National and International Legal Instruments Addressing Animal Welfare in Nepal
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Foreword

I believe this kind of study is the first in Nepal which identifies national and international legal instruments addressing animal welfare. This study includes an analysis of the legal instruments, weaknesses of these instruments and the gaps between national and international laws, it also provides practical recommendations for improving animal welfare in Nepal. As Nepal is a member of World Trade Organization (WTO) and World Organization for Animal Health (OIE) we have to comply our acts, regulations and standards with relevant international standards. The gaps between international laws, standards and national laws, standards have been studied in many countries, but they have never been examined in Nepalese perspective. I think, this is the first document considering obligations of Nepal to implement WTO agreements and OIE standards (among other international soft laws) related to animal welfare. This legal study also encompasses an analysis of the most currently adopted OIE standard –the Equine Welfare Standards adopted by the OIE in June 2016.

The Government of Nepal has recently formed the Ministry of Livestock Development. In Nepal livestock plays a significant role in people’s livelihood. Livestock contribute significantly to national economy and livestock development also plays an important role in attaining sustainable development goals. To harness livestock potentiality and bring tangible results in this sector, the Ministry drafted 40 points commitments immediately after its formation. One of the 40 points commitment of the Ministry is to revise existing laws addressing animal welfare and drafting other new laws that are required. In this newly emerged scenario this study is very useful and will be a guiding document for preparing relevant acts, regulations and standards.

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This study is a result of tireless effort of various individuals and organizations. I would like to thank the whole Animal Nepal team, for their relentless support in organizing consultations and gathering research materials, especially Pramada Shah (who was responsible for devising the concept behind this research) and Uttam Kafle. I would also like to thank various Departments within the Ministry of Livestock Development for providing necessary research materials; Dr. Narayan Sharma from the Department of Livestock Services and Dr. Narayan Ghimire from Veterinary Council of Nepal, for imparting their knowledge and for their continuous support throughout the research phase; the Director General of the Department of Livestock Services for taking the time out of him busy schedule to provide the study with a Foreword.

I am indebted to the extremely knowledgeable and patient Dr. Ram Krishna Timilsena for his useful feedbacks on the content of the study and his verification on the legal analysis. I am grateful for the support provided by Bikalpa Rajbhandari, who went beyond his role as a research associate; Sama Dongol and Manish Basnet for their research assistance; Maximillian Mørch for his editorial assistance; Chadani Lama for her excellent designing.

On behalf of Animal Nepal, I would like to extend a sincere gratitude to all the stakeholders that provided the team with research materials as well as feedback on the draft of the study. Animal Nepal is also very grateful for the continuous support of the Donkey Sanctuary UK.

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Abbreviation

CFS - Committee on World Food Security
EC – European Commission
ECOSOC – United Nations Economic and Social Council
EU – European Union
FAO – Food and Agricultural Organisation of the United Nations
GATT- General Agreement on Tariffs and Trade 1994
NGO - Non-Governmental Organization
OIE - World Organization for Animal Health
PIL - Public Interest Litigation
PRIAFS - Principle for Responsible Investment in Agricultural and Food System
SDG- United Nation’s Sustainable Development Goals
SPS Agreement - Agreement on the Application of Sanitary and Phytosanitary Measures
UDAW - Universal Declaration on Animal Welfare
WFP - World Food Programme
WTO- World Trade Organization
WQP - Welfare Quality Project
1. BACKGROUND

The adoption of the Muluki Ain in 1854 was Nepal’s first attempt at creating a legal code (in a modern sense). It was considered a progressive measure,\(^1\) abolishing horrendous practices such as the practice of sati.\(^2\) The 1854 Muluki Ain was also very progressive in respect to both animal welfare and animal protection. It contained provisions prohibiting and mitigating cruelty towards animals. According to the 1854 Muluki Ain, attempts to kill a cow was punishable by the confiscation of property, unintentionally killing a cow resulted in a fine and any cruel activity towards an oxen was punishable with a fine. Furthermore, it established a duty of care upon owners of oxen and cows. In addition to the iron clad protection of oxen and cows, the 1854 Muluki Ain also addressed the wellbeing of other animals. The Muluki Ain1854, prohibited humans from committing sexual acts with animals and it outlawed the

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\(^2\) A practice where women are required to end their lives by taking part in their husband’s funeral pyre.
killing of female mammals. It also contained several provisions prohibiting harmful acts towards an animal as a punishment to the animal, or just as a malicious act. While this may seem like very limited legal protection regarding an animal’s wellbeing, in 1854 this was rather progressive, not just for Nepal, but for the world in general.

However, nearly two centuries later, the situation of animals in Nepal is perceived to be rather dire. Local animal welfare Non-Governmental Organizations (NGOs) receive endless calls from concerned citizens regarding incidents of intentional or recklessly inflicted injuries on abandoned pets and livestock. It is a common sight to witness the inhumane transportation of animals. Many post-earthquake testimonies suggest that there is a correlation between the death of livestock and the poor conditions they were kept in – tied to a short rope in small heavy shelters. Many pets are kept in the same dismal manner as the livestock. Local NGOs testify to the existence of brick kilns filled with over worked and exhausted equines.

It would seem that Nepal’s legal system has failed to halt the abandonment of livestock and pets, as well as terminate cruel treatment of strays, pets, livestock and working animals. Whether this is due to the lack of progressive development of the law or whether this is due to the lack of implementation of the law is not clear. Till this date there has not been a study primarily examining the legal instruments addressing animal welfare in Nepal, so it is unclear as to what extent it is one or the other. The lack of research, as well as the need of clarification on the issue, led to the initiation of this study; thus, this is a modest step to provide some clarity on the legal instruments addressing animal welfare in Nepal.

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3 *Muluki Ain*, 1854, Chapter 71.
4 Information collected through several informal dialogues with local Animal Welfare NGOs; confirmed by AWNN member in the draft consultation itself – see in Annex 2.
5 In humane transportation for the purpose of this study is transportation clearly denying any comfort or safety to the animal – for example situations include chickens hung upside down on motorbikes and buffalos tied by their nose on moving vehicles.
6 Information based on testimonies of Animal Nepal’s team members that travelled to affected districts during the earthquake relief phase.
7 Information based on various annual reports of Animal Nepal, available at <https://animalnepal.wordpress.com/wanna-know-more/reports-2/>
2. INTRODUCTION

In response to the perplexing legal situation regarding animal welfare in Nepal, Animal Nepal decided to conduct a study on the legal instruments that address animal welfare in Nepal. This study will identify the relevant legal instruments and provisions at national and international level; the study will also identify the responsible bodies, as prescribed by law, to mitigate cases of animal abuse and to ensure animal welfare. It will examine the weaknesses of the national legal instruments as well as the gap between national and international laws in respect to animal welfare. The study intends to provide clarity regarding the provisions addressing animal welfare in Nepal; it intends to elucidate the compatibility, or the incompatibility for that matter, between national and international law addressing animal welfare. The study is conducted with the hope that it can be of assistance to the Government of Nepal to review and improve legislation; that it can be used as an advocacy tool for formation and implementation of animal welfare laws in Nepal as well as a tool to formulate and file Public Interest Litigation (PIL) regarding animal abuse in Nepal.
The study will first identify and examine relevant national legal instruments. Then it will continue to identify relevant international legal instruments; Nepali laws’ compatibility with these instruments will also be studied. The study is to be concluded with a set of recommendations based on the findings. The first section will be divided into four sub-sections. The first sub-section of this section will identify provisions of national legal instruments that address aspects of animal welfare (directly and indirectly). The second sub-section will identify the responsible bodies prescribed by law to address, protect and improve animal welfare in Nepal. The third sub-section will examine the weaknesses of the relevant national legal instruments. The fourth sub-section will provide a summary of the section while deciphering whether the law is adequate. The section considering the relevant international instruments will begin by identifying and explaining the relevant legal instruments; while discussing the instruments the jurisdiction of these instruments in the context of Nepal will be clarified. This section will be concluded by an analysis on the extent of compatibility between national and international legal instruments.

