

ANIMAL WELFARE LEGISLATION IN AFRICA: A CASE STUDY OF NIGERIA

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ABSTRACT

There is a general perception in Africa that animals are undeserving of welfare. This attitude is strengthened by poor economic conditions that lead people to chuckle at the purported travesty of animal welfare in the face of unfulfilled human needs. This attitude has trailed animals generally regardless of their utility. It is an attitude that appears to have also affected legislation with respect to animal welfare. And given that budgetary allocations meant for improving animal welfare are generally tied to annual appropriation legislation in contemporary constitutional arrangements, the budgetary allocations to zoos and wildlife parks appear to be generally determined based on the same principle. This is a principle based on the welfare of the animal as an end in itself rather than as a means to an end i.e. that towards accomplishing human sustainability, it is inevitable that sustainability is attained for animals, the inexorable precondition for which is welfare. This paper, therefore, analyses, using Nigeria as a case study, the commitment of African legislatures to this often understated aspect of sustainability. The study is conducted using a doctrinal methodology. The paper finds, amongst others, that the commitment to animal welfare is near non-existent and that this is evident in the dearth of or slow pace of animal welfare legislation. The paper recommends, amongst others, the urgent need in Nigeria both for a general animal welfare legislation and specially dedicated legislation to address the peculiar needs of species.

INTRODUCTION

Nigeria has never had animal welfare legislation in the true sense of the word. Many in Nigeria would laugh at the several classifications of animals needing protection and welfare – animals used in farming, animals used for transportation, animals in zoos, privately kept animals, animals in parks, companion animals, entertainment animals and the like. Each of these have their peculiar needs in terms of protection and welfare. Indeed, this is the case with each animal. That indifferent attitude is at the root of the neglect that animal welfare has encountered at every level in Nigerian life. The general perception in Africa is that animals are undeserving of welfare. It is an attitude strengthened by poor economic conditions that lead people to snigger at the purported travesty of animal welfare in the face of unfulfilled human needs. This attitude has trailed animals generally regardless of their utility. It is the same

with animal welfare legislation. This attitude that appears to have also affected progress in the direction of animal welfare legislation.

It is also important to note that under the Nigerian Constitution, the Legislature is responsible for allocation of resources to the various endeavours or sectors of government.¹ The implication is that budgetary allocations meant for improving animal welfare are generally tied to annual appropriation legislation of the National Assembly, the budgetary allocations to zoos and wildlife parks appear to be generally determined based on the same principle although it needs to be added that legislative approvals are generally based on the proposals put forward by the executive's Ministries, Departments and Agencies (MDAs). Across the board, therefore, animal welfare is handled based on this principle of indifference. However, it is a principle based on the welfare of the animal as an end in itself rather than as a means to an end i.e. that towards accomplishing human sustainability, it is inevitable that sustainability is attained for animals, the inexorable precondition for which is welfare. In plain language, Nigeria's animal and wild life resources are being utilised by the present generation with significant disregard for the needs of future generations.

Animal welfare legislation is legislation that, beyond prohibiting cruel treatment of animals, proactively advances the welfare of animals. In this sense, there have been several provisions in our laws designed to protect the animal against cruel treatment and torture. There has, however, always been a problem of implementation. It appears that because of the same disposition that animals are "*mere* animals", there appears to be no record of anyone ever having been prosecuted for, never mind convicted of, any offence related to cruelty to animals.² This is in spite of the ceaseless infractions on the welfare and rights of animals. The Editorial notes:

Sadly, it has become an everyday spectacle for itinerant traditional medicine sellers and owners of small circuses to move around towns and cities dragging along fettered animals that have been declared endangered and near extinct by the United Nations Environment Programme (UNEP) and by the world conservation bodies...

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¹ Sections 81(2) and 59(1)(a), (2), (3) and (4).

