



**THE ANIMAL PROTECTION ACT –
INTERNATIONAL COMPARISONS AND BEST
PRACTICES**

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➤ *The General Structure of Animal Welfare Legislation*

- ❖ The **purpose / underlying principles** of the legislation
- ❖ The **definition** of the animals governed by the legislation
- ❖ The contents of the legislation, including offences and whether or not it is **framework** legislation
- ❖ **Locus standi** – who has standing under the legislation to request its enforcement
- ❖ Prosecution under the legislation and whether it is **criminal** or **civil** in nature or both
- ❖ **Stripping of ownership** and whether criminal conviction is necessary first
- ❖ The **enforcement powers** of authorities
- ❖ **Penalties** for offences

➤ **Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents**

❖ **APA purpose / underlying principles :**

- To consolidate the laws relating to the prevention of cruelty to animals
- Enforcement subject to the concept of “unnecessary suffering”

Example: A person shall be guilty of an offence if s/he “*confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather*”

❖ **Other jurisdictions:**

- Notions of unnecessary or unjustifiable suffering also applied in France, Germany, India, Kenya, Norway, Sweden, Switzerland, Taiwan, Zambia, United Kingdom, United States
- Some countries attempt to amplify the scope of protection

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalentents***

❖ **Other jurisdictions:**

- Austria and Germany recognize man’s special responsibility towards as animals as fellow creatures
- New Zealand and Canada (Ontario) introduce a standard of care for animals
- Puerto Rico recognizes animals as living beings, deserving of fairness and dignity, and also recognises the link amongst crimes of violence including violence to animals
- South Korea recognizes the dignity and value of animals
- Switzerland requires that animals be treated in a manner which best complies with their needs
- Taiwan requires respect for the lives of animals

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalentents***

❖ **Other jurisdictions:**

- generally no recognition of animal rights as such
- only the RSPCA acknowledges something resembling rights, “The Five Freedoms” being:

The freedom from hunger and thirst

The freedom from discomfort

The freedom from pain injury or disease

The freedom to express normal behaviour

The freedom from fear and distress

- ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents***
 - ❖ **Definition of the animals governed by the APA :**
 - “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”
 - ❖ **Other jurisdictions:**
 - many have lists of specified animals
 - India seeks to include “any living creature other than a human being”
 - Germany, Kenya, Switzerland protect vertebrates
 - The United Kingdom protects “vertebrates other than man” but the definition may be extended by regulation to include invertebrates of any description

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents***

❖ **The contents of the APA, including offences and whether or not it is framework legislation :**

- intended to consolidate the laws relating to the prevention of cruelty to animals
- contains very general provisions for purposes of prohibition of animal cruelty
- Minister may make regulations relating to accommodation of animals and transport and other reasonable requirements to prevent cruelty
- specific prohibitions on animal fighting
- other pieces of law relating to animal protection found in a variety of other legislation

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents***

❖ **Other South African legislation :**

- The Performing Animals Protection Act 24 of 1935
- Animal Diseases Act 35 of 1984
- Animal Improvement Act 62 of 1998
- Animal Identification Act 6 of 2002
- Meat Safety Act 40 of 2000
- Marine Living Resources Act 18 of 1998
- Sea Birds And Seals Protection Act 46 of 1973
- Provincial legislation and municipal by-laws
- Code of Conduct and Practice for Veterinarians and Para-veterinarians, drawn up by the South African Veterinary Council (2006)
- SABS standards

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents***

❖ **Other jurisdictions :**

- Germany, New Zealand, Norway, Sweden, Switzerland have framework legislation with several detailed prohibitions
- Kenya has framework legislation with provision for Minister to make regulations on multiple issues
- India, South Korea, Taiwan, United Kingdom apparently intend to provide a framework, but there are only selected prohibitions

➤ ***Comparison : The South African Animal Protection Act (“APA”) and its International Equivalents***

❖ **Locus standi – who has standing under the APA to request its enforcement :**

- officer of the SPCA

❖ **Other jurisdictions:**

- SPCA’s and unspecified animal protection organisations or other agencies which are authorised by provincial or national governments
- India gives the police authority to deal with enforcement

SEIZURE OF ANIMALS PRIOR TO PROSECUTION

➤ *South Africa*

- ❖ Magistrate may authorise in writing, any officer of any society to seize animal/take custody if:
 - ~ reasonable grounds animal needs **immediate care**, or
 - ~ reasonably necessary to **prevent cruelty or suffering**.
- ❖ Animal in custody not claimed in seven days of advertisement/notice to owner, society deal with animal at its discretion.
- ❖ Society kill animal, irrespective of condition, if it cannot be disposed of.

➤ *Norway*

- ❖ The **animal welfare committee** may take necessary measures to **ensure protection** of animals.
- ❖ The **police and District Veterinary Officer** may also take such measures, with confirmation from the animal welfare committee

Seizure of Animals prior to Prosecution continues...