The focus of the study is domestic land animals and only legal provisions addressing the welfare of these animals are discussed. This study is conducted purely from a legal perspective, yet it not written only for a legal audience, thus at times the study may examine more than the legal text itself and discus the legal framework in respect to the situational context.

2.1. Preliminary Issue: Definition

Animal welfare:

It is important to understand the phrase ‘animal welfare’ before considering the legal instruments that address it; to differentiate it from ‘animal rights’ and ‘animal interests.’ To comprehend the concept of ‘animal welfare,’ it is vital to view various definitions of it from credible sources. The internationally accepted evolution of the principle of animal welfare began in 1965 when the British Government instigated an investigation into the welfare of farmed animals, and as a result recommended that all animals should have the freedom ‘to
stand up, lie down, turn around, groom themselves and stretch their limbs’. These became
known as the "Five Freedoms."\(^8\) In a correlative manner to the existing Five Freedoms, the
twelve point criterion for the assessment of animal welfare was developed by the Welfare
Quality Project (WQP)\(^9\). The WQP criterion for the assessment of animal welfare are:

1. “Animals should not suffer from prolonged hunger, i.e. they should have a sufficient
   and appropriate diet.
2. Animals should not suffer from prolonged thirst, i.e. they should have a sufficient and
   accessible water supply.
3. Animals should have comfort around resting.
4. Animals should have thermal comfort, i.e. they should neither be too hot nor too cold.
5. Animals should have enough space to be able to move around freely.
6. Animals should be free from physical injuries.
7. Animals should be free from disease, i.e. farmers should maintain high standards of
   hygiene and care.
8. Animals should not suffer pain induced by inappropriate management, handling,
slaughter or surgical procedures (e.g. castration, dehorning).
9. Animals should be able to express normal, non-harmful social behaviours (e.g.
grooming).
10. Animals should be able to express other normal behaviours, i.e. they should be able to
    express species-specific natural behaviours such as foraging.
11. Animals should be handled well in all situations, i.e. handlers should promote good
    human-animal relationships.
12. Negative emotions such as fear, distress, frustration or apathy should be avoided,
    whereas positive emotions such as security or contentment should be promoted.”\(^10\)

In addition to the Five Freedoms and WPQ, the World Organization for Animal Health (OIE)
has also defined ‘animal welfare’ for the purpose of developing standards. OIE’s definition
is essentially concerned with the state of the animal (physical, mental and natural states): “An
animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy,
comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering

\(^8\) See e.g., J. Vapnek & M. Chapman, ‘Legislative and regulatory options for animal welfare’, FAO, 2011, pp 7,
\(^9\) A research group of scientists from Europe and Latin America funded by the European Commission
\(^10\) See e.g., Principles and criteria of good animal welfare’, Project Office Welfare Quality, available at
<http://www.welfarequality.net/downloadattachment/41858/19874/wq%20_%20factsheet_10_07_eng2.pdf>
from unpleasant states such as pain, fear, and distress…Good animal welfare requires disease prevention and appropriate veterinary treatment, shelter, management and nutrition, humane handling and humane slaughter or killing. “\(^{11}\)

From examining various definitions and by detecting similarities between the definitions, it can be concluded that legal instruments addressing animal welfare are instruments that:

i. Promote maintenance of animal health, comfort and safety.

ii. Prohibit blatant acts of cruelty towards animals - While the words ‘blatant acts of cruelty’ are ambiguous, for the purpose of this study blatant acts of cruelty are acts that recklessly (action without disregard), negligently (action as result of carelessness) and intentionally (with knowledge or intent) cause unnecessary harm, suffering or fear to an animal.

iii. Assert ‘duty of care’ upon a person that has an animal under their ownership/care.

\(^{11}\)World Organisation for Animal Health (OIE), *Terrestrial Animal Health Code*, Chapter 7.1, Article 7.1.1
3. NATIONAL LEGAL INSTRUMENTS

This section will wholly focus on national legal mechanisms that address animal welfare. In this section the study will be divided into four sub-sections. The first sub-section will identify provisions of national legal instruments that address aspects of animal welfare (directly and indirectly). The second sub-section will explore the discretion, prescribed by law, to Government authorities and the public to address, protect and improve animal welfare. The third sub-section will examine the weaknesses of national legal instruments in the implementation of animal welfare. The fourth sub-section will provide a summary of this section while deciphering whether the law is adequate.

3.1. Provisions addressing aspects of Animal Welfare

The words ‘animal welfare’ are rarely found in legal documents of Nepal and an animal welfare act does not exist in the country; yet, it would be a misguided claim to state that the national legal instruments of Nepal do not contain any provisions that address animal welfare. When examining relevant national Acts, Regulations and Standards/Guidelines, it
was found that the concept of animal welfare is addressed by the law through three specific means in Nepal. Certain legal instruments explicitly provide for animal welfare, others show the intention to address animal welfare and some tend to address animal welfare incidentally – as a matter of consequence. The Constitution of Nepal 2072 BS\(^{12}\) (2015 A.D), various Acts, Regulations and Guidelines/ Standards include provisions addressing animal welfare (directly or indirectly); all of these documents are legally binding documents.

Whilst there is a hierarchy of the respective legal instruments (in the order they have been noted above), this study will not examine the provisions in their hierarchal order but in a different manner. This sub-section of the study will first identify the legal instruments that explicitly address animal welfare; then it will discuss the legal instruments that show an intention to address animal welfare. Finally, it will examine the provisions that provide for animal welfare as a result of coincidence. The sub-section is drafted in this particular manner in order to allow the reader to clearly identify the division between the aspects of animal welfare that are protected by the law and aspects of animal welfare that can be argued to be protected by the law. It is very important for the purpose of this study to understand this distinction.

### 3.1.1. Explicitly addresses aspects of Animal Welfare

Animal Health and Livestock Services Act, 1999(2055 BS):
This Act is versatile as it does not limit the obligations to certain animals, the definition of ‘animal’ includes all domestic or wild animals; birds and aquatic creatures are also mentioned (Section 2). This act addresses various aspects of animal welfare (indirectly) – health, safety & prohibition from fear and distress. The most important provision regarding animal welfare in this Act is Section 27, which provides that the ‘Government of Nepal may…establish a committee…to prevent cruelty to animals’. This provision allows the Government of Nepal complete discretion to prevent any form of blatant cruelty towards all animals and to ensure all aspects of animal welfare are safeguarded. Section 6(2) also emphasizes the importance of animal welfare through the obligation that it lays upon importers and quarantine officials—the obligation to arrange feed, water and security for the animals that happened to be held in Quarantine.

\(^{12}\)The Nepali calendar is different from the English calendar in year and months – BS stands for the Nepali year.
Additional binding legal documents addressing animal welfare adopted through this Act:

i. Section 17 Animal Health and Livestock Services Regulation, 2000(2056 BS) enables the creation and ratification of Animal Transportation Standard BS: The Animal Transportation Standard covers a vast amount of welfare issues during transportation; it sets standards for various methods of animal transportation – walking or transportation by land and air. While the Transportation Standard is for all animals and there are some general guidelines,13 it has specific transportation conditions for different species of animals such as specifics on space allocation in vehicles, rest periods, feeding times and travel during pregnancy (or with young offspring). In respect to walking the animals to their destination, there are specific provisions on how far and how many hours each animal may walk. Animals with specific standards include cows, oxen, buffalos, pigs and goats; there is no specific standard for equines (a species that is often transported within Nepal and across border from India).14

Muluki Ain, 1963 (2020 BS):

Muluki Ain, also known as the Country Code of Nepal, is one of the most significant legal documents in Nepal. Chapter 7 of Muluki Ain specifically provides provisions for animal welfare. Chapter 7 (1) and 7(6) prohibits hurting/killing of a cow or an oxen and also restricts hurting or killing of any animal or bird which has been restricted by the law or to which one’s rights does not extend to (essentially when one lacks ownership). Thus under Muluki Ain, blatantly harming any cattle or another’s animal is not justified, so aspects of animal welfare regarding unnecessary distress, fear and pain to animals (that are not one’s property or cattle) are addressed and protected through this legislation. Additionally, Chapter 16 of this Act prohibits unnecessary distress, fear and pain to an animal by forbidding bestiality.

