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A Review of Animal Cruelty Laws in Zimbabwe

This piece was written for Lewis & Clark's Emerging Topics in Animal Law course. All views expressed are those of the author.

By Yvonne Gurira

The Prevention of Cruelty to Animals Act (the PCAA) is the primary legislation that regulates the treatment of domestic animals and wild animals in captivity in Zimbabwe.^[1] The PCAA came into force in 1960, six decades ago, with the last amendment in 2001, merely two decades ago.^[2] The Act came into effect at a time when animals were not recognized as living beings with the ability to feel physical pain and suffer.

The PCAA is inadequate in addressing animal cruelty in Zimbabwe. Anti-cruelty laws are created to protect animals from abuse; however, the provisions are a failure as demonstrated by the broad terms used in this piece of legislation. The penalties are insufficient. Moreover, law enforcement agents lack resources to tackle animal cruelty. Campaign awareness programs are minimum. This blog provides an overview of animal cruelty and concludes that despite the limitations, opportunities are available to improve the welfare of animals. Remedies include modifying the existing legislation, increasing public awareness programs, offering more resources, and capacitating law enforcement agents.

What is animal cruelty?

Animal cruelty is defined as a wrongdoing or an offense against an animal.^[3] Cruelty is a general intent crime depending on the severity of the crime and other factors. Crimes of general intent crime require only a plan to commit the crime even though the offender may not know that the act is criminal. Active and passive cruelty are the most common types of animal cruelty.^[4] Active animal cruelty involves intentionally causing harm to an animal, while passive animal cruelty involves acts of omission or neglect such as omitting to feed the animal and provide proper shelter.^[5] Passive abuse also includes taking part in activities involving the suffering of animals.^[6]

The Limitations of the Prevention to Cruelty to Animals Act in Addressing Animal Cruelty

The language of the PCAA is too broad. The provisions are too vague and ambiguous, and this leads to unsuccessful enforcement of animal cruelty cases in Zimbabwe. The definition of an “animal” in the PCAA is insufficient. Non-vertebrates are excluded from the definition, yet they are animals. The PCAA uses undefined qualifying words like “cruelly,” “unreasonably,” and “unnecessarily.” For example, section 3(g) states, “Any person who cruelly or unnecessarily ties up or confines an animal or causes or permits any animal so to be tied up or confined shall be guilty of an offence.”^[7] The wording does not describe the conduct that is cruel, yet the law must be clear and set express limits, such as establishing hours for dog confinement.

Cruelty is not defined in the Act; hence measuring what exactly constitutes an act of cruelty becomes difficult. Qualified terms tend to exempt societal behaviors and practices from responsibility for unlawful conduct. A statute must explicitly specify what is prohibited to enable an ordinary person to act accordingly. The current terms provide some discretion and flexibility in the interpretation of anti-cruelty laws, resulting in offenders being charged only when the act is considered extreme or outrageous. The qualifying language can also reduce a prosecutor’s ability to prove cruelty.^[8] The police also have discretionary powers regarding when to arrest and charge the defendant / accused of animal cruelty, leaving many animal abusers free.

With such ambiguity, establishing evidence or a probability that the animal abuser committed an offense becomes difficult, especially considering that purposefulness and willingness must be proven. The state will have to prove not only the offense but also that the conduct is unreasonable.

The case of animal cruelty must be easy to follow without the burden of establishing beyond any reasonable doubt the intention of the offender.^[9]

The Act prohibits overdriving and overloading animals, which were significant in the 1960s when animals were the means of transport.^[10] However, the Act does not specify how much weight constitutes overloading, creating many loopholes for enforcement.

Penalties for offenses are not differentiated despite the various blameworthiness by the offenders. Grouping offenses differently according to culpability increases the gravity of the crime.^[11] For example, in the United States, many states now have aggravated cruelty for an individual who intentionally kills or causes pain to an animal or causes pain to more than ten animals, and the new category of offense has more serious sanctions.^[12]

Furthermore, the penalty for contravening the PCAA is not deterrent enough and defendant / accused will not hesitate to reoffend. The penalty provision is very low. When the PCAA came into effect, the legislature set the penalty as level five fine or imprisonment not exceeding six months. A level five fine is ZWL\$ 20 000 which is currently equivalent to USD 144.93. However, due to inconsistent monetary policies in the country, in 2017 following the amendment of the Finance Act, the government reviewed the fine to \$200.^[13] Because the country at that moment used USD currency, USD 200 deterred offenders. To ease cash shortages, the government in 2018 introduced the bond notes currency and converted the multi-currency system to the bond currency. Initially the bond currency shared the same value with the USD but due to hyperinflation the bond notes have lost value. The maximum penalty for animal cruelty is now a fine of ZWL\$200 or imprisonment not exceeding six months.^[14] A fine of ZWL\$ 200, according to the currency exchange rate is equivalent to USD 1.45. The fine is absolutely a mockery to the justice system. Suffice to say is the penalty is not standard; each case will depend on its circumstances, resulting in the same offense having extremely different sentences imposed across the country.