² 'Curbing Animal Cruelty in Nigeria' Editorial 4 March 2019

I. HISTORICAL EVOLUTION OF ANIMAL “WELFARE” LEGISLATION IN NIGERIA

As earlier posited, Nigeria has always had legislation designed to protect animals. These provisions are contained in, for instance, the Criminal Code Act,³ which is applicable in Southern Nigeria. Indeed, this code was legislated into existence on June 1, 1916. From its provisions, it would appear that colonial legislation was even better prepared to legislate on animal welfare than contemporary legislatures in Africa. Under the Code, any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to 3 years imprisonment.⁴ It is also an offence to kill, maim or wound any animal capable of being stolen is guilty of an offence punishable with imprisonment for two (2) years and where the animal is of a particular kind like a “horse, mare, gelding, ass, mule, camel, bull, cow, ox, goat, pig, ram, wether, or ostrich, or the young of any such animal”, the offender is liable to imprisonment for seven (7) years.⁵ Under section 456, a person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony, and is liable to imprisonment for seven years. Although some firm penalties have been provided for these offences, the penalty prescribed for the many forms of cruelty to offences under section 495 is liability to imprisonment for six months or to a fine of *fifty naira*,⁶ or to both such imprisonment and fine. Section 495(3), however, makes an exception for the destruction, or the preparation for destruction, of any animal as food for mankind, unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering. A court has the power upon conviction of an animal owner if it considers that it would be cruel to keep the animal alive, to direct that the animal be destroyed, and to assign the animal to a suitable person for that purpose⁷ and to deprive such owner of his ownership as well as make other orders as to the disposal of the animal.⁸

³ Cap. C38 Laws of the Federation of Nigeria 2004.

⁴ Ibid, sections 394 and 390.

⁵ Ibid, section 450.

⁶ The equivalent of a few United States cents.

⁷ Section 496 (n 2).

⁸ Ibid, section 497.

The Penal Code⁹ which is applicable in Northern Nigeria has been in operation since 1963. Chapter XV of the Code creates the offences of ill-treatment of animals.¹⁰ It provides that cruelly beating, torturing or otherwise wilfully ill-treating any tame or domestic animal which had previously been deprived of its liberty or arranging, promoting or organising fights between cocks, rams or other domestic animals are to be punished with imprisonment for up to one year or with fine which may extend to fifty pounds or with both. Similarly, wantonly over-riding, over-driving or over-loading an animal or wantonly employing an animal, which by reason of age, sickness, wounds or infirmity is not in a condition to work or neglecting an animal in such a manner as to cause it unnecessary suffering are punishable with the same penalty.¹¹ Pursuant to these provisions, a court may order an animal which is the subject matter of these provisions into temporary custody while the person convicted of the offences may be ordered by the court to pay for the treatment and maintenance of such an animal although the Court may also order such an animal to be destroyed in the event that it is suffering from an incurable disease or injury.¹² The provision on unnatural offences¹³ also tends to protect animals. Under the provision, any person who has carnal knowledge against the order of nature with an animal, amongst others, shall be liable to imprisonment for a term which may extend to fourteen years in addition to a fine.

It appears that since these provisions of the codes were enacted, there has been very little in the way of animal protection legislation in Nigeria until April 1985 when the military government promulgated what was eventually to become the Endangered Species (Control of International Trade and Traffic) Decree.¹⁴ Appropriately, the Act's long title introduced it as an enactment "to provide for the conservation and management of Nigeria's wild life and the *protection* of some of her endangered species in danger of extinction as a result of over-exploitation, *as required under certain international treaties to which Nigeria is a signatory*". This would appear to be the only significant domestication of animal protection treaties. The Act prescribes for the offence of hunting of or trading in specified wild animals for which it has placed an absolute prohibition a penalty of a fine of *one thousand naira*

⁹ Laws of Northern Nigeria 1963.

¹⁰ Ibid, section 207.

¹¹ Ibid, section 208.

¹² Ibid, section 209.

¹³ Ibid, section 284.

¹⁴ Now Cap. E9 Laws of the Federation of Nigeria 2004.

(N1,000) for a first offence and for a second and subsequent offence to imprisonment for one year without the option of a fine. For the offence created under section 2 of the Act export and import of species in breach of regulation enacted by the Act, the penalty is a fine of *five hundred naira (N500)* for a first offence and for a second or subsequent offence, to imprisonment for six months without the option of a fine. (unfortunately do not contain welfare provisions our legislature)

As can be seen from the above long title, it is possible that the wild life protected in the Act were recommendations from international treaties and there is a measure of shock that the donkey, for instance, was not wild life protected by the Act. The implication is the need to be more introspective in determining what wild life is in danger of extinction.