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13Section 2 – animals should be prevented from hitting each other, allowed moving space, speed should be controlled by the driver; Indicator of bad transportation are signs of bruising on animals and exhaustion S(2)(4)(a); Section 17 – specific travel time and breaks, Section 18- instructs to feed before transport; Condition of transport- Section. 15; Section 14- specifies when to tie, which animals can be tied and how to tie them.
Nepal Veterinary Council Act, 1999(2055 BS):
The objective of this Act is to regulate and standardize health services provided to animals. Section 9 (b) and (c), obliges the Veterinary Council to work on improving services and to develop standards for treatment, medicine and food. Whether the intention is to benefit animals or their owners, this provision is directly linked with animal welfare as it creates an obligation for the Veterinary Council to ensure animal welfare. The Council is required to develop standards in order to ensure animal health and comfort, thus ensuring components of animal welfare.

Animal Slaughterhouse and Meat Inspection Regulation, 2001(2057 BS):
Section 4 (d) requires slaughter houses to ‘have separate places for stunning before slaughter’, which suggests that there is an obligation to stun before slaughter. Additionally, if an animal is found to have possessed the following conditions such animal shall not be slaughtered: ‘(b) Animal with fever (d) pregnant or (e) animal with suckling offspring.’ (Section 9) (2)). It can be argued that these provisions prevent ‘blatant acts of cruelty’ by requiring a more humane method of slaughtering.

Ethical Guidelines for the Care and Use of Animals in Health Research in Nepal, 2006 (2062 BS) are specifically for animals used for Health Research. These guidelines are drafted and endorsed as per Section 10 of Nepal Health Research Council Act 1999 (2055 BS). In the context of animals used for research the guidelines ensure minimal discomfort, minimal pain and adequate level of care. The guideline is binding upon the organizations mentioned in the guideline itself, but much discretion has been left to the implementing body.

3.1.2. Animal Welfare - an intention?

Animal Health and Livestock Services Act, 1999 (2055 BS):
Section 15 of this Act states that either the officer in charge or the quarantine officer authority can restrict the movement and transport of animals from a place where there is an

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16 See, e.g., Nepal Health Research Council, Ethical Guidelines for the Care and Use of Animals in Health Research, 2006.
outbreak of contagious diseases in animals (within Nepal) to other places of Nepal. This measure, in place to ensure the prevention of zoonotic disease among animals, indicates an intent to protect the health of animals and to avert them from unnecessary pain. In addition to Section 15, Section 7 of this Act requires a certificate for transportation of animals. The certification is a guarantee that the animal is fit to travel; if this provision is considered in light of Animal Transportation Standard 2064 BS it can be presumed that this provision was drafted with the intent to ensure a degree of animal welfare.

Animal Slaughterhouse and Meat Inspection Act, 2000 (2056 BS):
In this Act there are no specific provisions related to animal welfare, but it does have provisions that obliges relevant personnel to maintain the health of animals that are to be slaughtered, and provisions that provide guidance for the conditions of slaughter houses (regarding standards of cleanliness to avoid health issues among animals). While that maybe to ensure human health, there is also an intention to maintain animal health, whatever the primary motive. Thus, the Act may be used to show indirect obligations to ensure the welfare of animals used for meat production.

3.1.3. Incidental legislation

Animal Slaughterhouse and Meat Inspection Act 2000 (2056 BS):
Section 8(3) states that ‘if an animal is found diseased upon inspection under Sub-section (1) the Meat Inspector may prohibit [slaughtering] of such animal. If any defect or disease is found in the meat of the slaughtered animal upon examination, the Meat Inspector may partially or completely prohibit the sale or distribution of such meat.’ Section 11(2) adds that the meat of animals that died due to an illness will be prohibited from being sold. Furthermore, Section 17 of the Act stipulates that the incompliance of Section 11(2) shall result in liability –a fine up to Ten Thousand Rupees for a first time offender and Twenty Thousand Rupees or an imprisonment up to three months from the second offence onwards. As Section 8 and 11 prove an economic disadvantage (no sale or fine) or deprivation of one’s freedom (imprisonment) as a result of neglecting animal welfare, these provisions indirectly encourage insurance and protection of animal welfare.
Local Administrative Act, 1972 (2028 BS) prohibits the abandonment of cattle (Section 9(11)); cattle meaning bullocks, buffalos, horses, sheep and goats; abandonment results in a penalty. While the primary motive of this Act may have been to avoid disturbance to traffic and to mitigate littering on the streets, this Act protects cattle from unnecessary harm and fear that result from abandonment.

Local Self-Governance Act, 1999 (2055 BS) states that one of the functions of the Ward (Local Administration body) is to catch strayed quadrupeds and hand them over to the concerned agency (Section 93); another function is to control the stray dog population and to impound or auction stray animals (Section 96). If the Ward is to have jurisdiction over these animals, there is an implication that these animals are public (Government’s) property. If we consider this Act in correlation with Muluki Ain Chapter 7 (1) and (6), which states that one cannot harm another’s animal, it could be argued that it is an offence for people to cause harm to stray animals (dogs, cats, etc.). Additionally, some Public (Crime and Punishment) Act, 1970 (2027 BS), prohibits the damage of public property (section 2). When we consider these Acts as complementary Acts, an incidental protection of animal welfare becomes a possibility.

Constitution, 2015 (2072 BS):
The new Constitution provides every citizen, “the freedom to engage in any occupation or be engaged in employment, establish and operate industry, trade and business in any part of Nepal” (Article 17(f)). However, this freedom can be restricted if the enterprise involves acts “which may have negative impact on public health, decent behaviour and morality” (Article 17(6)). This provision of the Constitution could in fact be used as a tool to render abusive entertainment activities involving animals, such as bull fighting, if one is able to offer an argument that such fights are conducted as a business operation or a form of employment and that such an act is capable of having a negative impact on decent behaviour or morality.
Additionally, the new constitution guarantees the right to religious freedom in Article 26. However, it restricts the right in Article 26(3) which states that while “exercising the right entrusted by this article, any act which may be contrary to public health, public decency or morality…is not allowed and such act shall be punishable by law.” One could argue that these provisions could have a forbidding effect on violent religious slaughters such as Khokana festival or Gadhimai (as a consequence of its adverse effect on public health and public morality). If one provides a strong argument that such religious slaughters can in fact affect public health (physical or mental) or is a violation of public morality, one could file a writ petition to the Supreme Court to ban such religious acts as a restriction prescribed by Article 26(3).

The Constitution also requires the state to adopt policies related to social and cultural transformation; policies ‘ending all forms of discrimination, exploitation and injustice prevailing in the society in the name of religion, custom, tradition, rites and rituals,”(Article 55(5)). Nepali law does not limit the word justice to humans so injustice can ultimately be extended to animals. It can be argued that abhorrent methods of religious sacrifice such as the one used in Khokana festival, where religious sacrifice is blatantly causing immense pain and suffering to an animal, is in fact exploitation of an animal and therefore an act of injustice.

