]).

¹⁵¹ For example, Compassion over Killing investigation at a hatchery (www.cok.net [accessed on 5/08/2010]).

¹⁵² For example, animals that are abused are beaten, kicked, burnt, set on fire, strangled, hanged, tortured, mutilated, neglected, abandoned, stabbed, shot, drowned and so on.

Chapter 3 - Discussion of Selected Animal Related Concerns

The animals of the world exist for their own reason. They were not made for humans any more than black people were made for whites or women for men.

- Alice Walker¹⁵³

This chapter will briefly investigate the various ways in which animals are legally used throughout the world, including the current legal system of South Africa. There are two main movements concerned with the welfare of animals, known respectively as the 'animal rights' and 'animal welfare' movements. There is a marked difference between these two movements, and their distinctions will be fully discussed in this chapter.

There are fears amongst those who are against awarding rights to animals that if animals were to be given rights, then this would detract from the importance of, and progress made with, human rights. This chapter will briefly investigate whether or not animal rights and human rights are compatible. It will briefly also explore the question of whether only animals should be granted rights in some form or whether all of nature (plants, rocks, rivers, etc.) should be included.

3.1. Natural vs. Legal Rights

A right is defined as a legally guaranteed entitlement that is available to persons to realise or defend their just and lawful claims such as claims to property and interests, for example, an interest in bodily integrity against other persons, government entities and companies.¹⁵⁴ A distinction is sometimes made between natural and legal rights. Natural rights are said to be rights that are not based on the laws, customs or beliefs of a certain society.¹⁵⁵ Natural rights are said to originate from a higher order than from the laws of any state¹⁵⁶ or man. Natural rights are believed to be what is right and good;¹⁵⁷ for example, in terms of natural law, all

¹⁵³ In Pickover *Animal Rights in South Africa* 1.

¹⁵⁴ Neethling *Law of Delict* 45-49.

¹⁵⁵ Van Blerk *Jurisprudence. An Introduction* (1998) 1-25.

¹⁵⁶ Van Blerk *Jurisprudence. An Introduction* 10.

¹⁵⁷ Van Blerk *Jurisprudence. An Introduction* 3.

men are equal.¹⁵⁸ Natural Law theorists advocated that the belief that there were distinctions between men was a man-made concept and that nature advocated equality for all, and that “God has made all men free; no man is a slave by nature.”¹⁵⁹ Legal rights on the other hand are rights that are codified in the legal system of a certain society and are generally based on the customs, beliefs and laws of that society.¹⁶⁰

It is submitted, that in terms of natural law, animals may have rights since this law is said to originate from a higher order. However, most natural law philosophers only referred to ‘man’ in their discussions.¹⁶¹ With regards to these legal rights, animals are currently only the objects of these rights. However, in Spain, legal rights were extended to include apes,¹⁶² when the citizens in Ecuador, in 2008, voted in favour of granting nature legal rights,¹⁶³ and in New Zealand, all laboratory research on the great apes have been banned since 1999.¹⁶⁴ It is submitted that the granting of legal rights to animals will place a “heavier” duty on all humans and governments around the world. This duty would have to extend beyond ensuring the welfare of animals are met and protected. It will need to ensure that their legal rights are enforced and protected against governments and other legal rights holders. Suggestions of how laws and the ideas/beliefs of society should and/or would need to change to improve the current laws and beliefs with regard to animals are discussed in chapter 7.

3.2. Various ways in which animals are used

There are several different ways that humans use and abuse animals which have now become accepted as normal or useful practices, no matter how cruel or painful some of these uses or practices are. In South Africa (and the rest of the world), animals and animal products are used for food, for clothing, for entertainment, for transport, for experimentation, for religious sacrifice, for companion animals, for hunting and for trading.¹⁶⁵ These uses will be briefly discussed to give the reader a basic understanding of the various ways that humans use animals.

¹⁵⁸ Van Blerk *Jurisprudence. An Introduction* 10.

¹⁵⁹ Van Blerk *Jurisprudence. An Introduction* 6.

¹⁶⁰ Van Blerk *Jurisprudence. An Introduction* 10.

¹⁶¹ Van Blerk *Jurisprudence. An Introduction* 1-25.

¹⁶² Catan ‘Apes get legal rights in Spain, to surprise of bullfight critics.’ *The Times* (June 27, 2008) (<http://www.timesonline.co.uk/tol/news/world/europe/article4220884.ece> [accessed on 4/8/2010]).

¹⁶³ Dance, A. ‘Ecuador grants rights to nature.’ *Nature News Team* (September 29, 2008) (http://blogs.nature.com/news/2008/09/ecuador_grants_rights_to_natur.html [accessed on 12/02/12]).

¹⁶⁴ Taylor, R. ‘A step at a time: New Zealand’s progress toward Hominid rights.’ *Animal Legal & Historical Centre* (April 26, 2001) (http://www.animallaw.info/journals/jo_pdf/lralvol_7p35.pdf [accessed on 12/02/12]).

¹⁶⁵ Grant ‘*The No-Nonsense Guide to Animal Rights*’ (2006) and DeGrazia ‘*Animal Rights. A Very Short Introduction*’ (2002).

3.2.1. Animals as Food

Most people only see the end product of an animal after it is processed in abattoirs. These end products can be found in the meat section of many supermarkets and in butcheries and at fish mongers. Most people do not know or have not witnessed how animals are loaded into trucks and off loaded at abattoirs, how these animals are processed into meat and how they are loaded and off-loaded and during the processing at abattoirs.¹⁶⁶ Even though many countries have laws which regulate the treatment of animals when they are been transported and in abattoirs, the truth is that these laws are often not properly enforced.¹⁶⁷

3.2.2. Animals as Clothing

Animals are often skinned, sometimes while they are still alive,¹⁶⁸ and their fur and hides are used to make clothes and other items, such as handbags, shoes, belts, jackets, waistcoats and jerseys.¹⁶⁹ Although any animal is in danger of being killed and used as clothing, the most common animals that are often killed for their fur include cats, dogs, rabbits, snakes, crocodiles, seals, cattle, pigs and ferrets. Other uses of animal skin include making blankets, chairs, car interiors and animal hides as mats.¹⁷⁰

3.2.3. Animals as Entertainment

There are various ways that humans use animals for entertainment. Some uses are beneficial to both animal and human, such as taking a dog for a walk; but other uses are beneficial to humans only, such as the use of animals at circuses or the keeping of wild animals in zoos. Other forms of entertainment that are often criticised as cruel to animals are rodeos, bullfights, the use of animals in movies and adverts, and greyhound and horse racing.¹⁷¹

3.2.4. Animals as Transport

Animals are often used to provide transport for humans, such as the ‘donkey’ carts found throughout South Africa. Animals in these situations are often maltreated due to lack of information on the part of the owner and/or lack of resources, but there are many equine

¹⁶⁶ There are several different resources (such as videos and information) concerning animals that can be found at various websites, such as www.animal-voice.org, www.nspca.co.za and www.peta.org.

¹⁶⁷ Grant ‘*The No-Nonsense Guide to Animal Rights*’ (2006) and DeGrazia ‘*Animal Rights. A Very Short Introduction*’ (2002).

¹⁶⁸ Grant *The No-Nonsense Guide to Animal Rights* 89-102.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

welfare organisations that have stepped in and have offered assistance to both animals and their owners.¹⁷² The Cart Horse Protection Association of South Africa is located in Cape Town.¹⁷³ They offer veterinary assistance, outreach clinics and they conduct road patrols, scrap metal yard inspections and respond to reports of abuse and overloading from members of the public, and police and traffic officials.

3.2.5. Animals used in Experiments

Many new medicines and other possibly toxic substances are routinely tested on animals to ensure that they are safe for human consumption;¹⁷⁴ this requirement is still enforced despite the fact that the medicines and other substances have already been tested and passed in another country.¹⁷⁵ Tests used on animals have been criticised as either being unnecessary, using too many animals or causing unnecessary pain and suffering. Critics point out that there are many alternative tests available that have either reduced the amount of animals needed, refined the tests or that have replaced the need of animals completely.¹⁷⁶

3.2.6. Animals and Religious Practices

Some religions, such as Islam and Judaism, require animals to be slaughtered in a certain manner.¹⁷⁷ These animals often have their throats cut while they are still alive and are then either bled to death or they are allowed to die from shock. In other situations animals are sometimes used as sacrifices for religious and cultural reasons. For example, in South Africa, there is a Zulu custom of the *Ukweshwama* festival where a bull is ritually killed, which symbolises the transfer of power from the bull to the King who is then able to use this power to protect his people.¹⁷⁸ Some religions even require that animals make as much noise as possible while they are being slaughtered which often means that they are kicked and beaten before and during the process of the religious slaughter.¹⁷⁹

¹⁷² www.carthorse.org.za. (accessed on 1/12/2009).

¹⁷³ *Ibid.*

¹⁷⁴ Grant *The No-Nonsense Guide to Animal Rights* 74.

¹⁷⁵ Rollin *Animal Rights & Human Morality* (2006) Chapter 3.

¹⁷⁶ Rollin *Animal Rights & Human Morality* 194 – 197.

¹⁷⁷ “In the name of God” <http://www.viva.org.uk/pdfs/Ritual%20slaughter%20A5.pdf> (accessed 05/08/ 2010).

¹⁷⁸ *Smit NO and others v King Goodwill Zwelithini Kabhekuzulu and others* (10237/2009) 2009. The Court held that from the expert evidence lead, that the cultural practice of *Ukweshwama* did not constitute to cruelty to animals and therefore refused to grant the interdict.

¹⁷⁹ “In the name of God” <http://www.viva.org.uk/pdfs/Ritual%20slaughter%20A5.pdf> (accessed 05/08/ 2010).

3.2.7. Companion Animals

Companion animals are more commonly known as pets. The pet industry is a billion dollar industry, selling food, clothes and other accessories for pets and even having restaurants and hotels that specially cater for dogs and cats.¹⁸⁰ The most common animals that are kept as pets are cats, dogs, birds, fish, rabbits, guinea pigs, mice and rats. Many animal rights activists criticise the keeping of exotic animals such as birds, reptiles and monkeys because, they argue, such animals are wild and need to live in the wild. Another criticism of keeping pets is that some people treat pets as humans, i.e. the pets' needs - such as nutritional, physical, psychological and health - differ to humans needs. These needs are, as a consequence, not properly met.¹⁸¹

3.2.8. Hunting Animals

Many wild animals are either hunted or traded, usually for money. Hunting is either done as a sport or only once to get a 'trophy'. In the case of trophy hunting, many wealthy people from America and Europe come to Africa to shoot and kill animals and then either keep the head, skin or they get the animal stuffed by a taxidermist for a trophy. These 'hunters' are usually inexperienced and take several shots at the animal, causing the animal to suffer greatly before it eventually dies.¹⁸²

3.2.9. Trading in Animals

Trading in wild animals is cruel and environmentally damaging. The trade is often done illegally. Wild animals that are traded often end up as food, housed in a zoo or kept as pets. Trade in wild animals is a booming business which cannot be sustained forever.¹⁸³ For example, there is an estimated amount of 817 gorillas in zoos worldwide.¹⁸⁴ The high demand of gorillas in zoos is slowly killing wild gorilla populations.¹⁸⁵ Another example of trade in wildlife is African (and Indian) elephants. Elephants are often traded between zoos, sold to circuses or shipped to warehouses where they are often beating and chained.¹⁸⁶ There

¹⁸⁰ In Pickover *Animal Rights in South Africa* 1.

¹⁸¹ *Ibid.*

¹⁸² See Chapter 1 of Pickovers' book, *Animal Rights in South Africa* (2005) 16-48.

¹⁸³ For more information see Pickover, '*Animal Rights in South Africa*' (2005).

¹⁸⁴ Pickover *Animal Rights in South Africa* 64.

¹⁸⁵ Pickover *Animal Rights in South Africa* 65.

¹⁸⁶ Pickover *Animal Rights in South Africa* 63.

is also a high mortality rate of elephants in zoos due to health problems that are brought about by the unnatural enclosures that they are often kept in.¹⁸⁷

It is submitted that many of these activities can be stopped altogether – for example, the hunting of endangered or threatened species like the Black and White Rhino and the African Elephant. In other cases the number of animals that are used could be reduced¹⁸⁸ or alternative methods used, such as the *in vitro* or the tissue culture technique¹⁸⁹ instead of using animals in experiments.

3.3. Animal Welfare vs. Animal Rights

The animal welfare lobby and animal rights lobby are two different movements that engage with issues that concern the general well-being¹⁹⁰ of animals and educating society about these issues. Although these two movements may share a common interest, i.e. to protect animals, the animal rights movement seeks to grant rights to animals and eradicate all forms of animal exploitation by humans while the animal welfare movement – the more common and less extreme view – seeks to protect and promote the welfare of animals that are used in various ways by humans.

We will be using the term ‘humane’ in this section, which is often used to describe the way animals should be treated. The term ‘humane’ is characterised by showing kindness, care and sympathy towards others, especially those who are suffering.¹⁹¹

3.3.1. Animal Welfare Movement

As was stated in Chapter 1, this movement advocates that animals are legal objects and that they should be treated humanely (reduce pain and suffering to a minimum) in the various situations that humans use animals, such as in laboratory experimentation, the entertainment industry and so on. This movement also advocates for stronger anti-cruelty laws to protect animals and it criticises the current laws for being too lenient in that they are full of legal loopholes and/or exceptions that are often far too easy to exploit and punishments that are too

¹⁸⁷ Pickover *Animal Rights in South Africa* 63-64.

¹⁸⁸ For example, the use of animals as food and for clothing.

¹⁸⁹ Tissue culture is where animal or plant tissue (or the whole or part of an organ) is kept and grown in a culture medium, so as to preserve its architecture and function (*Dorland's Illustrated Medical Dictionary* (2007) 31st edition).

¹⁹⁰ This would include physical, mental and even emotional well-being.

¹⁹¹ ‘Humane’ Cambridge Advanced Learner’s Dictionary (2005), 2nd edition.

lenient.¹⁹² In recent times though, more and more jurisdictions, such as the European Union, have been handing out harsher punishments to offenders. This indicates that the interests of animals in these jurisdictions are slowly being elevated.¹⁹³

In defence of the animal welfare movement, many people argue that the law does not allow owners to do everything they want with their property and, in the case of animals, the law either forbids the owner from doing certain things,¹⁹⁴ or requires the owner to do certain things.¹⁹⁵ It is furthermore argued that the term ownership is just a ‘label’ that implies that the person has certain rights and duties toward what is owned.¹⁹⁶

The animal welfare movement is criticised for not challenging the idea that animals exist for human use and gain,¹⁹⁷ and it is pointed out that the movement is in fact at the root of the problem of animal exploitation. The founder of Justice for Animals, Steve Smit¹⁹⁸ has said that industries have a working relationship and understanding with animal welfare bodies, which enables the abusers to defend their policies and have them endorsed. Thus exploitation is perpetuated.¹⁹⁹ For example, the NSPCA has collaborated with the animal industry to create rules, policies and codes of practices that this industry can follow. The NSPCA has also helped to create the South African Bureau of Standards (SABS) “Care and Use of Animals for Scientific Purposes.”²⁰⁰

3.3.2. Animal Rights Lobby

As was defined in Chapter 1, the animal rights lobby advocates that animals should be awarded legal rights and/or personality. The animal rights lobby believes that animals should not just be treated humanely, but that they should be awarded limited or full legal personality. In addition, the animal rights lobby advocates the need to end the current status of animals as property/legal objects. This lobby believes that as long as animals are considered property,

¹⁹² Dunayer *Speciesism* 58 – 73.

¹⁹³ http://ec.europa.eu/food/animal/index_en.htm (accessed on 11/07/2009).

¹⁹⁴ For example, forbidding the owner to abuse and neglect the animal. Abuse is defined as misuse, to violate, or excessive use (“abuse” Oxford English Dictionary (2009); and neglect is defined as paying little or no respect or attention to (“neglect” Oxford English Dictionary (2009)).

¹⁹⁵ For example, making sure that the animal has adequate food, water and shelter.

¹⁹⁶ Sunstein in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 11.

¹⁹⁷ Rogers & Kaplan ‘All Animals are not Equal’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 196.

¹⁹⁸ He made this statement in an interview with Michele Pickover in 2003 for her book.

¹⁹⁹ Pickover *Animal Rights in South Africa* 10.

²⁰⁰ Discussed in Chapter six.

they will not be effectively protected.²⁰¹ The animal rights lobby also believes that animals should be given a status that is similar to that of children. In other words, animals should be granted limited capacity.

Limited capacity is where a legal subject ‘...cannot have certain rights or duties at all, or have certain rights or duties at a specific moment.’²⁰² Legal subjects with limited capacity will still have rights, duties and legal capacity; however, this legal capacity will be limited in that they cannot have certain rights and duties.²⁰³ For example, children under the age of twelve (girls) and fourteen (boys) cannot get married and therefore cannot have any of the rights or duties that flow from a marriage.²⁰⁴ It is submitted that this would ensure that animals would be better protected from abuse and cruelty and that private litigation on behalf of animals would also be possible.

One of the arguments that is often used against granting rights to animals is that animal and human rights are not compatible, i.e., it is said that there will always be conflict between animal and human rights and people are scared that animal rights will become more important than human rights.²⁰⁵ But is this really the case? It is submitted that those who were against abolition slavery also had the same or similar fears with regards to the freeing of slaves and abolishing slavery. It is further submitted that the abolition of slavery has had no adverse effects on any ‘free men’s’ legal rights; on the contrary, it has made rights stronger and more universal.²⁰⁶

There have been many studies²⁰⁷ that have confirmed that the abuse of animals often escalates into violent crimes against humans. For example, many serial killers have had history of abusing and torturing animals when they were children.²⁰⁸ The studies also

²⁰¹ Sunstein in *Animal Rights. Current Debates and New Directions* 11.

²⁰² Cronje & Heaton *The South African Law of Persons* (2003) 2nd edition, 34.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ Ball & Norris (2009) *Beyond Might Makes Right*, <http://www.newveg.av.org/BeyondMightMakesRight.htm> (accessed on 11/07/2009).

²⁰⁶ Stone, C.D, *Should Trees Have Legal Standing? Law, Morality, and the Environment* (2010) 3rd edition, Oxford University Press: New York.

²⁰⁷ See http://www.helpinganimals.com/ga_humanAbuse.asp; <http://petaliterature.com/wel143.pdf>; & <http://www.nspca.co.za/page.aspx?Id=24&CateId=13&Category=Education&SubCateId=24&SubCategory=DOWNLOADS> (click on the FIRST STRIKE link).

²⁰⁸ See http://www.hsus.org/acf/cruelty/publiced/cruelty_serial_killers.html (accessed on 03/07/2009).

confirm that many homes where the pet is abused, the spouse and/or children are abused as well.²⁰⁹

Many writers through the ages - such as Aristotle²¹⁰ and John Locke²¹¹ - warned that children who were cruel to animals would often become cruel to people and that animals should be treated without cruelty, not because it was in the animal's interest, but because it was in the interests of man not to teach children to be cruel, which would often lead later on in life to being cruel to other people.²¹²

It is submitted that these studies and beliefs from the early writers and thinkers imply that there is not much difference between the treatment of humans and animals, i.e. if one can abuse and torture animals then one can abuse and torture humans; if animals can be treated like property then humans can also be treated as property. If this is true, then one can assume that if the status and treatment of animals were to change for the better, then so too will the status and treatment of humans change for the better.

Further evidence of the similarities of human and animal treatment lie in the way many powerful companies and industries treat both animals and humans. Animals have been used and abused by humans throughout history and many countries today are dominated by capitalist industries²¹³ that often exert considerable influence over government policies and attitudes. These industries "... view both humans and animals as economic units instead of living creatures... free-market global capitalism prioritises profit over life."²¹⁴

Many of the industries that exploit animals (legal objects) also exploit their human workers (legal subjects) and have infringed upon many human rights.²¹⁵ Factory workers²¹⁶ are often paid minimum wages and are exposed to poisonous chemicals and toxins,²¹⁷ injuries and

²⁰⁹ <http://www.nspca.co.za/page.aspx?Id=24&CateId=13&Category=Education&SubCateId=24&SubCategory=DOWNLOADS> (accessed on 03/07/2009).

²¹⁰ See Linzey & Clarke (eds) in *Animal Rights. A Historical Anthology* (2004).

²¹¹ See Locke 'Cruelty is Not Natural' in Linzey & Clarke (eds) in *Animal Rights. A Historical Anthology* (2004) 119-121.

²¹² *Ibid.*

²¹³ Such as pharmaceutical companies and the fast food industries and companies that supply these industries.

²¹⁴ Grant *The No-Nonsense Guide to Animal Rights* 103.

²¹⁵ Such as exposing workers to dangerous chemicals, toxins, injuries, lack of safety equipment, lack of proper hygiene, lack of proper ventilation and payment of minimum wages. Grant *The No-Nonsense Guide to Animal Rights* 104.

²¹⁶ Workers in the animal food industries, leather industry as well as sweatshops. Grant *The No-Nonsense Guide to Animal Rights* 112, 113.

²¹⁷ This often leads to cancer, lung diseases and bacterial infections from faeces, dead, dying or diseased animals. Grant *The No-Nonsense Guide to Animal Rights* 106, 107.

various other human rights abuses.²¹⁸ Even consumers are exploited by these industries, as they are given inaccurate and sometimes fatal information²¹⁹ and many drugs and products that are deemed safe for human use end up killing them.²²⁰

From these studies, it seems that human and animal rights are compatible with each other, though it may take some time and effort in creating a legal and societal framework that allows both human and animal rights to be respected and protected. These studies also tend to show that what often happens to the one happens to the other. The principle of ‘equal consideration’, which was explained earlier, should be used when dealing with human and animal rights. It is submitted that human rights are often infringed when money and profit are given higher priority than human wellbeing.

It is submitted that taking animal interests seriously does not mean that their rights/interests will become more important than human rights/interests or even that animals should be treated the same as humans for every purpose, just like not every human is regarded the same for every purpose. Animals don’t need to be granted all of the rights that humans have,²²¹ animals only need the rights that will effectively protect them.²²² In cases where there is a real conflict, then the interest that has more weight, whether it is the human or the animal interest, may have preference if it is necessary and not just for pleasure, amusement or convenience.²²³

Gary Francione argues that most of the conflicts²²⁴ between humans and animals are conflicts that are created by humans themselves.²²⁵ Francione further argues that with animals seen as property, humans treat every issue regarding the use and treatment of animals as if it were a

²¹⁸ Such as lack of safety equipment, lack of proper hygiene and lack of proper ventilation in factories and sweatshops. Grant *The No-Nonsense Guide to Animal Rights* 105.

²¹⁹ The animal food industry misleads the public in order to gain more profits, for example there is heavy emphasis to on inclusion of animal protein in ones diet to become healthy. However, more and more studies have proven that a diet high in animal protein increases the risk of heart disease, cancer, diabetes, stroke and obesity. Grant *The No-Nonsense Guide to Animal Rights* 106.

²²⁰ Thus according to Grant, many scientists have voiced concerns about using animals to test drugs and other products, as these tests are often inaccurate and cannot be replicated in humans. The *Journal of the American Medical Association*, in 1998, stated that deaths caused by adverse reaction to medication are the fourth leading cause of death in the USA. Grant *The No-Nonsense Guide to Animal Rights* 114.

²²¹ For example the right to education or the right to vote. It is submitted that common sense and, where needed, scientific knowledge will show us which legal rights animals need and which ones they don’t need.

²²² For example, the right to sufficient food and water and the right to an environment that is not harmful to their health or wellbeing.

²²³ Francione ‘Animals – Property or Persons?’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 133 -134.

²²⁴ For example, eating animal products, buying products tested on animals, etc. Humans have created these conflicts by breeding and using animals for food, for experiment, etc.

²²⁵ Francione in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 132.

real conflict of interests and end up choosing the human interest over the animal interest even if the only justification behind the choice is for convenience, pleasure or amusement.²²⁶ In Francione's own words "there is no true conflict."²²⁷

Bernard Rollin, has a similar view to Francione, i.e. that animal interests can be compatible to human interests. Rollin states that "respecting an animal's rights does not mean subordinating one's own interests to those of animals, any more than respecting human rights means letting other people take advantage of one."²²⁸

One can see from the above, that animal and human interests/rights can be reconciled and that there is no real conflict between them; the only conflict between the two is created by humans. The question is not whether animal rights are compatible with human rights, but why humans create conflict for themselves where there should be none. It is submitted that the alleged conflict revolves around the possible conflict between interests and legal rights of humans and animals. The real problem proposed then is how the courts would go about deciding whose interests and legal rights would take preference.

For example, if animals were granted legal rights, then both humans and animals would have a right to life. To satisfy this right, humans need to amongst other things, eat. However, for an animal to satisfy its right to life, it would need not to be slaughtered for food for the human. It is submitted that this situation may cause a conflict as many humans eat meat and they may not want to give it up. It would be up to the courts to decide whose right has preference over the other. Under the Constitution of South Africa,²²⁹ no right is absolute in terms of Section 36 – the Limitation of Rights clause. According to the Constitution, humans' 'right' to eat meat can be limited as the right to life²³⁰ is an absolute right and cannot be derogated from.²³¹ It is submitted that the animals' right to life should prevail as humans do not need meat to survive.

Within the animal rights movement itself, there are several different approaches which are advocated by Peter Singer, Tom Regan, Steven Wise, Gary Francione and Bernard Rollin

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ Rollin *Animal Rights & Human Morality* 115.

²²⁹ Act 108 of 1996.

²³⁰ Section 11.

²³¹ Table of Non-Derogable Rights found in the Constitution of the Republic of South Africa Act 108 of 1996.

regarding how and to what degree animals should be afforded legal rights.²³² However, all of these approaches agree that the current global treatment of animals is atrocious, and they will each be briefly looked at.

3.4. Animal Rights Approaches

3.4.1. Peter Singer

The first approach with regard to animal ‘rights’ is advocated by Peter Singer who believes that animals should have equal consideration to humans. Singer is a philosopher who specialises in applied ethics. His book, *Animal Liberation*,²³³ is often seen as the starting point for the animal rights movement in the U.S.A. As was discussed above, equal consideration implies that both human interests and animal interests should be given equal weight unless there is a good reason not to.²³⁴ We should, therefore, give the same weight to an animal interest as we would to a similar human interest,²³⁵ such as a life without pain, distress and cruelty/abuse. However, if a human has greater interests at risk in a particular situation, then the human interest may be given preference over the animal interests and *vice versa*.²³⁶ For example, a human’s interest in their garden (property) not being destroyed should be given preference to an animal’s interest in roaming on that property and destroying the plants. Another example is where an animal’s interest is to live and the human’s interest is to eat/avoid hunger. In this example the animal’s interest to live would be given preference as the human could satisfy his hunger by eating vegetables, fruits, nuts and other non-animal food.

For this approach to be effective, the moral and legal status of animals would need to be changed as the property status of animals “does them no good at all.”²³⁷ It is argued that this principle of equal consideration should be the basis of improving animals’ position in today’s society.²³⁸

²³² See Singer ‘Ethics Beyond Species and Beyond Instincts’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004); Regan ‘The Struggle for Animal Rights’ in Linzey & Clarke (eds) in *Animal Rights. A Historical Anthology* (2004); and Wise *Rattling the Cage. Toward Legal Rights for Animals* (2000).

²³³ Singer *Animal Liberation* (1975).

²³⁴ Singer ‘Ethics Beyond Species and Beyond Instincts’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 80.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ *Ibid.*

It is submitted that to achieve this, a clause would have to be inserted, for example, into the South African Constitution²³⁹ stating that animal interests shall have equal consideration to human interests. Legislation would need to be enacted to give effect to this clause. It is further submitted that this ‘Equal Consideration Act’ would need to make provision to enforce the equal consideration of animal and human interests by giving power to the courts to decide upon these matters where a conflict arises. The courts would need to take certain factors²⁴⁰ into consideration when determining whose interest should prevail over the other. Application to the court to determine whose interests should prevail would be brought on behalf of animals by interested parties, such as animal welfare groups or even “guardians” (as discussed in Chapter 8) of, for a lack of a better word, pets.

3.4.2 Tom Regan

The second approach is advocated by Tom Regan, who believes that animals should be given the same fundamental moral rights as humans. Regan is a philosopher who specializes in the animal rights theory.²⁴¹ He states that animals, like humans, are the experiencing subjects of a life. An experiencing subject of a life is a “...conscious creature having an individual welfare that has importance to us whatever our usefulness to others.”²⁴² Regan further states that the experiencing subjects of a life all have inherent value, whether they are human or animal. It is because animals are the experiencing subjects of a life and have inherent value, that they deserve to be treated with respect and in ways that do not reduce them to the status of legal objects, i.e. animals should have equal legal rights and legal status to humans.²⁴³

Tom Regan states that what is preventing this change, i.e. granting animals legal rights, is the “system that allows us to view animals as resources.”²⁴⁴ This change will only occur when people change their beliefs before they change their habits.²⁴⁵ However, Tom Regan points

²³⁹ Act 108 of 1996.

²⁴⁰ Such as, does the animal belong to an endangered or threatened species? What interest is at stake? Is it necessary for survival?

²⁴¹ Regan has written many books such as *Defending Animal Rights* (2001) and *The Case for Animal Rights* (2004).

²⁴² Regan ‘The Struggle for Animal Rights’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 185.

²⁴³ Regan in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 184.

²⁴⁴ Regan in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 176.

²⁴⁵ Regan in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 177.

out that this change is a complicated one and involves many people from fields such as education, politics and the media and other publications.²⁴⁶

It is submitted that, as with the first approach, a clause would need to be inserted into the Constitution stating that the Constitution would also apply to animals and therefore animals would now become legal subjects. Legislation would also need to be enacted to enforce these rights and provision would need to be made for legal remedies for animals whose rights have been infringed. Other changes would also need to be made, for example, owners would become guardians (as discussed in Chapter 8) and they would be allowed to sue on behalf of the animals under their guardianship; and offences against animals would change into crimes of murder, culpable homicide, assault, abuse and neglect.

3.4.3. Steven Wise

The third approach, advocated by Steven Wise, believes that the great apes²⁴⁷ should be granted the same legal protection as humans. Wise is an American legal scholar who specialises in animal protection issues, primatology, and animal intelligence. He believes that once the ‘human-animal barrier’ is broken by granting legal rights to the great apes, then the rest of the animal kingdom would be able to follow in the same footsteps, i.e. be granted legal rights.²⁴⁸ Wise believes that the awarding of legal rights to animals will be achieved by taking one step at a time and the first step would be to recognise their most basic rights.²⁴⁹

Wise states that whenever reformers have advocated that “legal things”, such as slaves, women and children, should be granted “legal personhood” their ideas are “bound to sound odd or frightening or laughable.”²⁵⁰ This is because until the right-less thing receives its rights, we cannot see it as anything but a thing for the use of “us” – those who are holding rights at the time.”²⁵¹

Wise further states that beliefs, such as the notion that animals are property, survive unless people are motivated to examine contradictory data with an unbiased mind and are both able

²⁴⁶ *Ibid.*

²⁴⁷ And certain other animals that have similar characteristics like the great apes, such as elephants, whales, dolphins and porpoises.

²⁴⁸ See Wise *Rattling the Cage. Toward Legal Rights for Animals* (2000).

²⁴⁹ Wise ‘Animal Rights, One Step at a Time’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 27.

²⁵⁰ Wise *Rattling the Cage. Toward Legal Rights for Animals* 84.

²⁵¹ *Ibid.*

and willing to think deeply about it.²⁵² Wise states further that unequal treatment of any kind must not only be rational but must also be morally acceptable,²⁵³ such as the general limitations clause in the South African Constitution, which allows a right to be limited if the limitation is justifiable and is of a general application.

It is submitted that this approach would need to be handled similarly to the second approach above, such as inserting a similar clause into the Constitution and enacting similar legislation. However, this approach would only apply to the great apes at first, as Wise believes that this “first step” would break the human-animal barrier which would allow other animals to be included and similar rights be granted to the other animals.

3.4.4. Gary Francione

The fourth approach is advocated by Gary Francione and is very much similar, if not the same to the approach advocated by Peter Singer. Francione is an American legal scholar and was the first academic to teach animal rights theory in an American legal school. The approach that Francione advocates is that of equal consideration and he states it as treating like cases alike unless there is a good reason not to do so.²⁵⁴ Francione believes that humans and animals should be treated the same because humans and animals both share the capacity to suffer.

As with Peter Singers’ approach, Francione states that when there is a conflict between human and animal interest, the interest that weighs more will justify the suffering of the other interest.²⁵⁵ For example, if the human interest weighs more then it would be justified to let the animal interest suffer and *vice versa*. Another point Francione raises is the situation of when both interests weigh the same. Francione suggest that in this case either none of the interests should be given preference or both interests should suffer unless there is a non-arbitrary reason that justifies differential treatment.²⁵⁶

It is submitted that this approach is similar to the approach of Peter Singer and that it would therefore need to be effected in the same way as was suggested for Singers’ approach, i.e.

²⁵² Wise *Rattling the Cage. Toward Legal Rights for Animals* 69.

²⁵³ Wise *Rattling the Cage. Toward Legal Rights for Animals* 85.

²⁵⁴ Francione “Animals – Property or Persons?” in Sunstein & Nussbaum *Animal Rights. Current Debates and New Directions* 121.

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

insert a clause in the Constitution of South Africa stating that animal interests shall have equal consideration to human interests and enact legislation to give effect to this clause.

3.4.5. Bernard Rollin

The fifth approach is advocated by Bernard Rollin. Rollin advocates that animals should be given the same moral concern as humans. Rollin is an American philosopher who specialises in animal rights and animal consciousness. Rollin believes that animals have interests and that it is these interests that make them worthy of being an object of moral concern.²⁵⁷ Rollin goes on to state that these interests should be protected by the same moral system that is used to protect human interests.²⁵⁸ Rollin also believes that the way animals are treated by humans should be judged in the same way that humans are judged before the law.²⁵⁹ For example, people who abuse or are cruel to animals should be convicted of crimes that, at present, can only be committed against other humans, i.e. murder, assault, culpable homicide, and abuse.

Rollin states:

“Respecting an animal’s rights does not mean subordinating one’s own interests to those of animals, any more than respecting human rights means letting other people take advantage of one.”²⁶⁰

It is submitted that according to this approach, animals should be granted a similar status to humans, i.e. legal subjects and that the existing legislation would need to be adopted to include animals in the scope of the protection of these legislations. Common sense should prevail in deciding which legislation would need to be adopted, such as the certain sections in the Bill of Rights contained in the Constitution of South Africa.

It is further submitted that all of the above approaches would only be successful if the public is educated as to why it is being done and why it is important that these approaches are being adopted. With the rising awareness of animal rights issues and the importance of the environment, a new environmental rights lobby has started. Some environmentalists²⁶¹ are advocating that if animals are to be awarded legal rights then the environment should also be awarded legal rights.

²⁵⁷ Rollin *Animal Rights & Human Morality* 105.

²⁵⁸ Rollin *Animal Rights & Human Morality* 44.

²⁵⁹ *Ibid.*

²⁶⁰ Rollin *Animal Rights & Human Morality* 115.

²⁶¹ For example, Paul W. Taylor and Holmes Rolston III.

3.5. Why not give rights to the environment²⁶² and not just animals?

Environmental ethicists concern themselves with the environment as a whole, which includes species, an ecosystem, the biosphere, etc. rather than the individuals – humans and non-humans – within these. Environmental ethicists claim that the requirement for moral consideration is to be alive or to be a system that contains life, therefore if animals are granted rights, then so should the environment.²⁶³

Many leading environmental ethicists have tried to elevate the status of the environment to the status of living, sentient beings that are morally valuable in, and of themselves.²⁶⁴ Some of the arguments that they have used include:

- Environmental factors are essential for the well-being or survival of all life and should therefore be given similar or higher moral value;²⁶⁵
- The environment creates life and because of this, the environment is more important than the life it creates;²⁶⁶ and
- ‘The infringement of the environment matters to it’ and the adjustment of the self-regulating systems of the environment are sometimes confused with the coping strategies in animals and humans.²⁶⁷

It is very hard to establish an environmental ethic which is concerned with mainly non-living and non-sentient objects that uses the same or similar ethics that has founded animal rights/welfare which is concerned with living, sentient beings.²⁶⁸ Nothing can be gained by trying to elevate the moral status of non-sentient objects to sentient beings. Since the environment is not sentient, it has no interests that should be protected.²⁶⁹ However, legal issues surrounding the environment are creeping into South African legislation and are been

²⁶² This would include plants, rivers, oceans, rocks, etc. See Rollin *Animal Rights & Human Morality* (2006) 136.

²⁶³ Rollin *Animal Rights & Human Morality* 137.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ Rollin *Animal Rights & Human Morality* 138.

²⁶⁸ Rollin *Animal Rights & Human Morality* 136.

²⁶⁹ Rollin *Animal Rights & Human Morality* 138.

legislated on. For example, Chapter 3 of the National Water Act²⁷⁰ deals with the protection of water resources, and introduces the term ‘ecological reserve’ which relates to the water required to protect the aquatic ecosystems of the water resource.²⁷¹

It is submitted that the environment, even though it should not gain a status equivalent to living, sentient beings, is still important and valuable. One can see this in how the destruction of the environment not only harms humans but animals as well. The value and importance of the environment can be argued with regard to how its destruction or preservation will affect both human and animal life. The preservation of various species is important as it is a collection of individuals, each of which are living sentient beings with interests that should be protected; and that there is plenty of empirical evidence²⁷² that suggests that there are numerous unforeseen disasters waiting to happen if the environment is not protected.²⁷³

In the view of the aforementioned, it is submitted that legal rights are only granted to legal subjects and legal subjects are living, sentient beings which have interests that are best protected by legal rights. It is further submitted that conferment of legal rights is the best way to protect the interests of living sentient beings since such rights are enforceable against every other legal subject. It is also submitted that the environment does not need the protection of legal rights as it is made up of non-sentient objects which have no interests. It is submitted further that legal subjects have an interest in protecting the environment and this protection will come from well thought-out environmental and property laws and the proper enforcement of these laws.

Even though the value of the environment arises out of its connection to living, sentient beings this does not mean that it is more valuable or less valuable than life.²⁷⁴ It also does not mean that the interests of living creatures will always override the concerns for non-living objects.²⁷⁵ One cannot disagree that the environment should be placed centrally in moral deliberations about human rights and animal rights/welfare concerns.

²⁷⁰ Act 36 of 1998.