II. THE DONKEY EXPORT AND KILLING (PROHIBITION) BILL 2018

We have had recent examples of animal protection and welfare legislation in Nigeria. One of them is the Donkey Export and Killing (Prohibition) Bill 2018, which was initiated and sponsored by me and was inspired in part by the treatment of donkeys. The donkeys are often loaded in the most deploring conditions in congested trucks travelling from Northern Nigeria to the South, a trip that could sometimes take two (2) days. The vicious and inhumane manner in which the donkeys are put to death is even worse. Some are strangled while others are just battered all over the head with axes and the like in the most gruesome manner until they succumb to death. Like this author has said, for many, it is utterly sickening that a treasured friend could be subjected to such cruel and inhumane execution. Although that is the case, the Bill can also be classified as one not fully advancing the full gamut of donkey welfare and rights. From the content of the Bill, it was meant to prohibit its exportation and its killing. The point, however, is that the Bills stop-start travails help illustrate the practical problems that a Bill advancing animal welfare might encounter in legislatures across Africa and Nigeria in particular.

There was a need, however, to determine what form of legislative measure to adopt. This need stemmed out of Nigeria's federal structure in which the federal legislature, the National Assembly has exclusive legislative powers over items contained in the Exclusive Legislative

List¹⁵ while sharing concurrent powers with the state legislatures called the State Houses of Assembly) to the extent stipulated in Part II of the Second Schedule.¹⁶ Given that under section 4(5) of the Constitution, the Acts of the National Assembly shall supersede the laws made by the State legislatures only if the Acts of the National Assembly are “validly made”, it was imperative to make sure that a law on protecting the donkeys fell within the legislative authority of the National Assembly. To a lesser extent in terms of relevance to the theme of this paper, this authority was found *directly* in Item 62(a) of the Exclusive Legislative List, which gives the National Assembly the power to make law over “trade and commerce between Nigeria and other countries including import of commodities into and *export of commodities from Nigeria...*” (emphasis added). In other words, the National Assembly can also make laws restricting the import of commodities out of and export of commodities into Nigeria.

The experts also found evidence of precedent. The Customs and Excise Management Act¹⁷ contains such restrictions. A second, even more graphic precedent is the Export Prohibition Act,¹⁸ which prohibits from exportation a number of food items including beans, yam tubers, cassava tubers, maize, and rice and which is still in our law books. The most apposite was the the Endangered Species (Control of International Trade and Traffic) Act¹⁹ in that it sought to protect a wide range of wild animals facing extinction from exportation. Research also clearly indicated that many countries have had to enact such laws to protect their wildlife from possible extinction.

Even more fundamental, under the Nigerian Constitution, Chapter II is devoted to certain fundamental objectives and directive principles of state policy. Under section 13, it is the mandatory duty and responsibility of all organs of government (including the National Assembly), and of all authorities and persons, exercising *legislative*, executive or judicial powers, to conform to, observe and apply the provisions of the Chapter. The Chapter directs places the duty on the State (including the National Assembly, to “protect and improve the

¹⁵ Part I of the Second Schedule to the Constitution (see section 4(2)).

¹⁶ Section 4(4)(a).

¹⁷ Cap. C45 Laws of the Federation of Nigeria 2004.

¹⁸ Cap. E22 Laws of the Federation of Nigeria 2004.

¹⁹ (n 11)

environment and safeguard the water, air and land, forest and *wild life* of Nigeria”²⁰ (emphasis added). It could be said that a glut of constitutional and legal validations existed for the proposed enactment. That being the case, the Bill could safely be enacted. In passing, it is useful to mention that for the purpose of animal welfare legislation, this last provision provides an assortment of loose or broad words and phrases - environment, water, land, sea and wild life - that should ease the exercise.

This Bill was initiated to stem the tide of massive extermination of donkeys. The Bill proposes, under clauses 1 and 2, and amongst others, to prohibit the exportation of live donkeys as well as the intentional killing of and exportation of donkey parts (including skin), derivatives or carcass from Nigeria as well as for consumption. Clause 2 then makes it unlawful to knowingly slaughter or kill a donkey by any means whatsoever or to knowingly purchase or sell a donkey or donkey parts for human consumption or for food for other animals. Clause 4(1) then recommends a penalty of ten (10) years imprisonment for offences committed under the Bill. The Bill also takes the precaution to ensure that where a corporate body or an association of persons has committed an offence under the Bill, that the chief executive, leader, head, or director of such a corporate body or association of persons shall become personally liable for the above penalty under Clause 4(2). Under Clause 4(3), the prohibited goods as well any vehicle, vessel, aircraft or other thing whatsoever used in connection with the exportation or vehicle, tools, devices, structure or building used in connection with slaughtering or killing a donkey are to be forfeited to the Federal Government.