17Khokana festival involves young men simultaneously being drowning and ripping apart a baby goat to death.  
18See, e.g., Advocate Prakash Mani Sharma Vs. His Majesty’s Government Council of Ministers and othersDecision Number : 7581 – Mandamus, N.K.P 2062 Number 8 (Mangsr), Decision Date: 2062/08/24, in this case the concept of environmental justice is considered a valid concept by the court.
Thus, the provisions regarding fundamental rights (right of religion and right of freedom) and policy adoption, within the Constitution, could be considered incidental ‘legislation’ in respect to animal welfare.

### 3.2. Bills addressing Animal Welfare

The Penal Code, 2015 (2071 BS) and the Civil Code, 2015(2071 BS) are Bills, currently in Parliament, which are in the process of being passed (these codes were not binding when the study was conducted but are expected to be binding in the near future). They both contain certain provisions addressing aspects of animal welfare. The Bill will be a positive development to the existing legislation regarding animal welfare. The Civil Code provides a very broad definition of animals, which includes domesticated animals of any kind in one’s custody whether it is a wild animal or a bird (Section 697). The Penal Code prohibits the act of leaving animals and birds unattended on other person’s property, public roads or public place; the punishment for breaching this provision is three months imprisonment or a five thousand rupees fine or both (Section 115). While the Local Administration Act, 1972(2028 BS) forbade the abandonment of cattle, this is set to be the first legal document that forbids leaving all animals unattended in public places. When this Bill is passed an individual can be liable for the abandonment of pets and working equines as well as for leaving cattle unattended to graze on public roads. This Bill would protect various animals from the unnecessary harm and fear that they face as a result of reckless abandonment on the streets (be it temporary or permanent abandonment).
3.3. The Government and the Public

When we study legal protection of any kind, it is very important to identify the authority with the discretion to prescribe the protection and the personnel capable of confuting a violation of such protection. While it is the duty of Parliament to pass Bills providing a specific legal right or protection, there is a Government body or bodies that are responsible for the administration of this right or protection. This body or bodies may also be responsible for drafting the Bills that Parliament passes. In most scenarios the personnel capable of challenging a violation of a legal protection is the individual or a group of individuals that are the victims of the violation itself. In respect to animals, the situation is slightly different. In certain scenarios the Government body responsible for the administration of the law regarding animal welfare is in fact the same body that must rebut a violation of the law. The public may be able to repudiate a violation of a law that addresses animal welfare.

Section 27 of the Animal Health and Livestock Services Act, 1999(2055 BS) provides that the ‘Government of Nepal may establish a committee…to prevent cruelty to animals’. This provision allows the Government of Nepal (and the relevant agencies) somewhat of a ‘Parens patriae’ role regarding animals. In law, this role refers to power of the state to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection.\textsuperscript{19} Section 27 Animal Health and Livestock Services Act, 1999(2055 BS) provides the State with the discretionary power to invoke their right to protect animals against negligent and cruel treatment from their owners or any other individual. Other Acts also grant a certain level of discretion to the Government bodies and agencies to protect animal welfare. The Local Self-Governance Act, 1999(2055) stipulate the ward (local administrative body) as an authority to monitor strays (Section 96). The Nepal Veterinary Council Act, 1999 (2055) prescribes authority to the Veterinary Council to draft necessary standards for treatment, medicine and feed for the betterment of an animal wellbeing (Section 9).

However, the promulgation of Nepal’s new Constitution in October 2015 (2072 BS) provides for restructuring of the State and the redistribution of State’s power in the Federal

Democratic Republic Nation. According to Article 56, the nation’s governance shall be distributed at three levels: Federal, Provincial and Local. The distribution of the State’s power is stated in Article 57. The Constitution does not specifically state any provision regarding animal welfare. However, the Constitution states that the Provincial Government is responsible for the protection and promotion of agriculture and livestock development (no. 20 of Schedule 6); No. 12 of Schedule 7 of the Constitution provides concurrent (Federal and Provincial) authority upon veterinary services; No 15 of Schedule 8 obliges Local Level Government to promote and support agriculture production management and, promotion and protection of livestock health.

In the scenario that the State fails to provide protection for an animal’s wellbeing as required by law, the public may be able to ‘act on behalf’ of the animal or animals. Article 133 of the Constitution 2015 (2072 BS) provides a tool that directly joins the public with the judiciary. When a public interest is affected at large a Public Interest litigation (PIL) can be filed. The right to file a writ petition is a right that belongs to the members of the public; the members of the public can be a NGO, an institution or an individual. In order to exercise the court’s jurisdiction, in a PIL, it is not necessary for the victim of the violation to personally approach the court. In Nepal ‘the Supreme Court shall, hear matters...for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective...[involving] any dispute of public interest or concern.” (Article 133, Constitution 2015). So, if it is found that an issue regarding animal welfare is in fact an issue affecting public interest (such as public health or public morality) or a violation of fundamental right than a PIL may be filed by the public.

3.4. Is the law effective?

Once the relevant legal instruments are identified, it is important to examine whether the law is effective (to determine whether change is required to fulfil the intent behind the development of the law). While the effectiveness of legislation is undoubtedly measured by the degree of compliance, there are legal academics whom suggest that the nature of the legal instrument developed by law-makers plays a significant role in whether the law can be

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effective;\textsuperscript{21} thus this sub-section will examine both issues. As determining the degree of compliance of the relevant legal instruments would have required another in-depth study (there is very little data available to conduct a secondary study) and would have been beyond the scope of this study, this study will only briefly examine this issue.

As noted in the paragraph above, to identify whether relevant legal instruments have been implemented additional data would be necessary, yet through consultations with various Government officials (as well as the general public) some information regarding implementation has become available. In discussion with the Veterinary Council and Department of Livestock Services, it was noted that, the Animal Slaughterhouse and Meat Inspection Act 1999 (2055BS) and Regulation 2001(2057 BS) have not been implemented; the Government implemented the Act and Regulation in Hetauda district for 5 months soon after the Regulation was drafted but was unable to implement it for much longer.\textsuperscript{22} According to the Chief of Quarantine in Nepalgunj(one of the largest entry/exit zone for livestock trade) the holding facilities are not sufficient for its very purpose, thus it is unlikely that the provisions regarding the quarantine of animals (Section 6(2) and Section 15 of Animal Health and Livestock Services Act, 1999(2055 BS)) are actually implemented. Additionally, it is unlikely that the provision penalising abandonment of cattle (under Section 9(11) of the Local Administrative Act, 1972 (2028 BS) is implemented as there is no mandatory registry system that would allow the relevant agencies to identify the owners of the cattle that have been abandoned (especially in a crowded city such as Kathmandu). While the Animal Transportation Standard 2064 proves to be the most comprehensive legal document\textsuperscript{23} protecting animal welfare in Nepal, it seems that the guideline is not wholly followed. When the Animal Nepal team travelled with the donkey owners from Nepalgunj to Kathmandu,

\begin{footnotesize}
\begin{enumerate}
\item[Ibid, pp.235]
\item[Due to implementation method (which was one locale at a time, instead of nationwide implementation) and lack of infrastructure development and technical development.]
\item[It is not to say that the document is comprehensive but to state that for Nepal it would be the most comprehensive legal document in respect to animal welfare.]
\end{enumerate}
\end{footnotesize}
none of the donkeys were removed from the vehicles for proper inspection at the check points as is required by the Animal Transportation Standard 2064BS (in order to determine the condition of the animal). A small public survey conducted\textsuperscript{24} by the author found that 80% of participants had witnessed transportation of animals on the highway in a manner that was in defiance of the Animal Transportation Standard 2064 BS.