²⁷¹ Part 3 of Chapter 3 of Act 36 of 1998.

²⁷² See www.globalwarming.org and www.globalwarming.net (both accessed on 07/07/2009).

²⁷³ Rollin *Animal Rights & Human Morality* 138.

²⁷⁴ Rollin *Animal Rights & Human Morality* 139.

²⁷⁵ *Ibid.*

Chapter 4 – International and Regional Agreements on Animal Welfare

I hold that, the more helpless a creature, the more entitled it is to protection by man from the cruelty of man.

- Mahatma Gandhi²⁷⁶

At an international and regional level, efforts are being made to protect animals and to promote animal welfare. The most notable international effort is the Universal Declaration on Animal Welfare of 2007.²⁷⁷ Some other noteworthy Conventions are the Convention on Biological Diversity of 1992²⁷⁸ and the Convention on International Trade in Endangered Species of Fauna and Flora of 1973.²⁷⁹

The United Nations has several specialised agencies that deal with the welfare of animals that are used by humans. The first agency is the Food and Agricultural Organisation (FAO). In 1943, forty-four governments committed themselves to founding a permanent organisation for food and agriculture. The first session of the FAO Conference (held in Quebec, Canada) in 1945 established the FAO.²⁸⁰ The second agency is the International Atomic Energy Agency (IAEA). The IAEA Statute was approved in 1956 by 81 member states of the United Nations and the IAEA was established in 1957.²⁸¹ And the third agency is the World Trade Organisation (WTO). In January 1995, the WTO replaced the General Agreement on Tariffs and Trade (GATT) – which had been established in 1947.²⁸²

The FAO's main goal is to defeat world hunger. In trying to achieve this, the FAO serves both developed and developing countries. It offers a platform where these countries can debate policies and negotiate agreements. The FAO also helps developing countries to improve and modernise their forestry, fisheries and agricultural practices.

²⁷⁶ <http://www.mkgandhi.org/autobio/chap72.htm> (accessed on 31/08/2009).

²⁷⁷ Initial Draft Text Arising from the Manila Conference on Animal Welfare (2003) and the Costa Rica Steering Committee Meeting (2005) for a Ministerial Conference Consideration 2007 (www.animalsmatter.org).

²⁷⁸ 5 June 1992.

²⁷⁹ 3 March 1973.

²⁸⁰ <http://www.fao.org/about/en/> (accessed on 14/07/2010).

²⁸¹ <http://www.iaea.org/About/history.html> (accessed on 14/07/2010).

²⁸² http://www.wto.org/english/thewto_e/gattmem_e.htm (accessed on 14/07/2010).

The IAEA was set up to ensure the promotion of safe, peaceful and secure nuclear technologies. The Agency is underpinned by three pillars:

- Safeguards and Verification;
- Safety and Security; and
- Science and Technology.

Through Science and Technology, the IAEA aims to promote the peaceful application of nuclear technology. Nuclear technologies are used to contribute towards sustainable development in the areas of agriculture, energy, the environment and health. The IAEA and the FAO have a joint programme that is aimed at improving animal production and health through the use of nuclear and molecular technologies.

The WTO is essentially a negotiating forum where all member states can negotiate trade agreements with one another and settle trade disputes. The WTO also has rules and agreements that guide and regulate trade between member states. The WTO has many agreements that either directly or indirectly deal with animals and or animal welfare and health. One example is the Sanitary and Phytosanitary Agreement of 1995 (SPS Agreement).²⁸³ Article 20 of the General Agreement on Tariffs and Trade (GATT 1994) is the General Exceptions Clause. Another example is the Agreement on Technical Barriers to Trade of 1995 (TBT Agreement). These three agreements will be discussed later in this chapter.

The United Nations founded the United Nations Environment Programme at the Stockholm Conference in 1973. The main objective of this Programme is to help nations and its people to improve their quality of life without compromising that of future generations.²⁸⁴ In order to do this, the United Nations Environment Programme has developed six areas of priorities, which will be discussed later in this Chapter.

On a regional level, countries in various regions of the world have agreed on certain treaties and conventions which are aimed at helping put uniform standards and ideals relating to

²⁸³ The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). It was signed at the Uruguay Round of the General Agreement on Tariffs and Trade, and came into effect at the beginning of 1995 when the World Trade Organisation was formed.

²⁸⁴ <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=43> (accessed on 12/02/12).

animals in place. Thus in the Africa region there is the African Union;²⁸⁵ Europe has the European Union (EU),²⁸⁶ the Council of Europe (CoE)²⁸⁷ and the Organisation for Security and Co-operation in Europe (OSCE);²⁸⁸ and North, South and Central America formed the Organisation of American States.²⁸⁹ The Asian and Pacific regions have no regional organisations in place that might cover the entire Asian continent or Pacific region.

The reason why Asia and the Pacific region do not have a regional organisation lies mainly on the diverse culture, religion and beliefs in those regions. However, on a sub-regional level, there are several organisations in place, such as the Association of Southeast Asian Nations (ASEAN),²⁹⁰ the South Asian Association for Regional Cooperation (SAARC),²⁹¹ the Organization of the Islamic Conference (OIC)²⁹² and the League of Arab States.²⁹³

In this study, only those regions that have treaties or conventions or laws in place that deal directly with animal welfare will be discussed.

4.1. International Treaties and Conventions

4.1.1. Universal Declaration on Animal Welfare

Many people rely on animals for companionship, livelihood or food and thus improving animal welfare will have a positive effect on human health and welfare. In 2003 a conference on animal welfare was held in Manila in the Republic of the Philippines which was attended by 19 governmental delegations.²⁹⁴ The conference was observed by the

²⁸⁵ The AU was established in terms of The Constitutive Act of the African Union of 2000. The African Union was in 2002.

²⁸⁶ In 1950, the European Coal and Steel Community began uniting European countries politically and economically to ensure that peace would last. The founders of this Community are Belgium, Germany, Italy, France, Luxembourg and the Netherlands. After signing the Treaties of Rome in 1957, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) was created; and in 1967, the European Communities (EC) was formed after the Merger Treaty was signed. The European Communities replaced the three previous Communities. When the Maastricht Treaty came into force on the 1 November 1993, the European Union was formally established.

²⁸⁷ The CoE was founded on 5 May 1949 after the signing of the Treaty of London.

²⁸⁸ The OSCE has no founding charter and was agreed upon after the completion of the Conference on Security and Co-operation in Europe in 1975 and has continued to evolve and grow over the years.

²⁸⁹ In 1889 – 1890, the International Union of American Republics was formed. In 1910 the name changed to the Union of American Republics and in 1948, the OAS was formed after the Charter of the Organization of American States was adopted.

²⁹⁰ ASEAN was established after the signing of the ASEAN Declaration (Bangkok Declaration) on 8 August 1967.

²⁹¹ SAARC was formed in 1983 after the Declaration on South Asian Regional Cooperation was adopted.

²⁹² The Charter of the Organisation of the Islamic Conference was adopted on the 25 September 1969.

²⁹³ The League of Arab States was established in 1945 after the Alexandria Protocol was adopted.

²⁹⁴ Australia, Bangladesh, Cambodia, China, Czech Republic, Egypt, Germany, India, Indonesia, Israel, Italy, Netherlands, New Zealand, Singapore, Switzerland, Spain, Philippines, Thailand and the United Kingdom.

European Commission, the United States and Saipan. A foundation text for the Universal Declaration on Animal Welfare was agreed upon. As a result of the Manila Conference, an inter-governmental steering committee was formed in 2005 which is led by officials from India, Kenya, Costa Rica, the Philippines and the Czech Republic.²⁹⁵ The delegations assembled at Manila adopted the Universal Declaration on Animal Welfare.

The Preamble to the Declaration states that it – the Declaration – aims to establish animal welfare as an important issue that is part of global social development. It also recognises the importance of the ‘five freedoms’²⁹⁶, the ‘three R’s’²⁹⁷ and that animal welfare includes animal health.

The Universal Declaration on Animal Welfare²⁹⁸ (hereafter referred to as the Declaration) is an international effort to focus on and to deal with animal welfare. The Declaration constitutes a proposed agreement between nations that have reached a common understanding about certain issues regarding animals. Issues dealt with by the Declaration include the fact that animals are sentient and can suffer,²⁹⁹ animal welfare needs must be respected³⁰⁰ and animal cruelty must end for good.³⁰¹

The principles of the Declaration aim at encouraging countries to adopt animal welfare legislation where there is none or to improve such legislation where they exist.³⁰² Animal related industries are encouraged to prioritise animal welfare in their policies and practices.³⁰³ It also seeks to change the current attitudes and beliefs towards animals.³⁰⁴

The Declaration has received support from many countries, governments³⁰⁵ and animal welfare organisations.³⁰⁶ On 23 March 2009, all 27 member states of the European Union

²⁹⁵ <http://www.udaw.org/gov/index.htm> (accessed on 8/12/2009).

²⁹⁶ That is freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour.

²⁹⁷ That is reduction of numbers in animals, refinement of experimental methods and replacement of animals with non-animal alternatives.

²⁹⁸ <http://www.wspa-international.org/wspaswork/udaw/> (accessed on 12/08/2008) this declaration is not in force yet.

²⁹⁹ Preamble.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² Principle 2.

³⁰³ Principle 4.

³⁰⁴ It is submitted that this is one of the aims that the Declaration as a whole wishes to achieve.

³⁰⁵ These include countries such as Fiji, Cambodia, Colombia, the Seychelles, Australia, New Zealand, Bahrain, Croatia, Palau, Switzerland and Thailand.

formally announced their support for the Declaration.³⁰⁷ This makes the European Union the first regional organisation to support this important animal welfare instrument.

The Declaration is currently still a proposal and it is hoped that it will be accepted as an international convention adopted by the General Assembly of the United Nations. The adoption of this Declaration by the United Nations will, among other things, ensure that animal welfare and issues related to animal rights become an international concern. It will also ensure recognition of animal welfare as a key factor in humanitarian and environmental policies.

It is proposed that this Declaration is an important effort by the international community which aims to bring animal welfare issues to the international scene. It is further submitted that this effort will help create a worldwide realisation that animals are sentient and that measures should be taken to, amongst other things, prevent cruelty, and promote alternative testing methods on animal experimentation.

4.1.2. The Convention on Biological Diversity of 1992³⁰⁸

The Convention on Biological Diversity was opened for signature at the Conference on Environment and Development, also known as the Rio Earth Summit, and it entered into force on 29 December 1993.³⁰⁹ The Convention has 3 main objectives:

1. The conservation of biological diversity;
2. The sustainable use of the components of biological diversity; and
3. The fair and equitable sharing of the benefits arising out of the utilization of genetic resources.³¹⁰

At the tenth meeting of the Convention, held in Japan from the 18th – 29th October 2010, it was decided by the parties of the Convention, to adopt a revised and updated action plan for the period 2011-2020.³¹¹ This plan included the Aichi Biodiversity Targets.³¹²

³⁰⁶ Such as the World Society for the Protection of Animals, the Humane Society of the United States and United Animal Nations.

³⁰⁷ www.wspa-international.org/latestnews/2009/eu_supports_udaw.aspx (accessed 31/08/2009).

³⁰⁸ 5 June 1992.

³⁰⁹ <http://www.cbd.int/history/> (accessed on 12/02/12).

³¹⁰ *Ibid.*

³¹¹ <http://www.cbd.int/sp/> (accessed on 12/02/12).

Some examples of these Targets include:

- At least halve the rate of loss of natural habitats, including forests, and where feasible reduce the rate of loss to close to zero;
- Establish a conservation target of 17% of terrestrial and inland water areas, and 10% of marine and coastal areas;
- Restore at least 15% of degraded areas through conservation and restoration activities; and
- Make special efforts to reduce the pressures faced by coral reefs.³¹³

By ensuring the conservation and protection of habitats and also by reducing the rate of habitat loss, this Convention ensures that the animals that live in these habitats are in turn protected and that the animal species survival is ensured due to the reduction of habitat loss and the conservation of the animals/species habitat.

4.1.3. The Convention on International Trade in Endangered Species of Fauna and Flora of 1973³¹⁴

The Convention on International Trade in Endangered Species of Fauna and Flora (CITES) was signed on the 3rd March 1973, in Washington DC, United States of America, and came into effect on the 1st January 1975.³¹⁵ The purpose of this Convention is to ensure that endangered animals and plants do not become or remain in unsustainable exploitation and ensure their survival.³¹⁶

CITES regulates the import, export and re-export of live and dead animals and plants, as well as products made from animals and parts.³¹⁷ CITES is based on a system of permits and certificates which may be issued if certain conditions are met and which must be presented before consignments of specimens are allowed to leave or enter a country.³¹⁸

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ 3 March 1973.

³¹⁵ http://ec.europa.eu/environment/cites/background_en.htm (accessed on 12/02/2012).

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

It is submitted that this Convention is a much needed one with the continued trade in endangered wild animals and plants. It is based on international co-operation between the different parties to CITES to ensure that these endangered species continue to survive.

4.2. The United Nations (UN)

The UN was founded in 1945³¹⁹ and is an international organisation with many areas of focus. The UN aims at maintaining and promoting human rights, social progress and international peace.³²⁰ The UN currently has 192 member states and has several specialised agencies, such as the Food and Agricultural Organisation (FAO), the International Atomic Energy Agency (IAEA), and the World Trade Organisation (WTO).³²¹

Specialised agencies are independent bodies and have their own rules, financial resources, organs and memberships, and are brought into a close relationship with the UN through negotiated and signed agreements.³²² Most, if not all of the specialised agencies are aimed at promoting and protecting human rights and/or human development. The FAO, IAEA and the WTO are specialised agencies that indirectly deal with animal welfare for the benefit of humans rather than the benefit of animals. The FAO signed a relationship agreement with the UN on 14 December 1946;³²³ and the relationship between the UN and the IAEA is contained in a UN resolution,³²⁴ and to all intents and purposes the IAEA acts like a specialised agency in the UN. The relationship between the UN and the WTO is expressed in an exchange of letters which notes the cooperative relationship between the two bodies.³²⁵ These letters were accepted by the UN General Assembly by resolution 322 on 12 December 1995.³²⁶

³¹⁹ <http://www.un.org/en/aboutun/index.shtml> (accessed on 8/12/2009).

³²⁰ *Ibid.*

³²¹ <http://www.un.org/en/aboutun/structure/> (accessed on 8/12/2009).

³²² <http://www.un.org/Overview/uninbrief/institutions.shtml> (accessed on 07/05/2009).

³²³ Resolution 50 (I) of the General Assembly, on the 14 December 1946.

³²⁴ Resolution 1145 (XII) of the General Assembly, on the 14 November 1957.

³²⁵ <http://www.unsystemceb.org/reference/system> (accessed on 07/05/2009).

³²⁶ www.unsystemceb.org/reference/system (accessed on 31/08/2009).

4.2.1 The Food and Agricultural Organisation (FAO)

The FAO indirectly contributes to the welfare of animals, especially livestock, by guiding and informing countries on the best veterinary practices³²⁷ and by helping countries adopt rules and codes of practices that will ensure the humane treatment of animals that are used.

The FAO has several divisions, and one of them is the Animal Production and Health Division (AGA).³²⁸ The AGA is aimed at assisting Member States in achieving the Millennium Development Goals,³²⁹ namely ensuring environmental sustainability and eliminating extreme hunger and poverty. The AGA's overall strategy is to guide the livestock sector, particularly in developing countries, towards socially desirable outcomes such as equity, veterinary public health and the sustainability of the environment and the natural resources used in animal production.³³⁰

To achieve this the AGA develops guidelines and best practices to promote livestock production and draws on the best scientific and technical knowledge and experiences gained from field projects that have been undertaken by it elsewhere. These guidelines and best practices provide a framework that governments, industries and farmers can use to draw up standards and codes of practices of their own and which are adapted to their specific needs and circumstances.³³¹

The AGA also provides information to national governments on regional and global livestock trends which is used to support livestock policy decision making.³³² This information is kept by the organisation and is made available through

“web-based information systems such as the *Global Livestock Production and Health Atlas (GLiPHA)*, which is an interactive electronic atlas providing a scaleable overview of national and sub-national information, the *Gridded Livestock of the World*, which presents data in terms of livestock and production density maps, the *Domestic Animal Diversity Information System (DAD-IS)*, which covers the status of farm animal genetic

³²⁷ This will help to prevent diseases and any unnecessary pain and suffering that may be a result of a disease.

³²⁸ <http://www.fao.org/ag/againfo/home/en/index.htm> (accessed on 07/05/2009).

³²⁹ The Millennium Development Goals are a UN initiative and include eight goals. The goals are to: Eradicate extreme poverty and hunger; Achieve universal primary education; Promote gender equality and empower women; Reduce child mortality; Improve maternal health; Combat HIV/Aids, Malaria and other diseases; Ensure environmental sustainability; and Develop a global partnership for development. (<http://www.un.org/millenniumgoals/> [accessed on 08/05/2009]).

³³⁰ <http://www.fao.org/ag/againfo/home/en/mission.htm> (accessed on 07/05/2009).

³³¹ <http://www.fao.org/ag/againfo/home/en/what/guideline.htm> (accessed on 07/05/2009).

³³² <http://www.fao.org/ag/againfo/home/en/what/information.htm> (accessed on 07/05/2009).

resources, and the *PAAT*³³³ *Information System*, which deals with *tsetse* and *trypanosomiasis*³³⁴ in sub-Saharan Africa, as well as through different series of electronic and hard copy publications.”³³⁵

The information generated by these bodies may be used by states to enact policies that encourage livestock farmers to adopt practices that are aimed inter alia at treating livestock more humanely. This information may also be used to enact policies that ensure that measures and resources are in place to prevent and treat livestock diseases. It is suggested that the use of this information may prevent the abuse and suffering of livestock which often arises from ignorance and the lack of measures to prevent livestock diseases.

4.2.2. The International Atomic Energy Agency (IAEA)³³⁶

The IAEA indirectly contribute to the welfare of animals, especially livestock, by helping to prevent diseases, improving breeding practices and animal nutrition as well as helping to develop policies for the humane treatment of animals.

The IAEA has an Animal Production and Health Sub-program which is used to contribute to the sustainability of the livestock production systems using nuclear and nuclear-related techniques. The IAEA assists member states to improve livestock productivity in a number of ways, such as breeding programs and the use of diagnostic tools to help prevent animal diseases. The IAEA also offers

“support and guidance... in formulating and implementing activities that underpin Member States’ national, regional and global livestock development objectives in strategic, applied and adaptive research, technology transfer, capacity building, policy advice and information management.”³³⁷

It is submitted that, from the above, the IAEA indirectly contributes to the welfare of animals by helping developing countries to control and prevent livestock diseases, ensuring the sustainability of the environment (for both humans and animals), and by improving breeding

³³³ Programme Against African Trypanosomiasis.

³³⁴ This is a collective name for diseases caused by the parasitic protozoan trypanosomes of the genus *Trypanosoma*. Some of the names of the various diseases include Nagana, Surra, Gambian Horse Sickness and Gall Sickness.

³³⁵ <http://www.fao.org/ag/againfo/home/en/what/information.htm>.

³³⁶ The IAEA Animal Production and Health Sub-programme can be found at <http://www-naweb.iaea.org/nafa/aph/index.html> (accessed on 07/05/2009).

³³⁷ <http://www-naweb.iaea.org/nafa/aph/index.html> (07/05/2009).

programs³³⁸ and animal nutrition.³³⁹ However, this contribution is likely to be done for the benefit of humans and not for the benefit of the animals.

4.2.3. The World Trade Organisation (WTO)³⁴⁰

The WTO was formed in 1995, and replaced the General Agreement on Tariffs and Trade (GATT) which was established after the Second World War (1939-1945).³⁴¹ The WTO is an international organisation that deals with the global rules of trade and ensures that trade runs as smoothly, freely and as predictably as possible.

The WTO contains agreements which have clauses that indirectly ensure the welfare of animals by allowing countries to prevent trade with other countries if there is a risk that a foreign animal disease may spread to the local animals.

Article 20 of the General Agreement on Tariffs and Trade (GATT 1994) is the General Exceptions Clause. This clause allows member states to impose certain restrictions on trading which would normally not be allowed. These exceptions must not be used to arbitrarily or unjustifiably discriminate against countries or to restrict international trade.³⁴²

While there are several exceptions, only one is concerned with animals. This exception allows governments to establish, among other things, measures that restrict trade with any other country where it is necessary to protect human, animal and/or plant health or life³⁴³.

These measures to protect human, animal and plant life or health are further enforced in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures of 1995 (SPS Agreement).³⁴⁴ Another agreement which allows trade to be regulated is the Agreement on Technical Barriers to Trade of 1995 (TBT Agreement).³⁴⁵

³³⁸ <http://www-naweb.iaea.org/nafa/aph/topic-animal-breeding.html> (accessed on 07/05/2009).

³³⁹ <http://www-naweb.iaea.org/nafa/aph/topic-animal-nutrition.html> (accessed on 07/05/2009).

³⁴⁰ www.wto.org.

³⁴¹ In 1945 at the United Nations Economic and Social Council, a proposal was made to create the International Trade Organisation (ITO). At the same time, the GATT was established and after the failed negotiations with regards to the ITO the GATT remained. The GATT was then replaced by the WTO after the adoption of the Marrakesh Agreement of 1995.

³⁴² General Agreement on Tariffs and Trade 1947, Article 20.

³⁴³ General Agreement on Tariffs and Trade 1947, Article 20(b).

³⁴⁴ The SPS Agreement sets out basic rules on food safety and animal and plant health. This Agreement allows countries to set up their own rules and must only be applied to the extent that is necessary to protect human, animal and/or plant life or health.. However, these rules must be based on science and must not be used to discriminate against countries or restrict international trade. www.wto.org/english/tratop_e/sps_e/spsagr_e.htm (accessed on 07/05/2009).

³⁴⁵ Technical Barriers to Trade Agreement, Article 2.2. The TBT Agreement allows each country to adopt their own standards and regulations for exporters and produces. However, the Agreement encourages governments to adopt international standards and regulations. Whatever regulations or standards a government adopts must not

It is proposed that these trade agreements indirectly contribute to the welfare of animals in that they prevent or restrict trade where (among other things) animal health may be threatened. It is further proposed that another way that these agreements contribute to animal welfare is the requirement that they must be based on scientific knowledge and be in line with international standards, guidelines and recommendations (which are continuously evolving and improving).

In my considered opinion these three specialised agencies are the first steps in ensuring animal welfare, even if it is done indirectly and to a limited degree. There may one day be a specialised agency that has as its main aim the welfare of animals or that enforces the provisions of the Universal Declaration on Animal Welfare, if the United Nations adopts this Declaration.

4.3. United Nations Environment Programme³⁴⁶

The United Nations Environment Programme (UNEP) was founded during the United Nations Conference on the Human Environment, also known as the Stockholm Conference. This Conference was held during the 5th – 16th June 1972.³⁴⁷ The main objective of UNEP is to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.³⁴⁸

To ensure environmental sustainability, UNEP has developed six priorities, namely:

1. Climate change – strengthening states to adapt to climate change and a move toward low-carbon societies;
2. Disasters and conflicts – minimise effects of environmental disasters and consequences of conflicts;
3. Ecosystem management – supporting balanced methods to meet future ecological and human needs;

discriminate against foreign goods. http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm (accessed on 9/12/2009).

³⁴⁶ www.unep.org/.

³⁴⁷ <http://www.unep.org/> (accessed on 12/02/12).

³⁴⁸ <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=43> (accessed on 12/02/12).

4. Environmental governance – promoting informed decision making enhance global and regional environmental co-operation;
5. Harmful substances – sound management on chemicals and provides a source for states on information on toxic chemicals; and
6. Resource efficiency – fostering sustainable consumption and production by leading global efforts in ensuring that natural resources are produced, processed and consumed in a more sustainable way.³⁴⁹

4.4. Regional Agreements

4.4.1. The Americas

The First International Conference of American States took place from October 1889 to April 1890 and was held in Washington, D.C.³⁵⁰ At this Conference, delegates approved of establishing the International Union of American Republics. Delegates met at varying intervals over the years. In 1948, the Charter of the Organisation of American States was signed³⁵¹ in Bogota, Colombia and the Organisation of American States (OAS) was formed. The OAS was created to strengthen cooperation between its member states, to promote democratic values and to deal with major issues³⁵² that face the American region.³⁵³ There are 35 member states, which include the independent states of the Caribbean, North, South and Central America.³⁵⁴ The OAS continues to promote democracy, defend human rights, foster integral development and prosperity, ensuring a multidimensional approach to security and supports Inter-American legal co-operation amongst its members.³⁵⁵

4.4.1.1. The Organisation of American States³⁵⁶

The OAS has no agreements or conventions on the protection and welfare of animals. However, the Organisation of American States does have a convention for the protection and

³⁴⁹ <http://www.unep.org/> (accessed on 12/02/12).

³⁵⁰ <http://www.oas.org/en/about/default.asp> (accessed on 9/12/2009).

³⁵¹ *Ibid.*

³⁵² Such as human rights violations and emergency and disaster relief.

³⁵³ The nature and purposes of the OAS is contained in Chapter 1, Articles 1 & 2 of the Charter of the Organization of American States (A-41)(http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm#ch1 [accessed on 5/08/2010]).

³⁵⁴ http://www.oas.org/en/about/member_states.asp (accessed on 10/12/2009).

³⁵⁵ <http://www.oas.org> [accessed on 12/02/2012]

³⁵⁶ www.oas.org.

preservation for nature and wildlife. The convention is called the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940).³⁵⁷ This Convention was adopted in Washington, D.C. and came into force on the 1 May 1942. The Convention states that parties to the Convention must make provision for the establishment of national parks, national reserves, nature monuments and strict wilderness reserves, as well as enact legislation with regards to the establishment and administration of these nature parks and reserves.³⁵⁸

Hunting, killing and capturing of wild animals and the destruction or collection of flora is prohibited in national parks, unless done by or under the direction of park authorities or for scientific research.³⁵⁹ The exploitation of resources in national parks may not be used for commercial profit.³⁶⁰ Legislation is to be adopted by parties to the Convention with regard to the protection and preservation of flora and fauna contained within the respective parties' borders, but are not within the boundaries of national parks, national reserves, nature monuments or strict wilderness reserves.³⁶¹ The importation, exportation and transit of protected fauna and flora must be controlled and regulated.³⁶²

The parties to this Convention agree to certain issues, such as prohibiting hunting, killing and capturing of wild animals and the destruction or collection of flora in national parks. It is further submitted that when it comes to enacting legislation, each party is allowed to adopt its own legislation, which enables it to cater for its own unique situations. However, the Convention only states the areas in which legislation should be adopted and it offers no guidance as to what should be included in this legislation. There are also no deadlines that the parties need to meet for the enactment of the relevant laws.

4.4.2. Africa

The Organisation of African Unity (OAU) was formed at the signing of the OAU Charter in Addis Ababa in Ethiopia on 25 May 1963.³⁶³ Its aims were, amongst others, to eradicate the

³⁵⁷ 56 Stat. 1354; TS. 981. The USA has signed and ratified this Convention and has enacted legislation in terms of this Convention. The name of this legislation is The Endangered Species Act (1973) 16 USC 1531 - 1544.

³⁵⁸ Article II.

³⁵⁹ Article III.

³⁶⁰ *Ibid.*

³⁶¹ Article V.

³⁶² Article IX.

³⁶³ http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm (accessed on 10/12/2009).

last vestiges of colonialism and apartheid, to promote solidarity and unity, intensify cooperation in development, and to promote international cooperation within the framework of the United Nations.³⁶⁴ In order to expedite the process of economic and political integration on the African continent, the Assembly of the OAU decided to convene an extraordinary session.

On 9 September 1999, the heads of state and government of the OAU met in Libya.³⁶⁵ A call for the establishment of an African Union was made and the Sirte Declaration³⁶⁶ was issued. The OAU had paved the way for the creation of the AU, and in 2002, at the Durban summit, the African Union was launched and held its first assembly of the heads of states. The African Union (AU) aims at, among other things, fostering solidarity and cooperation and promoting sustainable development in Africa.

4.4.2.1. African Union³⁶⁷

The AU inherited a convention with regards to wild animals, called the African Convention on the Conservation of Nature and Natural Resources. This Convention was signed at an assembly of heads of state and government in Algiers, Algeria on 15 September 1968.³⁶⁸ A revised version on the Conservation of Nature and Natural Resources was adopted at the Second Ordinary Session of the Assembly of the African Union in Maputo, Mozambique, on 11 July 2003. The 2003 version places an obligation on parties to the Convention to adopt and implement all necessary measures to achieve the objectives of the Convention.

With regard to wild animals, the parties are currently required to implement measures and policies for the sustainable use and conservation of species and genetic diversity of terrestrial, marine or fresh-water species.³⁶⁹ These measures and policies include legislating on the regulation of hunting, fishing and capture of terrestrial, marine and fresh-water species;³⁷⁰ identifying and eliminating factors that are causing the depletion of animals and plants,³⁷¹ and

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

³⁶⁶ The Sirte Declaration is a document that notes what deliberations and decisions were undertaken at the meeting, such as the need to strengthen the AU and make it more effective. (http://www.africa-union.org/Docs_AUGovernment/decisions/Sirte_Declaration_1999.pdf [accessed on 10/12/2009]).

³⁶⁷ www.africa-union.org.

³⁶⁸ <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm> (accessed on 10/12/2009).

³⁶⁹ Article IX – Species and Genetic Diversity.

³⁷⁰ *Ibid.*

³⁷¹ Article X – Protected Species.

according such animals and plants a protected status;³⁷² regulating trade in live animals, plants and trophies;³⁷³ and the establishment, management and, where possible, the extension of conservation areas.³⁷⁴

The African Convention on the Conservation of Nature and Natural Resources is similar to the American Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere. Both Conventions either regulate or prohibit hunting of certain animals³⁷⁵ and each Convention makes provision for the establishment or expansion of conservation areas.³⁷⁶ Other similarities include the adoption of policies and legislation³⁷⁷ to give effect to the agreed upon terms in the Conventions, and co-operation between the parties to give effect to the terms of their respective Conventions.³⁷⁸ It is submitted that the African Convention is not as effective as it could be as Africa faces many challenges³⁷⁹ which either hinder the Conventions effectiveness or hinder member states from adopting measures in terms of this Convention.

It is submitted that these challenges include poaching, the illegal wildlife trade, war, poverty, unemployment and even wealthy trophy hunters. These examples (such as poaching and the illegal wildlife trade) are challenges as they ignore the laws that are in place for the protection of wildlife. These challenges (war) also make the enforcement of these measures (laws) seem like a luxury or an issue that is only a secondary one to that of solving the problem of poverty and unemployment. Wealthy trophy hunters present a unique problem as they seem to take advantage of these challenges that face Africa, i.e. they are exploiting Africa's wildlife for their own personal gain and amusement.

³⁷² *Ibid.*

³⁷³ Article XI – Trade in Specimens and Products thereof.

³⁷⁴ Article XII – Conservation Areas.

³⁷⁵ Article III of the American Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940), and Article IX of the African Convention on the Conservation of Nature and Natural Resources (2003).

³⁷⁶ Article II of the American Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940), and Article XII of the African Convention on the Conservation of Nature and Natural Resources (2003).

³⁷⁷ Article V of the American Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940), and Article IX of the African Convention on the Conservation of Nature and Natural Resources (2003).

³⁷⁸ Article VI of the American Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940), and Article XXII of the African Convention on the Conservation of Nature and Natural Resources (2003).

³⁷⁹ Such as poverty, disease, hunger and human rights violations.

With regard to the illegal trade in wild animals and plants, The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora was created at Lusaka, Zambia on the 8th September 1994.³⁸⁰ This Agreement aims to reduce and eventually eliminate the illegal trade in wild animals and plants. In order to do this, this Agreement provides for the creation of a permanent task force that was launched on 1st June 1999, with its headquarters located in Nairobi, Kenya.³⁸¹ The Lusaka Agreement Task Force facilitates co-operative activities among government entities in carrying out investigations relating to illegal trade in wild fauna and flora.³⁸²

4.4.3. Europe

As was stated earlier, Europe has three regional organisations, namely the European Union (EU),³⁸³ the Council of Europe (CoE)³⁸⁴ and the Organization for Security and Co-operation in Europe (OSCE).³⁸⁵ However, only the European Union and the Council of Europe deal with the protection and welfare of animals.

4.4.3.1. The European Union (EU)³⁸⁶

On the 1 November 1993, the Maastricht Treaty came into force and the European Union was formally established. The EU is an economic and political partnership between twenty-seven democratic European countries. The EU aims, among other things, to uphold respect for human rights, the social economy, a sound environment and sustainable development. The EU has many animal related agreements and legislation.³⁸⁷ However, we will only be looking at agreements and legislation that relate to animal protection.

During the period of 2006-2010, the EU has planned to undertake the Action Plan on Animal Welfare.³⁸⁸ The action plan contains measures on developing and ensuring animal welfare

³⁸⁰ <http://www.lusakaagreement.org/about.html> (accessed on 13/02/12).

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ An economic and political organisation.

³⁸⁴ An organisation that enacts laws, regulations and policies.

³⁸⁵ An organisation that enforces the laws, regulations and policies.

³⁸⁶ <http://europa.eu>.

³⁸⁷ Such as with regards to fisheries, animal feeding stuffs and animal products subject to market organisation (http://eur-lex.europa.eu/RECH_repertoire.do?ihmlang=en [accessed on 6/08/2010]).

³⁸⁸ Communication from the Commission to the European Parliament and the Council of 23 January 2006 on a Community Action Plan on the Protection and Welfare of Animals 2006-2010 (COM(2006) 13 – Official Journal C49 of 28.02.2006). [all references contained under the European Union Heading are found at http://ec.europa.eu/food/animal/welfare/index_en.htm (accessed on 02/09/2009)].

and protection that the EU intends to implement. The action plan is intended to clarify community legislation,³⁸⁹ as well as propose any new legislation in areas where legal protection is lacking. The action plan covers the whole of the EU. The European Commission³⁹⁰ is responsible for implementing this action plan.

The Commission aims at ensuring that all EU policies are coordinated and coherent. The Commission will also promote the use of alternative testing methods to animal experimentation, as well as promote high standards for animal welfare. The action plan has five fields of action, the first of which is to upgrade the minimum animal welfare standards.³⁹¹ Promoting research and alternative methods for animal testing is another field³⁹² and the third field is to introduce animal welfare indicators.³⁹³ The last two fields are to ensure that both professionals and the general public are better informed about animal welfare³⁹⁴ and to support international efforts for the protection of animals.³⁹⁵

EU Regulations

The Animal Welfare during Transport³⁹⁶ regulation contains rules that identify and set out all the parties that are involved in transporting animals, as well as the responsibilities of these parties. The rules also strengthen monitoring and inspection of animals that are being transported and provides better and stricter regulations for animal welfare over long journeys and the vehicles that may be used. For example, vehicles used to transport animals must be fitted with equipment of the highest quality, including a temperature monitoring system, permanent access to drinking water and better conditions on livestock vessels. These conditions include ventilation, watering devices, and an approval system.³⁹⁷

³⁸⁹ The European Community was established in 1992 after the signing of the Maastricht Treaty. This treaty changed the name of the European Economic Community (EEC) to the European Community. The European Community was abolished in terms of Article 2 of the Treaty of Lisbon, which came into effect on 1 December 2009. In terms of Article 2, all references to the European Community have been replaced to read 'Union'.

³⁹⁰ The European Commission is the executive organ of the EU and monitors the application of EU treaties and decisions. (<http://www.coe.int/aboutcoe/index.asp?page=nepasconfondre&l=en> [accessed on 12/12/2009]).

³⁹¹ *Ibid.*

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.*

³⁹⁶ Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals during Transport and Related Operations, and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.

³⁹⁷ *Ibid.*

Another EU regulation that is applicable to the transportation of animals is the Community Standards on Staging Points.³⁹⁸ Staging points are areas where animals may be unloaded during long journeys. These staging points may only be used for animals to receive feed, water, rest, accommodation, care and dispatch the animals passing through. These regulations also set out common criteria that ensure the safety and welfare of animals at these staging points are met. For example, Article 3 requires each member to ensure that staging points are approved by a competent authority.³⁹⁹

The Protection of Animals used for Experimental Purposes⁴⁰⁰ creates a framework in which animals that are used for experimentation are adequately cared for and that no unnecessary pain or suffering is inflicted upon them. These regulations set out minimum standards for the keeping and caring of animals, when animals may be used, and what experiments may be done to them. They also regulate the procedures that must be used before, during and after experimentation on animals, which persons may conduct the experiments, and information that must be kept regarding the use of animals in experiments.

4.4.3.2. The Council of Europe (CoE)⁴⁰¹

The CoE⁴⁰² was founded in 1949 by ten founding members⁴⁰³ at the signing of the Treaty of London. The CoE now has 47 member states. The primary aim of the CoE is to ensure respect for human rights, democracy and the rule of law by creating a common legal and democratic area on the continent of Europe. The CoE contains several animal related conventions that are also used by the EU. Again here, only those conventions that deal with the welfare and protection of animals will be discussed.

³⁹⁸ Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community Criteria for Staging Points and amending the Route Plan referred to in the Annex to Directive 91/628/EEC.

³⁹⁹ Other noteworthy requirements are that staging points may only be used to receive, water, feed, rest, accommodate, care for and dispatch animals (Article 4); and Article 6 requires that before animals are dispatched to continue their journey, the official veterinarian of the staging point must confirm that the animals are fit to continue with the journey.

⁴⁰⁰ Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the Protection of Animals used for Experimental and other Scientific Purposes.

⁴⁰¹ www.coe.int.

⁴⁰² The CoE differs from the EU in that the CoE is an intergovernmental organisation which is primarily concerned with protecting human rights, democracy and the rule of law. On the other hand, members of the EU have given up some of their sovereignty so that decisions on certain matters of joint interest can be decided on a democratically throughout the EU. (http://www.coe.int/AboutCoe/media/interface/publications/Qui_sommes_nous_en.pdf [accessed on 12/12/2009]).

⁴⁰³ Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom.

