

## **Animal welfare: emerging trends in legislation**

C Brown

World Society for the Protection of Animals (WSPA), 222 Grays Inn Road, London WC1X 8HB, UK

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### **Animal welfare and policy**

The number of laws and standards regulating and protecting the welfare of animals is expanding around the world. The growing demand from policy-makers for expertise and advice on animal welfare in order to create these new regulations has been inspired by developments in both science and ethics, which are increasing our understanding of animals' abilities and capacities.

Advances in knowledge of animal behaviour and biology support the belief that many animals are sentient and have complex social behaviours, a means of communication and some demonstration of self-awareness (Chandroo *et al* 2004; Goodall 2006; Dawkins 2008). This is leading to a better understanding of the needs of certain species. In addition, the links between good animal welfare and areas beneficial to humans, such as health and the environment, are starting to be revealed by science (WSPA 2008; CIWF 2009).

As a result of being able to prove competencies in animals which we, as human beings, value, we are forced to consider the moral implications of our interactions with animals. The notion of an ethical responsibility towards animals is growing, and so animal welfare has become an additional concern in our everyday lives which needs to be balanced with other policy areas, such as economics and international trade.

As understanding and knowledge expands, more people around the world are becoming motivated to show concern for animal welfare. The scientific, veterinary, ethical and political communities must collaborate closely given that our knowledge of animals' capacities continues to grow. Policies and, as a result, legislation, needs to adapt accordingly when significant information is discovered which reveals inadequacies with the current legal protection for animals.

### **Animal welfare and legislation**

Historically, animals were treated as property in legislation. This remains the case in many countries, especially those which have not updated older laws specifically relating to animals (Francione 1995). However, over the past 15 to 20 years there has been a striking increase in the number of laws which have been developed in countries incorporating animal sentience and welfare, especially for those laws passed specifically to protect animals.

For some months, in order to assess the level of legal protection afforded to animals and the standards of welfare which are set, the World Society for the Protection of Animals (WSPA) has been conducting an audit of animal-related legislation across the world (WSPA 2011). The research is ongoing and looks at both general provisions usually found in dedicated animal protection legislation and a range of specific issues of international concern.

The findings so far show that it is now quite a rarity for a country to have absolutely no coverage of animal welfare requirements within their laws. In addition, the previous assumption, which many held that European countries are much further ahead in terms of legislative protection for animals, is shown not always to be the case. There is now recognition of the need for good animal welfare in laws across all regions, including the Middle East, Africa and Asia.

And the number of regulations protecting animals continues to increase. Around the world, there are currently several new animal protection laws in various stages of development or implementation, for example: Thailand's draft legislation is with their parliament awaiting approval; Nicaragua recently introduced a new animal welfare law which includes an animal's right to respect and protection; a drafting committee is working on a proposal in China which has gained media coverage around the world; and New Zealand is currently undertaking a review of its animal welfare legislation in order to update standards and increase protection.

## Common principles

From the research findings it is clear that certain trends are emerging across much animal-related legislation.

There is usually at least a basic acknowledgement that animals are able to suffer. Some Acts go on to specifically mention animal sentience and recognition of other important cognitive abilities; these are often explained within the text as the rationale for developing the legislation in the first place, providing the inspiration to protect animals<sup>1</sup>. Norway's Animal Welfare Act states that animals have an intrinsic value, irrespective of the usable value they may have for man<sup>2</sup> and South Korea's national legislation asserts that everyone should recognise the dignity and value of animals' lives<sup>3</sup>.

In some texts, the ethical responsibility humans have when interacting with animals is specifically recognised through acknowledgement that their use in any context brings with it an obligation to treat those animals humanely. Austria's Federal Act on the Protection of Animals describes this as the protection of life and well-being of animals based on man's special responsibility for the animal as a fellow creature<sup>4</sup>. Poland's Animal Protection Act states clearly that as a living being, an animal is capable of suffering and so should be respected, protected and taken care of by humans<sup>5</sup>.

Preventing people from deliberately causing acts of cruelty is a common theme across national animal protection legislation. Japan<sup>6</sup>, Mexico<sup>7</sup> and Israel<sup>8</sup> are just a few of the many countries which specifically prohibit cruel treatment towards animals. This is often written as an offence to cause unnecessary suffering<sup>9</sup>, or is further qualified as illegally causing an animal to suffer neglect, pain or injury<sup>10</sup>. Other countries choose to list illegal acts which cause suffering within the text, such as "overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies"<sup>11</sup>.