The maximum ceiling sentence of up to six months imprisonment is too lenient considering the various acts of cruelty that are committed. For example, people who severely abuse donkeys in Matabeleland region must receive stiff penalties for their gruesome acts.^[15] In this region, working donkeys because of their natural stubbornness are beaten by owners, who overload their carts and

use ill-fitting harnesses that cause lacerations that owners leave unattended.^[16] Extreme cruelty to donkeys needs same treatment as rendered in the case of cattle theft, which results in a mandatory jail term of nine years. More deterrent sentences must consider the intrinsic value of the animal and not merely the benefits derived from the animal such as meat, milk, money, and leather from cattle, as compared to only draught power from donkeys.

The PCAA does not provide for compensation where an animal is cruelly killed. When a criminal court awards compensation and the offender fails to comply with the order, the aggrieved party can easily enforce the order through the civil court. Neither does the PCAA award compensation for the emotional stress encountered by the owner when the animal suffers pain.

The Act does not provide for unlawful movement of animals, yet that is one of the most prevalent animal cruelty offenses in the country. Livestock are transported in very small trucks. Animal owners overload small trucks, tie up livestock on trucks, and travel long intervals without giving water to the livestock.^[17] Animals have restricted freedom, with no food and proper space in the small trucks that ferries them.^[18] Section 16 of the PCAA gives the Minister of Environment and Tourism of Zimbabwe the authority to create rules to control the slaughtering of animals.^[19] However, no government board is responsible for enforcing the regulations to promote measures on animal cruelty in the country. Furthermore, the killing of animals for sustenance takes place outside a registered slaughterhouse. Keeping track of any suggested measures becomes difficult; hence inhumane treatment continues to happen.

Lack of enforcement is common for animal cruelty cases in Zimbabwe. The PCAA gives powers of arrest to the inspectors of the Zimbabwe National Society for the Prevention of Cruelty to Animals (ZNSPCA).^[20] This makes the police ineffective in enforcing animal cruelty cases. Due to limited financial resources, the police rely on the complaints from the ZNSPCA to effect an arrest.

ZNSPCA is a nonprofit organization which relies on funding and when the organization has budget constraints no arrests are done. Moreover, ZNSPCA's primary goal is to promote welfare of animals and ZNSPCA achieve its goals through rendering assistance and education rather than causing arrests and this leaves other animal cruelty unattended.^[21] The organization only confiscate animals and initiate prosecutions where mistreatment is serious. This is another challenge as no one is qualified to justify any form of cruelty.

Law enforcement agents lack resources to tackle animal cruelty. Due to economic hardships, the police have no funding for animal cruelty. Unlike wildlife crime offenses that are supported by nonprofit organizations, animal abuse is suffering. No training is conducted for police investigators, prosecutors, and magistrates. No literature developed to address animal cruelty. The communities are not aware of what constitutes animal cruelty. Communities believe that owning the animals gives them exclusive rights over the animals. They can beat animals if the beating is necessary. Individuals take puppies for sale by the roadside spending the whole day without giving the puppies food and water due to ignorance. Despite all the limitations, opportunities are available to improve the status of animal cruelty in Zimbabwe.

Reforming the Status of Animal Cruelty in Zimbabwe

To achieve meaningful justice for domestic and companion animals and wild animals in captivity, the PCAA need reforms. Amending the existing Act will certainly cure the inexactness. The modification will target the interpretation part under section 2, offenses section under section 3. The definition of animal must include both vertebrate and non-vertebrates' animals. The PCAA must declare animals as sentient beings. Including sentience in the law will have direct effect on animal cruelty especially considering that animals have feelings and need protection against any form of cruelty. Section 2 must include a definition of animal cruelty as follows: "the infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the indulgence of a cruel and vindictive temper, or with reckless indifference to its pain".^[22] Terms such as 'unnecessary' must have objective definitions.

The police must set up an animal cruelty department that focuses on animal cruelty cases. This department just like the Criminal Investigations Department Minerals Flora and Fauna that investigates wildlife crime in Zimbabwe will deal with animal cruelty. The department will collaborate with the ZNSPCA and other interested animal organizations to fight animal cruelty. No substantive evidence is available for animal cruelty cases, yet cruelty is the order of the day. Like in the U.S. animal advocates must hire private investigators to conduct undercover investigations and unearth and report all forms of cruelty. Moreover, collaboration is yielding results for wildlife crime and the same collaboration and partnerships will obviously work for animal cruelty as the

investigators will get specialized training and more resources from interested entities. Through trainings in law enforcement mechanisms the police will learn to quickly detect animal cruelty. The police must conduct separate investigations or at least have joint operations with the ZNSPCA and other interested animal organizations.

