



LEGAL FRAMEWORK ANALYSIS OF THE DONKEY TRADE IN KENYA & TANZANIA



“Donkeys are the most misunderstood and abused animals around the world”

-Bonnie Jo. Campbell

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Executive Summary

Over the past few years, Kenya has been the center of a fast-growing industry in Africa to supply donkey skins to China.ⁱ Used in traditional medicine, donkey skin is boiled to produce a gelatin called *ejiao* which is believed to stop aging and boost libido.ⁱⁱ The growing demand has led to the attraction of a back market whose participation has helped the sprouting of gangs hired by skin-smuggling networks to steal donkeys. From Kenya to Tanzania to Ethiopia, the entrepreneurial criminals have been able to navigate around the laws and across the porous borders supplying stolen donkeys to meet the increasing Chinese demands of the illicit good. Falling under the ambit of transnational illegal trade, donkeys just like elephants and rhinos, must be protected through proper legislation – lack of control will leave Kenya with no donkeys by 2023.ⁱⁱⁱ

This report will give an understanding, scope and context of the donkey trade between Kenya and Tanzania placing it in its wider legal context. The report will then give a comparative analysis highlighting the legal gaps on the legislative frameworks of the two countries. The report will then conclude by giving a finding report on status of animal law enforcement in the two countries and thereafter give the recommendations that will address the illegal donkey trade.

1.0 Introduction

Overtime, concern has been growing over the expansion and diversification of the illegal trade in donkeys across the borders between Kenya and Tanzania. Experience shows that the illegal trade causes unsustainable practices impacting negatively on local economies and donkey dependent communities. The annual increase in the number of donkeys slaughtered and commercialization of its products without structured interventions is likely to disrupt livelihoods in the East African Region.^{iv} As the demand increases in China, communities in Kenya and Tanzania are crying foul as their donkeys continue disappearing from their villages. According to the KALRO Report, the donkey is ranked as the most important livestock compared to chicken, goats, sheep, cows and – this was based on its use in transportation while enhancing accessibility to hardship areas such as footpaths in marshy areas and during rainy seasons.^v The report went further and gave a mean income of Kshs. 11,390 to families whose sole source of livelihood was the donkey.

1.1 Status of the donkey trade

1.1.1 Kenya

As other African countries continue to ban donkey slaughter and trade, Kenya amended its law to include the donkey alongside horse as food animals – making donkey meat legal.^{vi} In just a few years, since the legalization of donkey meat, Kenya has become the center of the fast-growing donkey industry trade in Africa. Since 2016, Kenya opened four licensed donkey abattoirs - Silzha Limited Slaughterhouse, Star Brilliant abattoir, Goldox Kenya Limited and Fuhai Machakos Trading Company Limited - Which is more than any other country on the continent. They slaughter around 1,000 donkeys a day. The KALRO Report warned that donkeys were being slaughtered at a rate five times higher than their population was growing which could wipe out Kenya's donkey population by as early as 2023.

Whilst regulated, government-sanctioned slaughterhouses may appear to provide better welfare for the donkeys ending their lives. However, such premises still present numerous opportunities for their welfare to be compromised. For instance, as documented by a study done by ANAW and KSPCA, Silzha Abattoir used sub-standard and uncertified electric stunner instead of the stipulated captive bolt for humane killing; Goldox and Silzha Abattoirs had severely damaged off-loading zones that put donkeys under serious risk of injury; sub-standard construction of race areas, stunning box and temporary holding areas was evident in the four abattoirs.^{vii} The team also established that there was low compliance to the environmental standards as guided by the environmental Management and Conservation Act with all the slaughter houses operating well below 50% of their slaughter capacity.

1.1.2 Tanzania

Tanzania is one of the major source countries for donkey skins which feeds the demand for *ejiao* in China. In a bid to save the species and the livelihoods of communities living with donkeys, the Government of Tanzania halted the trade in donkey skins and closed its major slaughterhouses.^{viii} However, the threat to the animals and their owners remain as hired gangs continue to steal the animals in the middle of the night and slaughter them inhumanely. In addition to the illegal trade of the donkey, there are significant welfare violations resulting from the transportation of the donkeys for trade in Kenya. The market collection points are also areas of poor animal welfare – the donkeys are sometimes left to starve as it is believed to be easier to

remove the skin from a thin donkey. Finally, the unsafe and inhumane slaughter of the donkeys in the bush and the poor disposal of the donkey carcasses by illegal traders poses both environmental and public health risks.