Legislation is increasingly evolving to accommodate the belief that it is not simply the physical aspects of animals' lives which need to be protected — their psychological and behavioural needs are also being taken into account<sup>12</sup>. The principle that has become known as the 'Five Freedoms' — 1) Freedom from hunger, thirst and malnutrition; 2) Freedom from fear and distress; 3) Freedom from physical and thermal discomfort; 4) Freedom from pain, injury and disease; and 5) Freedom to express normal patterns of behaviour — is sometimes clearly replicated within a country's laws<sup>13</sup>, expanding the original desire for animals to be prevented from deliberate acts of cruelty, to a growing understanding that animals need to expe-

rience these freedoms in order to avoid any kind of suffering. Even where the specific freedoms are not directly referred to in legislative texts, there is a clear trend which suggests that policy-makers are using these guidelines as a basis for setting welfare standards and identifying prohibited practices<sup>14</sup>. In addition, in recent years, some countries have introduced the concept that those who take responsibility for an animal have a legal duty of care over it, so they must provide for its particular individual needs<sup>15</sup>. This is a move away from the traditional list of prohibited practices within this type of legislation, and allows for a more flexible framework which will adapt to the growing understanding of different animals being revealed by science.

## Policy gap

While many countries have made significant progress with ensuring standards for animal welfare through the introduction of legislation, this protection has not always been extended to all species believed to be sentient. There are often differing levels of legislative safeguards provided for animals being utilised by humans in different ways, for example, wild animals often receive less protection than animals being farmed, which, in turn, are often less protected in legislation than animals treated as pets. This sort of speciesism should be avoided as it makes legislation inconsistent with scientific and ethical knowledge, lessening policy effectiveness in the long term.

## Animal protection legislation and the IWC

With regards to the work of the International Whaling Commission (IWC), scientific research has shown that whales can feel pain, fear and distress, and that they display a wide range of different behaviours, social structures and communication methods which vary greatly between species. Some species, particularly toothed whales, form groups where there are close bonds between individuals and even co-operative hunting. Whales may stay in these groups for many years or even their whole lifetime (Parsons *et al* 2004).

Because of their sentience, whales — like many other animals — have welfare needs, and interactions which are detrimental to them might require regulation by law. Specific legislation dealing with the slaughter and injuring of whales, porpoises and dolphins has been introduced by some countries as a response to these advances in science and in recognition of their importance to the seas around that locality. For example, Brazil's Act No 7.643 prohibits the catching of cetaceans and Australia's Whale Protection Act (1980) prohibits people from killing, capturing, injuring or interfering with whales, dolphins and porpoises.

<sup>1</sup> Monaco's Law 1128 of 1989, Article 1.

<sup>2</sup> Norway's Animal Welfare Act 2009, Section 3.

<sup>3</sup> South Korea's Animal Protection Law 2007, Article 3.

<sup>4</sup> Austria's Federal Act on the Protection of Animals 2004, Section 1.

<sup>5</sup> Poland's Animal Protection Act 1997 (amended 2006), Article 1.

<sup>6</sup> Japan's Law for the Humane Treatment and Management of Animals 2005.

<sup>7</sup> Mexico's Constitution for the Federative Republic of Brazil of 1988, Article 225.

<sup>8</sup> Israel's Animal Protection Law 1994 (as amended), Section 2.

<sup>9</sup> Argentina's Animal Protection Act 1954, Section 3.

<sup>10</sup> Sections 445/6 of Canada's federal Criminal Code.

<sup>11</sup> South Africa's Animal Protection Act (Act 71 of 1962), Section 2. A similar list appears in many other country's legislation, such as Zambia's Prevention of Cruelty to Animals Act, Section 3.

<sup>12</sup> Finland's Animal Welfare Act 1996, Section 3.

<sup>13</sup> Tanzania's Animal Welfare Act 2008, Section 4.

<sup>14</sup> Croatia's Animal Protection Act 2006, Article 4.

<sup>15</sup> England's Animal Welfare Act 2006, Section 9.

Just as science and ethics have informed the development of legislation and regulations across the world in relation to the protection of animals, policy regarding human interactions with all animal types is evolving. In response to this, bodies such as the IWC need to adapt their policies to ensure advances in ethics, science and national laws are reflected in the standards set.

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