The National Prosecuting Authority must create a specialized unit that deals with animal abuse. Continuous capacity building training programs for investigators, prosecutors, and magistrates on animal cruelty on animals are necessary. Just like in the U.S. court fines for animal cruelty cases must be allocated to animal organizations like ZNSPCA or into a fund used to take care of animals.

[23] No information is available to demonstrate that ZNSPCA inspectors are trained on legal processes hence the need that they get trained together with other law enforcement agents.

The penalty provision in the PCAA needs revision. The penalty provision under section 3(k) should be increased from ZWL\$ 200 to level seven and from six months imprisonment to one year imprisonment. A level seven is ZWL\$ 40,000.00, which is equivalent to USD 263.00.**[24]** The PCAA must create different categories of aggravated animal cruelty offenses, as Oregon has done, with different penalties.**[25]** Add a new section titled 3A, Aggravated animal abuse; 'Any person who maliciously and intentionally kills or tortures an animal will be guilty of aggravated animal abuse and liable to a fine not exceeding level eight or to two years imprisonment or both.' This will punish the animal abuser in conformity with his conduct.

Conclusion

Although the PCAA endeavors to address animal cruelty, the Act is antiquated. The PCAA fails to sufficiently protect animals. Like what Mahatma Gandhi, the Indian lawyer says, "the greatness of a nation and its moral progress can be measured by the way its animals are treated".**[26]**

Zimbabwean laws must bring animal abusers to justice. Even though changing the laws is the most effective way, the process is slow, yet animals continue suffering. Conscientizing the communities is the best route to take for now at the same time pursuing the law-making process. Strengthening animal cruelty legislation in Zimbabwe will deter future abuse towards animals. Good laws coupled with increased investigations, education and increased awareness will help alleviate the suffering of animals caused by humans. Encouraging more enforcement and

aggressive prosecution of animal cruelty cases will improve the general attitude towards the welfare of animals.

Footnotes

[1] Prevention of Cruelty to Animals Act, 1960 (Act No. 25/1960) (Zim.).

[2] *Id.*

[3] Bruce A. Wagman, Sonia S. Waisman & Pamela D. Frasch, *Animal Law Cases and Materials* 92 (6th ed. 2019).

[4] **Active vs. Passive Animal Cruelty: Know the Difference**, **Litter.Robot.Blog** (Feb. 4, 2019), <https://www.litter.robot.com/blog/active-vs-passive-animal-cruelty> (last visited Feb. 2, 2022).

[5] *Id.*

[6] *Id.*

[7] *supra* note 1, s3(1)(g).

[8] Mary P. Brewster & Cassandra L. Reyes, *Animal Cruelty A Multidisciplinary Approach to Understanding* 7 (Mary P. Brewster & Cassandra L. Reyes eds., 2012).

[9] *Id.*

[10] *supra* note 1, s3(1)(a).

[11] *supra* note 8.

[12] Mon. tit. 45, S 45-8-217.

[13] Jkm, **Animal Cruelty to Attract \$200 Fine**, *Animal Husbandry Featured News* (May. 2, 2017), <https://farmers.co.zw/animal-cruelty-to-attract-200-fine/> (last visited Apr. 16, 2022).

[14] *supra* note 1, s3.

[15] **Matabeleland Animal Rescue & Equine Sanctuary, Facebook** (Nov. 16, 2021),

<https://www.facebook.com/mareszimbabwe/> (last visited Mar 5, 2022).

[16] *Id.*

[17] *Jkm, supra* note 13.

[18] *Id.*

[19] *supra* note 1.

[20] *Id.* s15.

[21] Zim. Nat'l Soc'y for the Prevention of Cruelty to Animals,

<https://znsPCA.wordpress.com/about/> (last visited Feb. 17, 2022).

[22] *Good-Faith Bargaining*, Black's Law Dictionary (10th ed. 2014).

[23] Ten. Code Ann. S 39-14-210.

[24] Zimra, *Offences and Standard Scale of Fines*, <https://zimra.co.zw/news/2179:offences-and-standard-scale-of-fines> (last visited Apr. 16, 2022), Rbz, *Foreign Exchange Auction Results 12 April 2022*, https://www.rbz.co.zw/documents/Foreign_Exchange_Auction/2022/April/Auction

(last visited Apr.16, 2022).

[25] Oregon Humane Society, *Oregon Animal Cruelty Laws Handbook 72* (2019),

<https://www.oregonhumane.org/wp-content/uploads> (last visited Jan 20, 2022).

[26] *supra* note 8, at 9.

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