Whilst a degree of implementation of national legal mechanisms addressing animal welfare is recognisable\textsuperscript{25}, it would seem that most provisions identified and discussed in the previous subsection (3.1) are still waiting to be implemented. There are various reasons why laws are not implemented; one reason, which is within the scope of this study, is the theory suggested by Professor Allott. He suggests that the nature of the law itself inhibits implementation;\textsuperscript{26} the provisions within the legal instrument (or the lack of) may be one of the reasons that the law has not been implemented. When considering the relevant provisions and the legal instruments that embody these provisions certain weaknesses within the legal documents (in respect to implementation mechanisms) can be identified.

For the implementation of the Animal Slaughterhouse and Meat Inspection Act 1999 (2055BS) and Regulation 2001(2057 BS), as well as parts (parts requiring holding facilities) of Animal Health and Livestock Services Act,1999 (2055 BS), and the Transportation Standard2008 (2064 BS) costly infrastructure is required; yet theActs and Regulations do not have provisions to address budget allocation. Provisions providing financial support for implementation would most certainly ensure a degree of implementation.\textsuperscript{27} Besides budget allocation, an administrative system for implementation, including enforcement, is required for effective legislation. Every relevant Act, Regulation and Guideline/Standard have provisions regarding responsible personnel and some form of monitoring and enforcement.

However, enforcement mechanisms remain weak. In most relevant legal documents, a lot of discretion is left to the responsible personnel on whether or not to enforce the law. For

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\textsuperscript{24}Survey was conducted with a small sample of the public in Pulchowk Lalitpur; with a basic questionnaire; sample group: 100 people.

\textsuperscript{25} For example, Nepal Veterinary Council has drafted standards to improve animal welfare in order to fulfil their obligation under Section 9 of the Nepal Veterinary Council Act

\textsuperscript{26} This legal analysis was supported by a local Law Professor, Dr. Ram Timelsina, during the consultation of the draft report.

\textsuperscript{27} See Annex 2, expert opinion – opinion ex registrar of Supreme Court of Nepal.
example, Section 8(3) of the Animal Slaughterhouse and Meat Inspection Act 1999 (2055BS) states that ‘if an animal is found diseased upon inspection…the Meat Inspector may prohibit [slaughtering] of such animal. If any defect or disease is found in the meat of the slaughtered animal upon examination, the Meat Inspector may partially or completely prohibit the sale or distribution of such meat.’ This provision shows that in a situation where an animal is kept unwell, which in defiance of the intention of the Act, there may be repercussions instead of there will be repercussions (the law does not define how the decision to ‘punish’ is made by the inspector thus it must be assumed that he has the discretionary power in this situation unless a certain standard is developed). Additionally, none of the relevant Acts, Regulations or Guidelines discussed provide an incentive to abide by the law in respect to animal welfare; there are only penalties for non-compliance. Most of the penalties for acts that violate a legal provision addressing animal welfare are fines, which were decided years ago (some have been amended but most are not current); as there has been large inflation in the economy these fines no longer act as an adequate deterrent mechanism.

While in theory there may be legal mechanisms which address different aspects of animal welfare, it seems that in reality the law has not been able to provide for animal welfare. Yet the foundation in theory is important for improvement in this sector.

3.5. Conclusion – Are national legal instruments adequate?

National legislations that address animal welfare are mostly related to cattle or animals used for meat production; legislation addresses aspects of animal nourishment, health, comfort and safety. There are also prohibitions that prevent cruelty towards these animals such as provisions encouraging humane killing, humane transportation and prohibition of abandonment (of cattle). In the current legal system there are limited laws addressing the welfare needs of companion animals, entertainment animals and draught animals directly, although the Animal Health and Livestock Services Act 1999 (2055 BS) and Animal Transportation Standard 2064 BS do provide for a degree of animal welfare to all animals.

The law also obliges certain Government agencies to provide for and protect animal welfare. The Local Self-Governance Act, 1999(2055 BS) stipulates the Ward (local administrative body) as an authority to monitor strays (Section 96). The Nepal Veterinary Council Act, 1999
(2055 BS) prescribes authority to the Veterinary Council to draft necessary standards for treatment, medicine and feed for the betterment of animal’s wellbeing (Section 9). The State also has the discretion to invoke their right to protect animals against negligent and cruel treatment from their owners or any other individual. With the new Constitution (2015) the discretionary powers of the different Government agencies may change in respect to animal welfare. Yet, the new Constitution has not changed the public’s ability to protect animal welfare, if it can be proved that it is a matter of public interest.

However, the law is still insufficient to address the needs of animals. As mentioned earlier there is minimal protection for companion animals, entertainment animals and draught animals. Draught animals are very important for the rehabilitation process of Nepal. Equines were widely used by international organizations, inter-governmental organization and UN entities (such as the World Food Programme, USAID and Singapore Red Cross) during the earthquake for relief work and will most likely be used throughout the rehabilitation phase; they play an integral role in brick production, which is essential for development of Nepal, yet there are no standards for working animals in the current national legal instruments of Nepal. Without any formal regulation on ownership, abandonment of such working animals during the off season of brick production is common practice. This lack of formal regulation on ownership affects companion animals as well, there are an unimaginable amount of abandoned cases, and although the new penal code intends to criminalize such acts, without a regularized registration system it would be very difficult to identify the perpetrator; legally binding registration system of all animal under ones’ care is yet to be required by a legal provision.

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28 Section 27, Animal Health and Livestock Services Act, 1999 (2055 BS)
29Needs based on the ‘five freedoms.’
30WFP, alone, used equines to transport 496.264 metric tons of supplies – information provided by WFP staff.
31Information gathered from observation and consultation with relevant organizations.
32However, WFP did set its own basic standard in respect to the weight carried by equines – 60 kilogram per equine/ per load.
Due to the dispersive nature of the legal instruments, a lack of implementable provisions and a lack of legal protection for various kinds of animals, the law is not adequate when we consider the situation. Therefore, a comprehensive animal welfare legislation, which encompasses all issues is necessary.
4. INTERNATIONAL CONTEXT

When national law is found to be inadequate, international law can perform a substitute role; many advocates of the Supreme Court of Nepal have presented their arguments supported by applicable international law.\textsuperscript{34} International law encompasses both hard laws and soft laws. Hard laws are Treaties and Conventions (documents that can be ratified by states), binding documents, that hold supremacy over national law.\textsuperscript{35} Soft laws are general principles, declarations and standards; non-binding documents\textsuperscript{36} but highly persuasive and followed by many States (leading advocate of Nepal has used to present his argument before the Supreme

\textsuperscript{34}See e.g., Sapana Pradhan and Others v Prime Minister and Council of Ministers and Others Writ no 064-WS-0011; also see e.g., Somprasad Paneru and Others v Office of Prime Minister and Council of Ministers and Others, Writ No. 3215, 2061 BS.; also see e.g., Surya Prasad Sharma Dhangel vs. Godavari Marble Industries and Others, Decision number: WP 35/1992, Decision date: 2049/05/08.

\textsuperscript{35} Section 9, Treaty Act 1990 (2047 BS).

Court of Nepal). Over the years animal welfare has developed through soft law in the international context and there is a possible development of animal welfare through hard law. In the following sub-sections, we will discuss binding agreements that potentially address animal welfare (agreements of World Trade Organization (WTO)), as well as soft laws, applicable to Nepal, which certainly address animal welfare. After which the compatibility between national and international legal instrument shall be examined.