For all practical purposes, the slaughter and export of donkeys in Tanzania for food was banned. Now donkeys are exported illegally to be slaughtered in Kenya where conditions for their slaughter are lax – which is not a great outcome for donkeys. An animal welfare bilateral treaty would be one method of seeking a broader consensus on how donkeys should be used and if a use is acceptable, what level of welfare must be provided during the use.

2.0 CURRENT LEGISLATIVE FRAMEWORKS & THEIR EFFECTS ON THE DONKEY

The use of animals and the conditions under which many are kept are unacceptable and a universal legal framework is needed to enhance the protection and status of animals. The donkey being classified as livestock, its welfare is governed by animal welfare statutes. At the international level, there are no overarching law on animal welfare. However, the Universal Declaration on Animal Welfare is an attempt to secure an international legal instrument that gives guidelines on issues on animal welfare.^{ix} It is an agreement among people and nations to recognize that animals are sentient and can suffer; to respect their welfare needs; and to end animal cruelty. Also, bearing this in mind, animal welfare borrows from other international conventions and treaties to effectively legislate/regulate animal welfare standards in the world over.

a) Global Laws and Policies

i. World Trade Organisation and its associated treaties^x

This regime maybe the most important legal framework regarding animals as it controls the international trade of live animals and animal products such as meat and skins. It legislates on safety measures in food, animal and plant health. The agreements also accord member states the policy space to regulate the health standard that it deems appropriate for its jurisdiction – members are urged to harmonize such measures by basing them on international codes or standards such as those from the OIE for animal health.

ii. International Air Transport Association Live Animal Regulations^{xi}

This is the worldwide standard for transporting live animals by commercial airlines whether it is a pet, an animal transported for zoological or agricultural purposes or for any other reason. Its objective is to ensure all animals are transported safely and humanely by air.

b) Regional Policies and Legislations

i. African union Inter-African Bureau for Animal Resources Animal Welfare Strategy for Africa^{xii}

This is a policy document whose vision is to create an Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource industry. Its actions are to be led by a framework based not only on animal welfare and human compassion, but also on sustainable livelihoods, communities, value chains for safe and profitable food and nutrition security, and efficient animal traction/utilization. It will use a system approach which will address the full range of animal welfare challenges including farm animals, working animals, experimental or laboratory animals etc. and deploying a variety of interventions and convening partners from across countries, the continent and the world. The AU-IBAR seeks to be the main driver of animal welfare strategy in Africa through its multi-stakeholder platform (APAW) which is mandated to coordinate and guide the implementation of the Animal welfare strategy for Africa.

ii. IGAD Regional Animal Welfare Strategy^{xiii}

The objective of this policy is two-fold; (i) to draw the attention of member states' policy makers and all animal welfare stakeholders to the key issues and challenges affecting the compliance status of IGAD member states to the OIE animals welfare standards; and (ii) to share key policy recommendations so as to assist and advocate mainstreaming of welfare into all animal production and utilization activities..

iii. The treaty for the Establishment of the East African Community^{xiv}

The treaty provides for cooperation, integration and development of the agriculture and food security sector and of the environment. Article 105 directs interventions that include the enactment of a common agricultural policy, the attainment of food sufficiency and the

development of early climatologically warning systems. Although the treaty does not have a specific provision advancing the interests of smallholder farmers, overall it undertakes in the preamble to raise the standards of living of the people through fostering cooperation and integration.

iv. The East African Community Fourth Development Strategy^{xv}

The EAC development strategy provides for the priorities and interventions for the community for all the sectors. Its focus is to design economic integration as a step towards global integration through sustainable use of resources, value addition, trade and enhanced competitiveness. In agriculture and food security sector, the strategy recognizes inadequate extension services, low productivity and entrepreneurship and limitations in technology adoption and innovation as challenges to be addressed in the sector. In order to improve the sector, the strategy in the development objective 6 aims at developing the regional competitive and sustainable sectors and prioritizes the promotion of agricultural productivity as well sustainable natural resource management. Additionally, it directs the promotion and protection of indigenous traditional knowledge associated with biological resources and eco-systems as well as the harmonization of biosafety policies on genetically modified organisms in the community.