The European Convention for the Protection of Animals kept for Farming Purposes⁴⁰⁴ aims at protecting farm animals from any unnecessary suffering or injury. The Convention sets out certain rules that are aimed at achieving this, such as rules on animal health,⁴⁰⁵ feed,⁴⁰⁶ environment⁴⁰⁷ and space.⁴⁰⁸ This Convention was open for signature by member states on 10 March 1976 in Strasbourg, France and it came into force on 10 September 1978. After this Convention was ratified by all the members of the EU, the EU enacted the Protection of Farmed Animals Act⁴⁰⁹ which sets out minimum standards for the welfare of farm animals that each member state must enact and meet. As a result, the EU has set out specific minimum welfare standards and protection for laying hens,⁴¹⁰ calves,⁴¹¹ pigs⁴¹² and chickens kept for meat production.⁴¹³

⁴⁰⁴ Council Decision 78/923/EEC of 19 June 1978 Concerning the conclusion of the European Convention for the Protection of Animals kept for Farming Purposes (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31978D0923:EN:NOT> [accessed on 4/08/2010]).

⁴⁰⁵ Article 7. This Article states that the condition and state of an animals health must be inspected at least daily (where animals are kept on intensive stock-farming systems) or at sufficient intervals to avoid unnecessary suffering).

⁴⁰⁶ Article 3 and Article 6. Article 3 requires the food that is provided to animals must have regard to the species, age and to the degree of domestication of the animal and which is appropriate to their physiological and ethological needs. Article 6 states that the food that is provided to animals must not cause any unnecessary suffering or injury, or contain any substance that may cause unnecessary suffering or injury.

⁴⁰⁷ Article 5. This Article requires that environmental conditions (such as lighting, heating, ventilation, and noise intensity) must conform to the physiological and ethological needs of each animal and must take into account the species, age and degree of domestication of the animal.

⁴⁰⁸ Article 3 and Article 4. Article 3 requires that animals must be housed in such a manner that the housing meets the animals' physiological and ethological needs. Article 4 requires that the animals freedom of movement must not be restricted and that if it is continuously tethered or confined, it must be given enough space that meets its physiological and ethological needs.

⁴⁰⁹ Council Directive 98/58/EC of 20 July 1998 concerning the Protection of Animals kept for Farming Purposes

⁴¹⁰ Council Directive 1999/74/EC of 19 July 1999 lays down minimum standards for the protection of laying hens [Official Journal L 203 of 3 August 1999] and Amended by Council Regulation (EC) No 806/2003 of 14 April 2003 [Official Journal L 122 of 16.05.2003]. The Protection of Farmed Animals Act sets out certain requirements, such as the minimum size that a cage must be in order to use it (cages will be eventually phased out in several years time), the size and shape of feed lots and drinking troughs, and that laying hens must be able to move freely about or have access to an outside run.

⁴¹¹ Council Directive 91/629/EEC of 19 November 1991 lays down minimum standards for the protection of calves [Official Journal L 340 of 11.12.1991] and Amended by Council Regulation (EC) No806/2003 of 14 April 2003 [Official Journal L 122 of 16.05.2003]. The Protection of Farmed Animals Act sets out that calves must be kept in groups unless a veterinarian certifies that a calf's health or behaviour requires that it be isolated and treated. Another requirement is the space allowance that each calf should have to itself, i.e. 1.5m² for each calf.

⁴¹² Council Directive 1999/74/EC of 19 July 1999 lays down minimum standards for the protection of pigs [Official Journal L 203 of 3 August 1999] and Amended by Council Regulation (EC) No 806/2003 of 14 April 2003 [Official Journal L 122 of 16.05.2003]. The Protection of Farmed Animals Act requires, amongst other things, that sufficient feed is made available to each pig, each pig must be able to stand up and lie down without difficulty, what measures may be used to prevent aggression between pigs, and daily inspections of pigs must be carried out to ensure that they remain healthy and injury free.

⁴¹³ Council Directive 2007/43/EC of 28 June 2007 lays down minimum standards for the protection of chickens kept for meat production. The Protection of Farmed Animals Act requires that buildings must have adequate lighting and ventilation, that each chicken has access to feed lots, drinking troughs and litter trays, and twice

The European Convention on the Protection of Animals at the time of Slaughter⁴¹⁴ sets out uniform minimum standards for animals at the time of slaughter throughout Europe. This Convention was opened for signature in Strasbourg, France on 10 May 1979 and came into force on 11 June 1982.⁴¹⁵ The Convention applies to the movement of animals before slaughter,⁴¹⁶ restraining animals,⁴¹⁷ stunning them⁴¹⁸ as well as the actual slaughtering of the animal.⁴¹⁹

Each country that has ratified this Convention is under an obligation to comply with the minimum standards which ensure that animals do not suffer any unnecessary pain or stress.⁴²⁰ To achieve uniformity of the rules, countries that have ratified the Convention must respect these rules, such as the design and construction of the slaughterhouse facility.⁴²¹ Other areas which are also included under these rules are the methods of slaughter, which include ritual slaughter⁴²² and the delivery of animals to the slaughterhouse.⁴²³ The EU also has similar legislation in place regarding the minimum standards for slaughtering of animals, called the European Convention for the Protection of Animals for Slaughter.⁴²⁴

The European Convention for the Protection of Pet Animals⁴²⁵ was opened for signature in Strasbourg, France on the 13th November 1987 and came into force on the 1st May 1992. This Convention sets out basic principles regarding animal welfare. These principles relate to housing,⁴²⁶ water,⁴²⁷ food,⁴²⁸ breeding,⁴²⁹ training,⁴³⁰ surgical operations⁴³¹ and killing of

daily inspections of the chickens must be carried out. Another requirement is that detailed records must be kept on the conditions in which the chickens are kept, their health, the mortality rate and any medical treatments undertaken on any chicken.

⁴¹⁴ Council Decision 88/306/EEC of 16 May 1988 on the conclusion of the European Convention for the Protection of Animals for Slaughter.

⁴¹⁵ <http://conventions.coe.int/Treaty/en/Summaries/Html/102.htm> (accessed on 11/12/2009).

⁴¹⁶ Chapter II, Articles 3-11.

⁴¹⁷ Article 7. Restraining an animal before they are slaughtered ensures that the act of stunning them can be done properly and that the animal is rendered completely insensible.

⁴¹⁸ Article 16. Stunning is an act which renders an animal insensible to pain and which usually lasts until they are slaughtered. The act of stunning an animal before they are slaughtered ensures that they do not suffer or feel pain.

⁴¹⁹ Chapter III, Articles 12-19.

⁴²⁰ Article 2.

⁴²¹ *Ibid.*

⁴²² Chapter III, Articles 12,13,14, 17 and 19 (these Articles are with regards to how an animal may be slaughtered and what instruments should be used to restrain the animal).

⁴²³ Chapter II, Articles 3, 4, 5, 7 and 11 (these Articles are with regards to the offloading of animals, the moving of animals within the slaughterhouse, and the lairaging of animals).

⁴²⁴ http://ec.europa.eu/food/animal/welfare/references/slaughter/jour137_en.pdf (accessed on 02/09/2009)

⁴²⁵ Council of Europe Treaty Series (CETS) No 125.

⁴²⁶ Chapter II, Article 4.

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*

pets.⁴³² This Convention applies to pets kept in households or establishments used for trading, commercial breeding, boarding houses and animal sanctuaries and, in certain circumstances, to stray animals.⁴³³

The Convention on the Conservation of European Wildlife and Natural Habitats⁴³⁴ aims at conserving wild animals and plant species, as well as their habitats. This Convention was opened for signature in Bern, Switzerland on 19 September 1979 and came into force on 1 June 1982. Endangered and vulnerable animal and plant species, and migratory animal species are given special attention.⁴³⁵ The parties to this Convention undertake to ensure that any and all necessary measures are taken to protect animal and plant species and their habitats and to ensure that these measures are included in the planning and development of policies for conservation.⁴³⁶ The Parties also undertake to promote education and distribute information about the need to conserve wild animal and plant species and their habitats.⁴³⁷

Both the European Union and the Council of Europe not only have more treaties and conventions regarding animals than the Organisation of American States and the African Union, they also include more animals under the scope of their conventions and treaties.⁴³⁸ The EU is also in the process of reviewing and updating its animal related conventions, treaties and legislation in terms of its Action Plan on Animal Welfare.

4.4.4. Asian and Pacific regions

There are several sub-regional organisations in these regions such as the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Organization of the Islamic Conference (OIC) and the League of Arab States. The Association of Southeast Asian Nations (ASEAN) is the only sub-region that deals with animal issues and will be discussed below.

⁴²⁹ Article 5.

⁴³⁰ Article 7.

⁴³¹ Article 10.

⁴³² Article 11.

⁴³³ Chapter I.

⁴³⁴ CETS No. 104.

⁴³⁵ Article 1.

⁴³⁶ Chapter I.

⁴³⁷ *Ibid.*

⁴³⁸ The OAS and the AU only have conventions that cover wild animals in their natural habitats, whereas the EU and the CoE include in their scope: wild animals, pet animals, farm animals, animals used in experimentation, animals that are being transported and animals that are going to be slaughtered.

4.4.4.1. The Association of Southeast Asian Nations (ASEAN)⁴³⁹

ASEAN was established by the five original member states⁴⁴⁰ by the signing of the ASEAN Declaration on 8 August 1967. Over the next several years, Brunei Darussalam, Vietnam, Laos PDR, Myanmar and Cambodia joined the ASEAN. ASEAN aims to accelerate economic, social and cultural progress and to promote peace and stability in the region.

The Agreement for the Establishment of ASEAN Animal Health Trust Fund was signed in Singapore on 17 November 2006. This agreement establishes the ASEAN Animal Health Trust Fund (the Fund)⁴⁴¹ and details how contributions may be made and how the Fund may be used.⁴⁴² This fund was created to promote unified and integrated animal health projects in the region.⁴⁴³ It was also created to help implement the aims and purposes that are embodied in the ASEAN Declaration of 1967.⁴⁴⁴

To aid conservation and sustainability of resources, the ASEAN created the Agreement on the Conservation of Nature and Natural Resources. This agreement was signed in Kuala Lumpur on 9 July 1985. This agreement covers national supporting measures to conservation and sustainable development⁴⁴⁵ and environmental planning measures, such as protected areas.⁴⁴⁶ As well as conservation of ecological processes, such as reducing pollution⁴⁴⁷ and the conservation of species and ecosystems, for example, the protection of endangered species.⁴⁴⁸

The above discussion has shown that there are many efforts in various regions of the world to protect and promote animal welfare. This information will be used in later discussions to see if there is a need for work to be done.

⁴³⁹ www.asean.org.

⁴⁴⁰ Indonesia, Malaysia, Singapore, Thailand and the Philippines.

⁴⁴¹ Article 1.

⁴⁴² Article 2.

⁴⁴³ Preamble.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Chapter V. This chapter allows contracting parties to either individually or in co-operation with any other contracting party to adopt and promote scientific and technical programmes in the conservation and management of their natural resources.

⁴⁴⁶ Chapter IV. This chapter allows contracting parties to ensure that the conservation of natural resources is taken into account when planning land use and that protected areas are established within their jurisdictions.

⁴⁴⁷ Chapter III. This chapter requires contracting parties to prevent, reduce and/or control the degradation of natural resources, the environment and pollution.

⁴⁴⁸ Chapter II. This chapter is required to, amongst other things, ensure maximum genetic diversity, the sustainable use of these species, and to protect endangered and endemic species.

Chapter 5 – Comparative Assessment of the Legal Protection of Animals in Four Foreign Jurisdictions

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

- Mahatma Gandhi⁴⁴⁹

Aims

In this chapter, the policies and select laws of four foreign jurisdictions with regard to animal welfare will be discussed and compared to the situation in South Africa. The chapter will examine legislation and case law regarding animals and animal welfare in these jurisdictions. They are the United States of America (USA), Switzerland, India, and Kenya.

Each of these jurisdictions differs in attitudes towards animals and therefore the legislation that protects animals in these countries differs as well. The USA and Switzerland are considered as representative of developed countries, while Kenya and India represent developing countries. India also has strong religious beliefs, with the main religion being Hinduism. Each country, furthermore, has its own strengths and weaknesses with regards to the laws protecting animals and the enforcement of the laws.

It is submitted that a great nation (as defined by Gandhi in the opening quotation) will have strong morals that will include the protection of animals and a value system that places greater importance on all life (and not just human life) over material objects and money. It is further submitted that a great nation will take responsibility for defending the weak and ensuring that they are not abused or exploited. This will be done through effective legislation that is enforced and respected by law enforcers, the judicial system and the public. The laws that we will be looking at will be those relating to cruelty, methods of slaughter, transportation, and experimentation in both agriculture and wildlife.

⁴⁴⁹ In MacKinnon 'Of Mice and Men' in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 266.

The animal welfare legislation that is discussed in this thesis is just a sample of the available legislation in the chosen foreign jurisdictions. This chapter is also not a conclusive comparative study; as the foreign jurisdictions were chosen as a lens through which to evaluate South African animal welfare legislation. The foreign jurisdictions were chosen specifically as their legislation falls within particular groups that are discussed broadly in the later chapters. The legislative groups referred to are legislation concerning animals in scientific research, animals used in the food industry,⁴⁵⁰ wild animals and domestic animals.

5.1. United States of America (USA)

The USA is said to be a leader in the political, cultural and economic spheres in the world.⁴⁵¹ However, compared with other developed nations, like Great Britain, the USA seems to have inadequate animal welfare legislation.⁴⁵² The USA has three main federal statutes with regard to animal welfare, namely, the Animal Welfare Act (2007),⁴⁵³ the Humane Methods of Slaughter Act (1978)⁴⁵⁴ and the Twenty-Eight Hour Law (1994).⁴⁵⁵

The USA, furthermore, has several other federal acts that deal with a range of issues concerning animals, such as the preservation and protection of wildlife and endangered species, the adoption of animals used in the military, and the conservation of several fish species, bird species, whales, turtles, etc.⁴⁵⁶ The three acts mentioned above will be discussed below, and the other acts will be briefly mentioned, where relevant. The USA has both federal⁴⁵⁷ and state laws regulating animal welfare. However, we will confine our examination to federal laws only, with only sparing allusions to some of the state laws where this is relevant and necessary.

As is the case in South Africa, the United States of America does not recognise animals as having legal standing.⁴⁵⁸ However, unlike South Africa, there have been a number of

⁴⁵⁰ This includes the transportation and the slaughter of these animals.

⁴⁵¹ "United States." The World Book Encyclopedia (2010), Volume 20.

⁴⁵² Grant *The No-Nonsense Guide to Animal Rights* 121-122.

⁴⁵³ Act 7 USC 2131 – 2159.

⁴⁵⁴ Act 7 USC 1901 – 1906.

⁴⁵⁵ Act 49 USC 80502.

⁴⁵⁶ <http://www.animallaw.info/statutes/stfedset.htm> (accessed on 10/12/2009).

⁴⁵⁷ The USA has several Acts which are concerned with animals, however only the Acts that protect animals or promote animal welfare will be looked at. For example, The Animal Welfare Act (2007) 7 USC 2131 – 2159; Federal Pet Protection Act (1990) 7 USC 2158; Endangered Species Act (1973) 16 USC 1531-1544; and there are a few others that will also be looked at.

⁴⁵⁸ In terms of South African Law, animals are considered as property and therefore have no legal standing in court.

lawsuits in America where animals have been named as the plaintiff,⁴⁵⁹ but most of these cases do not directly deal with the issue of *locus standi*.⁴⁶⁰ However, in the case of *Cetacean Community v. Bush*, United States, 386 F.3d 1169 (9th Cir. 2004), the court was asked to decide whether the world's cetaceans have standing to bring legal action their own name under the Endangered Species Act,⁴⁶¹ the Marine Mammal Protection Act,⁴⁶² the National Environmental Protection Act,⁴⁶³ and the Administrative Procedure Act.⁴⁶⁴ The Cetaceans challenged the United States Navy's use of Surveillance Towed Array Sensor System Low Frequency Active Sonar during wartime or heightened threat conditions. It was alleged by the Cetaceans that the Navy had violated, or will violate, the Endangered Species Act, the Marine Mammal Protection Act, and the National Environmental Policy Act. In its findings, the court held that the Cetaceans lacked standing and stated that "[i]f Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly." The court further held that in the absence of any such statement from these Acts, it is concluded that the Cetaceans do not have statutory standing to sue.

For a person to have legal standing he/she must have a personal interest in the outcome of the matter. For example, if X bumps and damages your car, you would have a personal interest in recovering damages as compensation to your car and therefore you have legal standing in court for this matter. However, your uncle (who does not own the car and is not

⁴⁵⁹ For example *Loggerhead Turtle v City Council of Volusia County, Florida* 896 F Supp 1170 (MD Fla 1995). The appellees (the turtles) filed a complaint in court that the county was taking endangered sea turtles in violation of the Endangered Species Act. The turtles filed a motion for a preliminary injunction to prevent the county from permitting beach driving and artificial light sources that resulted in the taking of the sea turtles. The court granted an injunction preventing the county from permitting beach driving during the nesting period of the sea turtles.

Northern Spotted Owl v Hodel 716 F Supp 479 (WD Wash 1988). In this case, environmental groups petitioned the Department of the Interior (DOI) to list the owl as an endangered species. The DOI issued a finding that listing the owl was not warranted at the time. The environmental groups sued and the court remanded the DOI to provide an explanation for their finding. On remand, the DOI reversed their decision and listed the owl as a threatened species.

Tree Boa v Witt 918 F Supp 879 (DVI 1996). The plaintiffs alleged that the Federal Emergency Management Agency (FEMA) and other governmental actors failed to follow specific procedures which were designed to ensure that risks were adequately considered for a housing project that would be inflicted on the tree boa of Vessop Bay during the planning and construction phase. The plaintiffs later abandoned their claim as the court found that the plaintiff failed to satisfy the Endangered Species Act notice requirements.

⁴⁶⁰ *Locus standi*, or legal standing, refers to a legal subject's (natural and juristic person) interest in a matter or dispute that entitles the legal subject to bring a matter before a court of law to receive judicial relief.

⁴⁶¹ 16 U.S.C. §§ 1531-1544.

⁴⁶² 16 U.S.C. §§ 1371-1421h.

⁴⁶³ 1172 Policy Act.

⁴⁶⁴ 16 U.S.C. §§ 4321-4347.

paying for it) may have an interest in you recovering the damages, but this ‘general’ interest is not enough and he will not have any legal standing in court for this matter.⁴⁶⁵

5.1.1. The Animal Welfare Act of 2007⁴⁶⁶

In terms of Section 1 of the Animal Welfare Act, the intention of the Act is to ensure that animals that are

“intended for use in research facilities or for exhibition purposes⁴⁶⁷ or for use as pets are provided humane care and treatment, to assure the humane treatment of animals during transportation in commerce; and to protect pet owners from the theft of their pets by preventing the use and sale of stolen pets.”⁴⁶⁸

This section further regulates the

“transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.”⁴⁶⁹

The Act is only intended to cover animals that are used in research facilities, by exhibitors and by dealers (in the animal and/or pet trade). It was originally enacted to curb the abuse of animals that had arisen due to the increase in use of animals in medical research.⁴⁷⁰

However, from 1966 (when the Act originally came into force) to 2007 certain amendments to the Act have excluded from its scope from the protection of the Act some animals that are most vulnerable to abuse, namely birds, rats and mice that are bred for use in research experiments, as well as farm animals and horses that are not used for research purposes from the protection of the Act.⁴⁷¹

The Act contains several provisions which ensure that animals covered within its scope, are ‘humanely treated’ and that ‘humane standards’ of care and housing are observed. There are separate provisions that require that dogs must have adequate exercise and or that primates

⁴⁶⁵ Neethling *Law of Delict* 45.

⁴⁶⁶ Act 7 USC 2131 – 2159.

⁴⁶⁷ These are animals that are kept in zoos, aquariums, circuses, etc.

⁴⁶⁸ Section 2131.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Cohen (2008) *Brief Summaries of Federal Animal Protection Statutes*, <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-529> (date accessed: 16/09/2008).

⁴⁷¹ Section 2132(g).

must have an environment that promotes their psychological well-being.⁴⁷² Other sections require keeping of records which show how an animal was obtained, transported and cared for,⁴⁷³ the establishment of a Research Facility Committee,⁴⁷⁴ the registration of dealers, exhibitors and research facilities,⁴⁷⁵ the prohibition of animal fighting,⁴⁷⁶ and the inspection of dealers, exhibitors and research facilities by legally established law enforcement officers.⁴⁷⁷

Judging by these sections, the Animal Welfare Act seems to adequately protect animals from cruel and painful practices. However, many criticisms have been levelled at this Act. The first and most important criticism is that animals that are raised for food or for clothing are excluded from the scope of the Act.⁴⁷⁸ So too are many other animals, namely birds, rats, mice, reptiles, fishes, and invertebrates. With so many animals excluded, Dunayer argues that these exclusions make a mockery of the title of the Act.⁴⁷⁹

Many animal rights activists claim that the Act in fact legitimises the abuse, torture and exploitation of animals, by allowing certain practises to continue and by regulating these practices through the provisions in the Act.⁴⁸⁰ This is done through, for example, breeding animals and then selling them either to research facilities, or to exhibitors, or to the public as pets. Another criticism is that the Animal Welfare Act does not regulate research practices on animals. For example, “a researcher can, theoretically, be charged with housing animals in unsanitary conditions but not for beating or mutilating them without anaesthetic.”⁴⁸¹

5.1.2. The Humane Methods of Slaughter Act of 1978⁴⁸²

This Act sets out the USA’s policy on livestock slaughter. The Act provides, in part that ‘the slaughtering of livestock and the handling of livestock in connection with slaughter shall be

⁴⁷² Section 2143 (a)(2)(B).

⁴⁷³ Section 2140.

⁴⁷⁴ Section 2143 (b).

⁴⁷⁵ Section 2136.

⁴⁷⁶ Section 2156.

⁴⁷⁷ Section 2147.

⁴⁷⁸ Sunstein ‘Can Animals Sue?’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 255.

⁴⁷⁹ Dunayer *op cit* 41 -45.

⁴⁸⁰ For example, instead of advocating for the use of alternatives to animal testing, the Act contains provisions (Section 2144) for the ‘humane care and handling’ of animals used in research facilities.

⁴⁸¹ Grant *The No-Nonsense Guide to Animal Rights* 78.

⁴⁸² Act 7 USC 1901-1906.

carried out only by humane methods.’⁴⁸³ Two methods of slaughter are allowed by this Act: the first method is to render the animal ‘insensible to pain’ using either a ‘single blow or gunshot or an electrical, chemical or other means that is rapid and effective’ to render the animal insensible to pain before being slaughtered.⁴⁸⁴

The second method is by ‘slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anaemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.’⁴⁸⁵

Animal welfare and even human rights activists argue that this Act is not properly enforced due to the introduction of high speed slaughterhouses,⁴⁸⁶ which means that more animals can be slaughtered and packaged in less time.⁴⁸⁷ With the increased speed at which animals are processed, this leaves very little space for error on the workers part.⁴⁸⁸ Workers are often abused, overworked, under qualified and desperate for work, a situation that often leads to the unintentional abuse of animals.⁴⁸⁹ The combination of high speed slaughterhouses and the lack of proper enforcement of the Act results in the workers as well as the animals being abused and exploited.⁴⁹⁰

Production lines are rarely, if ever, stopped for injured workers. Sometimes workers are forced to process live animals (due to ineffective stunning from time constraints). The animals often struggle and leave workers with injuries such as contusions, lost teeth, stab wounds and fingers being amputated.⁴⁹¹ Workers are only given a few seconds to render an animal ‘insensible’ but due to time constraints, not all animals are properly stunned.⁴⁹² There

⁴⁸³ Section 1901.

⁴⁸⁴ Section 1902 (a).

⁴⁸⁵ Section 1902 (b).

⁴⁸⁶ High speed slaughter houses are slaughter houses that operate at high speed. Grant *The No-Nonsense Guide to Animal Rights* 104-105.

⁴⁸⁷ Grant *The No-Nonsense Guide to Animal Rights* 104.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

⁴⁹² Grant *The No-Nonsense Guide to Animal Rights* 105.

is also not enough time to clean contaminated meat,⁴⁹³ which can often move freely within the USA food market.⁴⁹⁴

Another criticism is that this Act does not cover all animals that are intended for human consumption. In the case of *Levine v Conner*,⁴⁹⁵ the court held that the Humane Methods of Slaughter Act excluded poultry and turkey from the ambit of the Act. A further criticism is that there are no fines available if the statute is violated and penalties/sanctions are often not used, such as the penalty of suspending or withdrawing Federal inspections. Without these Federal inspections a slaughterhouse would have to halt its operations which would result in preventing products entering interstate and foreign commerce.⁴⁹⁶ Senator Robert Byrd (D-WV)⁴⁹⁷ stated on the floor in the Senate:

“The law clearly requires that these poor creatures be stunned and rendered insensitive to pain before this process begins. Federal law is being ignored. Animal cruelty abounds. It is sickening. It is infuriating. Barbaric treatment of helpless, defenceless creatures must not be tolerated even if these animals are being raised for food – and even more so, more so.”⁴⁹⁸

5.1.3. Twenty-Eight Hour Law of 1994⁴⁹⁹

This Act was first enacted in 1873 and amended in 1906.⁵⁰⁰ The 1906 version of the Act was repealed and then re-enacted in amended form in 1994.⁵⁰¹ The 1994 Act deals with the transportation of animals and provides that

“a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals ... may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.”⁵⁰²

⁴⁹³ This is meat that is covered in faeces or other contaminants.

⁴⁹⁴ Grant *The No-Nonsense Guide to Animal Rights* 107.

⁴⁹⁵ 540 F.Supp.2d 1113 (N.D. Cal. 2008).

⁴⁹⁶ Wolfson & Sullivan ‘Foxes in the Hen House’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* (2004) 227, note 4.

⁴⁹⁷ Democrat – West Virginia.

⁴⁹⁸ Wolfson & Sullivan in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 208.

⁴⁹⁹ Act 49 USC 80502.

⁵⁰⁰ Cohen (2008) *Brief Summaries of Federal Animal Protection Statutes*, <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-529> (date accessed: 16/09/2008).

⁵⁰¹ *Ibid.*

⁵⁰² Section 80502 (a)(1).

The Act further states that animals must be “unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours.”⁵⁰³ The Act does not apply to animals that are “transported in a vehicle or a vessel that has food, water, space and an opportunity for rest.”⁵⁰⁴ The Act contains penalties for persons who “knowingly” and “willingly” violate its provisions, the fines range from US\$100 to US\$500.⁵⁰⁵

There are certain exceptions to the Act: (1) Sheep may be confined for an extra 8 hours if the 28 hour confinement ends at night.⁵⁰⁶ (2) Animals may be kept for longer than 28 hours if there was an accident or other unavoidable causes that weren’t anticipated⁵⁰⁷ and (3) The 28 hours may be extended to 36 hours if it is requested in writing by the owner or person having custody of the animals being transported, to extend the confinement period.⁵⁰⁸

For the first time in 2006, the United States Department of Agriculture (USDA) decided to include trucks in the interpretation of vehicle. However, in the same document the USDA stated that the Twenty-Eight Hour Law does not apply to poultry,⁵⁰⁹ which is the main reason this Law is criticised for. Another criticism is that this Act is hardly ever enforced and that if it is enforced the harshest penalty is only a fine of US\$500.⁵¹⁰

5.1.4. Other Major Federal Statutes

As was mentioned earlier, the USA has several other major federal acts which support animal welfare. Some of these acts only deal indirectly with animal interests in terms of their use and value to man and will not be discussed.⁵¹¹ Only two acts will be briefly discussed. These

⁵⁰³ Section 80502 (b).

⁵⁰⁴ Section 80502 (c).

⁵⁰⁵ Section 80502 (d). On the 20/07/2010, one U.S. Dollar was equal to 7.63 South African Rands. Therefore, the fine of US\$100 to US\$500 was equal to ZAR763.98 to ZAR3820.15.

⁵⁰⁶ Section 80502 2.

⁵⁰⁷ Section 80502 2(A).

⁵⁰⁸ Section 80502 2(B).

⁵⁰⁹ Cohen (2008) *Brief Summaries of Federal Animal Protection Statutes*, <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-529>.

⁵¹⁰ Wolfson & Sullivan in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 208.

⁵¹¹ Such as the Animal Health and Disease Research Act of 1981.⁵¹¹ 3191 (a)(1) of the Act states that the purposes of the Act is to ‘promote the general welfare through the improved health and productivity of domestic livestock, poultry, aquatic animals, and other income-producing animals that are essential to the food supply of the United States and the welfare of producers and consumers of animal products;’ and the Fishery Conservation and Management Act of 1976⁵¹¹ which states that 1801(a)(1) ‘fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.’ & 1801(a)(3) ‘Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation.’

Acts seem to have a direct interest in protecting animals and they are the Endangered Species Act of 1973⁵¹² and the Marine Mammal Protection Act of 1972.⁵¹³

The Endangered Species Act authorizes the Secretary of the Interior and in the case of marine mammals, the Secretary of Commerce, to make a list of endangered and threatened species and their habitats. Section 1538 contains a list of prohibited acts with regard to endangered and threatened species, such as the prohibition of “any person or private or governmental entity from importing, exporting, taking, possessing, selling, or transporting any endangered species.”⁵¹⁴ The Act requires recovery plans to conserve and ensure the survival of endangered and threatened species to be developed and implemented by either the Secretary of the Interior or the Secretary of Commerce.⁵¹⁵

It is suggested that this Act is unique to the USA as none of the other jurisdictions under study has an act specifically aimed at ensuring the conservation and survival of endangered or threatened species. It is further suggested that this Act may ensure that endangered and threatened species can recover to such an extent where they may be able to take them off the list of endangered and threatened species. However, it is up to the Secretary of the Interior and or the Secretary of Commerce to ensure the conservation and recovery of endangered and threatened species.

The Marine Mammal Protection Act protects marine mammals and their habitats. This Act contains provisions on prohibitions, such as the prohibition to hunt, harass, capture or kill marine mammals.⁵¹⁶ It also contains provisions on the issuing and requirements of permits,⁵¹⁷ penalties⁵¹⁸ and an international program that would facilitate the protection and conservation of marine mammals via international agreements.⁵¹⁹

5.1.5. A note on State Laws

The USA is made up of fifty states and in addition to the federal laws, each state has its own laws concerning animal welfare and therefore the level of protection for animals in each state

⁵¹² 16 USC 1531-1534.

⁵¹³ 16 USC 1361-1423h.

⁵¹⁴ Cohen *Brief Summaries of Federal Animal Protection Statutes*.

⁵¹⁵ 16 USC 1533(f).

⁵¹⁶ Section 1372.

⁵¹⁷ Section 1374.

⁵¹⁸ Section 1375.

⁵¹⁹ Section 1378.

may differ.⁵²⁰ For example, forty–six states⁵²¹ and the District of Columbia classify animal cruelty as a felony⁵²² and the other four states⁵²³ classify animal cruelty as only a misdemeanour.⁵²⁴ Another example of the differing level of protection in each state can be seen with regards to farm animals which are often excluded from the scope of federal and state animal welfare legislation.⁵²⁵ However, the state of California is a recent example of improving animal welfare with regards to farm animals. On the 4th of November 2008, the Prevention of Farm Animals Cruelty Act⁵²⁶ was approved and will come into effect in January 2015, which allows factory farms five years to shift to the new housing requirements.⁵²⁷ This Act will halt the practice of confining pigs, hens and calves in cages and crates that are often too small for the animals to move around in.⁵²⁸ In my opinion, this change in practice will positively affect the welfare of thousands of animals in the state of California. It is further submitted that California has set a precedent by improving animal welfare for farm animals for the rest of the American states to follow. Below is a table containing a summary of the main American laws discussed above:

	Application	Exclusions	Note on Provisions
Animal Welfare Act	Research facilities, exhibitors and pet/animal dealers.	Farm animals, birds, rats & mice bred to be used in research, and horses.	Deals mainly with the humane treatment of animals and the humane standards of care & housing are observed. This Act is criticised for excluding to many animals from the scope of its

⁵²⁰ http://www.hsus.org/legislation_laws/state_legislation/ (accessed on 03/09/2009).

⁵²¹ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and Virgin Islands. [http://www.hsus.org/web-files/PDF/state_cruelty_chart.pdf (accessed on 03/09/2009)].

⁵²² A felony is an offence that is more serious than a misdemeanour and can be punished either by death or more than an one year jail sentence (“felony” Oxford English Dictionary (2009).

⁵²³ Idaho, Mississippi, North Dakota and South Dakota. [http://www.hsus.org/web-files/PDF/state_cruelty_chart.pdf (accessed on 03/09/2009)].

⁵²⁴ A misdemeanour is considered to be less serious than a felony and the punishment may be either a fine, forfeiture, penalty or a light imprisonment term (“misdemeanour” Oxford English Dictionary (2009).

⁵²⁵ www.hsus.org/farm/camp/lit-leg/legislation.html (accessed on 04/09/2009).

⁵²⁶ Proposition 2.

⁵²⁷ www.hsus.org/farm/news/ournews/prop2_california_110408.html (accessed on 04/09/2009).

⁵²⁸ *Ibid.*

			protection.
Humane Methods of Slaughter Act	Livestock slaughter.	Poultry and turkey.	Provisions seem adequate by providing two methods of humane slaughter. However, this Act is criticised for not always been enforced and the fines/penalties are not always imposed when the Act is contravened. The introduction of high speed slaughterhouses makes the humane slaughter of animals a difficult task for the slaughterhouse workers.
Twenty-Eight Hour Law	Transportation of animals.	Poultry	This Act is criticised for not always been enforced and the fines/penalties are not adequate.

5.2. India

In a 2001 census, Hinduism was found to be practiced by 80.5% of the population of India.⁵²⁹ Hinduism advocates the practice of non-violence and respect for all life and this is reflected in India's Constitution.⁵³⁰ Part IVA of the Indian Constitution⁵³¹ contains fundamental duties that every Indian citizen is obliged to follow. Amongst them is the duty of every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures',⁵³²

In a 2000 case arising from the above section, *Nair v. Union of India*,⁵³³ the High Court of Kerala held that,

⁵²⁹ <http://2001-2009.state.gov/g/drl/rls/irf/2008/108500.htm> (accessed on 04/02/2009).

⁵³⁰ The Constitution of India (Ninety-fourth Amendment) Act of 2006, Article 51A (g) at <http://lawmin.nic.in/coi/coison29july08.pdf> (accessed on 05/02/2009).

⁵³¹ The Constitution of India (Ninety-fourth Amendment) Act of 2006.

⁵³² Article 51A (g).

⁵³³ Kerala High Court no. 155/1999, June 2000.

“... circus animals ... are housed in cramped cages, subjected to fear, hunger, pain, not to mention the undignified way of life they have to live, with no respite and the impugned notification has been issued in conformity with the ... values of human life, (and) philosophy of the Constitution ... Though not homosapiens (*sic*), they are also beings entitled to dignified existence and humane treatment sans cruelty and torture ... Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights ... If humans are entitled to fundamental rights, why not animals?”⁵³⁴

We will be discussing in depth whether animals should be awarded or entitled to fundamental rights in the last chapter. India has one Act that deals with animal welfare, The Prevention of Cruelty to Animals Act of 1960⁵³⁵ and another Act that deals with wildlife, The Wild Life (Protection) Amendment Act of 2002.⁵³⁶ India has also enacted several rules with regard to animal welfare and only a select few will be dealt with in this study. These are The Transport of Animals Rules 1978;⁵³⁷ The Prevention of Cruelty to Draught and Pack Animals Rules 1968;⁵³⁸ Recognition of Zoo Rules 1992; and the Prevention of Cruelty to Animals (Slaughter House) Rules 2001,⁵³⁹ all of which will be discussed below.

5.2.1. The Prevention of Cruelty to Animals Act of 1960

This Act defines an animal as “any living creature other than a human being.”⁵⁴⁰ Section 2 goes on further to state that every person has a duty to take all reasonable measures to ensure the well-being of the animal under his or her control and to also prevent any infliction of unnecessary pain and suffering.⁵⁴¹

In accordance with Section 4 of this Act, the first government established animal welfare organisation was created in 1962, called the Animal Welfare Board of India. This Board was established to ensure the promotion of animal welfare and the protection of animals from

⁵³⁴ *Ibid.*

⁵³⁵ Act 59 of 1960.

⁵³⁶ Act 16 of 2003. This Act amends The Wildlife (Protection) Act 53 of 1972.

⁵³⁷ No.18-6/70-LDI, [23/3/1978].

⁵³⁸ No.9-18/68-LD, [23/3/1965].

⁵³⁹ S.O.270(E), [26/3/2001].

⁵⁴⁰ Section 2.

⁵⁴¹ Section 3.

unnecessary pain and suffering.⁵⁴² This Board is subject to the provisions of the Act and is a juristic person, allowed to sue and be sued.⁵⁴³

The Board's functions include:

- To keep the law with regards to animal welfare under constant study and to advise the Government to review and amend the law from time to time;⁵⁴⁴
- To advise the Government on making rules under the Act;⁵⁴⁵
- To take all such steps as the Board may think fit to encourage or provide for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals;⁵⁴⁶
- To encourage by the grant of financial assistance or otherwise, the formation or establishment of rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection;⁵⁴⁷
- To co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;⁵⁴⁸
- To give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;⁵⁴⁹
- To impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;⁵⁵⁰ and

⁵⁴² Section 4.

⁵⁴³ *Ibid.*

⁵⁴⁴ Section 9.

⁵⁴⁵ *Ibid.*

⁵⁴⁶ *Ibid.*

⁵⁴⁷ *Ibid.*

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Ibid.*

⁵⁵⁰ *Ibid.*

- To advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.⁵⁵¹

It is submitted that this list of the Board's functions seems to cover most, if not all, of the areas that should be dealt with in regards to animal welfare. It is further submitted that these functions should ensure that the animal welfare legislation in India stays up to date and that there are plenty of animal shelters to care for any unwanted or mistreated animals and that these shelters are given financial assistance.

The Act, furthermore, contains chapters that deal with specific issues, such as cruelty, experimentation and performing animals. Chapter 3 contains general provisions on what constitutes cruelty to animals, such as over-working, beating or kicking, which is similar to the provisions contained in Sections 2 and 2a of the South African Animal Protection Act of 1962.⁵⁵² However, the Indian Act goes further than the South African Act and the other countries under study, by making the following exceptions on what constitutes cruelty:

“the dehorning of cattle, or the castration or branding or nose roping of any animal in the prescribed manner; or the destruction of stray dogs in lethal chambers; or the extermination or destruction of any animal under the authority of any law for the time being in force; or any matter dealt with in Chapter IV;⁵⁵³ or the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.”⁵⁵⁴

These exceptions are what are usually excluded from other animal welfare legislation in the other countries under study, i.e. certain farm practices, experiments on animals and the slaughtering of animals for human consumption.⁵⁵⁵ One act of cruelty which seems to be specific to India is the practice of ‘phooka’ or ‘doom dev’. This is also known as ‘Cow Blowing’. Air is forcefully blown up into the cow’s vagina or anus to induce her to produce more milk.⁵⁵⁶

⁵⁵¹ *Ibid.*

⁵⁵² Act No.71 of 1962.