4.1. World Trade Organization

In 1994 the WTO was established through the endorsement of the Marrakesh Agreement; this re-enacted the 1947 General Agreement on Tariffs and Trade as the General Agreement on Tariffs and Trade 1994 (GATT). Through its agreements the WTO regulates activities of member States, which affect trade or condition competition for imported goods. The WTO agreements are binding on member States (Nepal has been a member state since 23 April 2004). If it is found that an obligation under a WTO trade agreement has been breached by a member State, another member State can file a complaint against the allegedly guilty member State through the effective dispute settlement mechanism introduced by WTO (this option has been utilized on various occasions). When we consider the WTO in respect to animal welfare the relevant agreements are the GATT and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

GATT:

Whether the GATT provides measures for animal welfare, or in fact restricts the establishment of animal welfare measures is a debatable topic. The provisions of the GATT that are of primary concern to this study are Articles (Art.) I, III, XI and XX. Art. XI

37 See e.g., Surya Prasad Sharma Dhungel Vs. Godavari Marble Industries and Others, Decision number: WP 35/1992, Decision date: 2049/05/08.
38 For the purpose of this study, when we discuss animal welfare in the international context we are discussing the international context that is applicable to Nepal.
40 Member Information Nepal and WTO, available at <https://www.wto.org/english/thewto_e/countries_e/nepal_e.htm>
prohibits member states from adopting quantitative bans or restrictions on imports or exports, unless approved by other provisions of the GATT. Art. I and III, cornerstone of WTO rules, are the provisions that prevent discrimination in international trade. Art. I provides that each nation must treat all other nations as the ‘most favoured-nation’ in regards to matters of export and import. Art. III (4) provides that:

“the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.”

Where animal welfare measures are concerned, a fundamental problem lies in the hesitation of the GATT to allow the distinction between products on the basis of their production process and methods. The US-Tuna case established that from the perspective of the GATT rules, dolphin-friendly tuna and dolphin-deadly tuna are ‘like products’; thus, accordingly, imported dolphin-deadly tuna must receive the same treatment as dolphin-friendly tuna. Essentially this case stipulates that the process or the production method is an indifferent factor when determining whether two products are ‘like’ products. However, a thorough examination of GATT case law exposes an opportunity for animal welfare - an existence of an approach which provides scope for differentiating between products according to their methods of production.

When it is found that a member State has taken a measure that is inconsistent with their trade obligations under Art I, III or XI of GATT the act may be justified on one of the grounds set out in Art XX. It may be justified if it was ‘(a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health; … (g) relating to the conservation of exhaustible natural resources.’ In the past, the Art XX exceptions have attained rather

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42This means that each trade partner must be treating equally.
43Fishing method that did not kill dolphins along with tuna
44Fishing method that did kill or harm dolphins along with tuna.
narrow interpretations, with the panel taking the view that the exceptions should not allow an animal protection measure to take precedence over the GATT’s substantive free trade provisions, but this may change as a result of the recent decisions of the Appellate Body of the WTO.

Upon various instances the Appellate Body of the WTO has stated that members have the right to decide the level of protection necessary to achieve their policy aim on matters such as public health or conservation. In the Shrimp case the Appellate Body specifically stated that ‘there is an important difference between conditioning market access on the adoption of essentially the same programme, and conditioning market access on the adoption of programme comparable in effectiveness’. The Appellate Body concluded that conditioning market access, on the adoption of a program comparable in effectiveness to that of the importing country is permissible under Art XX. This means that when a member State establishes a particular policy aim it is not necessarily forcing its legislative intent on other member States wishing to conduct trade with the first party; the judgement is merely stipulating that the latter party is required to develop measures in its own territory that is comparable in effectiveness to achieve the same policy aims. While these cases may not have been about animal welfare the judgements can be interpreted to apply to animal welfare issues. For example we

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48 Appellate board is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel, and Appellate Body Reports, once adopted by the Dispute Settlement Body, must be accepted by the parties to the dispute.
can look at Nepal and its trade partner of animal by-products, European Union (EU), where animal welfare is a major concern of the public and several policy’s demand animal welfare in the production of animal by-products. Thus, according to Appellate Body’s judgement on the Asbestos Case and the Shrimp Case, if Nepal intends to continue the trade of animal by-products with the EU member States it is very likely that it has to develop comparable animal welfare standards in the near future. Another recent judgement of the WTO’s Appellate Body supports this deduction.

On May 22nd, 2014, the WTO’s Appellate Body issued its report on the controversial “EC—Seal Products” dispute. The Appellate Body found that the EU prohibition on the importation and sale of seal products violated the GATT. However, the Appellate Body, made this judgment in a way that supported the Union’s defence on animal welfare grounds, so that the prohibition remains effective. “The decision marks the first time that the Appellate Body has found that a trade ban on animal welfare grounds falls within the exception under GATT Article XX (a) for measures necessary to protect public morals. This determination implicates the legality of future trade restrictions on animal welfare grounds.” Such a precedence by the Appellant Body allows room for trade ban on other animal welfare related issues in the near future, therefore this could affect Nepal’s future trade with partners such as EU (or India), if Nepal is not capable of developing and implementing a minimum animal welfare standard.

SPS agreement:
The WTO's SPS Agreement states that “to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures

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55 India’s animal welfare policies and legislation is much more developed than Nepal’s and India is also a WTO member State.
56 Meaning a maintained standard of animal health
on international standards, guidelines or recommendations."57 The Agreement states the OIE standard as the relevant international standard in respect to animal health.58

Under the SPS agreement, of the WTO, each member State has the sovereign right to set its appropriate level of protection when applying sanitary measures for international trade as long as they comply with the provisions established in the SPS Agreement (meaning that the standard set in SPS agreement is the basis minimum). WTO members may comply59 with their obligations under the SPS Agreement either by basing their measures on relevant OIE standards60, or by carrying out a scientific risk analysis as outlined in Section 2 of the Terrestrial Code (2008).61 Under OIE, the term ‘sanitary measure’ means a measure, designed ‘to protect animal or human health or life within the territory of the OIE Member from risks arising from the entry, establishment or spread of a hazardous diseases,’62 such measures can be found within various Chapters of the Terrestrial Code. While the SPS agreement focusing on the health of animals, that are to be internationally traded, the agreement incidentally addresses animal welfare. As discussed above in Section 3.1 protecting animal health incidentally provides for the protection of animal welfare.

While the SPS agreement has created a binding obligation for member states to abide by the OIE standards we cannot determine which standards or which provisions of these standards (incidentally protecting animal welfare) will be binding on member States; this discretion is left to each member states and must be studied on a case to case basis.

57SPS agreement, Art. 3(1), available at <https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm>
58SPS agreement Art 3(4), available at <https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm>
59But compliance is necessary; other aspects of the OIE may not be binding, but under the context of SPS agreement it receives that status.
60As the OIE has different standards for different animals or different situations, the relevant standards should be used – e.g for transportation of non-aquatic animals by land, animal health standards should be based on OIE transportation standard for non-aquatic animals by land, if not based on Section 2 of the Terrestrial code.
4.2. World Organization for Animal Health

In 1924 the OIE, an inter-governmental organization, was created to prevent the spread of hazardous animal diseases at a global level. While animal health had always been a concern of the OIE, in 2002 the OIE recognized the necessity to set international animal welfare standards, with the aim of improving animal health as well as animal welfare, on a global scale. With the mandate authorized by its member States, the OIE has obtained a global leadership role in developing international animal welfare standards and has attained an impressive number of achievements; the most notable achievement would be the standards developed within the Terrestrial Code. The Terrestrial Code encompasses general principles and specific recommendations on animal welfare, as well as animal health. The code itself is a non-binding document but very persuasive (as mentioned in the previous subsection of the study the provisions that are relevant to the SPS agreement may have a binding effect).

In 2002, the OIE created a permanent Working Group on Animal Welfare; the first undertaking of this group was to draft a set of guiding principles which were to be the basis for OIE’s future work on animal welfare. The guiding principles acknowledged the relationship between animal health and animal welfare, the internationally recognized "Five Freedoms" as a valuable tool for comprehending animal welfare and acknowledged the relationship between animal welfare and human welfare. These principles were adopted by the International Committee of OIE member States during the 72nd General Session in May 2004 and are now included in the Terrestrial Code itself.  