Policy Gap: The policy has no special provisions for smallholders and also does not integrate *elum* principles in crop health and livestock practices, farm energy and post-harvest practices.

v. The East African Community Agriculture and Rural Development Policy^{xvi}

This policy is the common agricultural policy provided for in Article 105 of the Treaty for the Establishment of the east African Community. It has the objective of achieving food security in the Community. The Policy elaborates the strategies of achieving the food security objective which includes increasing output, quality and availability of food and rational agricultural production through promoting complementarities and specialization under sustainable use and management of soil, water, fisheries and forests in order to conserve the environment.

Policy Gap: Smallholder interests are not directly addressed and there is no reference to sustainable development, farm energy and organic farming principles.

vi. The Comprehensive Africa Agriculture Development Programme, CAADP^{xvii}

The Comprehensive Africa Agriculture Development Programme (CAADP) is the common agricultural policy for Africa provided under Article 6 of the Treaty Establishing the African Economic Community. It aims at increasing agricultural growth rates through extending the area under sustainable land management and reliable water control systems, facilitating market access, increasing food supply and improving research and extension. The Kenyan CAADP Compact is implemented through the Agricultural Sector Development Strategy.

vii. The Maputo Declaration on Agriculture and Food Security in Africa^{xviii}

The Maputo Declaration is a policy that resolves to revitalize the agricultural sector by implementing, as a matter of urgency, the Comprehensive Africa Agriculture Development Programme and flagship projects for agricultural development. It acknowledges the need for Africa to utilize its full potential to increase its food and agricultural production by guaranteeing sustainable food security and ensure economic prosperity for its people.

c) Relevant National Policies and Legislations

i. Kenya

• Constitution, 2010^{xix}

The 4th schedule explains the roles the two levels of government have in promoting animal welfare. The national government is responsible for the protection of wild animals in conservation areas while the county governments are mandated to oversee the welfare of domestic animals, which includes livestock and pets. The County is responsible for animal husbandry, county abattoirs, plant and animal disease control. It also governs health services such as veterinary services.

The arbitrary slaughter of donkeys for meat and skin without control or resource allocation towards conservation and research is contrary to the constitution. Article 46(1)(c) of the Constitution 2010, protection of consumers health, safety and economic rights are guaranteed. The Constitution also emphasizes on the need to preserve the genetic resources and preserve all natural resources of the country; in chapter 5, part 2 Article 69(1)(a), (e), (g), (h) and 2 highlights the responsibility of the utilization of natural resources, conservation of biodiversity and control of exploitation for the sake of future generations.

Other than the constitution, the following legislations have an impact on animal welfare:

- **Penal Code^{xx}**

It provides for offences against animals where it criminalizes injury to animals and theft with intention to kill it.

- **Prevention of Cruelty to Animals Act^{xxi}**

The statute's main objective is to prevent cruelty towards animals by recognizing offences against animals and the applicable penalties for such offences. The offences relate to the care, management, training and experiments on animals. The Act also regulates the slaughter of animals by offering the Cabinet Secretary of Agriculture powers to pass regulations on slaughterhouses. It also accords the Minister powers to: grant licenses for experiments for research institutes; issue regulations on care of kept animals in animal boarding establishments; and issue regulations on transport by air, road, sea or inland waters of animals. Enforcement of these provisions is done by the police officers or authorized authority as gazetted by the Cabinet Secretary.

- **The Veterinary Surgeons Para-Professionals Act No. 29 of 2011^{xxii}**

The Act provides for the registration of both Veterinary surgeons and Veterinary Paraprofessionals by the Veterinary Board established by the Act. The Act aims to create a veterinary board to regulate the professionals that offer veterinary services that is, in their training, business, practice and employment. The board is accorded powers to issue annual licenses to private veterinary professionals. The Act provides for the establishment of a veterinary directorate to regulate the manufacture, importation, exportation, registration, distribution, prescription and dispensing of veterinary medicines and poisons. The Act provides that the Cabinet Secretary with powers to make regulations for the implementation of the Act, such regulations include those regulating the handling of animals with a view to safeguarding their welfare.

- **Animal Diseases Act^{xxiii}**

The Act aims to ensure the prevention and management of animal diseases in the country. It states that for the diseases deemed 'notifiable' animal owners ought to notify immediately the nearest administrative officer or inspector on occurrence of such a disease. The inspector then advises on what measures should be taken up to prevent the spread of the diseases. Inspectors are

usually veterinary officers. Measures taken may include quarantine and movement control to minimize spread of the disease.