⁵⁵³ This chapter deals with experimentation on animals.

⁵⁵⁴ Chapter 3, Section 11, Subsection 3.

⁵⁵⁵ Such as the USA. In the American Animal Welfare Act of 2007 birds, rats and mice that are bred for research purposes and farm animals and horses that are not used for research purposes are excluded from the scope of the Act.

⁵⁵⁶ Chapter 1, Section 2(g).

The punishment for first offenders is a fine of between ten to fifty rupees; in the case of second or more offenders, a fine of between twenty-five to a hundred rupees or imprisonment of three months or both.⁵⁵⁷ The punishment for practicing ‘phooka’ is a fine of up to one thousand rupees⁵⁵⁸ or imprisonment of up to two years, and the cow is forfeited to the government. It is submitted that for a country that has a Constitution that places a duty on all citizens to protect and have compassion for all living things, these punishments seem to be quite “soft” and outdated.

In Section 15 of the Act states that the government may constitute a Committee to control and supervise experiments on animals. On 19 October 2006, by government notice,⁵⁵⁹ the Government constituted a committee. The notice also stated that the duration for this Committee will be four years. The Committee is tasked with taking any and all measures that may be necessary to ensure that animals are not subjected to unnecessary pain or suffering before, during or after experimentation on them.⁵⁶⁰ The Committee may also make rules concerning experimentation.⁵⁶¹

Furthermore, the Committee has the power to authorise, in writing, any of its officers to enter and inspect an institute that uses animals in experiments.⁵⁶² This is to ensure that these institutes are complying with the rules that the Committee has made. The Committee also has the power to prohibit any further experiments on animals.⁵⁶³ This decision comes about from the officer’s report and after giving the institute an opportunity to be heard.⁵⁶⁴

With regard to performing animals, there are provisions which are contained in Chapter 5. For example, to exhibit or train an animal a person must be registered according to the provisions of this Act⁵⁶⁵ and the government may specify which animals may not be trained or exhibited as a performing animal.⁵⁶⁶

⁵⁵⁷ As of the 08/09/2009, One Indian Rupee is equivalent to 0.15 of the South African Rands. Therefore the fines ranging from Ten Indian Rupees to a Hundred Indian Rupees are equal to 1.55 South African Rands - 15.51 South African Rands. (www.xe.com [accessed on 08/09/2009]).

⁵⁵⁸ As of the 09/12/2009, One Indian Rupee is equivalent to 0.16 South African Rands. Therefore one thousand Indian Rupees is equal to 163.00 South African Rands. (www.xe.com [accessed on 09/12/2009]).

⁵⁵⁹ Government of India, Ministry of Environment and Forests Notification. S.O. 1817(E) New Delhi the 19th October, 2006.

⁵⁶⁰ Section 17.

⁵⁶¹ *Ibid.*

⁵⁶² Section 18.

⁵⁶³ Section 19.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ Section 23.

⁵⁶⁶ Section 22.

This Act and its provisions are similar to the South African Animal Protection Act.⁵⁶⁷ However, there are certain exceptions⁵⁶⁸ and acts of cruelty⁵⁶⁹ that seem to be specific to India. It is submitted that with the Board's function of advising the Indian Government from time to time to keep the law with regards to animals up to date, one would think that the penalties and /or fines given to offenders would be kept up to date as well.⁵⁷⁰

5.2.2. The Wild Life (Protection) Act of 1972 as amended by the Wild Life (Protection) Amendment Act of 2002

The principal Act, the Wildlife Protection Act of 1972,⁵⁷¹ was enacted to provide protection to wild animals, birds and plants and to deal with any matter that is connected thereto. In terms of this Act, animals are defined as 'amphibians, birds, mammals, and reptiles, and their young, and also includes, in the cases of birds and reptiles, their eggs.'⁵⁷² Section 6 of this Act makes provision for the setting up of a National Board for Wild Life. The Board has an advisory role to the government, such as advising the Government on areas which may be declared national parks, animal sanctuaries or closed areas and any matter that the government may refer to this Board.

No wild animal that is listed in schedules I, II, III and IV of the Act, may be hunted⁵⁷³ or traded.⁵⁷⁴ Only under certain circumstances may these animals be hunted or killed, such as the killing of an animal in self defence. Provision is made to declare any apt area a sanctuary, national park or a closed area.⁵⁷⁵

The 2002 amendment of the Act revised the 1972 Act and changed the definition of animals. In terms of the amended Act, animals are defined as "mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs."⁵⁷⁶ The Amendment Act now also ensures the ecological and environmental security of India.⁵⁷⁷

⁵⁶⁷ Act 71 of 1962.

⁵⁶⁸ For example, the dehorning of cattle.

⁵⁶⁹ For example, the practice of 'phooka'.

⁵⁷⁰ For example, fines could be increased from time to time to reflect inflation or the current economic situation.

⁵⁷¹ Act 53 of 1972 of India.

⁵⁷² Chapter 1, Section 2(1).

⁵⁷³ Chapter 3.

⁵⁷⁴ Chapter 5A.

⁵⁷⁵ Chapter 4.

⁵⁷⁶ Chapter 1, Section 2.

⁵⁷⁷ Amendment of Long Title.

As was stated earlier, the Prevention of Cruelty to Animals Act is similar in its scope and effectiveness to other animal welfare legislation in other jurisdictions, such as the South African Animals Protection Act of 1962. However, the Animal Welfare Board of India, which was set up in 1962 according to Section 4 of the Prevention of Cruelty to Animals Act of 1960, is the first Animal Welfare Organisation to be established by a Government.⁵⁷⁸

It is submitted that the Wildlife Protection Act of 1972 and the Wildlife Protection Amendment Act of 2002 covers a variety of animals and not just mammals. This wide ambit allows India to protect all of its wildlife. Both Acts also have provisions for the establishment of more conservation areas to further protect Indian wildlife, the prohibition of hunting animals that are listed in schedules I, II, III and IV of the Act, and provisions for the establishment of a National Board for Wild Life.

5.2.3. Rules

The government of India is authorised to make rules under section 38 of The Prevention of Cruelty to Animals Act and has enacted several rules which help enforce the law by clarifying it. Rules in general contain what actions and procedures may be used depending on the subject matter, the punishment for the contravention, and guidelines on the construction of any buildings.

(a) The Transportation Rules of 1978⁵⁷⁹ are aimed at dogs, cats, monkeys, cattle, equines, sheep and goats. These rules deal with amongst other things, rest periods, feeding, housing, and which animals are fit to travel. Other rules dealing with transportation are the Transport of Animals (Amendment) Rules 2001⁵⁸⁰ and the Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules 2001.⁵⁸¹

(b) The Prevention of Cruelty to Animals (Slaughter House) Rules of 2001⁵⁸² state that animals may only be slaughtered in slaughter houses and that certain animals may not be slaughtered, for example, pregnant animals and those less than three months old.⁵⁸³ Animals

⁵⁷⁸ Animal Welfare Board of India, <http://www.awbi.org> (accessed on 27/09/2010).

⁵⁷⁹ No. 18-6/70-LDI, [23/3/1978].

⁵⁸⁰ S.O.269(E), [26/3/2001] These rules apply to the transport of poultry by rail, road and air, and the transport of pigs by rail or road.

⁵⁸¹ S.O.268(E), [26/3/2001] These rules apply to livestock, such as: cattle, goats, pigs, sheep, horses and donkeys.

⁵⁸² S.O.270(E), [26/3/2001].

⁵⁸³ Rule 3.

must be stunned before slaughter and they may not be slaughtered in front of other animals.⁵⁸⁴ These Rules also contain provisions of how the slaughter house must be constructed, for example, window ledges must be sloped and doors must contain fly and rodent screens.⁵⁸⁵

(c) The Recognition of Zoo (Amendment) Rules of 2004⁵⁸⁶ only deals with the recognition of zoos and the classification of zoos into large, medium, small and mini facilities. However, the Recognition of Zoo Rules of 1992 contains provisions⁵⁸⁷ that deal with a number of matters such as

- Animal enclosures – for example, animal enclosures must be constructed in such a manner so as to ensure the safety of the animals, caretakers and visitors;⁵⁸⁸
- Veterinary facilities – for example, every large and medium zoo must have a fully fledged veterinary facility, which includes a veterinary hospital, diagnostic equipment and a range of drugs;⁵⁸⁹
- Feeding – for example, every zoo must timely supply wholesome and unadulterated food for each individual animal;⁵⁹⁰
- Hygiene – for example, every zoo must provide a proper waste disposal facility for treating both solid and liquid waste;⁵⁹¹ and
- Health – for example, the condition and health of all animals must be checked every day.⁵⁹²

India goes much further in protecting zoo animals, as not many jurisdictions, such as the USA and South Africa, have rules or legislation that specifically protects animals in zoos. In some cases animals must rely, so to speak, on the statutory protection of a jurisdiction, as the case in the United States. An example of this is Bill H2061 of the state of West Virginia in

⁵⁸⁴ Rule 6.

⁵⁸⁵ Rule 7.

⁵⁸⁶ G.S.R. 520(E).

⁵⁸⁷ Rule 10.

⁵⁸⁸ Rule 10.15.

⁵⁸⁹ Rule 10.31.

⁵⁹⁰ Rule 10.21.

⁵⁹¹ Rule 10.22.

⁵⁹² Rule 10.27.

the US. This Bill will apply to the treatment of Elephants by their owners or managers. The Bill will prohibit the abusive treatment that some Elephants face at the hands of their owners or managers in zoos and circuses. However, this Bill failed to complete the legislative process before adjournment in West Virginia, USA.⁵⁹³

(d) The Prevention of Cruelty to Draught and Pack Animals Rules of 1965⁵⁹⁴ state the maximum load that each draught and pack animal may carry, as well as the number of persons that may be carried at one time.⁵⁹⁵ There are also certain conditions that apply to draught and pack animals to ensure the animals welfare, such as having a rest period during 12:00 and 15:00 where the temperature exceeds 37°C.⁵⁹⁶ India, for instance, has many small and marginal farmers that use about 65 million draught animals⁵⁹⁷ and because of this, it is submitted that the Indian Government needed to address the use and treatment of these animals. It is further submitted that there are not as many draught animals in the USA, Switzerland and possibly in South Africa and Kenya as there are in India and because of this no specific rules or legislation have been enacted to protect these animals in these countries.

Most of the jurisdictions under discussion⁵⁹⁸ have similar rules on transporting and slaughtering of animals. India is unique in that it has enacted specific rules with regards to protecting zoo animals and preventing cruelty to draught and pack animals. These rules ensure that there is at least some level of protection aimed at a broad spectrum of animals.⁵⁹⁹

Below is a table containing a summary of the main Indian laws discussed above:

	Application	Exclusions	Note on Provisions
Prevention of Cruelty to Animals Act	“any living creature other than a human being.”	Several exclusions with regard to what constitutes as cruelty.	Provisions include the establishment of an Animal Welfare Board, experimentation on animals, cruelty to animals and performing animals.

⁵⁹³ www.bornfreeusa.org/legislation.php?p=2152&more=1 (accessed on 11/11/2010).

⁵⁹⁴ No. 9-18/68-LD, [23/3/1965] .

⁵⁹⁵ Rules 3-5.

⁵⁹⁶ Rule 6.

⁵⁹⁷ www.indiaenvironmentportal.org.in/node/17055 (accessed on 11/09/2009).

⁵⁹⁸ The USA, Switzerland and Kenya.

⁵⁹⁹ Animals in zoo's, animals that are been transported or are going to be slaughtered and draught and pack animals.

Wild Life (Protection) Amendment Act	Mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and their young and eggs.	Act only applies to wild animals (and plants).	Provisions include the establishment of a National Board for Wild Life; declare an area a sanctuary, national park or a closed area.
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5.3. Switzerland

Switzerland⁶⁰⁰ is not a member of the European Union (EU) and is therefore not obliged to meet the minimum requirements of EU members regarding animal welfare standards.

However, in 1992, Switzerland became the first country⁶⁰¹ in the world to acknowledge the interests of animals in its Constitution.⁶⁰² This acknowledgment places a constitutional duty on the Swiss Confederation and Cantons⁶⁰³ to enact legislation for the protection and welfare of animals, a duty which none of the other jurisdictions under discussion has. This acknowledgment also ensures that there is legislation that covers a variety of animal welfare matters.

⁶⁰⁰ Switzerland is made up of twenty-six cantons, each of which were fully sovereign states until the formation of the Swiss Federal State in 1848. ("Switzerland" The World Book Encyclopaedia (2010), Volume 17).

⁶⁰¹ Germany became the second country to include animals in their constitution (Article 20a), the Constitution of the Federal Republic of Germany, in May 2002. India merely places a duty on Indian Citizens to protect and cherish all life (The Constitution of India, Article 51A (g)). Article 20a (Protection of the natural foundations of life and animals) of the Constitution of the Federal Republic of Germany provides: Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.

⁶⁰² Section 80 of the Federal Constitution of the Swiss Confederation of 1999 provides:

1. The Confederation shall legislate on the protection of animals.
2. It shall regulate in particular:
 - a. the keeping and care of animals;
 - b. experiments and intervention on live animals;
 - c. the use of animals;
 - d. the importation of animals and animal products;
 - e. trade in animals and transportation of animals;
 - f. the slaughter of animals.

3 The federal regulations shall be implemented by the Cantons, insofar as the statute does not reserve this for the Confederation.

⁶⁰³ It is an administrative division which is generally smaller in size and population when it is compared to a province (South Africa) or a county (United Kingdom). (under "Switzerland" The World Book Encyclopedia).

Switzerland has other legislation, apart from the Constitution, that protect animals. They are the Swiss Federal Act on Animal Protection of March 9, 1978⁶⁰⁴ and the Swiss Animal Protection Ordinance of 1981. The first-mentioned act is comprehensive and covers many issues regarding the protection of animals, such as farming, welfare of pets, sale of animals and the use of animals in research.⁶⁰⁵

The Swiss Animal Protection Ordinance⁶⁰⁶ is a set of animal welfare regulations that are based on the Swiss Federal Act on Animal Protection. This ordinance addresses issues such as transporting,⁶⁰⁷ breeding⁶⁰⁸ and slaughtering of animals,⁶⁰⁹ as well as companion animals (or pets)⁶¹⁰ and animal research.⁶¹¹

5.3.1. The Swiss Federal Act on Animal Protection of 1978

The provisions of this Act shall be examined. These provisions deal with the keeping of animals, the transport of animals, the slaughter of animals and experiments with animals. Each of these issues are dealt with more comprehensively in the Swiss Animal Protection Ordinance, which will be dealt with after looking at the Swiss Federal Act.

Article 1 of the Swiss Federal Act on Animal Protection states that it only applies to vertebrate animals,⁶¹² however, the Federal Council is allowed to decide which invertebrate animals⁶¹³ may be included and to what extent the Act may apply to them. The animal welfare Acts from the jurisdictions under study provides general measures with regard to shelter or the treatment of animals. For example, the Indian Prevention of Cruelty to Animal Act of 1960 only requires the owner to provide an animal with sufficient food, water and shelter.⁶¹⁴ Article 2 of Section 1 provides that ‘Animals shall be treated in the manner which best complies with their needs.’⁶¹⁵

This section requires a generous interpretation when dealing with the needs of a specific animal, as every animal has different needs. The Swiss provision goes beyond ensuring that

⁶⁰⁴ Swiss APA 1978.

⁶⁰⁵ Swiss Federal Act on Animal Protection of March 9, 1978.

⁶⁰⁶ Swiss Animal Protection Ordinance 1981.

⁶⁰⁷ Chapter 6.

⁶⁰⁸ Article 34b.

⁶⁰⁹ Chapter 7a.

⁶¹⁰ Chapter 3a.

⁶¹¹ Chapter 7.

⁶¹² Vertebrate animals include fish, reptiles, birds, mammals and amphibians.

⁶¹³ These are insects, arachnids, crustaceans, molluscs, protozoa, annelids and echinoderms.

⁶¹⁴ Section 11(h).

⁶¹⁵ Section 1, Article 2 (1).

animals are just treated humanely, it ensures that each animals' mental, physical, emotional and biological needs are met sufficiently. For example, a large dog requires a lot of space, exercise and food, while a fish requires a clean tank, a small amount of food and enough space in the tank.

The Swiss Federal Act contains provisions for the keeping of animals.⁶¹⁶ These provisions require that animals are fed, cared for and provided with shelter.⁶¹⁷ The Act also contains provisions on trade in animals, which may be regulated, restricted or prohibited by the Federal Council.⁶¹⁸

With regards to transport, the Act requires that animals be transported in conditions that protect them from injury and suffering.⁶¹⁹ The Federal Council is required to introduce regulations regarding all aspects of transporting animals as freight, such as loading, unloading and feeding.⁶²⁰

Section seven which deals with the slaughtering of animals, requires that animals must first be stunned before they are slaughtered and the Federal Council is required to specify what methods of stunning may be used.⁶²¹ Section 8 of the Act contains provisions that prohibit certain practices, such as maltreatment, neglect, overworking, doping, cruelly killing, organising animal fights, using animals as target practice, abandoning them, etc.⁶²²

Surgical operations on live animals are subject to the regulations on experiments with animals,⁶²³ and must be done under general or local anaesthetics.⁶²⁴ Experiments with animals are defined as

“any procedure involving the use of animals to verify scientific hypotheses, to obtain information, to obtain or test a substance, and to observe the effects of a particular procedure on the animal, as well as the use of animals in experimental research on behaviour.”⁶²⁵

⁶¹⁶ Section 2.

⁶¹⁷ *Ibid.*

⁶¹⁸ Section 3.

⁶¹⁹ Section 4.

⁶²⁰ *Ibid.*

⁶²¹ Section 7.

⁶²² Section 8.

⁶²³ Section 5.

⁶²⁴ Section 6.

⁶²⁵ *Ibid.*

Experiments with animals have to be authorised by the cantonal authorities and only the scientific directors of institutes or laboratories may be authorised to conduct experiments.⁶²⁶ Further requirements are that experiments may only be conducted in facilities or laboratories that have qualified staff and adequate space, and experiments may only be conducted under the supervision of an experienced specialist. It is also required that ‘animals must be kept, fed and receive medical treatment before, during and after the experiment, according to the most up-to-date information available.’⁶²⁷

Article 16 permits the infliction of pain, suffering or injury on an animal in circumstances where the purpose of an experiment cannot be achieved in any other way. These types of experiments may only be carried out under the supervision of an experienced specialist.⁶²⁸ The animals that are used in this type of experiment may not be used for any further experiments.⁶²⁹

Where animals are used in experiments records must be kept.⁶³⁰ Every canton is required to appoint a committee of specialists for animal experiments. This committee is independent of the canton and is tasked with examining requests for animal experimentation and submitting applications to the cantons, as well as giving advice on how the animals should be kept and how the experiments should be conducted.⁶³¹

The Federal Council is also required to appoint a committee, which advises the Federal Veterinary Office.⁶³² The Federal Veterinary Office is required to operate a documentation centre which must contain information on alternative methods and animal experiments.⁶³³ The Federal Council is further required to

“promote and support international approval of testing methods replacing experiments with animals, allowing for such experiments to be conducted with less animals or experiments causing less stress to the animals.”⁶³⁴

⁶²⁶ *Ibid.*

⁶²⁷ *Ibid.*

⁶²⁸ Article 16.

⁶²⁹ *Ibid.*

⁶³⁰ Article 17.

⁶³¹ Article 18.

⁶³² Article 19.

⁶³³ *Ibid.*

⁶³⁴ *Ibid.*

Maltreating animals, or offences connected with international trade⁶³⁵ or violations of the provisions of the Swiss Federal Act on Animal Protection in any way, makes the perpetrator liable to arrest or a maximum fine of 20,000 Swiss Francs.⁶³⁶ Prosecution and enforcement of the Act is the responsibility of the cantons, unless otherwise stated in the Act.⁶³⁷

It is submitted that the provision⁶³⁸ in Article 2 Section 1 is not contained in any of the other animal welfare legislation under discussion. This provision goes further than ensuring the humane treatment of animals, which such treatment is usually the only requirement in ensuring the welfare of animals in the other animal welfare legislation of the jurisdictions under study.

It is further submitted that the provisions of this Act on experimentation are similar to the other jurisdictions discussed in that animals are required to be anaesthetised for the duration of the experiment, records of the use of animals in experiments must be kept and the requirement that experiments may only be conducted in a laboratory.

5.3.2. The Swiss Animal Protection Ordinance of 1981

This Ordinance contains regulations that are based on the Swiss Federal Act on Animal Protection of 1978, and was enacted in terms of Article 33 of the Act.

(a) General Provisions

Chapter 1 of the Ordinance contains provisions that are concerned with the keeping of animals. These relate to:

- Feeding – for example, animals must receive sufficient quantities of food and water regularly;⁶³⁹
- Caring – for example, any person who keeps or owns an animal is required to regularly check the welfare of the animal;⁶⁴⁰

⁶³⁵ *Ibid.*

⁶³⁶ *Ibid.* As of the 11/09/2009, One Swiss Franc is equal to 7,19 South African Rands. The maximum fine of 20,000 Swiss Francs is therefore equal to 143,834.38 South African Rands (www.xe.com [accessed on 11/09/2009]).

⁶³⁷ *Ibid.*

⁶³⁸ ‘Animals shall be treated in the manner which best complies with their needs.’

⁶³⁹ Article 2.

⁶⁴⁰ Article 3.

- Keeping arrangements – for example, animals must be kept in a manner that does not interfere with their bodily functions or behaviour;⁶⁴¹
- Housing – for example, animals that cannot adapt to the Swiss climate must be provided with housing;⁶⁴²
- Housing climates – for example, the premises used to house animals must be built and ventilated to maintain a suitable climate for the animal;⁶⁴³
- Enclosures – for example, enclosures must be built, equipped and installed in such a way that minimizes the risk of injury to the animal;⁶⁴⁴ and
- Standing stalls, boxes and tethering systems – for example, these must be designed to allow animals to lie down, rest and stand up in such a way that is considered as normal for a particular species.⁶⁴⁵

(b) Animal Attendants

Chapter 2 of the Ordinance contains provisions on the training, examination and employment of animal attendants. Article 8 provides that the training of animal attendants shall take place at recognised training establishments and that the course shall impart on students the basic knowledge for the keeping and caring of animals, as well as detailed knowledge of a specific field. A proficiency certificate will be awarded after twelve months of practical training and after successfully undertaking a proficiency certificate examination.⁶⁴⁶

Animal attendants may be employed at facilities keeping wild animals professionally or undertaking professional animal trading, institution keeping, breeding or trading in animals for experiments, animal shelters, clinics and establishments breeding and keeping pet animals.⁶⁴⁷

⁶⁴¹ Article 1.

⁶⁴² Article 4.

⁶⁴³ Article 7.

⁶⁴⁴ Article 5.

⁶⁴⁵ Article 6.

⁶⁴⁶ Article 9.

⁶⁴⁷ Article 11.

(c) Domestic Animals

Chapter 3 of the Ordinance contains specific provisions for domestic animals. Domestic animals are defined as

“domesticated animals of the following species: horses, cattle, pigs, sheep, and goats - not including exotic breeds thereof – as well as domestic rabbits, dogs, cats, and poultry (hens, turkeys, guinea fowl, geese, ducks, and domestic pigeons).”⁶⁴⁸

There are specific provisions for cattle,⁶⁴⁹ pigs,⁶⁵⁰ poultry,⁶⁵¹ rabbits⁶⁵² and dogs.⁶⁵³ These provisions ensure that each of these animals have their own specific needs met with regard to housing, feeding, stalls, enclosures and training (in case of dogs). These provisions also include farm animals,⁶⁵⁴ which are often excluded from specific protection in the other jurisdictions under study, such as the USA.

(d) Wild Animals

Chapter 4 of the Ordinance contains provisions concerning wild animals. Wild animals are defined as ‘all animals other than domesticated animals (Art. 12) as well as rodents bred for laboratory experiments.’⁶⁵⁵ These provisions deal with, among other things, authorisation to keep wild animals;⁶⁵⁶ trade in animals which require a permit and authorisation from the cantons.⁶⁵⁷ It is submitted that these provisions on trade are required to ensure that animals which are traded are legally obtained as well as to ensure the welfare of these animals.

(e) Transportation of Animals

The provisions on the transportation of animals⁶⁵⁸ include a provision that is not often seen in other jurisdictions under study, such as India and the USA. These provisions deal with the responsibility of the sender, the carrier and the consignee. The responsibilities of the sender include giving the carrier instructions for the care of the animals during transit and obtaining

⁶⁴⁸ Article 12.

⁶⁴⁹ Section 2.

⁶⁵⁰ Section 3.

⁶⁵¹ Section 4.

⁶⁵² Section 3a.

⁶⁵³ Section 6.

⁶⁵⁴ i.e. cattle, pigs and poultry.

⁶⁵⁵ Article 35.

⁶⁵⁶ Articles 38 – 44.

⁶⁵⁷ Articles 45 – 51a.

⁶⁵⁸ Articles 52 – 56.

the necessary documents before transporting the animals so as to speed up the transport process.⁶⁵⁹ The carrier is responsible for the care and prompt delivery of the animals to the consignee.⁶⁶⁰ The carrier is also responsible for ensuring that the sender gives him all the necessary documents for transporting the animals.⁶⁶¹ The consignee is responsible for unloading the animals and providing them with food, water, shelter and care.⁶⁶² With regard to wild animals, the consignee is responsible for accustoming the wild animal to its new surroundings.⁶⁶³

As was said earlier, jurisdictions such as India and the USA often don't place a duty or responsibility on the sender, the carrier or the consignee. Instead the provisions in these other jurisdictions are prescriptive and include the punishment for violating these provisions.

The Ordinance goes on to provide that animals that are sick, weak, injured, young and in an advanced state of pregnancy need special precautions if they must be transported, otherwise they must not be transported.⁶⁶⁴ Animals that are chosen for transportation must be properly prepared, which includes watering and feeding before and during transportation.⁶⁶⁵ Other provisions include the obligation on how to care for certain animals, such as lactating dairy cattle which must be milked twice a day and transporting unsociable animals separately.⁶⁶⁶

The mode of transport and the containers must be designed and made of material that is not harmful to the animals. The design of the containers must minimise the risk of injury to the animals and must be constructed in such a way so as to prevent escape.⁶⁶⁷ Fresh air must be readily available and the containers must be big enough to allow the animals to lie down, stand up, eat or drink.⁶⁶⁸

⁶⁵⁹ Article 52.

⁶⁶⁰ *Ibid.*

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*

⁶⁶⁴ Article 53.

⁶⁶⁵ *Ibid.*

⁶⁶⁶ *Ibid.*

⁶⁶⁷ Articles 54 – 55.

⁶⁶⁸ *Ibid.*

(f) Conducting Experiments on Animals

There are more provisions in this Ordinance with regards to experiments on animals.⁶⁶⁹ These provisions deal with matters that were not dealt with in the Swiss Federal Act on Animal Protection. These matters include

- The housing of animals – the provisions that govern the keeping of animals also applies to animals used in experiments;⁶⁷⁰
- Training specialists – that is, persons in charge of experiments on animals must have at least three years' practical experience in the field of experiments with animals;⁶⁷¹
- Authorisation – authorisation is required where surgery is performed on animals;⁶⁷²
- Inspections – institutes that use of animals in experiments must be supervised by the cantonal authorities and must be inspected once a year;⁶⁷³
- The Federal committee for animal experiments – Article 64 requires the Federal Committee to be made up of specialists in animal experiments, the keeping of animals, animal protection and at least one representative of the cantons;
- The documentation centre – the documentation centre is required by Article 64a to inform the cantonal authorities of the latest information and current level of knowledge on a regular basis.

(g) Slaughter of Animals

The provisions on the slaughtering of animals⁶⁷⁴ include the

- Delivery – Article 64(c) states that the meat controllers must control the health and care of the animals to be slaughtered by doing spot checks;

⁶⁶⁹ Articles 58 – 64b.

⁶⁷⁰ Article 58a (for example, animals that cannot adapt to the Swiss climate must be provided with housing [Article 4]).

⁶⁷¹ Article 59d.

⁶⁷² Article 60.

⁶⁷³ Article 63.

⁶⁷⁴ Articles 64(c) – 64(i).

- Housing – Article 64(d) contains a requirement that during warm weather, animals must be kept cool;
- Handling – Article 64(e) requires that the use of electric rods must be kept to a minimum;
- Stunning – Article 64(f) lists various methods of stunning certain animals, such as using the method of shooting a bolt or bullet into the brain of horses, cattle, pigs, sheep, goats and rabbits. Poultry may be stunned by using either electricity, a strong blow to the head or a bolt shot into the brain; and
- Bleeding of animals – Article 64(h) states that bleeding must be done by piercing or cutting the main blood vessel in the throat area.

(h) Other Prohibited Practices

There are further provisions in the Ordinance on prohibited practices⁶⁷⁵ that are not contained in the Swiss Federal Act on Animal Protection of 1978. These provisions include prohibited practices such as docking⁶⁷⁶ dogs' tails, striking animals in the face or on the genitals, surgical operations that simplify the keeping of pet animals⁶⁷⁷ and withholding water from poultry to encourage moulting.⁶⁷⁸

It is submitted that the provisions in Swiss law outline the responsibilities of all those involved with animals, such as owners, persons conducting experiments on animals and carriers. These responsibilities include how to properly keep an animal, the humane care of animals during transit, the reasonable housing of animals used in experiments, and the statutorily approved stunning and slaughter of animals. All these responsibilities should ensure that animals do not suffer unnecessarily.

Compared to other jurisdictions under study, Swiss law seems to be better in most of its provisions. For example, Swiss law covers a range of issues with regards to animals. This includes those animals, such as farm animals and animals used in experiments, which are

⁶⁷⁵ Article 66.

⁶⁷⁶ 'to remove part of something' ("Dock" Cambridge Advanced Learner's Dictionary (2005) 2nd edition, Cambridge University Press: Cambridge).

⁶⁷⁷ For example, removing their teeth or claws.

⁶⁷⁸ Article 66. Moulting is 'to lose feathers, skin or hair as a natural process at a particular time of year so that new feathers, skin or hair can grow.' ("Moulting" Cambridge Advanced Learner's Dictionary (2005) 2nd edition, Cambridge University Press: Cambridge).

often excluded from the scope of animal welfare legislation in other jurisdictions under study, such as India, South Africa and the USA.

However, other provisions seem to be similar to the other jurisdictions under study. For example, the provisions of the Swiss Federal Act on Animal Protection of 1978 for animal experimentation are similar to the other jurisdictions in that animals are required to be anaesthetised for the duration of the experiment, records of the use of animals in experiments must be kept and the requirement that experiments may only be conducted in a laboratory.

Overall, the Swiss law has made advances by including farm animals and animals used in experiments in their provisions. Switzerland has also banned circus animal acts⁶⁷⁹ and is making plans to phase out animal experiments altogether.⁶⁸⁰

Below is a table containing a summary of the main Swiss laws discussed above:

	Application	Exclusions	Note on Provisions
Swiss Federal Act on Animal Protection	Vertebrate animals.	Invertebrate animals. However, the Federal Council is allowed to decide which invertebrates may be included.	Ensures each animal's mental, physical, emotional and biological needs are met. Provisions dealt with more comprehensively by the Swiss Animal Protection Ordinance.
Swiss Animal Protection Ordinance	As above.	As above.	Provisions include: Keeping of animals, animal attendants, domestic animals, wild animals, transportation of animals, conducting experiments of animals, slaughter of animals and other prohibited practices.

⁶⁷⁹ Grant *The No-Nonsense Guide to Animal Rights* 58.

⁶⁸⁰ Grant *The No-Nonsense Guide to Animal Rights* 87.

5.4. Kenya

Kenya contains a range of animal and plant species, as well as several national parks, which are among the best in Africa.⁶⁸¹ Kenya has several pieces of legislation that deal with animals⁶⁸² and is also one of several countries that are part of the steering committee of the Proposed Universal Declaration on Animal Welfare of 2005.

The following quote suggests that the people of Kenya know the importance of caring for animals:

“Over 1 billion people in the world rely directly on their animals for survival, and Kenya is no different ... People in my country know this. When there is a drought, we will often give water to our animals before we give it to ourselves.”⁶⁸³

Kenya is in the process of drafting a new wildlife policy, which will be discussed in this section as well as the Prevention of Cruelty to Animals Act. The other acts regarding animal welfare will be briefly discussed afterwards.

5.4.1. The Prevention of Cruelty to Animals Act of 1962⁶⁸⁴

In Section 2 of this Act, which is the definition section, animals are defined as “a living vertebrate animal including mammal, bird, reptile, amphibian and fish.”⁶⁸⁵ Other jurisdictions under study, such as the USA and India, tend to exclude fish and certain mammals, such as farm animals and animals bred for use in scientific experimentation, from the scope and protection of their animal welfare legislation.

In the Act, ‘experiment’, is defined as “any experiment performed on an animal and calculated to give pain, but does not include an operation.”⁶⁸⁶ ‘Operation’ is defined as “an operation performed on an animal by a person legally permitted to operate for the purposes of (a) saving or prolonging the life of an animal; or (b) alleviating the suffering of an animal: or

⁶⁸¹ <http://www.kws.org/> (accessed on 19/12/2009).

⁶⁸² Such as the prevention of Cruelty to Animals Act of 1962 (Chapter 360), the Wildlife (Conservation and Management Act 1 of 1976, Animal Diseases Act of 1965 (Chapter 364), Cattle Cleansing Act of 1937 (Chapter 358) and The Fisheries Act of 1989 (Chapter 378).

⁶⁸³ Hon. Noah Wekesa, Minister of Education, Science and Technology, Kenya.

⁶⁸⁴ Chapter 360.

⁶⁸⁵ Section 2.

⁶⁸⁶ *Ibid.*

(c) sterilising the animal; or (d) enhancing the value or the appearance of the animal.”⁶⁸⁷
‘Owner’ is defined as “a person having the charge, custody or control of an animal.”⁶⁸⁸

(a) Offences

Part II of the Act covers a variety of offences in relation to animals. These offences include acts and omissions that lead to cruelty; animal fights and baiting; use of traps; hunting injured or captive animals; and prohibition of films that involve cruelty to animals. The punishment for the offences committed in section 3(1) of the Act is either a fine not exceeding three thousand shillings⁶⁸⁹ or imprisonment that does not exceed six months, or both.⁶⁹⁰

Persons guilty of promoting, causing, or assisting in baiting or fighting of animals are guilty of an offence and are liable to a fine that does not exceed three thousand shillings⁶⁹¹ or imprisonment that does not exceed six months, or both.⁶⁹² It is an offence to sell, or knowingly place any poisoned grain or flesh on lands or in buildings.⁶⁹³ The punishment for committing this offence is a fine of two hundred shillings.⁶⁹⁴ The use of traps and other devices that are designed to cause suffering to an animal is forbidden. Persons who fail to check their traps for at least once a day are guilty of an offence.⁶⁹⁵ Persons in contravention of this section are liable to a fine of five hundred shillings.⁶⁹⁶

It is prohibited to liberate captive animals in an exhausted or injured condition, or liberate captive animals in an enclosed space where it has no reasonable chance of escape for the purposes of hunting. Persons who commit these acts are guilty of an offence and liable to a fine of two thousand shillings or a term of imprisonment that does not exceed three

⁶⁸⁷ *Ibid.*

⁶⁸⁸ *Ibid.*

⁶⁸⁹ As of the 23/09/2009 One Kenyan Shilling is equivalent to 0.10 South African Rands. A fine of three thousand Kenyan Shillings therefore equals 300 South African Rands (www.xe.com/ucc [accessed on 23/09/2009]).

⁶⁹⁰ Section 3(3).

⁶⁹¹ *Op cit* note 608.

⁶⁹² Section 4(c).

⁶⁹³ It is submitted that it may have become necessary for the Kenyan Government to make this an offence as persons using poisons to destroy parasites and vermin may not have taken the proper care in distributing/using the poisons which may have resulted in the unintended death of animals and/or humans.

⁶⁹⁴ Section 5(b). As of the 23/09/2009 One Kenyan Shilling is equivalent to 0.10 South African Rands. A fine of two hundred Kenyan Shillings therefore equals 20 South African Rands (www.xe.com/ucc [accessed on 23/09/2009]).

⁶⁹⁵ Section 6(b).

⁶⁹⁶ *Ibid.* As of the 23/09/2009 One Kenyan Shilling is equivalent to 0.10 South African Rands. A fine of five hundred Kenyan Shillings therefore equals 50 South African Rands (www.xe.com/ucc [accessed on 23/09/2009]).

months.⁶⁹⁷ Persons who cruelly⁶⁹⁸ slaughter an animal, whether for human consumption or not, are guilty of an offense and are liable to a fine of two thousand shillings or a term of imprisonment that does not exceed three months.⁶⁹⁹

It is forbidden to cruelly train an animal by infliction of pain or excessively using a whip or other instrument and persons guilty of contravening this section are liable to a fine of two thousand shillings or a term of imprisonment that does not exceed three months.⁷⁰⁰ Other offences include public performances of untrained animals,⁷⁰¹ prohibiting persons from making or supplying films that depict cruelty to animals⁷⁰² and hawking animals in a cruel manner.⁷⁰³

If a person is convicted of an offence under this Act the court may, in addition to the other punishments, make an order to take the animal away from the owner and give it to an animal welfare body, if that is deemed to be in the best interest of the animal.⁷⁰⁴ In cases of extreme cruelty and neglect, the court has further powers to disqualify the offender from keeping or working with animals for up to ten years, or for life in extreme cases.⁷⁰⁵

(b) Experiments

Part III of the Act deals with the control of experiments conducted on animals. Experiments on animals may only be conducted by a licensed person(s)⁷⁰⁶ and persons who conduct experiments without a license are guilty of an offense and liable to a fine of three thousand shillings or a term of imprisonment not exceeding six months.⁷⁰⁷

⁶⁹⁷ Section 7(c). As of the 23/09/2009 One Kenyan Shilling is equivalent to 0.10 South African Rands. A fine of two thousand Kenyan Shillings therefore equals 200 South African Rands (www.xe.com/ucc [accessed on 23/09/2009]).