Chapter 7 of the Terrestrial Code includes various standards on animal welfare; the following are relevant to Nepal and this study:

1. Transportation of animals by land (7.3)
2. Slaughter of animals (7.5)
3. Stray dog population control (7.7)
4. Use of animals in research and education (7.8)
5. Animal welfare and boiler chicken production (7.10)
6. Animal welfare and dairy cattle production (7.11)

63See e.g., I.A. Roberston, Animal welfare and the law: fundamental principles for critical assessment, 2015, pp 214
7. Welfare of Working Equines (7.12)

All of the standards have certain similar characteristics. The standards set a criterion on how the animals should be handled and cared for in the various situations (slaughter houses, farms, residential homes as pet, etc.) that they are expected to be in; the standards identify the environment these animals should be kept in to avoid illness, pain, fear and stress. The standards also set a minimum competence level for handlers. The standards do not set specifics such as how much each animal should be fed or how often. This allows for the specifics to be set by each member state but the standard acts as a framework. The concept behind such standards would seem to be that by identifying all the necessary aspect of animal welfare for animals placed in various situations the standards set a measurement indicator for unacceptable practice (based on scientific evidence).

Responsibility of different stakeholders is apparent in every standard and the most relevant section of the OIE standards for this particular study as each standard developed by the OIE identified the relevant authorities to develop and implement such standards through national legislation. In the chapters on welfare of working equines and stray dogs population control “the veterinary is responsible for implementation of animal health and welfare legislations, policies and programmes.” However, in the case of working equines, the responsibility may be shared with other Government agencies, institutions and relevant stakeholders (7.12.3). In the chapters regarding transportation, the competent authorities have a responsibility to establish minimum standards for animal welfare, before, during and after travel. They have an obligation to set standards for facilities, containers and vehicles for the transport of animals; setting standards for the competence of animal handlers, drivers and managers of facilities in relevant issues in animal welfare. Not only does the competent authorities have to set standards but they also have to ensure appropriate awareness and training of animal handlers, drivers and managers of facilities in relevant issues in animal welfare (all of this can be done through collaboration with other organizations), to ultimately ensure that standards are followed. The recent OIE standards also acknowledge the importance of public awareness and have include NGOs, along with the Government, as the recommended responsible authority to carry out such activities. The various chapters discussed above also acknowledge the importance of local Government in the implementation of the law and in monitoring.
From an enforcement perspective, the standards are seen as recommendations and the OIE consequently remains an adviser to those organisations (Government entities) with the power to implement laws that directly bind people to comply to these standards.\textsuperscript{65}In a OIE conference, in 2003, participants recognized that animal welfare must be addressed in parallel with economic and social development, and as a result a declaration was taken to provide "a progressive Legislative and regulatory options for animal welfare implementation of OIE standards, adapted to the economic situation and capacities of [OIE] members".\textsuperscript{66}These policy statements reveal the commitment of the OIE and its member States (including Nepal) to the harmonization and implement animal welfare standards encompassed in the Terrestrial Code, while taking into consideration economic and social development needs.

4.3. Soft laws

4.3.1. Universal Declaration on Animal Welfare (UDAW)

The UDAW itself is not a legally binding document but it represents a consensus among States regarding animal welfare. Four UDAW principles were agreed upon in the Manila meeting in 2003\textsuperscript{67}:

1. The welfare of animals shall be a common objective for all states.
2. The standards of animal welfare attained by each state shall be promoted, recognized and observed by improved measures, nationally and \textit{internationally}.
3. All appropriate steps shall be taken by states to prevent cruelty to animals and to reduce their suffering.
4. Appropriate standards on animal welfare shall be developed and elaborated on such topics as the use and management of farm animals, companion animals, animals in scientific research, draught animals, wild animals and animals used for recreation.

The draft declaration was agreed upon by 21 delegations. While Nepal is not one on these delegations; these delegations have an obligation to advocate for animal welfare in Nepal according to the second principle, especially if they are involved with work affecting animals in Nepal. The European Commission (EC) is one of the delegations and is heavily involved.

\textsuperscript{65}See \textit{e.g.} I. A. Roberston, \textit{Animal welfare and the law: fundamental principles for critical assessment}, 2015, pp 214


\textsuperscript{67}Ibid, pp 18.
in Nepal as a major donor; also India happens to be another delegate and our partner in many projects. As members of the UDAW, both the EC and India have indirectly vouched to promote standards of animal welfare in Nepal; thus, there is a highly persuasive pressure on these delegates to work for improvement of animal welfare in the programmes and projects that they are involved in or supporting in Nepal.

4.3.2. Principle for Responsible Investment in Agricultural and Food System (PRIAFS)

The Principles (non-legally binding document) were endorsed by the Committee on World Food Security (CFS) at its 41st Session on October 15th, 2014. The CFS is an intergovernmental body that reviews and follows up on food security and nutrition policies. CFS is the primary comprehensive international and inter-governmental platform for all stakeholders to work together to achieve food security and nutrition for all. The Committee reports to the United Nation General Assembly through the Economic and Social Council (ECOSOC) and to the Food and Agricultural Organisation of the United Nations (FAO) Conference. Principles are not legally binding on Nepal but are persuasive as Nepal is a member State of both the FAO and the United Nations (secretariat of CFS) thus the recommendations of the CFS should be highly persuasive for Nepal.

The principles directly address animal welfare (animal welfare of farm animals). Principle 8 of the PRIAFS promotes safe and healthy agriculture and food systems. Section 28 within Principle 8 calls for responsible investment in agriculture and food system, which promotes safety and health through various measures including supporting animal health and welfare, in order to achieve sustainable increase in productivity, product quality, and safety.

4.3.3. UN’s Sustainable Development Goals (SDG) 2030

The SDG Political Declaration encompasses the significance of animal protection (a component of animal welfare). In the vision for 2030, all world leaders declare: “We envisage a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all. One in which humanity lives in harmony with

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nature and in which wildlife and other living species are protected.” Nepal is a member of the UN, thus the World Leader’s commitment to protect all species (through the declaration) also represents the commitment of the Nepali Government. While there is no legal obligation to abide by a declaration, there is a moral and professional obligation of the State.

4.4. Compatibility of National laws with International laws

As shown in the subsections above, international law fills the gaps and the inadequacies left by national law, to a certain extent. The national legislation of Nepal addressing animal welfare is limited; focused on certain species and with weak implementation and enforcement provisions. International law provides a better framework for the protection of animal welfare. The OIE recommends basic welfare standards for various animals placed in various situations; it also provides implementation strategies within the provisions of the standards by stipulating obligations of different stakeholders (or responsible bodies). Other international soft law instruments applicable to Nepal support the recommendations provided by the OIE. Additionally, the position that Appellate Board of WTO has taken in its recent arbitrary cases, could in fact act as pressure to establish stronger implementation and enforcement mechanism within national legislation addressing animal welfare.

National legislation addressing animal welfare is mostly related to cattle or animal used for meat production. There are no national legal instruments that the slightly resemble the OIE’s Chapter on stray dog population control (7.7), Chapter on boiler chicken production (7.10) and Chapter on welfare of working equines (7.12); however, these standards are vital, not just for animal welfare, but also for public health and development purposes (respectively). Whist the Guidelines for animals used in research, Animal Transportation Standard, Animal Slaughterhouse and Meat Inspection Act/Regulation provide similar welfare standard (based on five freedom) to OIE standard, they lack to provide provisions that enable implementation; provisions that obliges responsible bodies to provide adequate training for

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71It must be noted that WTO’s position is only affective to improve welfare of animals that are traded or animal’s whose by-products are traded.
handlers, that raise public awareness and that hold caretakers responsible for the welfare of animals under their care.  