The provisions of the Act are implemented by the Department of Veterinary Services in liaison with port Health officials at the port of entry. The Director of Veterinary Services has powers accorded under the Act for entry and search, for the prohibition of drug administration or to detain a suspect. These powers may also be effected by the inspectors. However, the Act does not mention or recognize any animal welfare principles or good practices.

- **Hide, Skin and Leather Trade Act^{xxiv}**

The Act amends and consolidates the law relating to the trade in hides, skins and leather where it provides for the co-ordination and control of the trade and development of the hide, skin and leather industry. The Act sets out conditions for one to be granted an exporter's or importer's license such as equipping and maintaining their premises to the satisfaction of the Director of Veterinary Services; carry out the grading of the hides, skins and leather to the satisfaction of the Director; and keep proper books. The Director of Veterinary Services also has powers for inspection that may be delegated to the veterinary inspector.

The Minister is mandated with the power to create various regulations such as regulations on prohibiting or controlling the movement of hides, skins, leather and leather goods; from one part of Kenya to any other part of Kenya; or from any part of Kenya to any neighboring country; or from any neighboring country through Kenya to any port or place of export.

Policy Gap: The Act does not provide for any animal welfare guiding principles in the processing or production of hides at slaughterhouses.

- **The Environmental Management and Coordination Act^{xxv}**

The Act offers a regulatory framework on environmental management and conservation in Kenya. It establishes a number of regulatory bodies in this area such as the National Environment Management Authority, Public Complaints Committee, National Environment Tribunal, National Environment Action Plan Committees and County Environment Committees. The National Environment Management Authority is in charge of implementation of all policies relating to the environment and regulates the environment and the management of natural resources. The Act

provides for environmental protection through environmental impact assessment, audit and monitoring and issuing restoration orders, conservation orders, and easements. The Act was amended in 2015 to incorporate the aspect of devolution.

On animal welfare, NEMA has created regulations on environmental impact assessment reports. The Act recognizes animals as part of the natural resources that need to be safeguarded prior to commencement of any development.

- **The Pharmacy and Poisons Board Act^{xxvi}**

This Act was enacted to make better provision for the control of the profession of pharmacy and the trade in drugs and poisons. The Pharmacy and Poison Board is established by the Act and mandated to regulate the practice of pharmacy and the manufacture and trade in drugs and poisons in the country. The Board aims to implement the appropriate regulatory measures to achieve the highest standards of safety, efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The National Drug Quality Control Laboratory is established to facilitate the examination and testing of drugs and any material or substance and ensuring the quality control of drugs and medicinal substance with a view to determining whether such drugs or medicinal substances comply with the Act. The Department of pharmacy within the Ministry of Health procures for drugs through its agency KEMSA. In the case of veterinary pharmaceuticals, the Chief Veterinary Field officer holds all AIEs (authority to incur expenditure) for effective veterinary procurement. Appropriate use of veterinary medicines guarantees animal welfare and animal food safety that are important aspects in local and international trade in animals and animal products. The enforcement of the veterinary pharmaceutical industry is uncoordinated as it is done by multiple agencies; this has led to the misuse of drugs and increased antimicrobial resistance that pose a threat to human and animal health.

- **The Standards Act^{xxvii}**

The Act seeks to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice. It also establishes the Kenya

Bureau of Standards and defines its functions and provides for its management and control. The KEBS regulates imported goods to meet the Kenyan standards as specified in the regulations.

- **The Meat Control Act^{xxviii}**

The Act aims to enforce standards in the meat industry by regulating slaughterhouses or abattoirs and the importation and exportation of meat products. The Minister of Agriculture specifies standards with the Health Minister on meat products which apply throughout the entire value chain. The Minister is mandated to make regulations on licensing and control of slaughterhouses, on meat transportation and the regulation on the export or import of meat. The Act provides for the penalty for breach of such regulations.

The Act was amended to include donkey alongside the horse as food animals. Interested parties can now seek licenses to sell donkey meat at the relevant veterinary offices to slaughter and sell the meat inside and outside of the country.