III. CHALLENGES IN THE LEGISLATIVE PROCESS

Although the Bill received overwhelming support from the public, members of the House and especially the leadership of the House, the Bill has not been transmitted to the President of the Federal Republic for assent. The reason is not farfetched. Nigeria runs a bicameral federal legislature in which there is a Senate and the House of Representatives.²¹ The cohabitive structural arrangement of the federal legislature in Nigeria is that when a bill is initiated and

²⁰ Section 20.

²¹ Section 4(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

passed in one chamber, it must be sent for concurrence in the other chamber.²² Thus the Bill was passed in the House of Representatives and sent to the Senate over two (2) years ago for concurrence. It has been held up in the Senate for this period of time thus far although there is still substantial hope that concurrence will eventually come.

In the meantime, a member of Senate has subsequently initiated a Bill in the Senate on the same subject matter although it is clear from its provisions that it has attempted to water down the strong response that the earlier Bill (i.e. initiated in the House of Representatives) proposed towards resolving the challenges posed to the donkey.

These are some of the frustrations that one might encounter in trying to realise animal welfare legislation. Despite this frustration though, considerable effort is ongoing and we have engaged with the Honourable Minister of Agriculture and Natural Resources to issue an order that accomplishes the objectives of the Bill i.e. prohibit the killing and exportation (from Nigeria) of donkeys. There are firm assurances that these efforts should soon yield fruit.

IV. OBSERVATIONS

From the foregoing discourse the following become clear:

- (a) The Nigerian legislature has not enacted any law to protect animals or advance the cause of their welfare. The only laws that have attempted to protect animals have either been colonial codes²³ or First Republic codes²⁴ or military decrees;²⁵
- (b) The penalties, especially the fines, prescribed for offences under these enactments are ridiculously weak and not deterrent enough;
- (c) The budgetary allocation for the purpose of animal welfare is inadequate determined as it is on the principle of indifference;
- (d) This indifference to animal welfare threatens human sustainability in Nigeria;

²² Ibid, section 58(2) and (3).

²³ For instance, the Criminal Code Act.

²⁴ For instance, the Penal Code.

²⁵ For instance, Endangered Species (Control of International Trade and Traffic) Act.

- (e) Nigeria is a country notorious for non-domestication of international treaties.²⁶ As such it has not domesticated any animal welfare treaties. Indeed, it appears that the only animal protection treaty Nigeria has *ratified* is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which she ratified in 1974; again under a military regime. Under section 12 as well as Item 31 of the Exclusive Legislative List of the Constitution, the responsibility for domestication of international treaties is the National Assembly's; and
- (f) Animal welfare reform legislation, never mind the pace, is non-existent.

CONCLUSION AND RECOMMENDATIONS

This study has clearly disclosed problems with the management of animal welfare but particularly with the initiation and management of animal welfare legislation. Given the problems identified, the paper makes the following recommendations towards enhancing animal welfare legislation in Nigeria:

- (a) The urgent need both for a general animal welfare legislation and specially dedicated legislation to address the peculiar needs of species. These legislation may be guided by international treaties and best practices on welfare legislation and needs of animals but must also involve the infusion of local considerations;
- (b) There is the need for the National Assembly to scrutinise international treaties relating to animal welfare to determine which are in need of domestication and for it to proceed to domesticate them;
- (c) Penalties for breach (particularly fines) especially in existing animal protection legislation should be substantial such as to be deterrent while new legislation must also contemplate this need for deterrent penalties;
- (d) Animal welfare and protection legislation must be enforced. In this regard, there is need to sensitise law enforcement agencies as to this need on account of the principle of human sustainability; and

²⁶ T Salem, 'Nigeria Yet to Domesticate over 95% of Treaties, Protocols – Reps' <<https://www.vanguardngr.com/2021/03/Nigeria-yet-to-domesticate-over-95-of-treaties-protocols-reps/>> accessed 28 October 2021.

(e) The executive and legislative arms need to work in synergy towards substantially improved budgetary allocations to the animal protection and welfare components of annual appropriations.

These measures should improve the wellbeing status of our animals for greater human and animal sustainability.