⁶⁹⁸ Section 8(1) states that cruelly slaughtering an animal means to either cause an animal more suffering than is necessary or to slaughter an animal in front of another one that is waiting to be slaughtered.

⁶⁹⁹ Section 8(1). See footnote 615.

⁷⁰⁰ Section 9(1). See footnote 615.

⁷⁰¹ Section 10(1). Persons contravening this section are liable to a fine of two thousand shillings or a term of imprisonment that does not exceed three months. See footnote 615.

⁷⁰² Section 11. Persons contravening this section are liable to a fine of two thousand shillings or a term of imprisonment that does not exceed three months. See footnote 615.

⁷⁰³ Section 12. Persons contravening this section are liable to a fine of five hundred shillings. *Op cit* note 614.

⁷⁰⁴ Section 28.

⁷⁰⁵ *Ibid.*

⁷⁰⁶ Section 13.

⁷⁰⁷ *Ibid.* *Op cit* note 608.

The Minister of Livestock Development may grant teaching permits⁷⁰⁸ with regard to animal experimentation. It may also issue licences that will specify what experiment may be conducted and how long the licence is valid for.⁷⁰⁹ It is an offence to conduct an experiment that is not specified on the licence.⁷¹⁰ Inspections⁷¹¹ may be carried out with regard to animal experiments and records of the experiments must be kept.⁷¹²

It is submitted that the definition of animal in this Act refers to animals that are usually excluded, such as fish, reptiles and amphibians. It is further submitted that the penalties for the contravention of this Act seem to be light. The fines given may reflect the current economic situation in Kenya or they may be outdated. If the latter is the case then these fines should be updated.

5.4.2. Draft Wildlife Policy of 2007

Over the past decade, Kenya has been involved in a process of reforming its laws with the aim of reflecting new approaches to participatory governance. Due to this reform initiative, the Wildlife (Conservation and Management) Act of 1976 is also under revision. There are many issues that are not adequately met by the current Wildlife (Conservation and Management) Act of 1976, including obligations under regional and multilateral agreements to which Kenya is a party.⁷¹³ An Act or a law that comprehensively deals with these and other issues outlined in the Draft Wildlife Policy of 2007 must be created.⁷¹⁴

The Kenyan government has committed itself to develop an implementation plan, which will help to ensure that the actions outlined in this Policy are addressed systematically and effectively, and will involve a range of both government and non-governmental stakeholders.⁷¹⁵

⁷⁰⁸ Section 17.

⁷⁰⁹ Section 16.

⁷¹⁰ Section 15.

⁷¹¹ Section 21.

⁷¹² Section 20.

⁷¹³ Draft Wildlife Policy, pg 26.

⁷¹⁴ *Ibid.*

⁷¹⁵ Draft Wildlife Policy, pg 32.

Kenya's current wildlife policy is contained in the Sessional Paper No. 3 of 1975, called '*A Statement on Future Wildlife Management Policy in Kenya*'.⁷¹⁶ The key elements of the Policy, in summary, recognise the following:

“(a) It identified the primary goal of wildlife conservation as the optimization of returns from wildlife defined broadly to include aesthetic, cultural, scientific and economic gains, taking into account the income from other land uses; (b) It pointed out the need to identify and implement compatible land uses and fair distribution of benefits derived from wildlife including from both non-consumptive and consumptive uses of wildlife; (c) It underscored the need for an integrated approach to wildlife conservation and management in order to minimize human-wildlife conflicts; and (d) The government assumed the responsibility of paying compensation for damages caused by wildlife.”⁷¹⁷

To implement the provisions of the current policy the Wildlife (Conservation and Management) Act of 1976⁷¹⁸ was enacted. The current policy and the Wildlife Act succeeded in enhancing wildlife conservation which significantly reduced the poaching of animals. It also established the Kenya Wildlife Service (KWS)⁷¹⁹ and the Kenya Wildlife Service Training Institute (KWSTI).⁷²⁰ However, according to the Draft Wildlife Policy, the current policy and legislation had failed to adequately address the following matters:

“(a) Reduce the conflict between people and wildlife; (b) Achieve the desired goal of adopting an integrated approach to wildlife management; (c) Achieve the desired goal of mainstreaming the needs and aspirations of landowners and communities in wildlife areas into wildlife conservation planning and decision making processes; (d) Achieve greater protection or conservation of wildlife within the protected and outside protected areas; (e) Achieve the desired goal of putting in place a regulatory framework for wildlife utilisation; (f) Achieve the desired goal of analysis and application of research data in the management of wildlife resources; and (g) Put into place mechanisms to monitor and ensure the implementation of the Policy and law.”⁷²¹

⁷¹⁶ Draft Wildlife Policy, pg 6.

⁷¹⁷ *Ibid.*

⁷¹⁸ Act 1 of 1976.

⁷¹⁹ The KWS is responsible for wildlife conservation and management.

⁷²⁰ The KWSTI plays an important role in human capacity development.

⁷²¹ Draft Wildlife Policy, which can be found at [www.tourism.go.ke/ministry.nsf/doc/draft_wildlife_policy.pdf/\\$file/draft_wildlife_policy.pdf](http://www.tourism.go.ke/ministry.nsf/doc/draft_wildlife_policy.pdf/$file/draft_wildlife_policy.pdf).

Despite all the successes of the current wildlife policy and legislation listed above, there were several factors that raised the need for Kenya to draft a new wildlife policy. According to the Draft Policy these factors include:

- Lack of comprehensive wildlife policy and law – this is due to the rapid change of land use to agriculture and rural and urban development;⁷²²
- Rapid change of tenure in wildlife rangelands –The insecure tenure of some land in wildlife conservation and the abuse of trusteeships by local authorities have led to apathy with regards to wildlife by the local communities. The rapid change of land use due to agriculture and rural and urban development have also negatively affected wildlife in these areas;⁷²³
- Inadequate incentives – there are inadequate incentives which would motivate communities and individuals who own land outside protected areas to adopt practices that are compatible with wildlife conservation and management;⁷²⁴
- Management plans – lack of integration of the various stakeholders in the wildlife conservation and management and a lethargy in implementing them where they exist;⁷²⁵
- Human-wildlife conflicts – this is due to a water shortage and inadequate dry season pasture for livestock. This results in a ‘competition’ for available resources between humans, their livestock and the wildlife;⁷²⁶
- The need to align policy and law within the framework of environmental law – such as the Environment Management and Coordination Act 8 of 1999;⁷²⁷
- The need to domesticate international and regional wildlife related conventions and treaties;⁷²⁸

⁷²² Draft Wildlife Policy, pg 7-11.

⁷²³ *Ibid.*

⁷²⁴ *Ibid.*

⁷²⁵ *Ibid.*

⁷²⁶ *Ibid.*

⁷²⁷ *Ibid.*

⁷²⁸ *Ibid.*

- The need for decentralisation and devolution of wildlife management to the lowest level possible – there is a lack of partnerships with local communities outside protected areas to help in the management and conservation of wildlife;⁷²⁹
- Marked decline in wildlife numbers and loss of biodiversity – this is due to an increase in the bush meat trade, rising poverty levels, poor cultivation methods, deforestation, charcoal burning, overgrazing and water and land pollution;⁷³⁰
- Inadequate research capacity and absence of reliable and up to date data on wildlife;⁷³¹
- The need to define wildlife;⁷³² and
- The need to align the policy with Vision 2030⁷³³ - Vision 2030 is an economic development plan, which aims at increasing the annual economic growth rates of Kenya to 10%.⁷³⁴ Vision 2030 is focused on six areas, namely tourism, agriculture, trade, manufacturing, financial services and information technology.⁷³⁵

The new Kenyan wildlife policy was developed in response to the above needs and factors. The goals of this policy recognise that wildlife is a national heritage as well as the cornerstone of the Kenyan tourism sector and, as such, it seeks to prevent the decline in wildlife populations and wildlife habitats.⁷³⁶ The goals of this policy can therefore be summed up as follows: to provide a framework for conserving, in perpetuity, Kenya's rich diversity of species, habitats and ecosystems for the well being of its people and the global community.⁷³⁷

The objectives and priorities of this policy are to:

“(a) conserve Kenya's wildlife resources as a national heritage; (b) provide a legal and institutional framework for wildlife conservation and management throughout

⁷²⁹ *Ibid.*

⁷³⁰ *Ibid.*

⁷³¹ *Ibid.*

⁷³² *Ibid.*

⁷³³ *Ibid.*

⁷³⁴ Ministry of State Planning, National Development and Vision 2030, <http://www.planning.go.ke/> (accessed on 27/09/2010).

⁷³⁵ *Ibid.*

⁷³⁶ Draft Wildlife Policy, pg 12.

⁷³⁷ *Ibid.*

the country; (c) conserve and maintain viable and representative wildlife populations in Kenya; (d) develop protocols, methodologies and tools for effective assessment and monitoring of wildlife conservation and management throughout the country; (e) promote partnerships, incentives and benefit sharing to enhance wildlife conservation and management; and (f) promote positive attitudes towards wildlife and wildlife conservation and management.”⁷³⁸

There are several guiding principles that underpin the policy, namely,

- That wildlife is a national heritage of common concern;⁷³⁹
- Adopting an integrated ‘ecosystem’ approach to conserving wildlife;⁷⁴⁰
- The conservation of wildlife will be promoted as a land use option;⁷⁴¹
- The principle of sustainable use will be implemented with regard to wildlife;⁷⁴²
- Benefits accruing from wildlife will be shared equally amongst stakeholders;⁷⁴³
- The cultivation of positive attitudes and perceptions towards wildlife;⁷⁴⁴
- Basing the conservation and management of wildlife on the principles of inter- and intra-generational equity;⁷⁴⁵
- The enhancement of a coordinated and participatory approach to wildlife conservation and management;⁷⁴⁶
- Conserving and managing wildlife resources in accordance with the principle of subsidiarity;⁷⁴⁷

⁷³⁸ *Ibid.*

⁷³⁹ *Ibid.*

⁷⁴⁰ *Ibid.*

⁷⁴¹ *Ibid.*

⁷⁴² *Ibid.*

⁷⁴³ *Ibid.*

⁷⁴⁴ Draft Wildlife Policy, pg 13.

⁷⁴⁵ *Ibid.*

⁷⁴⁶ *Ibid.*

⁷⁴⁷ *Ibid.*

- The integration of good governance principles, rule of law, effective institutions, transparency, accountability, respect for human rights and the meaningful participation of citizens in the conservation and management of wildlife;⁷⁴⁸
- The use of the precautionary principle before decisions are made;⁷⁴⁹
- The use of scientific knowledge and expertise with regards to the conservation and management of wildlife;⁷⁵⁰ and
- The domestication and implementation of multilateral environmental agreements.⁷⁵¹

The areas that will be covered by this policy include

- Conservation and management of wildlife in protected areas;⁷⁵²
- Conservation and management of wildlife outside protected areas;⁷⁵³
- Scientific research and monitoring;⁷⁵⁴
- Sustainable management of wildlife resources;⁷⁵⁵
- Human wildlife conflict and compensation;⁷⁵⁶
- Legal and institutional framework;⁷⁵⁷ and

⁷⁴⁸ *Ibid.*

⁷⁴⁹ *Ibid.*

⁷⁵⁰ *Ibid.*

⁷⁵¹ *Ibid.*

⁷⁵² Provisions under this proposed section include the following: establishing clear and recognizable boundary markers to protected areas, monitoring these boundaries, developing existing protected areas and possibly creating new protected areas. Draft Wildlife Policy, pg. 16.

⁷⁵³ Proposed provisions include formulating and implementing a National Land Use Policy and supporting landowners and communities to set aside wildlife conservation areas and sanctuaries. Draft Wildlife Policy, pg. 18.

⁷⁵⁴ Provisions should include establishing short and long-term national guidelines, protocols and population targets, and promote scientific research and monitoring in the wildlife sector as a basis for conservation planning and management decision-making. Draft Wildlife Policy, pg. 19.

⁷⁵⁵ These provisions will include developing and implementing detailed species management strategies and plans for keystone and indicator species and developing recovery plans for the conservation and survival of endangered and threatened species. Draft Wildlife Policy, pg. 21.

⁷⁵⁶ Proposed provisions include erecting and maintain game barriers, and promote and implement land use zoning to minimize human wildlife conflict. Draft Wildlife Policy, pg. 25.

⁷⁵⁷ This section will include provisions that will ensure that a comprehensive wildlife law is enacted to implement the conservation and management goals of this Policy, as well as ensure that this Policy and enabling legislation is reviewed regularly. Draft Wildlife Policy, pg. 26.

- Cross-sectoral linkages.⁷⁵⁸

This policy is generally aimed at protected areas. However, as the Draft Policy states, there are many issues that affect wildlife in the areas outside of these protected areas. These issues include space for wildlife, human-wildlife conflict, limited wildlife education and research, lack of security of tenure of land, user rights and representation in wildlife management and governance structures.⁷⁵⁹ These areas are largely owned by private owners and communities, and their cooperation in managing and conserving the wildlife in these areas is essential.⁷⁶⁰ Incentives will be introduced to either minimise or confine practices that have a negative effect on wildlife and to promote the establishment of sanctuaries or the implementation of measures that will promote sustainable wildlife conservation.⁷⁶¹

The KWS is currently responsible for the conservation and management of the wildlife in Kenya. This mandate is broad and centralised and has created many challenges (discussed above). In order to address these challenges, the conservation of wildlife in Kenya needs to be decentralised to the lowest level possible to enable communities and other stakeholders to participate in the planning, implementation and decision-making processes with regards to wildlife conservation.⁷⁶²

The Kenyan government will develop an Implementation Plan for this Policy.⁷⁶³ Both governmental and non-governmental stakeholders will be involved in this process. This will ensure that the various roles and responsibilities of each stakeholder are defined and can then be met.⁷⁶⁴ Developing this Plan will be an important step in ensuring that the actions outlined in this Policy will be effectively addressed.⁷⁶⁵ It will also emphasise performance measures which will gauge the progress of wildlife conservation and management in Kenya.⁷⁶⁶

It is submitted that although this is a draft policy, it highlights key issues that the government of Kenya needs to address and overcome. It is suggested that once this draft policy is

⁷⁵⁸ This provision will promote the development and implementation of legal instruments between the KWS and other relevant agencies that have overlapping mandates or benefit from wildlife resources, such as the Kenya Forest Service and the Water Resources Management Authority. Draft Wildlife Policy, pg. 29.

⁷⁵⁹ Draft Wildlife Policy, pg 18.

⁷⁶⁰ *Ibid.*

⁷⁶¹ *Ibid.*

⁷⁶² Draft Wildlife Policy, pg 26-27.

⁷⁶³ Draft Wildlife Policy, pg. 32.

⁷⁶⁴ *Ibid.*

⁷⁶⁵ *Ibid.*

⁷⁶⁶ *Ibid.*

implemented, the issues highlighted should be sufficiently dealt with and the wildlife of Kenya (and its people) will be protected.

5.4.3. Other Current Animal Welfare Legislation

It is submitted that the following three acts – the Animal Diseases Act, Cattle Cleansing Act, and the Fisheries Act of Kenya – play a role in ensuring that the welfare of certain animals is met. The first two acts indirectly ensure the welfare of certain animals in that they contain provisions and measures that ensure that the health of certain animals is maintained and certain diseases and outbreaks are controlled or prevented. The third act contains provisions with regard to marine mammals and turtles.

(a) The Animal Diseases Act⁷⁶⁷ defines an animal as ‘all stock, ruminating animals, dogs, cats, rabbits, captive wild animals and any other animal which the Minister may, by notice in the Gazette, declare to be an animal to which this Act shall apply;’⁷⁶⁸ This Act regulates the control of diseases that affect animals by introducing measures that may be taken or that must be taken by public bodies and owners of animals.⁷⁶⁹ For example, persons with diseased animals must notify the administrative officer or inspector and must also keep the diseased animals separate from unaffected ones.⁷⁷⁰

This Act also gives power to inspectors to enter property, land or any vehicle used to carry or contain an animal.⁷⁷¹ The inspector may examine any animal, carcass or meat for any signs of disease or ensure that the provisions of the Act are complied with.⁷⁷²

(b) The Cattle Cleansing Act⁷⁷³ regulates the cleansing of cattle (bulls, cows, heifers, calves and oxen),⁷⁷⁴ i.e. cleaning cattle of ticks and maintaining tick-free cattle. Section 4 of the Act provides for cattle cleansing areas to be declared and section 6 states that persons living in these areas may be ordered to clean their cattle on certain dates and times, using certain prescribed methods specified in the Act or by the Director of Veterinary Services in the Gazette.

⁷⁶⁷ Chapter 364 of the Laws of Kenya.

⁷⁶⁸ Section 2.

⁷⁶⁹ Section 4.

⁷⁷⁰ Section 4.

⁷⁷¹ Section 14(1).

⁷⁷² *Ibid.*

⁷⁷³ Chapter 358 of the Laws of Kenya.

⁷⁷⁴ Section 2.

(c) The Fisheries Act⁷⁷⁵ provides for the utilisation, management, development and conservation of fisheries. Section 23 of the Act gives the Minister power to make regulations in connection with the Act. These regulations are called the Fisheries (General) Regulations and it has declared that the maritime zones in Kenya are a sanctuary for marine mammals and turtles.⁷⁷⁶ It is forbidden to

“(a) kill any marine mammal or turtle; (b) chase any marine mammal or turtle with intent to kill; (c) harass any marine mammal or turtle so as to disturb its behaviour or breeding habits; or (d) take any marine mammal or turtle, alive or dead, including any marine mammal or turtle stranded on land.”⁷⁷⁷

It is further stated in Section 51 that

“(3) Where any marine mammal or turtle is caught or taken unavoidably during fishing, such marine mammal or turtle shall, whether it is alive or dead, be released immediately into the waters. (4) any persons who contravene this regulation shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.”⁷⁷⁸

Below is a table containing a summary of the main American laws discussed above:

	Application	Exclusions	Note on Provisions
Prevention of Cruelty to Animals Act	“living vertebrate animal including mammal, bird, reptile, amphibian and fish.”	Invertebrates.	Provisions include: Experiments on animals, acts and offences in relation to animals.
Draft Wildlife	Wild animals.	Only applies to wild	Goals of the Policy:

⁷⁷⁵ Chapter 378.

⁷⁷⁶ Section 51 (1).

⁷⁷⁷ Section 51 (2).

⁷⁷⁸ Section 51 (3) & (4).

Policy		animals (and plants).	Provide a framework for conserving, in perpetuity, Kenya's rich diversity of species, habitats and ecosystems for the well-being of its people and the global community.
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Conclusion

The level of protection with regards to animals (both domestic and wild) differs from jurisdiction to jurisdiction. Some jurisdictions have a relatively high level of protection for domestic animals (such as Switzerland) while other jurisdictions have a high level of protection for their wildlife (such as Kenya).

The USA, as was discussed above, has several Federal Acts with regards to the welfare of animals. However, there has been a lot of criticism levelled against these Acts. For example, the strengths⁷⁷⁹ of the Animal Welfare Act of 2007 are overshadowed by its weaknesses. Also, many animals have been excluded⁷⁸⁰ from the scope of this Act which reduces the Acts' effectiveness to protect vulnerable animals. Furthermore, the Animal Welfare Act does not regulate research practices on animals.⁷⁸¹ One of the major criticisms levelled at USA animal welfare legislation is the lack of enforcement. It is submitted that the USA needs to review its animal welfare legislation from time to time, as well as compare its animal welfare legislation to other countries and once this is done, the USA will be able to update the animal welfare legislation to ensure that the protection and welfare of animals continues. It is submitted that an education campaign may also be started to educate the public on the need to protect the welfare of animals.

As was stated earlier, India is a very religious country⁷⁸² and has included in its Constitution⁷⁸³ duties that every Indian citizen is obliged to follow. One of the duties that are relevant for this discussion is the duty 'to protect and improve the natural environment

⁷⁷⁹ Such as, ensuring that animals that are covered in the scope of this Act are treated humanely, that humane standards of care and housing are observed, as well requiring adequate exercise for dogs and promoting the psychological well-being of apes.

⁷⁸⁰ Bird, rats, mice, farm animals, fishes, and reptiles.

⁷⁸¹ For example, "a researcher can, theoretically, be charged with housing animals in unsanitary conditions but not for beating or mutilating them without anaesthetic." (Grant *op cit* 78).

⁷⁸² India is considered to be a highly religious country due to the fact that at least 80% of the population practices Hinduism.

⁷⁸³ The Constitution of India (Ninety-fourth amendment) Act of 2006.

including forests, lakes, rivers and wild life, and to have compassion for living creatures’.⁷⁸⁴ Despite this duty, animal cruelty is still prevalent throughout India. Indian legislation has several strengths. For example, section 4 of the Prevention of Cruelty to Animals Act of 1960 required the Indian government to establish an animal welfare organisation called the Animal Welfare Board of India which was created in 1962. The Wildlife Protection Act of 1972 and the Wildlife Protection Amendment Act of 2002 cover a variety of animals and not just mammals. These acts allow India to protect all its wildlife. It is submitted that, like the USA, India needs to review its animal welfare legislation from time to time,⁷⁸⁵ and it may want to compare its animal welfare legislation to other countries and, once reviewing is completed, India will be able to update its animal welfare legislation to ensure that the protection and welfare of animals and wildlife continues. Just like the USA, India may want to introduce an education campaign that teaches its citizens on the need to protect the welfare of animals.

As was discussed above, Swiss law seems to be better in most of its provisions when it is compared to the other jurisdictions under study. For example, Swiss law covers a range of issues with regards to animals and also includes farm animals and animals used in experiments, which are often excluded from the scope of animal welfare legislation in the jurisdictions of Kenya, India, South Africa and the USA.

However, there are several provisions that are similar to the other jurisdictions under study. For example, the provisions of the Swiss Federal Act on Animal Protection of 1978 for animal experimentation are similar to the provisions of the USA Animal Welfare Act of 2007 and the Kenyan Prevention of Cruelty to Animals Act of 1962 in that animals are required to be anaesthetised for the duration of the experiment, records of the use of animals in experiments must be kept and the requirement that experiments may only be conducted in a laboratory. The strengths of Swiss law may be summed up as follows:

- Swiss law has made advancements by including farm animals and animals used in experiments in their provisions;
- It has banned circus animal acts⁷⁸⁶ as well as making plans to phase out animal experiments altogether;⁷⁸⁷

⁷⁸⁴ Article 51A (g).

⁷⁸⁵ This point is one of the Animal Welfare Board’s (of India) function – section 9 of the Prevention of Cruelty to Animals Act of 1960.

⁷⁸⁶ Grant *The No-Nonsense Guide to Animal Rights* 58.

- Article 2 of Section One's provision,⁷⁸⁸ goes further than ensuring the humane treatment of animals; and
- the provisions in Swiss law outline the responsibilities of all those involved with animals, such as owners, persons conducting experiments on animals and carriers.⁷⁸⁹

Even though Swiss law seems to be the best of those studied, Switzerland should still review and update their animal welfare legislation from time to time to ensure that they continue with the advancement of animal welfare protection. It is submitted that an education campaign throughout Switzerland should also be introduced.

Section 2 of the Kenyan Prevention of Cruelty to Animals Act⁷⁹⁰ defines animals as “a living vertebrate animal including mammal, bird, reptile, amphibian and fish.”⁷⁹¹ It is submitted that this is noteworthy as Kenya, a developing African country, has included more animals in its anti-cruelty legislation than a developed country (the USA) and a highly religious country that places a duty on its citizens to have “compassion for living creatures” (India). It is submitted that the penalties for the contravention of this Act seem to be light. However, the fines given may reflect the current economic situation in Kenya or they may be outdated, and if this is the case then these fines should be updated. With regards to the Kenyan Draft Wildlife Policy of 2007, key issues are highlighted that need to be addressed by the Kenyan government. The Draft Policy also lists how the government plans to overcome these issues. It is submitted that once this draft policy is implemented, the issues highlighted should be sufficiently dealt with and the wildlife of Kenya (and its people) will be protected. As with the USA, India and Switzerland, Kenya needs to review and keep its animal welfare legislation up to date, as they have done with their wildlife legislation in the form of the Draft Wildlife Policy of 2007. An education campaign should also be introduced throughout Kenya.

The level of protection in South Africa with regards to animals will now be discussed.

⁷⁸⁷ Grant *The No-Nonsense Guide to Animal Rights* 87.

⁷⁸⁸ ‘Animals shall be treated in the manner which best complies with their needs.’

⁷⁸⁹ These responsibilities include: how to properly keep an animal, the proper care of animals during transit, the proper housing of animals used in experiments, and the proper stunning and slaughter of animals. All these responsibilities should ensure that animals do not suffer unnecessarily.

⁷⁹⁰ Chapter 360.

⁷⁹¹ Section 2.

Chapter 6 - South Africa

I truly believe that animal welfare is human welfare. In protecting animals, we ensure our own survival.

- Maneka Gandhi⁷⁹²

This chapter will examine the legislation of South Africa with regard to animal welfare. Firstly we will look at the various departments (e.g. Agriculture) responsible for enforcing the animal welfare legislation. We will then look at various statutes and case law will be used to illustrate various issues.

In South Africa, there are two main acts for the protection of animals, the Animal Protection Act⁷⁹³ and the Performing Animals Protection Act.⁷⁹⁴ There is another act, the Societies for the Prevention of Cruelty to Animals Act,⁷⁹⁵ which regulates animal welfare associations. These three national acts will be examined in this chapter. They are complete with provincial legislation⁷⁹⁶ that deals either directly or indirectly with animals. Some of the less important statutes,⁷⁹⁷ such as those that concern animal products for human use,⁷⁹⁸ will not be considered in any great depth as they do not add to the core debate.

6.1. South African Government Departments Responsible For Animal Welfare

South Africa is no exception when it comes to considering animals as legal objects/property. Michele Pickover critically examines issues affecting animals such as trophy hunting, trade in

⁷⁹² Interviewed in *Beauty Without Cruelty's* magazine, *Compassion* (Volume 31) 1999.

⁷⁹³ Act 71 of 1962.

⁷⁹⁴ Act 24 of 1935.

⁷⁹⁵ Act 169 of 1993.

⁷⁹⁶ Nature and Environmental Conservation Ordinance 19 of 1974 (Cape, which now covers the Western, Eastern and Northern Cape, as well as some parts of the North West Province), Nature conservation Ordinance 12 of 1983 (Transvaal, this now covers Gauteng, Northern Province and the North West Province), Nature Conservation Ordinance 8 of 1969 (Orange Free State, covers the Free State Province), and the Nature Conservation Ordinance 15 of 1974 which has been supplemented by the KwaZulu-Natal Nature Conservation Management Act 9 of 1997 and the KwaZulu-Natal Nature Conservation Amendment Act 5 of 1999 and Act 7 of 1999.

⁷⁹⁷ Sea Birds and Seals Protection Act 46 of 1973, The Meat Safety Act 40 of 2000, The Animal Health Act 7 of 2002.

⁷⁹⁸ For example, the Game Theft Act 105 of 1991. This Act is concerned with the ownership of game, and the acquisition and loss thereof.

wild animals, vivisection and animals as food. She also highlights the abuse and cruelty that are often experienced by wild animals at the hands of humans, such as inexperienced hunters, uncaring traders, and uncaring workers in slaughterhouses.⁷⁹⁹ This abuse and cruelty is often shrouded in secrecy and hidden from the public eye.

Pickover states that the response and attitude of the South African government to both wild and domestic animal welfare issues seems to be one of putting “... profit before social good and public interest... the South African government is more concerned about the animal when it is dead (‘safe meat’) than when it is alive.”⁸⁰⁰

The South African Government also supports the trophy hunting industry and trade in wild animals.⁸⁰¹ Mercer and Pervan, in *For the Love of Wildlife*,⁸⁰² state that the persecution of the wildlife in South Africa has become institutionalised:

“It starts right at the top with regional government policy; it is enshrined in the Constitutions; it contains the law and government administration, and it runs rife through human society in the form of hunting and poaching. Even the wildlife conservation charities have fallen into the trap of aiding and abetting this evil.”⁸⁰³

6.1.1. The Department of Agriculture

The Department of Agriculture is responsible for animal welfare, as well as making sure that the Animal Protection Act of 1962 is enforced and implemented. The Department of Agriculture also promotes factory farming, a place in which many abuses of animals occur. Safety and health laws in these factories are not properly enforced as there are not enough inspectors, due to a shortage of money and staff, to ensure that these laws are followed.⁸⁰⁴ In 1998, the Department of Agriculture held a workshop on “Animal Welfare in a Diverse Society,”⁸⁰⁵ where a proposal was made to establish an Animal Welfare Committee.⁸⁰⁶ In a Press Release issued by the National Department of Agriculture, Derek Hanekom, the Minister of Agriculture and Land Affairs, stated that other issues that were raised were

⁷⁹⁹ *Animal Rights in South Africa* (2005).

⁸⁰⁰ Pickover *Animal Rights in South Africa* 146.

⁸⁰¹ See Pickover *Animal Rights in South Africa* (2005) and Mercer, C. & Pervan, B. *For the Love of Wildlife* (2000).

⁸⁰² Mercer & Pervan *For the Love of Wildlife*.

⁸⁰³ Mercer & Pervan *For the Love of Wildlife* 219.

⁸⁰⁴ Pickover *Animal Rights in South Africa* 146.

⁸⁰⁵ 12 May 1998, http://www.info.gov.za/speeches/1998/98904_2359810872.htm (accessed on 31/09/2009).

⁸⁰⁶ Which will advise the National Department of Agriculture on animal welfare issues.

ceremonial/ritual or religious slaughter of animals, animal experimentation, management of performing animals, registration of animal welfare organisations and the training of animal welfare instructors.⁸⁰⁷

In 2006 at a Joint Constitutional Review Committee, the National Department of Agriculture submitted a report back on animal protection. In this report the Department briefed the Committee on the protection that is offered to animals, that is incorporated in several different acts. The Department stated its policy on animals as taking into consideration different cultures and beliefs with regard to animals, as well as considering different challenges that are faced protecting animals in urban and rural areas. The Department further stated that its policy shifted from “animal welfare” to the concept of “animal care.”⁸⁰⁸

The concept of animal care is said to include both preventing animal cruelty and assisting people in gaining the maximum benefit from their animals.⁸⁰⁹ The Department acknowledged the work and contribution that non-governmental organisations were doing for the community for animals. Challenges that the Department faced were increasing the Department’s capacity to deal with animal protection and to include animal welfare organizations into governmental framework. The Department further recognised the need for the formation of a National Welfare Committee which would deal with issues arising from and connected to the concept of animal care.⁸¹⁰

Members of the Joint Constitutional Review Committee placed forward several questions, one of which was whether there was a need to make constitutional amendments to balance any possible conflicts between human and animal rights. The committee stressed that there was a need for the Department of Agriculture to make their policy and legislation to reflect local conditions. The Department was urged to consolidate several pieces of legislation.⁸¹¹

The Directorate of Animal and Aquaculture Production released a Draft Animal Care Policy for South Africa in 2006. The objectives of this draft Policy include the formation of an Animal Care Advisory Committee, the creation of various codes and an effective communication strategy between all of the essential “players” (for example, animal welfare

⁸⁰⁷ Press release, http://www.info.gov.za/speeches/1998/98904_2359810872.htm (accessed on 31/09/2009).

⁸⁰⁸ *Ibid.*

⁸⁰⁹ *Ibid.*

⁸¹⁰ *Ibid.*

⁸¹¹ <http://www.pmg.org.za/minutes/20060803-animal-protection-submission-department-agriculture-report-back>.

groups, the Department of Agriculture).⁸¹² This draft Policy places an emphasis on the care of animals rather than on the prevention of cruelty. It is submitted that this change of focus will improve the welfare of animals.

This draft Policy acknowledges that there is an immediate need for regulations, standards and guidelines to control the various sectors and activities relating to animals.⁸¹³ This draft Policy also acknowledges the importance of the “five freedoms,”⁸¹⁴ the “three Rs”⁸¹⁵ and that the use of animals carries a duty and obligations to protect animals and ensure their welfare.⁸¹⁶

It is submitted that this draft Policy entrenches the belief that animals are property and that they may and should be used by humans. It is further submitted that this draft Policy and the wording of this draft Policy is anthropocentric. For example, “Caring for these animals... not only makes economic sense...”,⁸¹⁷ “...our animal resources...”⁸¹⁸ and “...society in general becomes more tolerant of the diverse use of animals for various purposes.”⁸¹⁹

Taking all of this into consideration, while looking at the National Department of Agriculture website pages, the Department says very little or nothing about animal welfare. The focus is rather on improving animal production, such as cattle, goats and poultry; as well as helping emerging farmers and developing feedlot facilities.⁸²⁰

6.1.2. The Department of Environmental Affairs and Tourism

The Department of Environmental Affairs and Tourism is responsible for trading in wild animals, as well as promoting hunting. The Department views wild animals as a commodity that can be sold and traded. For example, The National Norms and Standards for the Management of Elephants in South Africa has a few purposes, a couple of which are to

⁸¹² Draft Animal Care Policy for South Africa, 8.

⁸¹³ *Ibid.*

⁸¹⁴ They are (1) the freedom from thirst, hunger and malnutrition; (2) the freedom from discomfort; (3) the freedom from pain, injury and disease; (4) the freedom to express normal behaviour; and (5) the freedom from fear and distress.

⁸¹⁵ That is reduction of numbers in animals, refinement of experimental methods and replacement of animals with non-animal alternatives.

⁸¹⁶ *Ibid.*

⁸¹⁷ Draft Animal Care Policy for South Africa, 3.

⁸¹⁸ *Ibid.*

⁸¹⁹ Draft Animal Care Policy for South Africa, 4.

⁸²⁰ Feedlot facilities are places where cattle are grain-fed. This practice is usually done for a specified period before slaughter, to ensure that the cattle produce lean and tender beef.

promote broader biodiversity and socio-economic goals that are ecologically, socially and economically sustainable, and ensures the sustainable use of hair, skin, meat and ivory products.⁸²¹ However, this Norm does recognise the sentient nature of elephants, their highly organised social structure and ability to communicate.⁸²² The Department of Environmental Affairs and Tourism and the Department of Agriculture have failed to co-ordinate their policies on issues regarding animals, such as developing policies for animal welfare and enforcement of their policies and legislation.⁸²³

6.2. Laws Regulating Animal Welfare

South Africa has several national and provincial Acts, rules and codes that either deal directly or indirectly with animals and their welfare. As was said earlier, only those Acts that deal with animal welfare directly, and not those that deal with the human use of animals, will be discussed below.

6.2.1. The Constitution of the Republic of South Africa⁸²⁴

The Constitution of South Africa is considered as “one of the most progressive in the world and enjoys high acclaim internationally.”⁸²⁵ The Constitution has a Bill of Rights, but it does not extend to include the protection of animals. Even the most basic of rights, such as the right to life and bodily integrity, is not granted to animals.⁸²⁶ The Constitution also does not contain a provision which either obliges people to treat all animals humanely⁸²⁷ or a provision that acknowledges animal interests as being an important matter that needs to be respected.⁸²⁸ It is suggested that perhaps it may be too soon to include animals in the scope of the South African Constitution and more specifically the Bill of Rights, since the South African Constitution is only about 14 years old. However, the environment, which is included in the

⁸²¹ The National Norms and Standards for the Management of Elephants in South Africa, page 9.

⁸²² *Ibid.*

⁸²³ Pickover *Animal Rights in South Africa* 9.

⁸²⁴ Act 108 of 1996.

⁸²⁵ <http://www.info.gov.za/documents/constitution/index.htm>.

⁸²⁶ It is submitted that a conflict may arise between man's desire to eat animals and the animals right to life and bodily integrity. However, animals that are not used as food by humans are still not afforded any protection by the Constitution or Bill of Rights.

⁸²⁷ Such as in the Indian Constitution. Article 51A contains a list of fundamental duties that every citizen is obliged to follow, with Article 51A (g) obliges citizens ‘to protect and improve the natural environment including ... wildlife, and to have compassion for living creatures.’

⁸²⁸ Such as in Switzerland and Germany.

scope of the Constitution,⁸²⁹ seems to be afforded more specific protection than animals. It is submitted that the protection of the environment stems from an anthropocentric perspective, i.e. the environment is only protected for human's continued use and enjoyment. The environment is not protected because of the animals and plants that also occupy and use the same environment, the animals and plants therefore indirectly benefit from the environment being protected.

There is no international recognition of the right to a clean environment. However, on a regional level there are several organisations that have recognised this right. For example, Article 24 of the African Charter states, "all peoples shall have the right to a general satisfactory environment favourable to their development." This right is expressed as a codified right, which is interdependent with all of the other human rights and all of these rights, including that of the right to a "satisfactory environment" requires the same obligations from the State.⁸³⁰

6.2.2. The Animal Protection Act 71 of 1962

The main legislation protecting animals in South Africa is the Animal Protection Act 71 of 1962. This Act defines animals as "any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person."⁸³¹

The term "any ... other domestic animal ... or wild animal" is open to a broad interpretation, as the word animal may encompass all species of animals, including those that were not specifically mentioned, such as amphibians, fishes, insects, etc.⁸³² With this in mind, this Act should cover all animals in South Africa. However, there are exceptions that apply. The definition of an animal that is given in the Act states that only wild animals, birds and reptiles that are in captivity or are under human control are included in the scope of the Act. This may have been done for practical reasons, as it would be difficult to apply the Act to wild animals that are not under human control or in captivity. It is submitted that wild animals would need their own legislation to protect them as their needs and circumstances are

⁸²⁹ Section 24 of the Constitution of the Republic of South Africa Act 108 Of 1996, which states that every person has the right to an environment that is not harmful to human health and wellbeing and the right to have the environment protected.

⁸³⁰ "The Human Right to a Clean Environment." Right Based Approach to Conservation (<https://community.iucn.org/rba11/default.aspx> [accessed on 27/09/2011]).

⁸³¹ Section 1.

⁸³² "animal." *The Encyclopædia Britannica* (2007).

different from domestic and captive wild animals. For example, poachers are a threat to all wild animals and this threat needs to be dealt with sufficiently, and wild animals' habitats need to be protected from habitat destruction that is either caused by man or by natural disasters.