- **The Meat Control (Local Slaughter Regulations 2010)^{xxix}**

The regulations form the subsidiary legislation under the Meat Control Act. It provides the minister with the power to declare a slaughterhouse/abattoir. It classifies slaughterhouses into three categories that is A, B and C. Permits and licenses may be issued by the Permanent Secretary in the Ministry of Agriculture.

The enforcement mandate is upon the Director of Veterinary Services who may issue directives on enforcement and may order closure of abattoirs for non-compliance with the regulations. The second schedule of the regulations provides for the specification of slaughterhouses and acknowledges that they should be suitable for animal welfare issues. It also specifies that a humane stunning method should be applied before slaughter.

- **The Kenya Draft Livestock Policy 2019^{xxx}**

The draft policy seeks to regulate the animal resource industry specifically livestock or farm animals. It aims to improve the management of livestock and promote animal health and food access to international markets. The policy seeks to cooperate with county governments in livestock development, through the establishment of an intergovernmental secretariat within the

Ministry of Agriculture. The policy it acknowledges that there is low awareness on animal welfare requirements in feeding, housing, transportation and slaughter and animal participation in sports.

The policy statement recommends the national government to create regulations and standards to ensure animal welfare is upheld and enforced. It also recommends the county government to ensure enforcement of animal welfare among communities through awareness and legislation, animal control services including licensing of companion animals, facilities for accommodation care and proper disposal of animal carcasses. The policy recognizes also the need to regulate cross-border disease management by strengthening surveillance on diseases on cross border trade with neighboring countries. The policy also proposes the review of the numerous legislations governing livestock and farm animal resources to ensure aspects of devolution are incorporated and the various regulators are restructured where necessary.

ii. Tanzania

- **The Animal Welfare Act 2008^{xxxi}**

The Act provides for the humane treatment of Animals in Tanzania. It establishes the Animal Welfare Advisory Council that advises the Minister for Livestock on animal welfare concerns and administration of the Act. The Act provides for the transportation of animals, for their protection from ill treatment and for the humane handling of working animals and humane slaughter. The animal welfare inspectors have search and entry powers where they suspect the cruel treatment of an animal. Its enforcement is done by the Director of Animal Welfare who recommends to the Director of Public Prosecutions cases that need to be prosecuted to enforce the provisions. The Act also specifies that a transport permit must be issued for the animal to be transported. The means of transportation should not cause suffering, it also specifies how the fittings of the vehicle ought to be. The Act creates offences that are against animal welfare such as cruel treatment, baiting and carrying animals in a manner to cause it to suffer.

- **Hide and Skin Trade Act 2008^{xxxii}**

The Act seeks to promote the trade in hides, skin and leather in the country. It also establishes the National Hides, Skins and Leather Advisory Committee, which advise the Minister of Livestock on policies and other matters relating to hides, skins and leather industry. It also advises the local government authority on the same. It establishes a Village Hides, Skins and

Leather Advisory Committee that advises the village council on enforcement of by-laws related to hides, skins and leather industry. Enforcement is done by inspectors who have powers of inspection, search and seizure. The Director responsible for Hides and Skin may appoint persons amongst registered veterinarians, livestock officers or livestock field officers to be inspectors for every local government authority. The Act also provides for offences of hide trade that do not meet the standards. The minister has powers to make regulations to meet the objectives of the Act.

- **The Livestock Identification, Registration and Traceability Act^{xxxiii}**

The objective of the Act is to provide for the establishment of the National Livestock Identification, Registration and Traceability System for purposes of controlling animal diseases and livestock theft, enhancing food safety assurance; to regulate movement of livestock, improve livestock products and production of animal genetic resources; to promote access to market and to provide for other related matters. The livestock owner with the assistance of the livestock identification and traceability agent are required to affix the livestock identification devices on the animal under the supervision of the registered veterinary professional or enlisted or enrolled veterinary para-professional under the Veterinary Act. The owner or the livestock keeper in a compulsory livestock identification area who dispatches, offers for sale, sells, transports, slaughters or disposes off livestock or carcass of livestock that is not identified or accompanied by the prescribed documentation commits an offence.

A person who owns or operates an abattoir, meat processing plant, livestock market and quarantine facility or holding ground are required to take and keep records of animal identification particulars and establish the source from which the animals were dispatched and submit such records to the Director or the local government authority in his area of jurisdiction. The Director, an authorized agent or a police officer may order any person who is in possession of a livestock whose ownership is in dispute to present such livestock to the identification parade. The Director/ his agent has enforcement powers to enter into any premises, establishment or livestock market and carry out inspection to ensure compliance with the provisions of this Act.