➤ *Taiwan*

- ❖ Animal shelters, for keeping/taking care of:
 - ~ stray animals, abandoned animals;
 - ~ animals kept and confiscated by competent authority;
 - ~ animals in danger.

➤ *Canada*

- ❖ Retain seized animal where charges laid and reasonable grounds believe animal harmed if returned to owner.

➤ *Costa Rica*

- ❖ Establishes 'lien' over animal against the custodian.
- ❖ Custodian does not pay costs whilst animal in care during judicial proceedings.
- ❖ Legal ownership of animal transferred to a government agency or NGO.

Seizure of Animals prior to Prosecution continues...

➤ *Papua New Guinea*

- ❖ If owner/person in charge of animal taken into custody for cruelty: police officer making arrest take charge of animal.
- ❖ Deposit it place of safe custody as security for the payment of –
 - ~penalty to which person may become liable; and
 - ~any reasonable expense incurred taking charge/keeping the animal.
- ❖ Court may order in default of payment of penalty / expenses: animal be sold to satisfy amounts.

➤ *Bermuda*

- ❖ Animal may be seized when owner is arrested.
- ❖ Cost of keeping animal must be paid by owner.

➤ *Malta, Myanmar, Philippines, Solomon Islands, Tonga, Vanatua, Brazil, Portugal*

- ❖ The Acts do not provide for the seizure or stripping of animals

STRIPPING OF OWNERSHIP ON CONVICTION: IMPOSITION OF PENALTIES BY AUTHORITIES

➤ *South Africa*

- ❖ Court may in addition to any punishment imposed
 - ~ order **animal destroyed**: opinion cruel keep animal alive;
 - ~ order person convicted **deprived of ownership** of animal;
 - ~ **any order** with regard to such animal as it deems fit.

➤ *United Kingdom*

- ❖ Court may, instead / addition other penalties **order**:
 - ~ **deprivation ownership** of animal and
 - ~ for its disposal.

➤ *Zambia*

- ❖ Similar provisions
- ❖ **No such order** unless **evidence** e.g.. previous conviction, owner's character, animal, left with owner, **likely exposed to further cruelty**.

➤ *India*

- ❖ Stripping of ownership
- ❖ Animal forfeited to Government/ court also make order regarding disposal of animal as thinks fit.

➤ *Kenya*

- ❖ Stripping of ownership

➤ *Taiwan*

- ❖ No immediate stripping ownership.
- ❖ Competent authorities aside from imposing penalties – order feeder make improvement within time limit.
- ❖ Authorities may confiscate animal if feeder not made improvement within the time.

➤ *South Africa*

- ❖ Court may in addition any punishment imposed
 - ~ declare person unfit own/ in charge any animal, or of any animal of a specified kind, for a specified period.
- ❖ Person found in possession/charge any animal in contravention declaration guilty of offence.
- ❖ Has the potential to be useful section: many other countries elaborate more on disqualification orders.

➤ *Sweden*

- ❖ County administrative board: prohibit persons have animals/particular species in care if:
 - ~not comply with control authority decision – significant relevance to animal welfare;
 - ~seriously neglected control / care animal;
 - ~maltreat animal;
 - ~convicted of cruelty to animals;
 - ~repeatedly been convicted of offences.
- ❖ No prohibition offence manifestly not be repeated.
- ❖ If person subject to prohibition is owner of the animal, county administrative board may also order to dispose of it.
- ❖ Apply for fixed period / until further notice.

➤ *United Kingdom*

- ❖ Similar provisions.
- ❖ Imposed animals generally / animals of one or more kinds.
- ❖ If person convicted offence: court may instead / in addition other penalties make :order disqualifying him period thinks fit.
- ❖ Disqualifies person from -
 - ~owning/keeping animals;
 - ~participating in keeping of animals;
 - ~party arrangement where entitled to control/influence was animals kept;
 - ~dealing animals; or
 - ~transporting animals.
- ❖ Breach: offence
- ❖ Termination of disqualification
 - ~Person disqualified: apply termination of order.
 - ~No application made:
 - before end one year period from when order made
 - before end of any period specified in order.
 - ~Court consider: applicant's character, conduct since disqualification imposition, any other circumstances.

- ❖ Seizure animals in connection with disqualification
 - ~Person to whom order applies owns/keeps any animal contrary to disqualification may order:
 - all animals he owns/keeps taken into possession
 - have effect order for disposal of animal.
- ❖ Court not make disposal order for unless –
 - ~given owner opportunity heard, or
 - ~not reasonably practicable communicate with owner.