It is submitted that although farm animals⁸³³ are included in the scope of the Animal Protection Act, this Act still fails to protect farm animals adequately.⁸³⁴ This Act also fails to include animals in laboratories in its scope, and it also fails to prohibit experimental procedures conducted on these laboratory animals.⁸³⁵ On the other hand, the National Society for the Prevention of Cruelty to Animals (NSPCA) has advised that the Animal Protection Act is excellent and that it indeed covers all animals.⁸³⁶ It is submitted that, with all due respect to the NSPCA, although many animals are included in the scope of this Act, there are still many animals that are excluded (as was mentioned above). The Animal Protection Act also only seems to protect animals from 'unnecessary cruelty' and allows 'necessary cruelty' to continue, as discussed more fully below. With all of this in mind, it is submitted that this is not an excellent piece of legislation. It is only satisfactory, with much room for improvement.⁸³⁷

Offences

The Act creates a number of offences specifically aimed at protecting animals.⁸³⁸ Thus section 2 and section 2A contain a number of prohibited practices that if committed will be deemed as an offense of cruelty, such as kicking, maiming,⁸³⁹ starving or promoting animal fights. Persons convicted of contravening section 2 are liable to a fine that does not exceed R4000 or to a term of imprisonment that does not exceed 12 months; and persons convicted of contravening section 2A are liable to a fine or a term of imprisonment that does not exceed 2 years. In terms of this legislation, the maximum penalties for a conviction is a sentence of up to 2 years imprisonment and/or a fine that may not exceed R200 000 if the case is heard

⁸³³ Such as cattle, pigs, sheep, chickens and goats. See Pickover *op cit* at 145.

⁸³⁴ A brief discussion of how farm animals are treated can be seen in Chapter 3.

⁸³⁵ Pickover *Animal Rights in South Africa* 121.

⁸³⁶ <http://www.nspca.co.za/page.aspx?Id=58&CateId=17&Category=Public%20Relations&SubCateId=58&SubCategory=Animaltalk%20letter> (accessed on 12/06/2009).

⁸³⁷ Suggestions for improving the current legislation will be dealt with in Chapter 7.

⁸³⁸ As a general rule, it is not unlawful to inflict pain or kill an animal if you are defending yourself from an attack by an animal (*R v Sibeko* 1951 (2) SA (E) and *S v Nkhulmeleni* 1986 (3) SA 102 (V)).

⁸³⁹ The case of *S v Gerwe* 1977 (3) SA 1078 (T), deals with the meaning of 'maim' and 'tortures' which the court says must be given their ordinary meaning, which is the 'infliction of bodily pain as punishment or as a means of persuasion' for torture and 'to mutilate' for maim. With this in mind, the court held that stabbing a dog did not qualify as torture or maiming.

in a regional court.⁸⁴⁰ It is submitted that the penalties for committing an offence under this Act is not adequate as animal cruelty still occurs every day. The many studies that link animal cruelty and “human” cruelty (as discussed in Chapter 1) would suggest that the appropriate penalties for animal cruelty become similar to the penalties for “human” cruelty as well as a minimum sentence and/or fine set for cases of animal cruelty.

In addition to these punishments, a court may order that an animal be destroyed if the Court is of the opinion that it would be cruel to keep such animal alive.⁸⁴¹ It is submitted that this may be the “humane” way of dealing with an animal that is the victim of cruelty. However, another “humane” option that may be introduced is to allow the courts to order that the animal receive appropriate medical and psychological attention and that the offender should either pay all or a portion of the veterinary and pet psychologist bills.

A court may also make an order against convicted persons in terms of this Act, of depriving the owner of the ownership of the particular animal(s) they have abused,⁸⁴² or deprive ownership of a certain type or breed of animal.⁸⁴³ It is submitted that a person who is convicted of animal cruelty should not be allowed to own or possess an animal unless they can prove to the court that they are rehabilitated and that they will not abuse an animal again.

A court also has the power to award damages where the action of the convicted person has caused loss to any person or where such action has resulted in any person incurring veterinary expenses.⁸⁴⁴ The court, on application, will inquire into and determine the amount of loss or expenses incurred and give a judgment against the convicted person in an amount that does not exceed R5000.⁸⁴⁵ It is submitted that this amount for damages should not be restricted to R5000. The court should be allowed to determine the appropriate amount, whatever that amount may be.

The Minister of Justice, in terms of section 10(1)(b) and 10 (1)(c), enacted the Regulations Relating to the Seizure of Animals by an Officer of a Society for the Prevention of Cruelty to Animals.⁸⁴⁶ In terms of this Regulation, an officer of an SPCA may seize an animal if he/she

⁸⁴⁰ <http://www.nspca.co.za/page.aspx?Id=58&CateId=17&Category=Public%20Relations&SubCateId=58&SubCategory=Animaltalk%20letter> (accessed on 12/06/2009).

⁸⁴¹ Section 3(a).

⁸⁴² Section 3(b).

⁸⁴³ Section 3(c).

⁸⁴⁴ Section 4.

⁸⁴⁵ *Ibid.*

⁸⁴⁶ No.R.468, 14 March 1986.

is authorised in writing by a magistrate.⁸⁴⁷ The animal may only be seized if there are reasonable grounds to assume that an animal needs immediate care or if it is reasonably necessary to prevent the cruelty or suffering of an animal.⁸⁴⁸ Any person who removes an animal that was seized by an officer⁸⁴⁹ or any person who hinders, obstructs or resists an officer in the exercise of their duty⁸⁵⁰ is guilty of an offence, and is liable to a fine not exceeding R2000 or a term of imprisonment not exceeding one year.⁸⁵¹

It is submitted that legislation like the Animal Protection Act is often interpreted in such a way so as to ensure that the ‘ordinary use’ of animals are not interfered with. The Act states that only “unnecessary”⁸⁵² abuse or cruelty to animals is punishable, this therefore means that abuse or cruelty that is deemed necessary will not be punished.⁸⁵³ Some forms of abuse and cruelty are allowed to continue as they are generally regarded as having some acceptable use or benefit to human society⁸⁵⁴ and are often controlled by certain regulations and/or policies.⁸⁵⁵

Animal Rights Activists in South Africa criticise the Animal Protection Act and argue that this Act has done very little to curb the abuse of animals, in fact, the Act actually allows animals to “...suffer if the end justifies the means.”⁸⁵⁶ In terms of the earlier case of *Ford v Wiley*⁸⁵⁷ pain was considered as reasonable or necessary if the reason for the infliction of the pain outweighs the suffering. Therefore, if a reasonable person regarded the infliction of pain as disproportionate to the benefit achieved, then the pain that was inflicted would be considered unreasonable or unnecessary and therefore prohibited.

It is submitted that the courts generally interpret this Act to the advantage of the owner and not for the benefit of the animal, i.e. their judgments are anthropocentric. For example, in the

⁸⁴⁷ Section 2(1).

⁸⁴⁸ *Ibid.*

⁸⁴⁹ Section 6(1)(a).

⁸⁵⁰ Section 6(1)(b).

⁸⁵¹ Section 6(2).

⁸⁵² Sections 2(1)(b), 2(1)(c), 2(1)(e), 2(1)(f), 2(1)(p) and 2(1)(r).

⁸⁵³ In the case of *R v Heldberg* 1993 NPD 507, it was held that the mere infliction of pain alone is not enough to contravene the prohibition of treating an animal cruelly; the pain must also be unnecessarily inflicted.

⁸⁵⁴ Such as factory farming, which produces food; and vivisection, which uses live animals for scientific research.

⁸⁵⁵ For example, the Poultry Regulations (24 February 2006) that were made in accordance with section 22 of the Meat Safety Act 40 of 2000.

⁸⁵⁶ Pickover *Animal Rights in South Africa* 79.

⁸⁵⁷ [1889] 23QB 203.

case of *R v Moato*⁸⁵⁸ the accused was charged and convicted of contravening section 3(1) of the Prevention of Cruelty to Animals Act 8 of 1914. The accused had caused serious injuries to the complainant's dog, after it started fighting with her dog. The accused hit the complainant's dog with a stick to try and separate the two dogs. On appeal, the court held that although the accused acted in defence of her property, this conduct did not amount to a contravention of the section. It was further held that

“The object of the legislation was not to confer legal rights upon animals and this prohibition is not intended to provide them with protection. The aim is obviously to prohibit a person from being so cruel to an animal as to give offence to the finer feelings and sensibilities of other persons.”

In a similar judgment in *S v Edmunds*,⁸⁵⁹ the court held that

“It is not the mistreated dog who is the ultimate object of concern....Our concern is for the feelings of other human beings, a large proportion of whom...identify themselves with a tortured dog or horse and respond with great sensitivity to its sufferings.”

In the article “Vivisection and the Law”,⁸⁶⁰ Karstaedt states that

“According to our case law, it (the anti-cruelty animal legislation) was not even intended to protect animals. The legislature's intention, we are told, was to protect human beings who are sensitive to animal suffering from affronts to their sensibilities and to prevent degeneration of the finer human values in the sphere of animal treatment.”⁸⁶¹

It is submitted that all of the above examples can be seen to confirm the criticism levelled at this Act. These examples further confirm that when the Act is interpreted, it is not the animal that is the concern of the courts but the human owner or the human community that is the concern of the courts.

⁸⁵⁸ 1947 (1) SA 490 (O).

⁸⁵⁹ 1968 (2) PH H398 (N).

⁸⁶⁰ Karstaedt “Vivisection and the Law” 351.

⁸⁶¹ *Ibid.*

6.2.3. Performing Animals Protection Act 24 of 1935

This Act was enacted to “regulate the exhibition and training of performing animals and the use of dogs for safeguarding.”⁸⁶² Persons may only exhibit, train or use a dog for safeguarding if they have a licence and a certificate, both of which may be issued by a magistrate upon application and after the magistrate is satisfied that the applicant is a fit and proper person.⁸⁶³ The penalty for contravening the provisions of this Act is a fine not exceeding R4000 or imprisonment not exceeding twelve months.⁸⁶⁴

This Act must be read in conjunction with the Animals Protection Act,⁸⁶⁵ and the word “animals” in terms of this Act, has the same meaning as that used in the Animal Protection Act. However, reptiles⁸⁶⁶ are excluded from the scope of the Act, as well as animals used in the “confinement or training ... for military, police or sporting purposes or the purpose of an agricultural show, horse show, dog show, caged bird show or any public zoological gardens, or ... the use of a dog for safeguarding by the South African Defence Force, the South African Police or the Prisons Service.”⁸⁶⁷

It is submitted that the reason for the exclusion of these animals may be that the nature of the shows and the assumed expertise of the persons conducting them and the training of animals in the military, police or sporting fields justify these exclusions. Whatever the reason, it is suggested that provisions are still needed to ensure the welfare of these animals during training and during shows.

Section 4 of this Act confers powers to police officers to enter any premises, place or vehicle⁸⁶⁸ and inspect any animal that is kept at such places, and inquire about the measures and methods used to feed, train, control and restrain such animals.⁸⁶⁹ Police officers also have the power to inspect the conditions that animals at an exhibition are maintained and controlled in.⁸⁷⁰

⁸⁶² Long Title of the Act.

⁸⁶³ Sections 2 & 3.

⁸⁶⁴ Section 8.

⁸⁶⁵ Section 10 of the Performing Animals Protection Act 71 of 1962.

⁸⁶⁶ Section 11.

⁸⁶⁷ Section 9.

⁸⁶⁸ Section 4(1)(a).

⁸⁶⁹ Section 4(1)(b).

⁸⁷⁰ Section 4(1)(c).

It is an offence to obstruct, delay or in any way interfere with any police officers who are exercising the powers conferred on them by this Act.⁸⁷¹ Persons who contravene this section are liable to a fine that may not exceed R4000 or a term of imprisonment that may not exceed 12 months.⁸⁷²

The Act contains no provisions on how animals in general should be and should not be trained; the conditions at exhibitions; how animals should be and should not be transported, including feed and rest; or how animals should and should not be housed at exhibitions or while they are being trained. However, section 7 of the Act does give power to the Minister⁸⁷³ to make regulations regarding these issues, as well as any other issues that may affect the welfare of all these animals. In terms of this section, the Deputy Minister of Justice has enacted the Performing Animals Protection Act, 1935 Regulations.⁸⁷⁴

These Regulations only deal with the application for granting or renewing of a licence and the conditions subject to which such a licence may be held. The only regulation that deals with the welfare of animals is regulation 3(3), which states that no person may train or exhibit an animal that is ill or that is injured, unless a veterinarian has certified that such an animal is fit to be trained or exhibited. Any person who contravenes these Regulations is guilty of an offence and liable to a fine not exceeding R4000 or a term of imprisonment not exceeding 12 months.⁸⁷⁵

It is submitted that a minimum standard for the training, confining and exhibiting of these animals should be enacted and enforced. For example, the duration of the training per session, the methods used to train an animal should not cause any unnecessary pain or suffering, and the amount of rest and the amount of food and water that is required while training and exhibiting an animal.

6.2.4. The Societies for the Prevention of Cruelty to Animals Act of 1993

This Act establishes the National Council of Societies for the Prevention of Cruelty to Animals (NSPCA)⁸⁷⁶ and states that the objects of the Council are:

⁸⁷¹ Section 5.

⁸⁷² *Ibid.*

⁸⁷³ That is, the Minister of Justice.

⁸⁷⁴ No.R.1672, 1 September 1993.

⁸⁷⁵ Section 4.

⁸⁷⁶ Section 2(1).

“(a) to determine, control and co-ordinate the policies and standards of societies, in order to promote uniformity; (b) to promote co-operation among societies; (c) to prevent the ill-treatment of animals by promoting their good treatment by man; (d) to promote the interests of societies; (e) to take cognizance of the application of laws affecting animals societies and to make representations in connection therewith to the appropriate authority; and (f) to do all things reasonably necessary for or incidental to the achievement of the mentioned in paragraphs (a) to(e).”⁸⁷⁷

This Act also establishes a board whose task/function is to manage and control the Council⁸⁷⁸ to assist the Council to achieve its objects. Section 6 of the Act sets out the functions, powers and duties of the Council and the board, which include the following:

“(a) collect contributions or raise funds country-wide in any lawful manner; (b) receive financial grants from public funds and accept donations and bequests from any person or estate; (c) appoint suitably qualified persons as inspectors and other employees of the Council, as well as agents and representatives, to assist it... (e) defend legal proceedings instituted against the Council and institute legal proceedings connected with its functions... (f) ... purchase or otherwise acquire, or possess or hire, movable and immovable property, and alienate, let, pledge or otherwise encumber such property... (n) co-operate or enter into agreements with any person, institution, government or administration, upon such conditions as may be agreed upon; (o) act as official national representative of societies at all national and international organizations and meetings...”⁸⁷⁹

The Board may, in terms of section 7 of the Act, make rules relating to, amongst other things, the course of conduct that each society must follow⁸⁸⁰ and the minimum standards for facilities and services that are used or provided by a society.⁸⁸¹ The Board is also required to furnish every SPCA, inspector and employee a copy of the rules that the Board has decided upon or the amendment or repeal of such rules.⁸⁸²

Every society must be registered with the Council⁸⁸³ and any person who wishes to register with the Council must apply to the board and must include with their application any

⁸⁷⁷ Section 3.

⁸⁷⁸ Section 2(3).

⁸⁷⁹ Section 6(2).

⁸⁸⁰ Section 7(1)(a).

⁸⁸¹ Section 7(1)(c).

⁸⁸² Section 7(3).

⁸⁸³ Section 8.

documents that are required as well as the application fee.⁸⁸⁴ The board may either refuse⁸⁸⁵ or grant an application⁸⁸⁶ or cancel a registration.⁸⁸⁷ If an application is refused, the applicant must be notified in writing of the decision and the grounds of refusal must be included.⁸⁸⁸ If an applicant is successful, a certificate of registration will be issued to the society.⁸⁸⁹ A copy of this certificate must be displayed at all times at every place that the society ordinarily conducts its affairs.⁸⁹⁰ A registration certificate becomes invalid upon cancellation and the society concerned must return the certificate to the board.⁸⁹¹

Every registered society is required to act in accordance with the rules that the board has compiled.⁸⁹² Each society is also required to keep records, statements and accounts with regards to its financial affairs, transactions, assets and liabilities.⁸⁹³ A society may defend or institute any legal proceedings that are connected to its functions, i.e. prohibit the commission by any person of a particular kind of cruelty to animals.⁸⁹⁴

It is submitted that an important decision was stated by Cameron JA, in his minority judgment, about the roles of the NSPCA and the intention of animal welfare legislation, in the case of *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*.⁸⁹⁵ Cameron JA in his dissenting judgment, recognised that the Council's objects go beyond protecting animals and that they include "making representations about laws affecting animals ... (and) commenting on their sufficiency or insufficiency, the objects include also law revision and law reform."⁸⁹⁶

Cameron JA went on to say that the Animal Protection Act and the Societies for the Prevention of Cruelty to Animals Act do not confer rights on animals that they protect.

⁸⁸⁴ Section 8 (2).

⁸⁸⁵ Section 8(4)(a).

⁸⁸⁶ Section 8(4)(b).

⁸⁸⁷ Section 8(4)(c).

⁸⁸⁸ Section 8(6).

⁸⁸⁹ Section 8(7).

⁸⁹⁰ *Ibid.*

⁸⁹¹ Section 8(4)(c).

⁸⁹² Section 9(2)(a).

⁸⁹³ Section 9(2)(c).

⁸⁹⁴ Section 9(2)(l).

⁸⁹⁵ 2008 ZASCA 78 (RSA); [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA). The appellant appealed against the decision of the previous court which dismissed the appellants application for an interim interdict restraining the respondent from feeding live prey to tigers, which is in contravention of 2(1)(g) of the Animal Protection Act 71 of 1962. Mhlantla AJA, for the majority judgment, found that the appellant did not make out a case that could be answered by the respondent and the appellant was not allowed to make out a case on appeal. In the circumstances of the case, the appeal was dismissed with costs.

⁸⁹⁶ Paragraph 35.

Instead they are statutes that were designed to promote the welfare of animals.⁸⁹⁷

Furthermore both statutes recognise that animals are sentient beings capable of suffering and humans are capable of inflicting immense cruelty on them; and for this reason of human cruelty the Council was created, which the legislature has implicitly recognised as having an important function.⁸⁹⁸ In Cameron JA's own words

“Though animals are capable of experiencing immense suffering, and though humans are capable of inflicting immense cruelty on them, the animals have no voice of their own. Like slaves under Roman law, they are objects of the law, without being its subjects. The statute (The Societies for the Prevention of Cruelty to Animals Act) thus constitutes the Council and its associated SPCAs as their guardian and their voice.”⁸⁹⁹

This Act automatically confers legal standing to the NSPCA. However, before this Act was enacted, the NSPCA had some success in court proceedings prior to acquiring its powers in terms of this Act. In the case of *Society for the Prevention of Cruelty to Animals, Standerton v Nel & Others*⁹⁰⁰ the SPCA applied for an interdict to be granted against the first respondent, who wished to hold a rodeo with a live bull-riding competition. The respondent submitted that the applicant's powers with regards to animal welfare was narrowly circumscribed by the Animal Protection Act of 1962 and therefore had no clear right or *locus standi* to act beyond these powers. The court held that there was no merit to this submission and that the Animal Protection Act of 1962 gave the applicant vast powers and it would be very surprising if the applicant did not have the lesser power of preventing the injury that was in question. The court further held that the applicant qualified as an organisation to seek an interdict with regards to cases where harm, injury or cruelty was being committed or about to be committed.

With this in mind, it is interesting to note that the NSPCA was not a party to the case of the Zulu custom of the *Ukweshwama* festival. It is submitted that, perhaps the NSPCA felt that the *Ukweshwama* custom did not harm or was not cruel in any way to the animal that is used in this custom.

⁸⁹⁷ Paragraph 38.

⁸⁹⁸ Paragraphs 38 and 39.

⁸⁹⁹ Paragraphs 39 and 40.

⁹⁰⁰ 1988 (4) SA 42 (W).

6.2.4.1. The National Society for the Prevention of Cruelty to Animals (NSPCA)

The NSPCA in South Africa was founded in 1955 and all 92 member Society for the Prevention of Cruelty to Animals (SPCA) are governed by the Societies for the Prevention of Cruelty to Animals Act of 1993. This Act therefore makes the NSPCA and member SPCA's a statutory body.⁹⁰¹ The NSPCA has six operational units, namely

- Animals in Sport & Recreation;
- Farm Animals;
- Global Campaigns;
- Wildlife;
- Research Ethics; and
- Society Liaison.⁹⁰²

With regards to these units, the NSPCA plays both proactive and reactive roles. The proactive role includes, amongst other things, monitoring welfare standards in abattoirs, farming establishments, game auctions, zoos and research facilities. Reactive work includes responding to rescue or mercy missions when any disasters arise and also inspecting permits for trading in wildlife.

The above mentioned operational units, deal with a number of national issues relating to animal, including

- Disaster response and emergency relief;
- Awareness campaigns, education, and community outreaches;
- Compilation of codes and regulations for the animal industry,⁹⁰³ the development of units or standards within industries that use animals, and liaison with these industries;

⁹⁰¹ <http://www.nspca.co.za/default.aspx?Id=1&CateId=1&Category=About> (accessed on 20/09/2010).

⁹⁰² www.nspca.co.za.

⁹⁰³ Such as codes and regulations for poultry, pigs and cattle.

- Development of committees, monitoring of animal welfare standards, negotiation with government and provincial level;
- Proactive welfare work, researching the link between animal cruelty and human abuse, training SPCA inspectors and committee members; and
- Presenting courses on animal welfare to Prisons, South African Police and Traffic Services.⁹⁰⁴

With regard to the above matters, the NSPCA provides outreach programmes to rural and farming communities in the form of educational projects which are aimed at the caring for and welfare of farm or working animals and veterinary assistance. The NSPCA also conducts investigations into criminal activities with regards to animals, such as dog fights, stock theft and smuggling of animals.⁹⁰⁵ In 2005, the Acting Director General of the National Department of Education authorised the NSPCA to develop an animal care programme for the new school curriculum which would be included in the Life Orientation subject.⁹⁰⁶

6.3. Other Animal Welfare Legislation

6.3.1. The Meat Safety Act of 2000⁹⁰⁷ mainly contains measures aimed at promoting and establishing meat safety and the safety of any other animal products. It also aims to establish national standards in abattoirs, regulate the exportation and importation of meat and to deal with any other matter that is related to these issues.⁹⁰⁸ Schedule 1 of the Act contains a list of both domesticated and wild animals that the Act covers. These include animals such as bovine⁹⁰⁹ animals, zebra, fowl, kangaroo, crocodile, goat and ostrich.

This Act does not stipulate any national animal welfare standards with regards to animals in the abattoirs. However, there are provisions that deal with animal welfare, such as section 11(h) which requires that ‘an animal presented for slaughter at an abattoir must be handled humanely during loading, transportation, off-loading, housing, immobilizing and killing as prescribed in accordance with the requirements of the Animals Protection Act.’

⁹⁰⁴ *Ibid.*

⁹⁰⁵ *Ibid.*

⁹⁰⁶ *Ibid.*

⁹⁰⁷ Act 40 of 2000.

⁹⁰⁸ Long Title of the Act.

⁹⁰⁹ This includes cattle, bison, buffaloes, sheep, goats and antelopes ("bovid." *Oxford English Dictionary* (2009).

Another provision that deals with animal welfare is section 11(i), which states that ‘no dead animal or animal that is suffering from a condition that may render the meat unsafe for human and animal consumption may be presented at an abattoir for slaughter.’ The Act also forbids the slaughtering of animals for research purposes unless it is approved of by the national executive director.⁹¹⁰

It is submitted that a national animal welfare standard with regards to animals in slaughterhouses/abattoirs, should be enacted and enforced. Persons can be hired and trained how to inspect abattoirs to ensure that the legislation is being followed and charge any person who contravenes the Act and/or the national animal welfare standards.

6.3.2. The Animal Health Act of 2002⁹¹¹ replaces the Animal Diseases Act⁹¹² and provides for measures to promote animal health and to control animal diseases. In terms of this Act, an animal is defined as a ‘mammal, bird, fish, reptile or amphibian which is a member of the phylum vertebrates, including the carcass thereof; any invertebrate which is prescribed as an animal for the purpose of this Act.’⁹¹³

Section 7 of this Act limits investigations, experiments and research with, and the manufacture and evaluation of biological products that either consist of or originate from an animal. Any person wishing to carry out such actions needs a written authority from the national executive officer.⁹¹⁴ It also regulates the exportation⁹¹⁵ and importation⁹¹⁶ of animals and provides for the establishment of animal health schemes,⁹¹⁷ and provides for matters that are similar to the above mentioned issues.⁹¹⁸

⁹¹⁰ Section 11(s). A national executive director is a veterinarian which is appointed to this position by the Minister of Agriculture.

⁹¹¹ Act 7 of 2002.

⁹¹² Act 35 of 1984 and the Animal Disease Amendment Act 18 of 1991.

⁹¹³ Section 1 of the Animal Health Act.

⁹¹⁴ Section 7(1).

⁹¹⁵ Section 8. No person may export an animal without an export health certificate, which is issued by the national executive officer. A national executive officer is a veterinarian which is appointed to this position by the Minister of Agriculture.

⁹¹⁶ Section 9. No animal may be imported into South Africa without a permit, which is issued by the national executive officer (this is a veterinarian who is appointed by the Minister of Agriculture).

⁹¹⁷ Section 16. A scheme may be used to improve the health of animals. A scheme may also be used in respect of different kinds of animals, different kinds of animal diseases or parasites, different areas and different classes of persons.

⁹¹⁸ For example, investigate vaccinations that will promote animal health or control animal diseases.

Any person who does not comply with the provisions in sections 7, 8 and 9,⁹¹⁹ while being a participant in a scheme, contravenes any provision of such scheme or fails to comply therewith,⁹²⁰ is guilty of an offence. The penalty for a first conviction under this Act is a fine or a term of imprisonment that does not exceed 2 years.⁹²¹ The penalty for a second or subsequent conviction is a fine and a term of imprisonment that does not exceed 4 years.⁹²²

6.3.3. The Sea Birds and Seals Protection Act of 1973⁹²³ forbids any person from killing, capturing or wilfully disturbing any seabirds or seals, unless given permission in terms of a permit issued by the Minister of Environmental Affairs & Tourism or a delegated representative of the minister's office. The South African Policy on the Management of Seals, Seabirds and Shorebirds⁹²⁴ now also includes shorebirds under the scope of this Act. Seabirds are defined as "birds that obtain a portion of their food from the sea."⁹²⁵ The policy is aimed at outlining

"the framework of principles and approaches which will guide and direct the responsible and orderly management of seals, seabirds and shorebirds for the benefit of present and future generations in South Africa. Simultaneously, it will guide and direct the drafting of revised legislation that will govern and regulate activities associated with the subject species in terms of this policy."⁹²⁶

The killing of seabirds, shorebirds and seals for profit is prohibited.⁹²⁷ The killing of seals, seabirds and shorebirds and the collection or destruction of their eggs and nests is also prohibited,⁹²⁸ except where this is necessary for conservation management, or for scientific, safety, health or humane reasons.⁹²⁹ All killing, except that for humane reasons, should be

⁹¹⁹ Section 29(1)(a).

⁹²⁰ Section 29(1)(g).

⁹²¹ Section 29(2)(a).

⁹²² Section 29(2)(b).

⁹²³ Act 46 of 1973.

⁹²⁴ General Notice 1717 of 2007.

⁹²⁵ The South African Policy on the Management of Seals, Seabirds and Shorebirds, pg 4.

⁹²⁶ The South African Policy on the Management of Seals, Seabirds and Shorebirds, pg 5.

⁹²⁷ The South African Policy on the Management of Seals, Seabirds and Shorebirds, pg 6.

⁹²⁸ *Ibid.*

⁹²⁹ *Ibid.*

controlled by permit.⁹³⁰ All killing should be done humanely.⁹³¹ Accurate records should be kept of numbers of seals and seabirds killed and eggs collected or destroyed.⁹³²

It is submitted that the Department of Environmental Affairs & Tourism, if they do not do so already, should hire persons (budget permitting) to enforce this legislation. They would need to be trained with regards to the provisions of this Act which should enable them to properly enforce the Act and to charge anyone who contravenes any section of the Act.

6.4. Provincial Legislation

Provincial legislation on nature conservation and wildlife has changed very little from when it was first enacted; and despite the fact that South Africa no longer has only four provinces, the ordinances that were used for those four provinces are being used in today's nine provinces. These ordinances are old and archaic and reflect the ideas and policies that were used during the Apartheid era. The Ordinances are outlined below.

6.4.1. The Cape Nature and Environmental Conservation Ordinance of 1974⁹³³ covers the Western, Eastern and Northern Cape, as well as some parts of the North West Province. It was enacted to consolidate and amend the laws relating to nature conservation and provide for any other matter that is connected to this.⁹³⁴ This Ordinance defines a wild animal as “any living vertebrate or invertebrate animal belonging to a non-domestic species and includes any such animal which is kept or has been born in captivity.”⁹³⁵ It contains provisions on certain prohibitions, such as prohibiting the use of certain firearms,⁹³⁶ picking certain plants,⁹³⁷ catching certain fish⁹³⁸ and the methods used to catch fish⁹³⁹ and the hunting of endangered animals.⁹⁴⁰

It also has regulations that deal with, amongst other things, requiring persons to have a licence to fish⁹⁴¹ or hunt,⁹⁴² or possess certain plants⁹⁴³ and animals⁹⁴⁴ and the sale of certain

⁹³⁰ The South African Policy on the Management of Seals, Seabirds and Shorebirds, pg 7.

⁹³¹ *Ibid.*

⁹³² *Ibid.*

⁹³³ Ordinance 19 of 1974.

⁹³⁴ Long Title of the Ordinance.

⁹³⁵ Chapter 1, section 2.

⁹³⁶ Section 30.

⁹³⁷ Section 63.

⁹³⁸ Section 52.

⁹³⁹ Section 56.

⁹⁴⁰ Section 26.

⁹⁴¹ Section 53 and 54.

protected plants⁹⁴⁵ and fish.⁹⁴⁶ This Ordinance also categorises wild animals and flora as endangered,⁹⁴⁷ protected⁹⁴⁸ or noxious aquatic growths.⁹⁴⁹ As noted above, this ordinance is old and archaic and reflects the ideas and policies that were used during the apartheid era. It is submitted that each of these four provinces covered by this ordinance need to enact its own regulations and policies in order to better protect and conserve the wildlife and habitats that are specific to their areas. For example, these regulations should contain a list of protected species which would include endangered and threatened species, conservation measures for these species and similar, updated prohibitions to the ones above. Other regulations may include updated punishments for the contravening of these regulations, licences for certain activities and specific protection for species that are indigenous to only a certain area within these provinces or that are indigenous to the province itself.

6.4.2. The Transvaal Nature Conservation Ordinance of 1983⁹⁵⁰ covers the Gauteng, Mpumalanga, Limpopo and the North West Province. It was enacted for the same reason as the Cape Ordinance and is the same for all provinces to which it applies. This ordinance only applies to vertebrates, as it defines wild animals as “any vertebrate, including a bird and a reptile but excluding fish, belonging to a species which is not a recognised domestic species and the natural habitat of which is either temporarily or permanently in the Republic ...”⁹⁵¹ The Ordinance also applies to fish and defines fish as “... aquatic fauna generally (excluding mammals and birds) whether indigenous or exotic and includes the eggs or spawn thereof.”⁹⁵²

Like the Cape Ordinance, the Transvaal Ordinance prohibits the use of certain firearms,⁹⁵³ catching certain fish⁹⁵⁴ and picking certain plants.⁹⁵⁵ However, unlike the Cape Ordinance, the Transvaal Ordinance prohibits the use of certain hunting methods⁹⁵⁶ and allows the

⁹⁴² Section 27(1)(a).

⁹⁴³ Section 62(1).

⁹⁴⁴ Section 26.

⁹⁴⁵ Section 62(1).

⁹⁴⁶ Section 57.

⁹⁴⁷ Schedule 1 and 3.

⁹⁴⁸ Schedule 2 and 4.

⁹⁴⁹ Schedule 5.

⁹⁵⁰ Ordinance 12 of 1983.

⁹⁵¹ Section 1.

⁹⁵² *Ibid.*

⁹⁵³ Section 4(c) and 4(d).

⁹⁵⁴ Section 11.

⁹⁵⁵ Section 15.

⁹⁵⁶ Section 4.

Minister of Agriculture to authorise the destruction of vermin.⁹⁵⁷ The Ordinance also requires persons to have a permit to hunt protected and ordinary game,⁹⁵⁸ to catch certain fish,⁹⁵⁹ and to pick, sell or be in possession of certain plants.⁹⁶⁰

The Ordinance also categorises wild animals and plants. However, the categories are different to the ones contained in the Cape Ordinance. The Transvaal Ordinance uses the categories of protected game,⁹⁶¹ ordinary game,⁹⁶² vermin,⁹⁶³ aquatic growths,⁹⁶⁴ protected plants,⁹⁶⁵ and specially protected plants.⁹⁶⁶

Similar to the Cape Ordinance, the Transvaal ordinance is also old and archaic and the ideas and policies reflected are those that were used during the pre-1994 political dispensation. It is proposed that each of these four provinces will also need to enact its own regulations and policies in order to better protect its wildlife and habitats. For example, the use of the word “vermin” should not be used and instead of killing such “vermin” there should rather be measures in place that will reduce or prevent these animals from destroying farmers’ crops or killing their livestock. These regulations should also contain a list of protected species, conservation measures for these species and similar, updated prohibitions to the ones discussed above. Other regulations may include updated punishments for the contravening of these regulations, the granting of licences for certain activities and specific protection for species that are indigenous to only a certain area within these provinces or are indigenous to the province itself.

6.4.3. The Free State Nature Conservation Ordinance of 1969⁹⁶⁷ covers the Free State Province. It was enacted to provide for the conservation of fauna and flora and the hunting of animals causing damage and for matters connected to these.⁹⁶⁸ This Ordinance uses the same definition for wild animal as the Transvaal Ordinance and defines an exotic animal as “any

⁹⁵⁷ Section 8.

⁹⁵⁸ Section 3.

⁹⁵⁹ Section 11.

⁹⁶⁰ Section 15.

⁹⁶¹ Schedule 1.

⁹⁶² Schedule 2.

⁹⁶³ Schedule 5.

⁹⁶⁴ Schedule 6.

⁹⁶⁵ Schedule 7.

⁹⁶⁶ Schedule 8.

⁹⁶⁷ Ordinance 8 of 1969.

⁹⁶⁸ Long Title of the Ordinance.

live vertebrate animal (except a fish) belonging to a nondomestic species and the habitat of which is not in any part of the Republic ... and includes the eggs of such animals.”⁹⁶⁹

Many of the provisions in this Ordinance are similar to those in the other two ordinances discussed above, such as prohibiting the use of certain weapons while hunting,⁹⁷⁰ catching certain fish,⁹⁷¹ and prohibiting certain acts in respect of protected plants.⁹⁷² Similar to the Transvaal Ordinance, the Free State Ordinance allows the Administrator⁹⁷³ to authorize the hunting of an animal that has caused damage to property. The Ordinance prohibits persons from hunting exotic animals,⁹⁷⁴ as well as prohibiting the release of exotic animals into the Free State Province,⁹⁷⁵ prohibiting the sale of exotic animals⁹⁷⁶ and prohibiting the keeping of exotic animals.⁹⁷⁷

The Ordinance also categorises animals and plants. The categories include protected game,⁹⁷⁸ ordinary game,⁹⁷⁹ exotic animals,⁹⁸⁰ aquatic plants,⁹⁸¹ and protected plants.⁹⁸² It also contains provisions on the prohibition and regulation on similar matters and uses the same definition of wild animal as the Transvaal one.

Like the Cape and Transvaal Ordinances, the Free State Ordinance is old, archaic and reflects the ideas and policies of a former era. It is suggested this province should update this ordinance in order to better protect the wildlife and habitats that are specific to this area. For example, instead of killing “problem animals” there should rather be measures in place that will reduce or prevent these animals from damaging property. These regulations should also contain conservation measures for protected species and similar, updated prohibitions to the ones discussed above. Other regulations may include updated punishments for the contravening of these regulations, granting of licences for certain acts and specific protection

⁹⁶⁹ Section 1.

⁹⁷⁰ Section 8.

⁹⁷¹ Section 25.

⁹⁷² Section 33.

⁹⁷³ Means the Administrator acting on the advice and with the consent of the Executive Committee of the Province (section 1).

⁹⁷⁴ Section 18.

⁹⁷⁵ Section 19(a).

⁹⁷⁶ Section 19(b).

⁹⁷⁷ Section 19(b).

⁹⁷⁸ Schedule 1.

⁹⁷⁹ Schedule 2.

⁹⁸⁰ Schedule 4.

⁹⁸¹ Schedule 5.

⁹⁸² Schedule 6.

for species that are indigenous to only a certain area within this province or are indigenous to the province itself.

6.4.4 Natal Nature Conservation Ordinance of 1974⁹⁸³ covers the KwaZulu Natal Province. Unlike the other three ordinances, the Natal Ordinance defines an animal as “any member of the animal kingdom other than man.”⁹⁸⁴ In line with this definition, the Ordinance has several chapters, each of which has provisions relating to certain groups of animals.

Chapter III relates to game, Chapter V to mammals, Chapter VII refers to amphibians, invertebrates and reptiles, Chapter VIII deals with wild birds, Chapter IX to freshwater fish, and Chapter X refers to coastal fishing (and marine life). Each of these chapters provides for similar matters, such as requiring all persons to have a permit if they either wish to hunt, kill, capture, keep or have in their possession any group of animal that is covered by each of these chapters.

Like the other three ordinances, the Natal Ordinance also categorises animals.⁹⁸⁵ Unlike the other ordinances, the Natal ordinance provides for the establishment, conduct or maintenance of zoos. This provision essentially requires persons to get approval from the Administrator if they wish to establish, conduct or maintain a zoo.⁹⁸⁶ Once an approval is granted, the zoo must be registered.⁹⁸⁷ Another unique feature of this ordinance is the prohibition of cruelty to indigenous and exotic mammals.⁹⁸⁸ However, these provisions seem to only deal with the permits required to establish, conduct and maintain a zoo and does not directly provide for the welfare of animals kept in zoos.

The Natal Ordinance is supplemented by the KwaZulu Natal Nature Conservation Management Act.⁹⁸⁹ This Act establishes a KwaZulu Natal Nature Conservation Board,⁹⁹⁰ which has as its primary function the management of nature conservation in the province, as

⁹⁸³ Ordinance 15 of 1974.