- **Animal Diseases Act^{xxxiv}**

The Act aims to make provisions for control and prevention of animal diseases for monitoring production of animal products, for disposal of animal carcasses. The minister is obligated to issue regulations on measures to be taken when checking and handling livestock disease outbreak such as quarantine to prevent further spread. The carcasses of animals dying from the disease are buried or disposed of in manners prescribed by the Inspector and in accordance with existing control regulations for the disease. The carcass of any animal that died from a notifiable disease is not be cut or destroyed in any way without the consent of an Inspector or Veterinarian. The Act also provides that any person in-charge of animal market or fair who suspects an animal having a notifiable disease is being sold or exposed or offered for sale or disposal may seize and isolate the animal and forthwith notify the nearest Veterinarian or Inspector. The Act also provides for ante mortem and postmortem checks at Slaughter houses.

- **The Meat Industry Act No 10 of 2006^{xxxv}**

The Act seeks to restructure the meat industry to enable efficient management of the industry and ensure provision of high-quality meat. It establishes the Annual Council whose function among others is to promote the meat industry in Tanzania as well as advising the minister and the board in issues relating to meat industry. It also establishes the Tanzania Meat Board whose function is advising the minister on effective policies and strategies in the role of supervision, promoting livestock groups and ensuring compliance with the national and international meat standards and meat product standards and quality. Thus, only authorised persons are permitted to carry on business as livestock producer, trader or livestock market operator and to that effect hold a valid registration certificate.

- **The Veterinary Act No 16 of 2003^{xxxvi}**

The Act regulates and supervises veterinary specialist, paraprofessionals and the practice and management of complaints against veterinary professionals. It establishes the Veterinary Council of Tanzania that registers veterinarians; it also exercises disciplinary control over them. It makes recommendations to the Minister on any matters that relate to the practice.

- **The Standards Act No. 2 of 2009^{xxxvii}**

The Act aims to provide for the promotion of the standardization of specifications of commodities and services, to re-establish the Tanzania Bureau of Standards and to provide better provisions for the functions, management and control of the Bureau. Tanzania Bureau of Standards is mandated to undertake measures for quality control of products of all descriptions and to promote standardization in industry and commerce. In the performance of its functions the Bureau shall have regard to the health, safety, environment and general welfare of the people of the United Republic of Tanzania. The inspector is empowered to conduct inspection, enter and search premise and arrest. Obstruction of inspectors is an offence and attracts liability.

- **The National Environment Management Act^{xxxviii}**

The Act aims to provide for and promote the enhancement, protection, conservation and management of the environment. The objectives of the Act include: to provide for legal and institutional framework for sustainable management of environment; to outline principles for management, impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement; to provide basis for implementation of international instruments on environment; to provide for implementation of the National Environment Policy.

- **The Food, Drugs and Cosmetics Act^{xxxix}**

The Act aims to provide for the efficient and comprehensive regulation and control of food, drugs, medical devices, cosmetics, herbal drugs and poisons. The Act establishes the Food and Drug Authority. It regulates veterinary drugs the importation or manufacture and sale of drugs or vaccines, through issuing of licenses or permits. The Authority may on its own motion based on the opinion that a medicinal product or cosmetic, for reasons relating to deficiencies in the quality, safety or efficacy, order or recall a product from the market at the cost of the manufacturer, registrant or importer.

3.0 Gap Analysis

The way donkeys are treated is disconcerting. Either it is in the way they are transported or in the inhumane killing of the donkeys to satisfy the escalating global trade in its skins. In some cases, donkeys have been traded over long distances into the bush where they are suspected to have been killed by lethal injection with an unknown substance before being skinned; the rest of the carcass was left in the bush.^{xl} It is estimated that a minimum of 1.8 million donkey skins are traded each year. In addition to the welfare concerns for the donkeys, this issue is especially devastating in developing countries whose donkeys are essential to the livelihoods of people in developing countries, like Kenya and Tanzania. Despite the numerous conventions and treaties stating their support for agriculture, there is need to establish a legal framework that will specifically legislate on the donkey.