➤ *Norway*

- ❖ If person **particularly serious manner/more once violated Act's provisions**
 - ~may deprive ownership, either **specific period or permanently**
 - ~right own, keep, use, trade in, slaughter, care for animals, or hunt and fish
 - ~guilty person be deprived of one/more/all of rights
 - ~may be limited particular animal species.

➤ *Switzerland*

- ❖ Anyone **convicted of cruelty banned** by courts:
 - ~keeping, trading, all other professional handling of animals – all/certain kinds
 - ~keeping/caring for animals of all/certain types
- ❖ Make application ban subject acquiring proof of suitability if facts justify assumption that would commit further offences.
- ❖ Restored right to keep animals on application if no longer grounds assume will repeat offence.
- ❖ Infringe ban: liable maximum one year's imprisonment/fine.

Future Disqualification Of Ownership On Conviction continued...

➤ ***France***

- ❖ As an additional penalty, court may impose prohibition, permanent or otherwise, against keeping an animal.

➤ ***New Zealand and Bermuda***

- ❖ Court on conviction may make an order permanently depriving convicted person of ownership

➤ ***Austria***

- ❖ Permanent seizure on second offence.

➤ ***Kenya***

- ❖ Restrictions future animal ownership.

Penalties continued....

➤ COUNTRY	FINE	IMPRISONMENT
Developed Countries		
Canada (Ontario)	R450 000	Two years
France	R350 000	Two years
United Kingdom	R270 000	51 weeks
Austria	R23 000 – R173 000	None
Malta	R2 700 – R538 800	One year
South Korea	R33 000	None
	(for abusing animals on stated grounds in the Act)	
	R3 000	None
	(for abandoning animals, not complying with request for information or refusing entry/search)	
Western Australia	R14 000 – R340 000	None
New Zealand	R11 000	None
Taiwan	R12 000 – R62 000	None
Norway	Unspecified	Six months

Penalties continued....

➤ COUNTRY	FINE	IMPRISONMENT
Developing Countries / Countries with Economies in Transit		
Croatia	R16 000 – R32 000	None
Bermuda	R8 000	12 months
Vanatua	R4 700	None
	Second offence: R9 500	Three months
Costa Rica	None	Six months – 8 years/house arrest for 90 days
	(for willful abandonment)	
	R70	Six months
	(for negligence)	
Papua New Guinea	R620	Six months
Solomon Islands	R100	Six months
Tonga	R80	Three months
	(for cruelty)	
	R40	Three months
	(for ill-treatment)	
India	R9	None
	Second offence: R18	Three months
Kenya	R320	Six months

South Africa

Powers of officers of society for prevention of cruelty to animals

- With warrant enter premises animal is kept to examine the conditions
- Without warrant enter premises at any time with consent owner/occupier
- Without warrant arrest person suspected on reasonable grounds having committed offence
 - reason believe ends of justice defeated by delay in obtaining warrant
- Person wilfully obstructs, hinders, resists officer or conceals animal guilty offence

South Africa

Killing animal

- Police officer of opinion animal so diseased, severely injured or in physical condition ought to be killed shall:
 - if owner absent/ refuses consent to killing
 - at once summon veterinarian or
 - no veterinarian in reasonable distance, two adults reliable/ sound judgment
 - after examination certify cruel keep it alive, police officer may without consent of owner kill the animal
 - manner inflict little suffering as practicable.
- Veterinarian exercise powers conferred on police officer without summoning others

Australia

- Provides for appointment of **general inspectors** to:
 - enforce proper, humane care and management
- Authorised persons may issue **infringement orders**.

New Zealand

- Powers given **Animal Welfare Inspectors, auxiliary officers and vets**
 - enter, inspect, seize and mitigate suffering
- **Enforcement orders** on application to the **District Court**

Austria

- Each **province** appoints Animal Protection Ombudsman
- Federal Animal Protection Council
- **District administrative authorities** with help **public security officials** responsible implementation

Bermuda

- Police officer may arrest person suspected cruelty to animal.
- Power entry on warrant, although police inspect without warrant animals in public places.

Canada (Ontario)

- Inspectors and agents of the OSPCA authority inspect premises without a warrant
 - believe animal immediate distress, kept for exhibition, entertainment, boarding, sale or hire.
- Requires vets report suspected animal abuse/neglect
 - protects them from personal liability for doing so

Brazil

- Not provided for

Kenya

- Authorised officers and **police** may enter, inspect and seize.

Switzerland

- Bodies responsible for enforcement have **access** to premises, vehicles and animals
 - for this purpose have **status of judicial police**

Germany

- Persons authorized by competent authority may:
 - enter sites, business premises, office buildings and transport of person to provide information during office hours;
 - enter **living space person** required provide information: **basic right of inviolability of privacy of home restricted**;
 - **examine** animals and take **samples**: blood, urine, excrement, animal feed;
 - make **behavioral observations** on animals also by picture/ sound recordings.