⁹⁸⁴ Section 1.

⁹⁸⁵ Schedule 1 – ordinary game. Schedule 2 – protected game. Schedule 3 – specially protected game. Schedule 4 – open game. Schedule 6 – endangered mammals. Schedule 7 – protected amphibians, invertebrates and reptiles. Schedule 8 – unprotected wild birds. And Schedule 9 – specially protected birds.

⁹⁸⁶ Section 82.

⁹⁸⁷ Section 83.

⁹⁸⁸ Section 86 prohibits persons from securing indigenous and exotic mammals by means of a rope, cord, chain or anything serving a similar purpose.

⁹⁸⁹ Act 9 of 1997.

⁹⁹⁰ Section 4.

well as in protected areas within the province and to promote and develop ecotourism facilities within these protected areas.⁹⁹¹

6.4.5. The KwaZulu Natal Nature Conservation Act of 1997 was enacted to provide institutional structures for nature conservation in KwaZulu Natal and to establish control and monitoring bodies and mechanisms, and to provide for matters incidental thereto.⁹⁹² Apart from its primary function discussed above, the KwaZulu Natal Nature Conservation Board is from time to time, allowed to conduct investigations and advise the Minister⁹⁹³ on legislation and policies relating to the function of nature conservation.⁹⁹⁴

The Board is also allowed to raise funds and acquire or dispose of movable assets by any lawful means⁹⁹⁵ and to enter into agreements with statutory bodies,⁹⁹⁶ organs of State⁹⁹⁷ and/or persons or bodies approved by the Minister.⁹⁹⁸ Furthermore, this Act requires the Board to determine conditions and set norms and standards for nature conservation activities and the management of protected areas,⁹⁹⁹ and for the sustainable use of all indigenous plants and animals throughout the Province.¹⁰⁰⁰

Although some progress has been made in the Kwa-Zulu Natal Province, the ordinance that is still in use reflects the ideas and policies that were used during the apartheid era. Like the Free State Ordinance, the Natal Ordinance should be updated to ensure that wildlife and habitats that are specific to this area are adequately protected. For example, these regulations should contain conservation measures for protected species and specific protection for species that are indigenous to only a certain area within this province or are indigenous to the province itself.

It is disheartening that after sixteen years of a democratic and constitutional South Africa, little has been done to enact new legislation for the protection and conservation of wild animals (and plants) for each of the nine provinces. It is submitted that each province will

⁹⁹¹ Section 5 (1)(a).

⁹⁹² Preamble.

⁹⁹³ The Minister in the context of this Act means the member of the KwaZulu Natal Executive Council who has the responsible to protect and conserve the environment in the KwaZulu Natal Province.

⁹⁹⁴ Section 5(2)(a)(i).

⁹⁹⁵ Section 5(2)(b).

⁹⁹⁶ Section 5(2)(c)(i).

⁹⁹⁷ Section 5(2)(c)(ii).

⁹⁹⁸ Section 5(2)(c)(iii).

⁹⁹⁹ Section 5(3)(a)(i).

¹⁰⁰⁰ Section 5(3)(a)(ii).

have its own problem areas that need to be dealt with and unique ecosystems/environment that need to be protected and conserved. This is because each province covers different geographical areas¹⁰⁰¹ which contain different plant and animal species, which will have different problem areas. These issues will only be adequately dealt with by a provincial legislation that is enacted specifically for that province and not an ordinance that does not reflect the morals and values of today's society. It is submitted that perhaps provincial legislatures feel that national legislation is, for the current moment, enough to ensure the protection and management of wild animals and plants. However, there still will come a time when revised and updated legislation will be needed.

6.5. Industry Codes/Rules

These Codes of Practices¹⁰⁰² have been drawn up in co-operation between the NSPCA and the various animal-related industries. It is submitted that the government did not get involved as, perhaps, it felt that the legislation that is in place is adequate enough to protect the animals that are involved; or, perhaps, the Government did not want to interfere with private and/or public industries as the Government may be benefitting from this situation.¹⁰⁰³ These codes reflect the minimum standards that these industries have agreed upon and are used in conjunction with various animal welfare laws, and the Animal Protection Act in particular. These codes range from the management of and animal welfare in abattoirs, the transport of livestock and specific welfare issues for pigs, poultry and dairy cattle. The following are a selection of the important codes:

6.5.1. Duties and Functions of Abattoir Managers Regarding the Welfare of Animals and A Guideline for the Use of Prodders and Stunning Devices in Abattoirs¹⁰⁰⁴ were promulgated to ensure the humane handling of livestock during the process of slaughtering to prevent unnecessary suffering. These codes introduce norms and minimum standards for abattoirs to adopt and follow. These codes also introduce measures that will prevent cruelty and financial loss that is usually associated with the mishandling and maltreatment of slaughtering livestock. Abattoir managers are required to ensure that records are kept of persons that

¹⁰⁰¹ For example, coastal areas, semi-desert areas and forest areas.

¹⁰⁰² These codes can be found on the NSPCA website at <http://www.nspca.co.za/page.aspx?Id=146&CateId=14&Category=Farm&SubCateId=146&SubCategory=Industry%20Codes>.

¹⁰⁰³ In terms of tax been paid, or profit been paid out to members, partners etc.

¹⁰⁰⁴ This guideline sets out standards on how to use electric prodders, for example, to make an animal move forward the handler must stand behind the shoulder and apply the prod to the rear quarters of the animal; and stunning devices, for example, how to use and properly stun an animal with a captive bolt pistol and electric stunning.

continuously deliver animals that are injured, dead, bruised or who have given birth while in transit. These names must be given to the Secretariat of the Livestock Welfare Co-ordinating Committee.¹⁰⁰⁵ Managers must also ensure that their staff members have the necessary skill and experience to humanely handle the animals while off-loading, herding and lairaging the animals.¹⁰⁰⁶ Stunning equipment must be regularly checked and back up equipment must be available at all times.¹⁰⁰⁷ Slaughtering equipment must also be regularly checked and in good working order, and animals must be properly stunned before they are slaughtered.¹⁰⁰⁸

It is submitted that there is not certainty as to whether these guidelines are enforced. However, since the guidelines were drawn up in conjunction with the NSPCA there is a very good chance that the NSPCA may be monitoring certain abattoirs. It is further submitted that each abattoir should be required to hire a neutral third party to monitor the staff and manager to ensure that guidelines are been followed.

6.5.2. The Code of Practice for the Handling and Transport of Livestock of 2000 applies to cattle, sheep, pigs and goats, and applies to many aspects of transport, such as handling of livestock when on-loading and off-loading¹⁰⁰⁹ and the procedure used for loading.¹⁰¹⁰ Rule 6 states that off-loading and on-loading of animals must be done as calmly and as quietly as possible, and with patience and tolerance. Once loaded, the journey should start as soon as possible and the animals must be promptly off-loaded once they reach their destination. Rule 2 requires that livestock must be handled with patience and tolerance at all times and with due allowance for their natural behaviour.

This code also deals with transporting livestock on the hoof.¹⁰¹¹ Rule 3 requires that Animals driven by the hoof must be under proper and constant supervision. Animals must be driven in a calm manner and at a relaxed gait, which is natural to the animal. The vehicles used in transporting livestock must be roadworthy and constructed in such a way as to ensure adequate ventilation and protect against exhaust fumes and direct sunlight.¹⁰¹²

¹⁰⁰⁵ Rule 3(vi).

¹⁰⁰⁶ Rule 3(viii).

¹⁰⁰⁷ Rule 4(B).

¹⁰⁰⁸ Rule 4(C).

¹⁰⁰⁹ Rule 6.

¹⁰¹⁰ Rule 2.

¹⁰¹¹ Rule 3.

¹⁰¹² Rule 4.

Animals must be provided with adequate food and water before the start of the journey, and when pigs are transported, an emergency supply of water should be kept and used, when necessary, to spray the pigs to reduce the incidence of heat exhaustion.¹⁰¹³ Animals that are restrained during transport must be managed in such a manner as to prevent injury or death.¹⁰¹⁴ Animals must not be restrained around the head or neck and must not be restrained for more than 4 hours in a 24 hour period.¹⁰¹⁵

The driver of a vehicle transporting animals must be alert and in a fit state of mind at all times and must not drive the vehicle in such a manner as to cause the animals to slip, fall or injure themselves. The vehicle must be driven with regards to the safety and wellbeing of the animals being transported.¹⁰¹⁶ To ensure that it is followed a neutral third party should be employed.

6.5.3. The South African Pig Welfare Code¹⁰¹⁷ contains rules that are specific to pigs, such as healthcare,¹⁰¹⁸ transport,¹⁰¹⁹ nutrition¹⁰²⁰ and the handling of pigs in abattoirs.¹⁰²¹ This code also contains rules on tethers,¹⁰²² crates,¹⁰²³ pigs kept outdoors,¹⁰²⁴ and sick and injured pigs.¹⁰²⁵ It is submitted that to ensure that this code is followed an independent third party should be employed.

¹⁰¹³ Rules 5 and 7.

¹⁰¹⁴ Rule 9.

¹⁰¹⁵ *Ibid.*

¹⁰¹⁶ Rule 8. The driver of a vehicle transporting animals must be alert and in a fit state of mind at all times and must not drive the vehicle in such a manner as to cause the animals to slip, fall or injure themselves. The vehicle must be driven with regards to the safety and wellbeing of the animals being transported.

¹⁰¹⁷ Compiled by the South African Pork Producers Organisation, the Pig Veterinary Society, the NSPCA, the Livestock Animal Welfare Association, the previous Meat Board, and Abakor (a state owned abattoir company).

¹⁰¹⁸ Rule 4 and 5 under the section of Stockmanship, Husbandry, and Healthcare. Animal waste and waste products must be handled to minimise the risk of discomfort and spread of disease to other animals and humans, and the strict control of parasites, flies and rodents must be maintained at all times.

¹⁰¹⁹ Rule 1 to 5 under the Transport section and must be read in conjunction with the Code of Practice for the Handling and Transport of Livestock.

¹⁰²⁰ Rules 1 and 2 under the Nutrition section states that pigs must have access to clean drinking water at all times and wholesome feed every day.

¹⁰²¹ Rules 1 and 2 of the Abattoir section. Personnel at abattoirs must be trained in the use of welfare standards and must ensure that stress and injury to pigs is kept to a minimum. Pigs must be effectively stunned before they are slaughtered.

¹⁰²² Rule 1. No new tether systems may be built and all existing ones had to be phased out by the end of 1999.

¹⁰²³ Rule 2. Crates must be designed and built to allow sows to lie down and stand up without any hindrance and a safe creep area for piglets must be provided. Rapid fluctuations in temperature should be avoided.

¹⁰²⁴ Rule 8. Pigs kept outdoors must be provided with enclosures, and feeding and watering facilities must be made available at all times.

¹⁰²⁵ Rule 10. Pigs must be inspected daily for signs of vices, sickness, injury, bullying or distress. Pigs that are sick or injured must be treated promptly.

6.5.4. The South African Poultry Association (SAPA) Code of Practice of 2001¹⁰²⁶ includes similar rules on health status as the code for pigs.¹⁰²⁷ It also has rules on the catching and transporting of chicks and adult chickens¹⁰²⁸ and the handling of chickens at the abattoir.¹⁰²⁹ Other rules that are more specific to poultry include food safety,¹⁰³⁰ breeding material,¹⁰³¹ hatcheries,¹⁰³² barn type housing¹⁰³³ and standards and requirements for producing hatching eggs,¹⁰³⁴ broiler chickens¹⁰³⁵ and free – range chicken.¹⁰³⁶ Similar to the other codes above, a neutral third party should be employed to ensure that this code is properly enforced.

6.5.5. The Code of Practice for the Welfare of Dairy Cattle¹⁰³⁷ contains several rules with regards to dairy cattle. A selection of the more important rules will be dealt with below. Pertaining to the feeding and watering of both calves and adult cattle, Rules 1 and 2 apply. Rule 1.2 states that adult cattle must have food that is fresh and available at all times. With regard to calves, Rule 2.9 states that calves must not be weaned before 6 weeks of age and they must be eating significant amounts of solid food before they are weaned.

Rules 3 and 4 contain certain requirements that facilities and calf pens must meet, such as Rule 3.1 that states that all facilities must be designed, constructed, maintained and regularly inspected to ensure that they are free of dangerous or hazardous features. Any facility that is damaged will be suspended until it gets repaired. Rule 4.1 states that calf pens must be

¹⁰²⁶ Compiled by the South African Poultry Association, 2001.

¹⁰²⁷ Rule 3.1. This rule states that records must be kept on health, vaccination, hatchery hygiene and laboratory tests (i.e. blood tests). Blood tests must be conducted at regular intervals to ascertain whether certain poultry diseases are present.

¹⁰²⁸ Rule 9. Catching chickens must be done by experienced staff, and as quickly and quietly as possible. Drivers who are in charge of transporting chickens must be responsible and be trained in transporting livestock (and poultry). The vehicle in which chickens are transported must be roadworthy and be constructed in such a way as to protect the chickens from adverse weather conditions.

¹⁰²⁹ Rule 10. Chickens arriving for slaughter must be monitored and the cause of death, injury and/or sickness of any chicken must be determined and reported to the chicken farmer. Chickens must be handled humanely, and stunned and slaughtered as soon as possible.

¹⁰³⁰ Rule 3.2. Food safety relates to food borne pathogens (Salmonella Enteritidis) and the use of antibiotics and drugs on poultry.

¹⁰³¹ Rule 2. Breeding material refers to the lineage of poultry and the importation of this lineage. A permit is required to import poultry and is valid for 12 months.

¹⁰³² Rule 4. This deals with the handling of chicks, elective surgery/morphological changes, identification devices attached to chicks, and the euthanasia and disposal of non-saleable or unhatched chicks.

¹⁰³³ Rule 8. Chickens housed in barns must have enough space to move around freely and be able to flap its wings. Fresh air must be available, as well as ventilators and manure extraction systems to prevent the build up of ammonia.

¹⁰³⁴ Rule 5. This rule deals with the receiving chicks and chickens onto the premises, housing, feed and water, and the supervision and protection of chicks.

¹⁰³⁵ Rule 6. This rule deals with the same matters as the rule above.

¹⁰³⁶ Rule 7. This rule deals with the management, feed and water, the internal and external environments, record keeping and health of free-range chickens.

¹⁰³⁷ Compiled by the NSPCA Farm Animal Unit, 2005.

appropriate for the size, age and breed of the animal. The calf must be able to stand up, turn round, lie down, rest and groom itself without any hindrance in these pens.

Rule 6 of this code covers the health of dairy cattle. It states, amongst other things, that sick or injured cattle must be promptly treated or humanely slaughtered¹⁰³⁸ and that a preventative control programme must be used to control flies. Rule 9 deals with surgical procedures, such as Rule 9.2 which states that assistance should be given to heifers after 4 hours of trying to calf and after 2 hours for adult cows.

Requirements for emergency slaughter are contained in Rule 10. Rule 10.2 requires that calves that were born with severe physical defects and painful congenital deformities must be humanely destroyed. It is submitted that to ensure the proper enforcement of this code a neutral third party be employed. It is also proposed that inspectors be employed and trained by the Department of Agriculture for those people who cannot afford to employ a neutral third party. These inspectors will ensure that the Department of Agriculture complies with its task of enforcing any and all laws and rules with regard to animal welfare.

6.6. “The Care and Use of Animals for Scientific Purposes”¹⁰³⁹

The SABS standard 10386 “The Care and Use of Animals for Scientific Purposes” was published in 2008, by the National Council of SPCA’s and the South African Bureau of Standards (SABS).¹⁰⁴⁰ It is hoped by all who helped create this code that it will soon be enacted as a piece of legislation.¹⁰⁴¹

This Code was enacted to ensure the humane and ethical care of animals for scientific and teaching purposes. It aims to “emphasise the responsibilities of investigators, teachers and institutions using animals; ensure that the welfare of animals is always considered; ensure that the use of animals is justified; prevent or minimize pain or distress where possible for each animal used in scientific and teaching activities; ensure minimum uniform national standards of animal care and use; minimise the number of animals used in projects in such a way that it will not jeopardise the validity of the study; and promote the development and use

¹⁰³⁸ Rule 6.3.

¹⁰³⁹ South African Bureau National Standard 10386 of 2008.

¹⁰⁴⁰ <http://www.nspca.co.za/other.aspx?Id=&CateId=&Category=&page=News&nId=95&Title=EXPERIMENTATION>.

¹⁰⁴¹ *Ibid.*

of techniques which refine, reduce or replace animal use in scientific and teaching activities.”¹⁰⁴²

The Code sets out that each institution which uses animals for scientific or teaching purposes, must establish at least one Animal Ethics Committee (AEC); the terms of reference and membership are set out in the Code. The AECs are tasked to “...verify that the case for animal use is justified and to ensure adherence to the principles of Replacement, Reduction and Refinement (the 3 R’s).”¹⁰⁴³

It is proposed that this code should be enacted as legislation and penalties be created for the contravention of it. To ensure that each institution which uses animals for scientific or teaching purposes has established at least one Animal Ethics Committee (AEC), the NSPCA should be allowed to inspect these institutions. The NSPCA should also be allowed to inspect the AEC’s to ensure that they have been properly formed and that they properly carrying out their functions and duties.

6.7. Animal Related By-Laws

Every municipality in South Africa has enacted its own by-laws. These municipalities have also enacted by-laws with regard to animals and usually deal with matters such as the control of dogs and the keeping of either animals, cage birds and pigeons, bees, dogs and poultry.¹⁰⁴⁴

In Summary

Discussion in this chapter has revealed that South Africa has very similar laws to the other jurisdictions under discussion, such as the United States, Kenya and India. At first glance, the discussed South African animal welfare legislation seems to be adequate in dealing with animal welfare and the protection and conservation of wild animals and plants. However, on

¹⁰⁴² South African National Standard 10386 ‘The Care and Use of Animals for Scientific Purposes’ pg 5.

¹⁰⁴³ South African National Standard 10386 ‘The Care and Use of Animals for Scientific Purposes’ pg 5.

¹⁰⁴⁴ For example, the Buffalo Municipality has a by-law named the Keeping of Poultry (PN 549/1950). This by-law lists the requirements for keeping poultry on any premises. Poultry includes any domesticated or wild fowl, goose, duck, turkey, pigeon or dove. To keep poultry, one must get the Councils written permission which is obtained by making an application with a site plan attached, which shows the situation of all structures that are to be used with regards to the poultry. The structures used, must meet certain requirements and to the satisfaction of the Council. Persons keeping poultry must ensure that the structures remain clean and intact so as to prevent rodents, parasites and other vermin from infesting the structures and surrounding areas. Persons who do not comply with the regulations kept in the by-law is guilty of an offence and if convicted is liable to pay a penalty that does not exceed R40.

closer inspection, it is submitted that the penalties for contravening the discussed animal welfare legislation is inadequate – this it is, can be seen by the table below.

NAME OF ACT	SECTION CONTAINING OFFENCES/PENALTIES	DESCRIPTION OF PENALTIES
(1) The Animal Protection Act 71 of 1962	Section 2	(A) Fine not exceeding R4000; and/or (B) Imprisonment that does not exceed 12 months.
	Section 2A	(A) Fine; and/or (B) Imprisonment that does not exceed 2 years.
	Section 3(a)	Court may order that the animal be destroyed if deemed cruel to keep such animal alive.
	Section 3(b) and 3(c)	Court may deprive convicted person of ownership of the particular animal that was abused or deprive ownership of a particular breed of animal.
	Section 4	Court may award damages of not more than R5000 against convicted person (on application)
(2) Regulations Relating to the Seizure of Animals by an Officer of a Society for the Prevention of Cruelty to Animals (No.R.468, 14 March 1986)	Regulation 6 (2)	(A) Fine not exceeding R2000; and/or (B) Imprisonment that does not exceed 12 months.
(3) Performing Animals Protection Act 24 of 1935	Section 5	(A) Fine not exceeding R4000; and/or (B) Imprisonment that does not exceed 12 months.
	Section 8	(A) Fine not exceeding R4000; and/or (B) Imprisonment that does not exceed 12 months.
(4) Performing Animals Protection Act, 1935 Regulations	Section 4	(A) Fine not exceeding R4000; and/or (B) Imprisonment that does not exceed 12 months.
(5) The Animal Health Act 7 of 2002	Section 29(2)(a)	First offence: Fine; and/or Imprisonment that does not exceed 2 years.
	Section 29(2)(b)	Second Offence: Fine; and/or Imprisonment that does not

		exceed 4 years.
(6) The Cape Nature and Environmental Conservation Ordinance 19 of 1974	Section 85	Section 86
(7) The Transvaal Nature Conservation Ordinance 12 of 1983	Section 22, 43, 44, 45, 48, 66, 85, 96, 98 and 99.	Section 22, 43, 44, 45, 48, 66, 85, 96, 98 and 99.
(8) The Free State Nature Conservation Ordinance 8 of 1969	Section 36E and 40	Section 36E and 40
(9) The Natal Nature Conservation Ordinance 15 of 1974	Section 55, 76, 90, 130, 154 and 208	Section 23, 55, 76, 90, 99, 109, 130, 154, 185 and 208

It is submitted that the many studies that link animal cruelty and ‘human’ cruelty (as discussed in Chapter 1) would suggest that the appropriate penalties for animal cruelty should be similar to the penalties for ‘human’ cruelty. Minimum sentences and/or fines should be set for cases of animal cruelty. For example, section 51 of the Criminal Law Amendment Act 105 of 1997 states that a minimum sentence may be imposed for murder if it was planned or premeditated.

As was submitted above, the Animal Protection Act fails to adequately protect farm animals and animals used in laboratories and it also fails to prohibit experimental procedures conducted on these laboratory animals. Only the various industry codes and rules are in place to ensure the welfare of these animals. However, without the force of legislation, these codes and rules can be easily ignored without fear of prosecution as abuse or cruelty that is deemed necessary will not be punished. The abuse and cruelty that farm animals and animals used in laboratories face on a daily basis is allowed to continue as they are generally regarded as having some acceptable use or benefit to human society. The Animal Protection Act is often criticised by South African animal rights activists as doing very little to curb the abuse of animals. South African animal rights activists argue that the Act actually allows animals to “...suffer if the end justifies the means.”¹⁰⁴⁵

With regard to the protection and conservation of wild animals, the provincial legislation has changed very little from when it was first enacted. South Africa now has nine provinces; however, these nine provinces still use the ordinances that were used for the four old provinces. As was discussed above, these ordinances are old, archaic and reflect the ideas and policies that were used during the apartheid era. It is submitted that each of the nine

¹⁰⁴⁵ Pickover *Animal Rights in South Africa* 79.

provinces need to enact its own legislation, regulations and policies in order to better protect the wildlife and habitats that are specific to their area and in keeping with current *mores* and concerns.

It is submitted that South Africa needs to review its animal welfare legislation from time to time, as well as compare its animal welfare legislation to that of other countries. Once this is done, then this country will be able to update the animal welfare legislation to ensure that the protection and welfare of animals continues and improves over time. The enforcement of the various animal welfare laws should also be tackled. If the police are unable or unwilling to enforce the animal welfare legislation, then the task of enforcing these legislations should be handed over to the various SPCA's in South Africa.¹⁰⁴⁶ A separate animal welfare court could also be created. This would ensure that animal welfare matters are dealt with on the same basis as human matters. There is no court of this kind in the world today, as animal welfare matters are dealt with by the courts that are already established, such as the criminal and civil courts.

Other suggestions for development in South Africa are dealt with more fully in the next chapter.

¹⁰⁴⁶ Who need to be primarily supported by public monies to perform this task.

Chapter 7 – Proposals for Future Development in South Africa

As a Buddhist monk my concern extends to all members of the human family and, indeed, to all sentient beings who suffer. I believe all suffering is caused by ignorance. People inflict pain on others in the selfish pursuit of their own happiness or satisfaction.

- His Holiness the Dalai Lama¹⁰⁴⁷

Not all people think like the Dalai Lama, perhaps for reasons of ignorance. This chapter will investigate suggestions about how ignorance can hopefully be overcome and in turn help eradicate the pain that is often inflicted ‘in the selfish pursuit of (peoples) own happiness or satisfaction,’ where this selfish pursuit affects animals.

This chapter will investigate a sample of suggestions on developing current animal welfare legislation and concerns. These suggestions have been put forward by various writers and animal welfare and animal rights groups, as well as developments in foreign countries. The suggestions range from legislation to education, changing attitudes and current lifestyle practices.

7.1. Legislative Suggestions

7.1.1. Legislation concerning domestic and wild animals

Animal Rights and Animal Welfare Activists have argued that most, if not all suffering can be explained away as a “necessary” evil, such as that occasioned by the disciplining of a pet. It is argued that these exceptions reduce the effectiveness of the anti-cruelty legislation. Sunstein¹⁰⁴⁸ suggests that to make anti-cruelty legislation more effective, greater enforcement of this legislation should be allowed, i.e. allow interest groups and representatives of abused

¹⁰⁴⁷ Nobel Peace Prize Acceptance Speech, Oslo, December 1989.

¹⁰⁴⁸ Sunstein ‘Can Animals Sue?’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 252.

animals to bring private suits to court and get compliance orders to ensure that anti-cruelty and other related legislation is properly enforced and complied with.¹⁰⁴⁹

Animal Rights activists believe that certain activities involving animals, such as hunting, trade in wildlife and the use of animals in making clothing (e.g. fur), ornaments (ivory), or medicine should be banned outright.¹⁰⁵⁰ Further, it is suggested that animals that are confined in cages (such as in laboratories) or exhibits (such as zoos) should be given plenty of space to move around, that is, an environment that is stimulating to the animal. This would include adequate lighting, exercise and plenty of stimulating toys and objects that will relieve boredom and monotony - and a companion if the animal is a group/social animal (such as monkeys).

Areas of little protection include hunting, zoos, wildlife management, trade in wildlife, farming and animals used in scientific experiments and the entertainment industry. Proper regulation of these areas will reduce the amount of animal suffering and will, hopefully, encourage persons in these fields to either reduce the number of animals used¹⁰⁵¹ or adopt measures to ensure the reduction of suffering to the animals. For example, unskilled hunters should receive training before they embark on hunting to ensure that they do not cause unnecessary suffering to the animal they intend to kill.

It is submitted that animal interests should be included in the Constitution,¹⁰⁵² which should impose on the government a constitutional duty to legislate on matters of animal welfare and a duty to review and improve any existing animal welfare and animal related legislation from time to time. By so including animal interests in the Constitution, a constitutional duty will be imposed upon South African citizens to protect and promote animal welfare. The inclusion of animal welfare in the Constitution would be a bold step and would send a message to every person in the world, that the South African government and the people of South Africa are committed to furthering both human rights and animal welfare and that this step may ultimately lead to animals being granted legal status and rights.

It is submitted that the step to granting legal status and rights to animals be done slowly. This would be necessary as the attitudes and beliefs of people toward animals will not be easy to

¹⁰⁴⁹ Sunstein 'Introduction. What are Animal Rights?' in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 7.

¹⁰⁵⁰ For example, PETA (www.peta.org).

¹⁰⁵¹ For example, reduce the amount of animals used in experiments, farming, and trade in wildlife.

¹⁰⁵² As was done in India, Switzerland and Germany.

change. Stricter animal welfare legislation should be the start, with more importance and focus being placed upon animal issues. Once this has been established, limited legal rights could then be introduced in phases. For example, phase one could introduce legal rights to pet animals;¹⁰⁵³ phase two could introduce legal rights to animals kept in zoos and aquariums;¹⁰⁵⁴ phase three could introduce legal rights to farm animals.¹⁰⁵⁵

It is suggested that, as was done in India, the South African government should establish a government animal welfare board or convert the NSPCA to serve as the government animal welfare board. This board would have the same or similar functions as the Indian animal welfare board, which was discussed in chapter 4. The NSPCA and the various SPCA's around the country should be granted the similar powers as the police with regards to animals.¹⁰⁵⁶ This would then ensure that animal welfare legislation is properly enforced. The South African government should also create an animal welfare grant for animal welfare organisations. The amount of the grant would depend on how many animals the animal welfare organisations care for and how involved they are in the community.

(a) Hunting and Trading in Animals

It has been submitted that the trade in animals and hunting should essentially be banned as hunting is said to introduce children to a “culture of guns and violence ... and a world in which white men are lionized and blacks, Hispanics, gays, and women are denigrated.”¹⁰⁵⁷ The above comment was aimed at the National Rifle Association (NRA) from the United States, which is affiliated to hunting organisations in South Africa. The board members of the NRA have been criticised for their openly racist, pro-gun and right-wing tendencies and remarks.¹⁰⁵⁸ However, this may be too drastic for some and a less ‘harsh’ version is herewith suggested. The trade in certain animals and animal products should be banned, such as

¹⁰⁵³ The reason to introduce legal rights to pet animals first, is that these are the animals that people are constantly in contact with and seem to be most interested in caring for and protecting.

¹⁰⁵⁴ Animals kept in zoos and aquariums are viewed daily and the people viewing these animals will most likely be interested in protecting and promoting these animals welfare.

¹⁰⁵⁵ As consumers become more aware of the conditions that farm animals are put through on a daily basis, the consumer will possibly not tolerate this cruelty and will want these animals welfare to be protected and promoted.

¹⁰⁵⁶ For example, SPCA officers could charge people with animal cruelty and arrest them, as well as remove any animal that is abused or remove any animal where there is a good reason to do so.

¹⁰⁵⁷ Pickover *Animal Rights in South Africa* 22-23.

¹⁰⁵⁸ *Ibid.*

endangered species, fur of any animal, ivory and rhino horn.¹⁰⁵⁹ It is also submitted that hunting certain animals should be banned, such as predators and any other animals that are either labelled as endangered, threatened or vulnerable. Continuing with this suggestion, is that certain hunting methods should be banned as well, such as hunting with dogs and the use of traps. Hunting permits should only be issued to persons who have qualified, i.e. passed an exam/test, or have experience.¹⁰⁶⁰ It is submitted that exams/tests (these could be written, oral or physical tests) should be introduced, as well as requiring candidates to obtain a certificate in gun use and safety. These measures would ensure that hunting licenses are strictly controlled and that the person who has a hunting licence will be competent and qualified to use a gun. It is submitted that these suggestions would ensure that if hunting does continue, then at least it would be done ‘humanely’ in that the animals that are hunted do not suffer or die in excruciating pain. Another reason for these submissions is that certain animals need to be protected from hunters as continued hunting will either endanger the species or drive them into extinction.

(b) Abattoirs

Abattoirs should be constantly monitored to ensure that all the relevant legislation and rules are enforced. This would ensure that high standards of both animal welfare¹⁰⁶¹ and public health¹⁰⁶² are achieved. The constant monitoring of abattoirs would also lead to job creation which would in the long run benefit both humans and animals.¹⁰⁶³

(c) Transportation of Animals

Transportation of animals should be monitored and legislation specifically aimed at transporting animals should be enacted and enforced.¹⁰⁶⁴ In addition to this, traffic fines for overloading vehicles (with animals) while transporting animals or using the wrong vehicle could also be introduced.

¹⁰⁵⁹ Francione ‘Animals – Property or Persons?’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 108-142.

¹⁰⁶⁰ This would include people from overseas who wish to come to South Africa to get an ‘African trophy’ to take home with them.

¹⁰⁶¹ Unnecessary pain and suffering would be reduced, as the monitors would ensure that the animals are properly stunned before slaughter and that employees would not abuse or torture animals while unloading and so on.

¹⁰⁶² Contamination of meat would be kept to a minimum.

¹⁰⁶³ More people would have jobs (and money) which would lead to people focusing less on themselves and more on other issues affecting society.

¹⁰⁶⁴ Traffic officers may need to enforce this legislation as and using the wrong vehicle to transport animals as well as overloaded vehicles can be a danger to everyone who uses a public road.

(d) “Pet” Animals

The writer is aware that the word “pet” would imply that the animal is a legal object. When discussing this section, the term “pet” is only used as there is no other term that would better describe an animal under the care and guardianship of a human.

Instead of the traditional view which regards the animal as property/legal object and the owner as the legal right holder/ legal subject, some¹⁰⁶⁵ suggest that this traditional view be changed to that of an animal being a legal subject and the owner becoming the guardian of the animal and that both retain their status as legal subjects. This situation would be similar to the child-guardian legal position. Thus, according to this view, a person might adopt an animal and become its guardian, and then take on similar roles as any guardian of a child would. For example, the guardian may sue on behalf of the animal.

The proposed procedure for an animal adoption would start off with a visit by the prospective guardian to an animal shelter. The prospective guardian would take a look at and interact with the animals there, while the staff may watch and record how the animal and prospective guardians interact with each other. Once an animal is chosen, the prospective guardians would be interviewed and their property would be inspected. After the inspection, a report would be submitted and the adoption would be either approved or another animal that would be better suited to the prospective guardian would be suggested.

In this adoption relationship, anti-cruelty legislation will still apply but then, there will be direct duties imposed on the guardian (and other persons) with regard to the adopted animal. These duties may be similar to the duties that a parent/guardian presently owes to his/her child under the law. For example, the guardian would have a duty to provide the animal with shelter from the elements, a duty to feed and provide water to the animal on a daily basis and a duty to have the animal medically treated if it falls ill or is hurt in any way.

To make the adoption process more effective, “backyard breeding” would need to be made illegal and pet-shops would no longer be allowed to sell “pets”. If a person wished to be a breeder of animals, he/she would need a breeders licence. This would ensure that the adoption process is enforced and that there is no overabundance of unwanted animals. The current legislation concerning adoption and guardianship of children will only have to be

¹⁰⁶⁵ Such as Epstein ‘Animals as Objects, or Subjects, of Rights’ in Sunstein & Nussbaum (eds) *Animal Rights. Current Debates and New Directions* 143-161.

adapted in certain sections to include animals and the courts. Having dealt with this legislation many times before, law- and policy-makers should not find it difficult to apply this adapted legislation to animals.

The idea behind allowing breeding of animals to continue is so that it can be regulated, as well as to ensure that the animals/species that are adopted as “pets” will not become threatened, endangered or extinct. Legislation would need to be enacted to regulate the breeding of animals/species that are to be adopted as “pets”. Therefore, allowing guardians to breed their “pets” must not be construed as ownership over that “pet”, as breeding allows the continuation of that species and the “pet” will continue to be a legal subject.

Pet owners can often be irresponsible towards their pets, as well as to society, for example, by allowing their pets, for example dogs, to roam free. These dogs may attack other pets and people causing serious injuries or even death. Rollin suggests that legislation should be enacted against irresponsible pet owners and penalties should be imposed on those who fail to observe the law.¹⁰⁶⁶ The provisions of this legislation would include various penalties for violators, as well as contain certain responsibilities for pet owners and a screening procedure that will ensure that only responsible persons may own a pet animal. This “pet” legislation would only be necessary if the “animal adoption” legislation does not come to fruition.

The screening procedure¹⁰⁶⁷ would require people to demonstrate that they are fit to own and care for an animal. Prospective pet owners would have to prove that they have, amongst other things, adequate time, space, knowledge and ability to look after an animal; their fitness to own and care for an animal might need to be tested through an examination. Other provisions of the suggested legislation would include constraints on when one may euthanize a pet, rebates on animal sterilization,¹⁰⁶⁸ and pets would be required to be licensed and identified with the owner. This would make it much easier to locate owners of lost and stolen pets, as well as identify irresponsible owners.

This legislation would aim to establish education mechanisms to teach people about responsible pet ownership in terms of acquiring a pet, caring for the pet and what one can and can’t do when one does not want the pet anymore. This legislation would also impart on people the ethic that owning a pet is not a right, but a privilege.

¹⁰⁶⁶ Rollin *Animal Rights & Human Morality* 311-317.

¹⁰⁶⁷ *Ibid.*

¹⁰⁶⁸ *Ibid.*

(e) Offences and Penalties

In addition to these submissions, it is suggested that all animal related legislation in South Africa should be examined and redrafted so that any possible “loopholes”¹⁰⁶⁹ and vague and ambiguous provisions are done away with and exceptions are made stricter. Most animal anti-cruelty legislation states that intentional abuse is a crime.¹⁰⁷⁰ However, intentional abuse is often very hard to prove and in most cases of abuse and cruelty it is done unintentionally. It is suggested that, with this in mind, a new crime relating to animals should be introduced and that is the crime of “negligent abuse.”¹⁰⁷¹ This would help in convicting wrongdoers where it is hard to prove intention, and it would also help in making animal welfare issues being taken more seriously. In addition, the punishment for cruelty to animals should reflect the degree of cruelty shown to the animals. For example, the more serious or cruel the abuse, the harsher the punishment should be, and repeat offenders should also be punished more severely.

Further, it is submitted only a fine for abusing, torturing or killing an animal is unacceptable and it should be replaced by community service¹⁰⁷² including a fine, with said fine being used as a donation to an animal welfare organization. This “donation fine” should be put to good use by the animal welfare organisation, particularly for the caring of the animals under their supervision.

Community service as a punishment would result in people contributing to society and the community, as well as being educated about the importance of animal welfare issues. Community service would be animal orientated and would include helping the SPCA or other animal welfare organization, zoos, aquariums and even national parks or nature reserves. Convicted persons would help care for animals in various ways, such as clean their enclosures, help with feeding the animals, checking them for any signs of illness and picking up litter in nature reserves and national parks.

¹⁰⁶⁹ For example, ‘unnecessarily starves or under-feds or denies water or food to any animal;’ (Section 2(c) of the South African Animal Protection Act 71 of 1962).

¹⁰⁷⁰ For example, the South African Animals Protection Act 71 of 1962.

¹⁰⁷¹ This would be the case where someone ‘forgets’ to, for example, feed their animal or provide shelter from the cold or heat, and this leads to the death or serious injury of the animal.

¹⁰⁷² A community service sentence is one of the punishments that is available for the courts in the USA to hand down to convicted persons. For example, a man in Berks County, USA, was sentenced to, amongst other things, a 24 hour community service sentence. www.berkshumane.org/docs/021705_Stetler_Press_Release2.pdf (accessed on 19/09/2009).