Lack of visibility of the donkey as a species leads to a lack of ability to regulate the donkey slaughter trade. Alongside these problems are those of the donkey owners themselves, who are the vulnerable communities, which leaves them prone to unethical trading practices such as theft and unfair business practices. Listed below are the policy gaps and governance issues in the regulation of donkey welfare vis – a- vis animal welfare in Kenya and Tanzania.

Kenya

- a) There seems to be no publicly available evidence of commitment to engage with the OIE to improve the welfare of animals in Kenya. The majority of the content of the OIE's guiding principles for animal welfare are covered in the Kenyan legislations, however, the Acts are lacking in specific animal welfare provisions regarding killing methods. This would be important and essential as Kenya's demonstration and will to develop legislations that are in line with the OIE's standards will improve donkey welfare in the country.
- b) There is need for a national policy specific to donkey welfare that can be based on the international standards for which Kenya is a party to. Especially owing to the fact that the donkey trade, in both its legal and illegal forms, results in a chain of welfare issues for the donkeys at every step – from sourcing to transport and finally to slaughter. These issues cannot be ignored. Also, there is need for raising awareness on animal welfare across the majority of the people on the plight of the donkey.

- c) Whereas the Meat Control Act has declared the donkey as a food animal and partly provides for the building standards for the donkey abattoir, it does not provide a code of hygienic practices for donkey meat and neither does it provide for the environmental health measures.
- d) There should be a review of all laws on the animal resource industry to harmonize animal welfare principles in the numerous regulations and to streamline the various multi sector agencies involved. This will eliminate the governance issues such as overlap or duplication of tasks and enable the effective implementation of the laws. As observed from the above statutes the Ministry of Health and Agriculture and Trade and their various agents need to have inter-agency collaboration on the animal resource industry to address all its concerns including animal welfare.
- e) The specific animal welfare standards should be within the subsidiary legislation, for ease of amendments, because some of these standards are scientific based that keep evolving the periodic review of these regulations is therefore necessary. A dynamic institutional relationship between animal welfare scientists and regulatory agencies is a vital precursor to ensure good animal welfare legislation.
- f) The other regulatory concern in the animal resource industry is the conflict that arises with regards to regulation of animals where the fourth schedule of the Constitution outlines the functions of both levels of government. Most of these laws need to be reviewed because of the consequence of devolution on mandate to ensure harmony with the Constitutional functions of each level of government. Further county government laws need to be harmonized with the national policies on the animal resource industry i.e. the veterinary, agricultural, livestock and health policies. Article 189 (1) (c) of the Constitution provides for inter-governmental co-ordination between both levels of government on policies.
- g) The institutional challenge in the animal resource industry is that the animal welfare unit within the Directorate of Veterinary Services, whose function is coordination of animal welfare activities in the directorate, is staffed by one officer and lacks a specific budget. The financial and human resource capacity at both national and county level needs to be strengthened to ensure the promotion, development and implementation of animal welfare regulations. There is need to establish the veterinary policy that shall legislate on the exploitation of animals.

- h) In Kenya, animal welfare emphasis is on disease control but from the International Standards its scope is wider than that health of an animal. There is, therefore, need for the establishment of an Animal Welfare advisory council, to advise the minister on animal welfare concerns, as is the case in Tanzania. The advisory council can also be the link between the various government departments within the animal resource industry for farm, domestic and wild animals. This can ensure the effective implementation of animal welfare concerns across the various sectors.
- i) The Prevention of Cruelty to Animals Act needs to be reviewed to incorporate the role of the county governments in the prevention of animal cruelty, as the function of animal welfare is explicitly one for county government. Also, the enforcement of animal welfare is effected by the police, mandate should be extended to health or veterinary inspectors.
- j) The draft livestock policy also points out an issue of the need for restructuring of the various government agencies that govern the animal resource industry to avoid the duplication of enforcement agents. Animal welfare has a lot of dimensions, however from the perspective of governance of Animal welfare policies the restructuring or streamlining roles will ensure the efficiency in implementation of the regulations.
- k) The Livestock traceability in Kenya should be a necessary measure taken up in policy and practice to ensure the monitoring of farm animals through the various value chains, for health and safety reasons. It ascertains origin ownership and movement of the animals curbing against vices such as illicit trade and spread of diseases.