Malta

- Act enforced by
 - **Animal Welfare Officers**: act under Director of Veterinary Services.
 - Every member of **police force** and any local warden (appointed under the Private Guards and Local Wardens Act)

Norway

- **Police**, members of animal welfare committees and official **veterinarians** may, **at any time**,
 - **inspect** animals and places where animals kept.

Papua New Guinea

- A **Police Officer**, on his own view or on the complaint and information of any person, may—
 - **arrest, without warrant**, person committing or reasonably suspected offence; and
 - bring him before a court

Sweden

- Control of compliance exercised by county administrative boards, other government agencies and municipalities
- Control authority may:
 - issue orders/ prohibitions ensure compliance
 - right receive information/ study documents on request;
 - receive access to areas, facilities, buildings, premises, other places animals kept
 - inspect animals, conduct investigations and take samples.
 - Police authorities provide assistance needed

Korea

- Competent authorities: Council of Agriculture (COA) at central level; provincial or city governments; and county governments.
- Enforcement formulated by competent authority at the central level.
- Mayor/ Governor make owner register animal with delegated government authority
 - deemed necessary for specified species protection and prevention of abandonment.
 - feeder register birth, acquirement, transfer, loss and death of pets.

Korea

- Competent authorities have **animal protection inspectors** and may also select volunteer inspectors.
- Access
 - enter animal contest grounds, places for slaughtering, breeding, trading, keeping, training and animal scientific application to **investigate/ ban activities** in violation of Act
 - investigation and ban not be evaded, refused or obstructed.
- May ask for **police assistance** if necessary.

Tongo

- Similar provisions to South Africa regarding killing of diseased/ injured animals
- No other enforcement provisions

Vanatua

Remedial notices

- After *investigating a report*, *vet* own initiative/instructions District Commissioner require:
- owner/ person in charge of animal take action specified in notice to remedy complaints
 - if owner /person charge animal *does not within reasonable time comply* with notice -
 - *veterinary officer prepare official report* full details offence: forward District Commissioner.
- Similar powers for vet to kill an injured/ diseased animal as South Africa

Zambia

- Owner animal convicted offence in respect of the animal,
 - court if satisfied **cruel to keep animal alive**, may direct animal killed: occur **without unnecessary suffering**.
- Similar powers of police officer to kill an injured/ diseased animal as South Africa
- Police have same powers of access and arrest as officers of SPCA in South Africa
- Director of Veterinary Services authorise any **officer of any society for prevention of cruelty to animals exercise powers** conferred by Act on **police officer**.

Improvement notice

- If inspector of opinion person failing protect welfare animal which responsible
 - may serve notice specifying non compliance; steps taken; period for complying
 - **no criminal proceedings** instituted **before end period** specified

United Kingdom

Powers in relation to animals in distress

- If inspector/ constable reasonably believes protected animal suffering:
 - may take or arrange steps appear immediately necessary alleviate animal's suffering: does not authorise killing
- If veterinary surgeon certifies own interests be killed, an inspector/ constable may kill animal
- Inspector/ constable act without certificate veterinary surgeon if appears:
 - condition of animal such no reasonable alternative to killing
 - need for action: not reasonably practicable wait for vet

United Kingdom

Access

- Inspector/ constable enter premises search for protected animal if reasonably believes—
 - animal suffering or, if circumstances do not change, likely to suffer.
- Not authorise entry any part of premises used private dwelling.
- Inspector/ constable may (if necessary) use reasonable force
 - only entry required before warrant can be obtained

Warrants

- Justice of the peace may, on application inspector/ constable, issue warrant enter premises if necessary using reasonable force.
- Satisfied reasonable grounds for believing protected animal on premises which suffering or likely to suffer if circumstances do not change.

United Kingdom

Order regarding animals taken in possession

- Magistrates court may order following in relation to animal taken into possession
 - specified treatment
 - possession given specified person;
 - sold;
 - disposed of otherwise than sale;
 - killed
- Court may not make order unless:
 - given owner opportunity be heard, or
 - not reasonably practicable communicate with owner.
- Determining how exercise its powers, court consider desirability of protecting animal's value and avoiding increasing expenses which person may be ordered to reimburse.
- Constable may seize animal if appears involved in fighting offences

Power to stop and detain vehicles

- Constable stop/detain vehicle to enter/ search if reasonably believes animal in distress.

Powers Vets

- Access and search premises (New Zealand and Norway)
- Duty report cruelty: protection from personal liability (Canada)

Involvement all levels government in implementation

- Central government, provinces and municipalities (Korea and Malta)

Powers police / police assistance

- Most countries
- Giving *societies* that prevent animal cruelty *police powers*

Entry without warrant

Canada, Norway and Germany

Germany: right to *privacy home restricted*

- Comprehensively set out powers
 - Germany and Sweden: samples and behavioral observations
- Registration of pets