This punishment is based on the utilitarian theory of punishment. This theory believes that punishment should be used to deter future crimes of a similar nature and that punishment should be limited to what is needed to prevent or deter these future crimes.¹⁰⁷³ Legislation enacted under this theory has its punishment designed to deter future crime, with the deterrence either being general or specific. General deterrence “means that the punishment should prevent other people from committing criminal acts. The punishment serves as an example to the rest of society, and it puts others on notice that criminal behavior will be punished.”¹⁰⁷⁴

Specific deterrence

“means that the punishment should prevent the same person from committing crimes. Specific deterrence works in two ways. First, an offender may be put in jail or prison to physically prevent her from committing another crime for a specified period. Second, this incapacitation is designed to be so unpleasant that it will discourage the offender from repeating her criminal behavior.”¹⁰⁷⁵

7.1.2. Legislation concerning scientific research

In South Africa, there is currently no legislation devoted exclusively to scientific research with regards to animals. However, the South African Bureau of Standards recently published the SABS Standard 10386 “The Care and Use of Animals for Scientific Purposes”, which was discussed above in Chapter 5. It is suggested that this Standard should be enacted legislation, as it would protect and promote animal welfare in the scientific realm.

It is furthermore suggested that one provision that is essential and that is missing in this Standard is the provision that requires a National Committee for Scientific Research to be set up. This Committee would evaluate the necessity of any and all proposals of scientific experiments (both medical and non-medical research) that involve animals, so that those experiments that are deemed unnecessary would be prevented from being carried out.

Rollin suggests that a provision that should be included is one that requires an “Animal Care Committee”¹⁰⁷⁶ to be set up. The tasks of this Committee would be to monitor the care and welfare of animals that are used in laboratories, as well as to inspect the conditions of

¹⁰⁷³ <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html> (accessed on 19/09/2009).

¹⁰⁷⁴ *Ibid.*

¹⁰⁷⁵ *Ibid.*

¹⁰⁷⁶ Rollin *Animal Rights & Human Morality* 233.

laboratories and ensure that regulations and policies relating to animal welfare are met. The Committee would also review the practices that are used on animals and suggest, if needed, alternatives to those practices. The Committee would also be required to file reports of the above mentioned activities from time to time.

This Committee would also deal with any proposals for new chemicals to be developed.¹⁰⁷⁷ Developers of new chemicals would have to prove to the Committee that their new product is better and show why it would be better. This procedure would help reduce the amount of chemicals that are produced and will prevent any unnecessary chemicals being produced and tested on animals.

A further suggestion of Rollin is that a Science Research Library should be created, containing information about all research that has been conducted and is being carried out in South Africa. Any prospective researcher would be required to check with this library to ensure that his/her proposed research has not been carried out or is not in the process of being carried out.¹⁰⁷⁸

Personnel that are required to work with and on animals, such as scientists and care givers, should be required to undergo training to ensure that they know how to adequately care for and reduce unnecessary suffering in animals.¹⁰⁷⁹ Laws on husbandry and housing systems should be enacted, which will ensure that animals will be housed and treated as close as possible to what their needs are.¹⁰⁸⁰

7.1.3. Legislation concerning farm animals

The intensive factory farming¹⁰⁸¹ of animals should be reduced¹⁰⁸² and eventually stopped altogether,¹⁰⁸³ while “traditional” farming¹⁰⁸⁴ should rather be encouraged.¹⁰⁸⁵ The

¹⁰⁷⁷ Rollin *Animal Rights & Human Morality* 190.

¹⁰⁷⁸ Rollin *Animal Rights & Human Morality* 234.

¹⁰⁷⁹ *Ibid.*

¹⁰⁸⁰ Rollin *Animal Rights & Human Morality* 250.

¹⁰⁸¹ i.e. animal farming that requires farm animals to be confined in small crates, cages, pens, etc, on inside of a building. These animals usually do not have enough space to move around freely and they are usually unable to go outside or see daylight.

¹⁰⁸² This will reduce a lot of pain and suffering for millions of farm animals in South Africa. The reduction of factory farms will also ‘free up’ a lot of grain and water that can be used elsewhere.

¹⁰⁸³ Intense factory farms are cruel and unhealthy for animals. They are also a breeding ground for viruses and disease, the recent swine flu epidemic is said to have originated in a factory farm. ‘Swine Flu Ancestor Born on U.S. Factory Farms.’ at <http://www.wired.com/wiredscience/2009/05/swineflufarm/>.

¹⁰⁸⁴ ‘Traditional’ farming refers to farming methods that allow animals to roam freely outside and they are not confined in buildings or small cages, pens and so on.

conditions in which farm animals are often kept are usually cruel. However, they are seen as a “necessary evil.” This is why farm animals are often excluded from the scope of anti-cruelty/animal welfare legislation.

Currently, many farm animals are kept indoors for most of their lives in cramped, crowded and dirty conditions.¹⁰⁸⁶ It is proposed that legislation aimed at improving and promoting the welfare of these animals by rectifying these conditions should be enacted, for example, by requiring construction of bigger stalls, better drainage systems, access to the outside and fewer animals kept in small spaces. Information from scientists, animal welfare groups and other experts on animals would need to be consulted when drafting this legislation.

Other conditions which should be dealt with and legislation enacted to that effect relate to the loading, transporting, and off-loading of animals¹⁰⁸⁷ and conditions at auctions and sale yards.¹⁰⁸⁸ It is submitted that areas where there is currently little legislative protection in place for animals should be properly regulated and these regulations should also be properly enforced, by the SPCA. These proposed pieces of legislation will ensure that the welfare of animals in these situations are protected and promoted.

In a recent UN sponsored report entitled “International Assessment of Agricultural Science and Technology for Development”,¹⁰⁸⁹ it was suggested that more emphasis should be placed on small-scale, ecologically sound farming, as well as dietary quality instead of quantity and price. The report further stated that industrial agriculture had an impact on water resources, land degradation, climate change and human health.¹⁰⁹⁰ This report seems to be anti-capitalist in that the quality of food is favoured over how much can be produced and how cheaply it can be produced.

¹⁰⁸⁵ It is submitted that there would be many advantages for reverting to the “traditional” way of farming. For example, farm labourers would be needed thus more jobs would be created; less animals would mean that more food and water is available for human consumption (and food prices might decrease) and there might also be the possibility of exporting excess foods to foreign markets; and there might be less pollution/environmental impact which would help decrease the occurrences of diseases and illnesses that are caused by these two factors. These examples may lead to an increase in South Africa’s economy.

¹⁰⁸⁶ Pickover *Animal Rights in South Africa* 166.

¹⁰⁸⁷ For example, rest should be given on long hauls, food and water available, stressful events should be kept at a minimum.

¹⁰⁸⁸ For example, food and water must be provided, shade must be available, unnecessary suffering prohibited.

¹⁰⁸⁹ A summary of the report can be found at

http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/15_04_08_sr_exec_sum_130408_final.pdf (accessed on 12/04/2011).

¹⁰⁹⁰ For example, there is presence of pesticide residue, heavy metals, hormones, antibiotics and other additives in food systems and large-scale livestock farming.

7.2. Education Suggestions

Discrimination can be in the form of racism, sexism and most importantly, speciesism. And there are still many other forms of discrimination. Ignorance can be “cured” through education that reveals to the learner the similarities between persons or, in the case of this study, animals and people, and the false generalisations and misconceptions that are often learned or taught to children (and adults) by parents, other adult figures, friends and/or society.

It is submitted that the government should make an effort to educate the public on animal welfare. The government should also include animal welfare in South African school’s curriculum. This curriculum would teach school children about animal welfare, as well as about animal husbandry and responsibility which will deal with, amongst other things, responsibility towards animals. This curriculum would also teach children and teenagers ethics in general.¹⁰⁹¹ This “animal education” should help children become aware that animals are not just things but that animals should be protected and not treated cruelly or abused. This may help reduce animal abuse, either intentionally or unintentionally, that occurs on a daily basis.

It is submitted that universities and colleges should take it upon themselves to develop courses that teach, amongst other things, the social-dimension of human-animal interactions, moral status of animals, and ethics of animal and human research.¹⁰⁹² These courses should apply to several fields of study, such as the legal, sociological, psychological, historical and teaching fields.¹⁰⁹³ Police officers and even magistrates and high court judges should be required to take a course on animal welfare issues and the importance of enforcing animal welfare legislation in order to prevent further crimes and to punish those that commit abuse against animals.

¹⁰⁹¹ The European Union has several programs (such as ‘walk the dog’ and ‘close to animals’), and tools about animal welfare education which can be accessed at <http://www.animalwelfare-education.eu/conference/aw-programstools-exhibitors.html> (accessed on 21/09/2010). The First Concepts in Animal Welfare is a programme that was initiated by the World Society for the Protection of Animals and is in relationship with the United Nations Educational, Scientific and Cultural organisation. This program can be found in the regions of Central and South America, Africa and Asia. The First Concepts of Animal Welfare can be found at <http://www.animal-education.org/default.asp> (accessed on 22/09/2010).

¹⁰⁹² Rollin *Animal Rights & Human Morality* 322.

¹⁰⁹³ These courses may include animal welfare legislation, the effects that animal welfare issues have on society and the psychology of animal abusers.

Further, it is proposed that an educational campaign backed by the government should be introduced in schools, rural areas, professional institutes, animal related industries, as well as to the general public. This campaign should cover issues such as

- The relationship between animal health and welfare and human health and welfare;
- The dangers of a diet that is high in animal protein. More and more studies have proven that a diet high in animal protein increases the risk of heart disease, cancer, diabetes, stroke and obesity;¹⁰⁹⁴
- The acknowledgement that animals are sentient and they can feel pain;¹⁰⁹⁵
- The need to treat animals with respect and dignity;
- Highlight animal abuse and cruelty,¹⁰⁹⁶ and its affect on both animals and humans;
- How to report animal cruelty; and
- The popularisation of the “five freedoms”¹⁰⁹⁷ that every animal deserves.

Anti-cruelty organizations, and local governments, could set up community and adult education courses¹⁰⁹⁸ on responsible pet ownership and general animal welfare¹⁰⁹⁹ and they should educate the community through posters, adverts and through other means, such as radio broadcasts. A good example of this ‘pet ownership course’ has been developed in Switzerland. As of 1 September 2008, Swiss law has required prospective dog owners to

“a theory section on the needs and wishes of the animal, and a practice section, where students will be instructed in how to walk their dog and react to various situations that might arise during the process... Anglers will also be required to

¹⁰⁹⁴ Grant *The No-Nonsense Guide to Animal Rights* 106.

¹⁰⁹⁵ Dunayer *Speciesism* 126-134.

¹⁰⁹⁶ Animal abuse and/or cruelty can range from neglect to malicious killing. For example, intentionally depriving an animal of food or water, or torturing, mutilating or killing an animal (<http://www.nspca.co.za/page.aspx?Id=190&CateId=13&Category=Education&SubCateId=184&SubCategory=INFO%20-%20A%20to%20E> [accessed on 21/09/2010]).

¹⁰⁹⁷ Many of the European rules and laws are based on these five freedoms. They are (1) the freedom from thirst, hunger and malnutrition; (2) the freedom from discomfort; (3) the freedom from pain, injury and disease; (4) the freedom to express normal behavior; and (5) the freedom from fear and distress.

¹⁰⁹⁸ Rollin *Animal Rights & Human Morality* 322.

¹⁰⁹⁹ Pet owners should be provided with basic information about dog and cat (and other types of animals that are kept, such as birds, horses, etc.) behaviour, diseases, anatomy and physiology. Rollin *op cit* 323.

complete a course on catching fish humanely, with the Government citing studies indicating that fish can suffer too.”¹¹⁰⁰

Many pets have been given away, abandoned or euthanised due to their owners/keepers having an unknown allergy to fur/long-haired animals. These situations can be avoided if prospective owners/keepers are aware of any allergies they may have with regards to animals.

Consumers should be made aware of the conditions that farm animals experience every day, as well as the impact that industrialized farming has on the environment and other farmers. It is submitted that once these conditions are known, it is hoped that many consumers will want changes to be made to the practices of industrialized and other animal farming. Further, it is submitted that in order for these animal producers to stay in business they would have to listen to the voice of consumers and make the necessary changes to their practices.

Gary Francione¹¹⁰¹ states that the view that animals are property will only change when society is educated about the need for a significant change in the way that animals are viewed and treated, i.e. that animals exist in their own right and that they were not created to serve or to be exploited by man. Once the status of animals is changed from one of property to a status that is similar or equal to a legal person, only then will the law properly protect animals, as well as help in ‘liberating’ animals from the exploitation of humans.

Animals and humans are connected, and what is done to animals may also be done to humans. As can be seen, there is much that can be changed with regards to attitudes towards animals, and once these attitudes have changed then so will “human practices,” the laws and the treatment of animals. It is necessary to educate people about animal welfare in order to overcome ignorance, which is the main cause of animal pain and abuse. The eradication of ignorance will help to create a real change in how people view and treat animals. It will also help in having this change last for a long time, or, hopefully, forever.

¹¹⁰⁰ Pancevski (2008) *New Swiss Law Protects Rights of ‘Social’ Animals*, www.timesonline.co.uk/tol/news/world/europe/article3818457.ece (accessed on 17/09/2009).

¹¹⁰¹ Francione (1996) *Animals as Property*, <http://www.animallaw.info/articles/arusgfrancione1996.htm> (Date accessed 19/06/2008).

7.3. Suggestions for Current Lifestyle Practices

Animal Rights Activists and vegetarians advocate that more people should adopt a vegetarian lifestyle. More effort should be put in to expose and educate people on a vegetarian lifestyle and the benefits thereof. These benefits do not only apply to one's body, but also to the environment and animals as well.

A few arguments in favour of vegetarianism are: Firstly, less consumption of meat will mean that fewer animals will be bred and slaughtered for meat, which will result in less animal suffering.¹¹⁰² Secondly, there will also be less grain needed to feed the fewer animals, leading to more grain that will be available for human consumption, which may in turn lead to a decrease in world hunger.¹¹⁰³ Thirdly, large amounts of water are used to process meat, therefore fewer animals will mean that less water will be used to process meat, and instead more water will be available for both human and animal consumption.¹¹⁰⁴

Rollin argues that many medical, veterinary and other biomedical teachers and professors agree that many tests and demonstrations that use live animals can be swapped with the use of computer programs, videos and models.¹¹⁰⁵ Where alternatives are available, then universities should be encouraged to use these alternatives instead of live animals. When these alternatives are used, the unnecessary suffering of animals is prevented, as well as the fact that money will be saved. These changes may also be enforced through legislation and/or policies.

The use of alternatives in scientific research should also be encouraged and researched. However, due to the current limited knowledge of physiology and biology, the use of animals in scientific research is still needed to gain enough knowledge so that it can be replaced by alternatives.¹¹⁰⁶ Legislation should be enacted to enforce the use of alternatives where this can be done and there must be justification for the use of animals in any proposed research.

¹¹⁰² www.ivu.org/religion/articles/argument3.html (accessed on 27/09/2009).

¹¹⁰³ *Ibid.*

¹¹⁰⁴ *Ibid.*

¹¹⁰⁵ Rollin *Animal Rights & Human Morality* 201.

¹¹⁰⁶ Rollin *Animal Rights & Human Morality* 221.

Many animal rights groups¹¹⁰⁷ and animal welfare organizations¹¹⁰⁸ have a number of suggestions for reducing animal suffering that every person can use in their everyday life. Some of the suggestions put forward by these groups include

- Less consumption of food, water, electricity, etc;
- Buying responsibly;¹¹⁰⁹
- Buying organic or free-range animal products;
- Reduction of the amount of meat in one's diet;
- Avoiding buying any products that are tested on animals;
- Avoiding buying clothes and accessories made from animals;¹¹¹⁰ and
- Reporting animal abuse.

There have been many studies¹¹¹¹ that confirm that abuse and cruelty to animals is linked to the abuse of humans and violations of human rights. The Uplifting and the stabilisation of poor and war torn countries will in the long run, reduce both animal and human suffering and exploitation. More should be done on an international level to end poverty and war in developing countries. With stability and prosperity, one can focus less on one's own suffering and start to focus more on the suffering and uplifting of other people and animals.

7.4. Role of the Media

It is submitted that the media should be encouraged¹¹¹² to cover more on animal welfare and highlight and expose issues with regard to animals such as, studies on animal abuse and new scientific research that confirm the sentience and intelligence of animals.

It is submitted that in order to reduce crimes against animals (and humans), society should encourage the importance of respecting *all* life over money and profit, i.e. less importance

¹¹⁰⁷ Such as PETA (www.peta.org).

¹¹⁰⁸ Such as the NSPCA (www.nspca.co.za).

¹¹⁰⁹ Such as buying recyclable or recycled goods and buying locally produced goods.

¹¹¹⁰ Such as fur coats, crocodile or snake skin handbags, belts or shoes and so on.

¹¹¹¹ For example, the Humane Society of the United States study on animal cruelty (2001) and the Office of Juvenile Justice and Delinquency Program (2001) of the US Department of Justice.

¹¹¹² For example, the Government may provide incentives (in addition to an education campaign) to the media to provide 'animal welfare updates' to the public.

should be given to the pursuit of material objects and wealth.¹¹¹³ It is further submitted that with the increase in respect for life there should be a great reduction in crime, especially violent crime, because if people respect life they will, in most circumstances, not harm it. Everyone is equal and should be treated as such, no matter how rich or poor one is; and life is important and should be treated with respect and dignity, no matter what species it resides in.

Summary

There have been many proposals and suggestions that have been discussed in this chapter with regards to animal welfare legislation. These proposals are aimed at protecting the future welfare of both domestic and wild animals. It is submitted that if these suggestions and proposals were to be introduced, then the various animal welfare issues¹¹¹⁴ would receive better legislative protection and enforcement and eventually the granting of limited legal capacity.

However, changes to legislation alone will not curb animal cruelty and abuse. In order to make legislation more effective, an education campaign should be introduced by the Government. As was discussed above, this education campaign would be aimed at schools, rural areas, professional institutes, animal related industries, as well as to the general public. It will cover the reasons as to why there have been changes to animal welfare legislation, the importance of protecting animals and wildlife, as well as educating consumers in becoming responsible consumers. It is necessary to educate people about animal welfare in order to overcome any ignorance that may be the cause of animal pain and abuse. The eradication of ignorance will help to create a real change in how people view and treat animals.

These suggestions and proposals will help educate and change society in the way that animals are viewed. Once this view has changed, the treatment of animals will also change and people will come to realise that animals exist in their own right and that they were not created to serve or to be exploited by man.¹¹¹⁵ People will also come to realise that there is an added benefit which will flow directly from this change of attitude. For example, the environment

¹¹¹³ It is submitted that the more value is placed on material objects, the less people value human and animal life, and the more expendable they become. In other words, there is a belief that material objects must be obtained no matter what the “cost” is.

¹¹¹⁴ Such as transporting animals and animals kept in zoos.

¹¹¹⁵ Francione (1996) *Animals as Property*, <http://www.animallaw.info/articles/arusgfrancione1996.htm> (Date accessed 19/06/2008).

will not be exploited as it currently is and humankind will benefit from a “healthier” environment and an increased respect for life.

Chapter 8 - Conclusion

Until he extends the circle of his compassion to all living things, man will not himself find peace.

- Albert Schweitzer¹¹¹⁶

It has been discovered that the animal rights and animal welfare movements are not recent developments. There have been many such movements throughout history (as far back as 500B.C.),¹¹¹⁷ which have either advocated that animals deserve to be treated more humanely or that they deserve rights just like humans. There were numerous reasons for such activism ranging from obtaining heavenly bliss by abstaining from cruelty to all living creatures,¹¹¹⁸ to the idea that all things of creation are children of the Father and thus brothers of man¹¹¹⁹ and the notion that animals feel pain similar to humans.¹¹²⁰

Animals of today, as in the past, face many hardships in South Africa and the rest of the world, as a result of the actions of uncaring, abusive and/or ignorant people. Rules exist to counteract these negative actions. However, there is a demonstrated lack of proper enforcement of animal welfare/animal anti-cruelty legislation, regulations and industry rules.¹¹²¹

In the majority of jurisdictions throughout the world, animals are generally considered to be property that can be bought, traded, hunted and after they have been killed, their remains kept as trophies or souvenirs. From what has been investigated, the European Union seems to be leading an 'animal welfare revolution.' Animal interests in the European Union are being given more importance and cognisance when determining

¹¹¹⁶ (1875-1965) <http://www.all-creatures.org/hr/hraschweitzer.htm> (accessed on 17/10/2010).

¹¹¹⁷ i.e. The Laws of Manu.

¹¹¹⁸ Chapter Five of the Laws of Manu, compiled between 500 B.C. – 200 B.C.

¹¹¹⁹ St. Francis of Assisi. (1181 – 1226).

¹¹²⁰ Jeremy Bentham. (1748 – 1832).

¹¹²¹ This includes the failure of police officers and the courts who say they have more important matters to deal with. Prosecutors also fail to enforce animal welfare/ animal anti-cruelty legislation as they sometimes do not wish to prosecute people who contravene these legislations. Inspections to abattoirs and slaughterhouses to ensure the proper enforcement of rules for the humane handling and slaughtering of animals are poorly performed.

animal related legislation and practices, which in turn is improving the welfare of animals. Spain, a member of the European Union, has gone as far as granting limited legal rights to the great apes.

The European Union is also leading the world in another animal related area, in this case by recently approving and backing the Universal Declaration on Animal Welfare by all member states of the European Union.¹¹²² It is submitted that the Universal Declaration on Animal Welfare is a step in the right direction towards the universal acceptance and acknowledgement of the sentience of animals, as well as the importance of animals to all humans and the need for all humans to treat animals with dignity and respect.

On a closer inspection of the four selected foreign jurisdictions,¹¹²³ the level of protection with regards to animals (both domestic and wild) differed from jurisdiction to jurisdiction. Some jurisdictions have a relatively high level of protection for domestic animals (such as Switzerland) while other jurisdictions have a high level of protection for their wildlife (such as Kenya).

Though the USA boasts substantial animal welfare legislation, there has been a lot of criticism levelled against these laws. For example, the Animal Welfare Act of 2007 has excluded several animals¹¹²⁴ from its scope which reduces the Act's effectiveness to protect vulnerable animals. The Animal Welfare Act also does not regulate research practices on animals.¹¹²⁵ Another criticism levelled at USA animal welfare legislation is the lack of enforcement, which if resolved would lessen the large amount of animal cruelty.

As was stated earlier, India is a very religious country and has included in its Constitution¹¹²⁶ a duty for every Indian citizen 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.'¹¹²⁷ Indian animal welfare legislation has several strengths, such as section 4 of the Prevention of Cruelty to Animals Act of 1960 required the Indian government to establish an animal welfare organisation called the Animal Welfare Board of India which

¹¹²² www.wspa-international.org/latestnews/2009/eu_supports_udaw.aspx (accessed 31/08/2009).

¹¹²³ India, Kenya, Switzerland and the United States of America.

¹¹²⁴ Bird, rats, mice, farm animals, fishes, and reptiles.

¹¹²⁵ For example, "a researcher can, theoretically, be charged with housing animals in unsanitary conditions but not for beating or mutilating them without anaesthetic." (Grant *The No-Nonsense Guide to Animal Rights* 78).

¹¹²⁶ The Constitution of India (Ninety-fourth amendment) Act of 2006.

¹¹²⁷ Article 51A (g).

was created in 1962, and The Wildlife Protection Act of 1972 and the Wildlife Protection Amendment Act of 2002 covers a wide variety of animals and not just mammals which allows India to protect all of the wildlife that is found in India. However, despite these strengths, animal cruelty in India still prevails.

Swiss law covers a range of issues with regards to animals and also includes those animals, such as farm animals and animals used in experiments, which are often excluded from the scope of animal welfare legislation in the jurisdictions of Kenya, India, South Africa and the USA. However, there are several provisions that are similar to these jurisdictions, such as the provision of the Swiss Federal Act on Animal Protection of 1978 for animal experimentation. This provision is similar to the provisions of the USA Animal Welfare Act of 2007 and the Kenyan Prevention of Cruelty to Animals Act of 1962 in that animals are required to be anaesthetised for the duration of the experiment, records of the use of animals in experiments must be kept and the requirement that experiments may only be conducted in a laboratory.

The Kenyan Prevention of Cruelty to Animals Act¹¹²⁸ defines animals as “a living vertebrate animal including mammal, bird, reptile, amphibian and fish.”¹¹²⁹ Fish, reptiles, amphibians, birds and certain mammals¹¹³⁰ are usually excluded from the scope and protection of animal welfare legislation. With regards to wildlife, the Kenyan Draft Wildlife Policy of 2007 was drawn up and key issues were highlighted that need to be addressed and how the government plans to overcome these issues.

Discussion in Chapter Six has revealed that South Africa has very similar laws to the United States, Kenya and India. On closer inspection of the South African animal welfare legislation, it was submitted that the penalties for contravening the discussed pieces of animal welfare legislation are inadequate. It was also shown that the many studies that link animal cruelty and “human” cruelty (as discussed in Chapter One) would suggest that the appropriate penalties for animal cruelty become similar to the penalties for “human” cruelty as well as a minimum sentence and/or fines set for cases of animal cruelty.

On further inspection, it was found that The Animal Protection Act of 1962 fails to protect farm animals, animals used in laboratories and it fails to prohibit experimental procedures conducted on these laboratory animals. There are only the various industry codes and rules in

¹¹²⁸ Chapter 360.

¹¹²⁹ Section 2.

¹¹³⁰ Such as farm animals and animals bred for use in scientific experimentation.

place to ensure the welfare of these animals are protected. However, it was noted that these industry codes and rules can be easily ignored without fear of prosecution as the abuse and cruelty that farm animals and animals used in laboratories face on a daily basis are allowed to continue because they are generally regarded as having some acceptable use or benefit to human society.

With regard to the protection and conservation of wild animals, it was noted that the previous four provincial laws used during the Apartheid era are still been used today in the nine South African provinces. These ordinances are old, archaic and reflect the ideas and policies that were used during the Apartheid era. In order to better protect the wildlife and habitats that are specific to each province, new legislation, regulations and policies will need to be enacted.

The many proposals and suggestions that were discussed in the previous chapter are aimed at including animals and other animal related issues¹¹³¹ in the scope of the various animal welfare laws, which should ensure the future protection of all animals' and their welfare.

The primary conclusion of this dissertation that will have the most fundamental effect is that it is necessary to educate people about animal welfare in order to overcome any ignorance that may be the cause of animal cruelty. The eradication of ignorance will help to create a real change in how people view and treat animals. The suggestions and proposals¹¹³² contained in the previous chapter will help educate and change society in the way that animals are viewed and treated, and people will come to realise that animals exist in their own right and that they were not created to serve or to be exploited by man.¹¹³³

It is submitted that it is not necessary at the moment to grant animals rights. The reason for this view is that these newly granted rights may have no effect on how some humans view and treat animals, i.e. animals may still be treated the way they are even if they are giving rights.¹¹³⁴ Other reasons include that the South African government has no plan or policy in place that would indicate how these rights would be introduced or implemented. The drafting

¹¹³¹ Such as transporting animals and animals kept in zoos.

¹¹³² The proposal for a government education policy, animal welfare added to South African school's curriculum, animal welfare courses at universities and colleges, and an education campaign aimed at the judiciary and police with regard to animal welfare concerns.

¹¹³³ Francione (1996) *Animals as Property*, <http://www.animallaw.info/articles/arusgfrancione1996.htm> (Date accessed 19/06/2008).

¹¹³⁴ For example, women in South Africa have had legal rights for several years. However, the abuse and exploitation of women (and girls) still continues in South Africa.

of a plan or policy will take time and money, and would also need to include the ideas and suggestions of animal welfare and animal rights groups, the public and perhaps scientists and/or animal handlers who are familiar with animal behaviour, anatomy, etc.

While the plan or policy is being drafted, the South African government may start to educate people about animal welfare and why it is important to protect their welfare. The South African government may also strengthen the existing animal welfare legislation to ensure further protection of animals. Once a plan or policy has been drafted and approved, the granting of legal rights to animals may proceed. This will allow the status of animals to be elevated from property (legal objects) to a status that is similar to children (legal subjects with limited rights) and be finally treated with the dignity, respect and justice they deserve before the law.

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Annexure A

THE
STATUTES
AT LARGE,
PASSED IN THE
PARLIAMENTS
HELD IN IRELAND:
FROM
The Third Year of EDWARD the Second, A.D. 1310,
TO THE
Twenty sixth Year of GEORGE the Third, A.D. 1786 inclusive,
WITH
MARGINAL NOTES, and a Complete INDEX to the Whole.

PUBLISHED BY AUTHORITY.

IN THIRTEEN VOLUMES.

DUBLIN:

Printed by GEORGE GRIERSON, Printer to the King's Most Excellent Majesty. M DCC
LXXXVI.

***An Act against Plowing by the Tayle,
and pulling the Wooll off living Sheep.***

[None shall plow or work horses by the tail.]

WHEREAS in many places of this kindgome, there hath been a long time used a barbarous custome of ploughing, harrowing, drawing and working with horses, mares, gledings, garrans and colts, by the taile, whereby (besides the cruelty used to the beasts) the breed of horses is much impaired in this kingdome, to the great prejudice thereof :

[Barbarity of the custom, a prejudice to the breed of horses.]

whereas also divers have and yet do use the like barbarous custome of pulling of the wooll yearly from living sheep instead of clipping or shearing of them ; be it therefore enacted by the Kings's most excellent Majesty, and the lords spirituall and temporall, and the commons in this present Parliament assembled, that no person or persons whatsoever, shall after one yeare next ensuing the end of this present Parliament, plough, harrow, draw or worke with any horse, gelding, mare, garran or colt, by the taile, nor shall cause, procure or suffer any other to plough up or harrow his ground, or to draw any other carriages with his horses, mares, geldings, garrans or colts, or any of them, by the taile;

[None shall instead of shearing or clipping, pull off the wool from living sheep.]

and that no person or persons whatsoever, shall, after the end of this present Parliament, pull the wool of any living sheep, or cause or procure to be pulled, instead of shearing or clipping of them ;

[Justices of assize and of the peace may inquire and punish by fine and imprisonment.]

and if any shall doe contrarie to this act, and the intention thereof, that the justices of assize at the generall assizes to be holden before them, and the justices of peace at their quarter-sessions, shall have power by this act to enquire of, heare and determine all and every offence and offences done contrary to this present act, and to punish the offenders which shall do contrary to the same, by fine and imprisonment, as they in their discretion shall think fit.

Annexure B

Massachusetts Body of Liberties of 1641

Off the Bruite Creatures

(92) No man shall exercise any Tirranny or Crueltie towards any brute Creature which are usuallie kept for man's use.

(93) If any man shall have occasion to leade or drive Cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, It shall be lawful to rest or refresh them, for a competent time, in any open place that is not Corne, meadow, or inclosed for some peculiar use.

Annexure C

Some extracts from The Speech by Lord Erskine...on the Bill for Preventing Malicious and Wanton Cruelty to Animals (1809)

“The next generation will feel, in the first dawn of their ideas, the august relation they stand in to the lower world, and the trust which their station in the universe imposes on them; and it will not be left to a future Sterne to remind us, when we put aside even a harmless insect, that the world is large enough for both. This extension of benevolence to objects beneath us, become habitual by a sense of duty inculcated by law, will reflect back upon our sympathies for one another ; so that I may venture to say firmly to your Lordships, that the Bill I propose to you, if it shall receive the sanction of Parliament, will not only be an honour to the country, but an era in the history of the world.”

“A Bill was brought into the House of Commons, whilst I had the honour of a seat there, to repress this practice [of bull-baiting], but not upon the true principle. The framers of it were, I am persuaded, actuated by motives of humanity, but they mixed with it very laudable objects of human policy, which rather obscured the principle of protection to the animals.”

From Cruelty to Animals, an extract of the speech of Lord Erskine in the House of Peers on the second reading of the Bill for preventing malicious and wanton cruelty to animals, 1809:

“Animals are considered as property only. To destroy or to abuse them, from malice to the proprietor, or with an intention injurious to his interest in them, is criminal. But the animals themselves are without protection. The law regards them not substantively. They have no RIGHTS!”

“... I am to ask your Lordships, in the name of that God who gave to Man his dominion over the lower world, to acknowledge and recognize that dominion to be A MORAL TRUST.”

“... For every animal which comes in contact with Man, and whose powers, and qualities, and instincts, are obviously constructed for his use, Nature has taken the same care to provide, and as carefully and bountifully as for man himself, organs and feelings for its own enjoyment and happiness. Almost every sense bestowed upon Man is equally bestowed upon them - seeing, hearing, feeling, thinking, the sense of pain and pleasure, and passions of love and anger, sensibility to kindness, and pangs from unkindness and neglect, are inseparable characteristics of their natures as much as of our own.”

Annexure D

ANNO TERTIO GEORGII IV. REGIS. CAP LXXI.

COPY
OF AN
ACT OF PARLIAMENT
FOR PREVENTING
CLANDESTINE MARRIAGES ;
TOGETHER WITH
AN ACT
TO PREVENT
CRUELTY TO ANIMALS,
PASSED
IN THE THIRD YEAR OF THE REIGN OF KING GEORGE THE FOURTH
ALSO, AN APPENDIX
CONTAINING
SIR CHRISTOPHER ROBINSON, THE KING'S ADVOCATE,
DR. PHILLIMORE'S OPINIONS ON CERTAIN QUERIES IN THE
MARRIAGE ACT.
LEEDS ;
PRINTED BY JOHN BARR, BRIGGATE.

1822

***An Act to prevent the cruel and improper
Treatment of Cattle. 22d July, 1822.***

[Magistrates empowered to inflict a Penalty on Persons convicted of cruel Treatment of Cattle.]

Whereas it is expedient to prevent the cruel and improper Treatment of Horses, Mares, Geldings, Mules, Asses, Cows, Heifers, Steers, Oxen, Sheep, and other Cattle : May it therefore please Your Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other Cattle, and Complaint on Oath thereof be made to any Justice of the Peace or other Magistrate within whose Jurisdiction such Offence shall be committed, it shall be lawful for such Justice of the Peace or other Magistrate to issue his Summons or Warrant, at his Discretion, to bring the party or parties so complained of before him, or any other Justice of the Peace or other Magistrate of the County, City, or place within which such Justice of the Peace or other Magistrate has Jurisdiction, who shall examine upon Oath any Witness or Witnesses who shall appear or be produced to give Information touching such Offence, (which Oath the said Justice of the Peace or other Magistrate is hereby authorized and required to administer) ; and if the party or parties accused shall be convicted of any such Offence, either by his, her, or their own Confession, or upon such Information as aforesaid, he, she, or they so convicted shall forfeit and pay any Sum not exceeding Five Pounds, not less than Ten Shillings, to His Majesty, His Heirs and Successors ; and if the person or persons so convicted shall refuse or not be able forthwith to pay the Sum forfeited, every such Offender shall, by Warrant under the Hand and Seal of some Justice or Justices of the Peace or other Magistrate within whose Jurisdiction the person offending shall be Convicted, be committed to the House of Correction or some other Prison within the Jurisdiction within which the Offence shall have been committed, there to be kept without Bail or Mainprize for any Time not exceeding Three Months.

[No Persons to be punished, unless Complaint made within Ten Days after the Offence.]

II. Provided always, and be it enacted by the Authority aforesaid, That no Person shall suffer any Punishment for any Offence committed against this Act, unless the Prosecution for the same be commenced within Ten Days after the Offence shall be committed ; and that when any Person shall suffer Imprisonment pursuant to this Act, for any Offence contrary thereto, in Default of Payment of any Penalty hereby imposed, such Person shall not be liable afterwards to any such Penalty.

[Proceedings not to be quashed for want of Form.]

III. Provided also, and be it further enacted, that not Order or Proceedings to be made or had by or before any Justice of the Peace or other Magistrate by virtue of this Act shall be quashed or vacated for want of Form, and that the Order of such Justice or other Magistrate shall be final ; and that no proceedings of any such Justice or other Magistrate in pursuance of this Act shall be removeable by Certiorari or otherwise.

[Form of Conviction]

IV. And for the more easy and speedy Conviction of Offenders under this Act, be it further enacted, That all and every the Justice and Justices of the Peace or other Magistrate or Magistrates, before whom any Person or Persons shall be convicted of any offence against this Act, shall and may cause the Conviction to be drawn up in the following Form of Words to the same effect as the Case shall happen ; (*videlicet*)

"Be it remembered, That on the day of in they year of our Lord, A. B. is convicted before me, One of His Majesty's Justices of the Peace for or Mayor or other Magistrate of [*as the case may be*] either by his own Confession, or on the Oath of One or more credible witness or Witnesses [*as the case may be*] by virtue of an Act made in the Third Year of the Reign of his Majesty King George the Fourth, intituled *An Act to prevent the cruel and improper Treatment of Cattle, [specifying the Offence, and Time and Place where the same was committed, as the Case may be.]* Given under my Hand and Seal, the Day and Year above written."

[Justices to Order Compensation to Persons vexatiously complained against.]

V. And be it further enacted, That if on hearing any such Complaint as is herein-before mentioned, the Justice of the Peace or other Magistrate who shall hear the same shall be of opinion that such Complaint was frivolous or vexatious then and in every such Case it shall be lawful for such Justice of the Peace or other Magistrate to order, adjudge, and direct the Person or Persons making such Complaint, to pay the Party complained of, any Sum of Money not exceeding the Sum of Twenty Shillings, as Compensation for the Trouble and Expense to which such Party may have been put to by such Complaint ; such Order or Adjudgment to be final between the said Parties, and the Sum thereby ordered or adjudged to be paid and levied in manner as is herein before provided for enforcing Payment of the Sums of Money to be forfeited by the person convicted of the Offence herein-before mentioned.

[Limitation of Actions.]

VI. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be brought or commenced against any person or persons, for any thing done in pursuance of this Act, it shall be brought or commenced within Six Calender Months next after ever such Case of Action shall have accrued, and not afterwards, and shall be brought, laid, and tried in the County, City, or place in which such Offence shall have been committed, and not elsewhere ; and the Defendant or Defendants in such Action or Suit may plead the General Issue, and give this Act and the special Matter in Evidence at any Trial or Trials to be had thereon, and that the same was done in pursuance and by authority of this Act ; and if the same shall appear to have been so done, or if any such Action or Suit shall not be commenced within the Time before limited, or shall be laid or brought in any other Country, City, or place than where the Offence shall have been committed, than and in any such Case the Jury or Juries shall find for the Defendant or Defendants ; of if the Plaintiff or Plaintiffs shall become nonsuit, or shall discontinue his Action or Actions, or if Judgement shall be given for the Defendant or Defendants therein, then and in any of the Cases aforesaid such Defendant or Defendants shall have Treble Costs, and shall have such Remedy for recovering the same as any Defendant of Defendants hath or may have for his, her, or their Costs in any other Cases by Law.