Tanzania

- a) For all practical purposes, the slaughter and export of donkeys in Tanzania for food was banned. Now donkeys are exported illegally to be slaughtered in Kenya where conditions for their slaughter are lax – which is not a great outcome for donkeys. An animal welfare bilateral treaty would be one method of seeking a broader consensus on how donkeys should be used and if a use is acceptable, what level of welfare must be provided during the use.
- b) The need for training of stakeholders within the livestock value chain and enforcement agents is necessary to ensure animal welfare practices and regulations are adhered to.

- c) Weak enforcement on illicit trade of animals and animal by products is a huge challenge to the protection of animal welfare, there is need to strengthen the surveillance role of various agents such as the customs authorities, the police to improve on control mechanisms at the border posts.
- d) The Tanzanian Government export ban on Donkeys and their by-products has been lauded as a step in the right direction regarding safeguarding the welfare of these working animals. However, the Hides and Skin Act still provides for equid hides trade. The Act should be reviewed, or the amending regulation should be made accessible.
- e) The Animal welfare Act should create enforcement mechanisms for the prohibition on causing unnecessary pain, suffering or distress to or abandoning a farm animal in section 11(2) or for the prohibition on causing working animals avoidable suffering, injury, pain or distress in section 33(2).

4.0 Conclusion

Donkeys have not been considered a significant component of the development process. Traditional attitudes to donkeys have also been quite negative and in some instances have inhibited the spread of donkey use. This attitude has led to a loss in the traditional knowledge relating to donkeys and to lack of investment in research and development of donkey issues. There is hope for animals in Kenya's as the country's blue print (Vision 2030) identifies the vision for the agricultural and livestock sectors.^{xli} With a large and diverse reservoir of animal generic resources, majority of which are indigenous, Kenya stands at a really unique place and should therefore act quickly to ensure that its donkey genetic resource is not diluted.^{xlii} This can be done by properly legislating and providing an effective institutional framework. Further, Kenya can pledge, in principle, support for UDAW. An expression of support for the UDAW demonstrates a government's commitment to working with the international community to improve animal welfare.

Citations

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- ⁱⁱ The Donkey Sanctuary, Under the Skin: What is Ejiao? See full text at <https://www.thedonkeysanctuary.org.uk/what-we-do/issues/donkey-meat-skin-and-milk/what-is-ejiao>
- ⁱⁱⁱ USAID, Feed the Future: Resilience and risk in pastoralist areas recent trends in diversified and alternative livelihoods (2016) See full report at https://pdf.usaid.gov/pdf_docs/pa00m1pz.pdf
- ^{iv} Ibid
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- ^{vi} Ibid
- ^{vii} ANAW & KSPCA, Current status of donkey abattoirs in Kenya (2019)
- ^{viii} Amy Yee, Donkeys are dying because China wants their hides for traditional remedy (2019) See full report at <https://www.npr.org/sections/goatsandsoda/2019/04/30/716732762/donkeys-are-dying-because-china-wants-their-hides-for-a-traditional-remedy>
- ^{ix} See full declaration at <https://www.globalanimallaw.org/database/universal.html>
- ^x See the treaty and its associated treaties at https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm
- ^{xi} See full text at www.iata.org
- ^{xii} <http://www.au-ibar.org/executive-summary>
- ^{xiii} See full report at <https://igad.int/index.php/programs/95-icpald/1382-regional-animal-welfare-strategy-and-action-plan-for-igad-member-states-validated>
- ^{xiv} See full objectives of the treaty at <https://www.eac.int/customs/objectives>
- ^{xv} See full strategy at https://www.usaid.gov/sites/default/files/documents/1860/East_Africa_RDCS_July_2021.pdf
- ^{xvi} See policy at shorturl.at/msuIT
- ^{xvii} See full description of the programme at <https://www.un.org/en/africa/osaa/peace/caadp.shtml>
- ^{xviii} See full declaration at shorturl.at/hqLS2
- ^{xix} <http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010>
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^{xli} The **Kenya Vision 2030** is the current economic blueprint to guide the country's development agenda. Its main aim is to create "a globally competitive and prosperous country with a high quality of life by 2030" by transforming Kenya into "a newly-industrialized, middle income country providing a high quality of life to all its citizens in a clean and secure environment". The vision is anchored on three key pillars: a) Economic; b) Social; and c) Political pillar.

^{xlii} *National livestock policy*, (Republic of Kenya, 2019) Read more: <http://www.kilimo.go.ke/wp-content/uploads/2019/02/Draft-reviewed-National-Livestock-Policy-February-2019.pdf>