While OIE standards and other soft law instruments are not binding they are very persuasive. A landmark environment law (PIL) case in Nepal had used Stockholm declaration (international soft law) as a supportive legal document during the hearing of the case. The PIL case that used Stockholm declaration to justify that the concept of environmental justice is a legal concept also defined the ‘right to life’ to include ‘right to environment’. This argument was accepted by the Supreme Court of Nepal; since that case, ‘right to environment’ has been adopted as a fundamental right in the Constitution. This case signifies that influence of international soft law on national legal system. It must be noted that the PRIAFS, OIE and SDG hold the same power as Stockholm Declaration.

The agreements of the WTO are more influential than soft law, and it would appear as a result of the recent judgements of the Appellate Board, of the WTO, animal welfare may become a justified exception for the GATT rules; the GATT exception of public morale has been used to justify ban of seal products in the EU. This opens the door for more trade bans on animal welfare grounds. Third largest buyer of Nepali animal by-products is a Europe Union member State (where public morale regarding animal welfare is very strong as proven by the seal ban case). Thus, in the near future Nepal may feel trade restriction if animal welfare standards are not set in place.

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72 While all three national legal instrument discussed do obligate caretakers to be responsible for the welfare of animals during the time the animal is in their care, the instruments do not obligate the responsible monitoring body/personnel to hold these caretakers responsible if they have acted negligently, recklessly or in defiance of the law.

73 Expect for OIE provisions relevant to SPS agreement.

74 See. e.g., Surya Prasad Sharma Dhungel Vs. Godavari Marble Industries and Others, Decision number: WP 35/1992, Decision date: 2049/05/08

75 It must be noted that Sustainable Development Goals are not only the responsibility of the Government’s to fulfill, they are also the goals of UN agencies who happen to be stake holders.

5. RECOMMENDATIONS

The study found that while Nepal has certain legal instruments that address animal welfare, the instruments are not wholly effective or adequate and in many cases they are not comparable to international standards. As Nepal has limitation, as a developing country, not all international legal standards regarding animal welfare may be practical yet certain changes in the national legal system is necessary and attainable, for the benefit of the animals as well as for the development of the country. The following recommendations are suggestions based on the findings of the study:

1. Establish a Committee under Section 27 of Animal Health and Livestock Services Act (2055 BS) - The Committee has the authority to prevent cruel activities towards animals; thus the Committee has the capacity to develop standard and guidelines to regulate any industrial, entrepreneurial, religious or private activity
exploiting animals. A Committee whose focus is on animal welfare and protection could fill in many inadequacies found in the current national legal instruments.

2. **Review and amend national laws that address animal welfare:**
   - To include mandatory registration of working animals, farm animals and companion animals in order to enforce Local Administrative Act, (and the new Penal Code once it is passed) and achieve OIE standard on stray dog population control and welfare of working equines.
   - To include provisions on budget allocation for infrastructure development (such as slaughterhouses and quarantine) and training of technical expertise as well as direct stakeholder- owners and handlers.
   - Revise enforcement mechanism– all the Acts mentioned above must be revised. Fines must be re-evaluation; incentive should be provided for law abiding citizens (for example tax incentives for law abiding owners of slaughter houses, importers, broiler chicken farmers, etc.)

3. **Draft a comprehensive Animal Welfare Act that addresses the minimum welfare needs of all animals mentioned in Chapter 7 of the Terrestrial Code of OIE:**
   National legislations that address animal welfare are mostly related to cattle or animals used for meat production; even those have problems with implementation and are found in a disperse set of legislations. In the current legal system there are very limited laws addressing the welfare needs of companion animals, entertainment animals and draught animals (directly). Thus, a comprehensive Animal Welfare Act is necessary.

4. **Ensure awareness training for direct and indirect stakeholder on OIE standards and National Law and Guidelines:** This requires identifying stakeholders and educating them, thus, obliging them to take responsibility for their action.
Annex 1: Revised Translation of Acts

During the study we found that the official English translations of various provisions within the relevant Acts were incorrect. While these provisions may not necessarily be the provisions addressing animal welfare mentioned in the study above, these provisions are relevant (mostly for procedural reasons) and are important for understanding the Acts in a wholesome manner. As some of the stakeholders (INGOs/ UN entities/other States) are not Nepali speakers/readers we felt that this annex was necessary to fulfil the purpose of this study.

Animal Slaughterhouse and Meat Inspection Act, 2055(1999)

<table>
<thead>
<tr>
<th>SN</th>
<th>Nepali Version of Act</th>
<th>English Version of Act</th>
<th>Revision and suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>प्रस्तावना : सर्वसाधारण जनताको स्वस्थ्य र हित कायम राज्य मासू तथा मासुबाट बने खाद्यपदार्थका निर्माण स्थान र मासूमा हुने स्वस्थता तथा मासुको स्वभावित गुण बिजली उपस्थित स्थल कायम राज्यको लाभ पशु क्रियाशाला स्थापना गर्ने र मासू जाँच गर्ने सम्भेत्वमा व्यवस्था गर्न बाह्यनीय भएकोले</td>
<td>Preamble: Whereas it is expedient to establish slaughterhouse and arrange for meat inspection to safeguard the health and welfare of the people in general and to control adulteration in meat and meat products and to maintain reasonable standard of meat by protecting the wholesomeness, quality and adequacy of meat;</td>
<td>To safeguard the health of the general public and maintain their interest/ welfare in order to prevent the contamination in meat and meat products and to maintain the ‘wholesomeness’ of meat and prevent the degradation of natural quality of meat while maintaining the reasonable standard it is expedient to establish slaughterhouse and arrange for meat inspection.</td>
</tr>
<tr>
<td>2</td>
<td>दफा २ (क) &quot;पशु&quot;भन्नले गाई, गो, बिहा बाहेक भले जातको खमी नस्लाईएको ला नस्लाईएको बौका, भेडा, च्याङ्रा, सूंगूर, बंगुर, बंदिल, बाँगो, झरायो र भुसायोको लागि योग्य देखाएको भैसी, वाशा, पांची जातको भेडा, च्याङ्रा, सूंगूर, बंगुर, बंदिल</td>
<td>Sec 2 (a) : &quot;Animal&quot; means castrated or castrated goat, sheep, Himalayan goat(Chyangra), pig, wild pig, he buffalo or rabbit the females of buffalo, Some words missing during translation.</td>
<td>Insert the fallowing text before the word castrated - ‘except cow, bull, ox’.</td>
</tr>
<tr>
<td>Paragraph</td>
<td>Translation</td>
<td>Notes</td>
<td></td>
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<tr>
<td>बा खरायो सम्मन न पछ्य र सो शव्दले भाले बा पाई जताको कूरु, हास, परेबा बा मागुको प्रयोजनको लागि पालिएको अन्य पशुपक्षी समेत सम्मन न पछ्य।</td>
<td>goat, sheep, Himalayan goat, pig, or rabbit which are fit for meat other than a cow, an ox a bull, and this word also includes poultry, ducks, pigeon or other species of beasts and birds kept for meat purpose.</td>
<td>Replace second word 'castrated' for uncastrated. 'boar' instead of 'wild pig' After pig insert 'hog, boar'</td>
<td></td>
</tr>
<tr>
<td>3 दफा ४(३) … शर्त तथा अपनाइएनु पनि मापदण्ड तोकिएको महोजिम हुनेछ।</td>
<td>Sec 4(3): … and the specification to be… can use word 'standard' instead of specification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 दफा ५ (२) उपर्युक्त १ वमोजिम दर्खास्त पनि आएमा तोकिएको अधिकारीले त्यस्तो दर्खास्तको सम्बन्धमा आवश्यक जाँचबुझ गरी तोकिएको महोजिम दस्तुर लिए दर्खास्तबालालाई पशु वध्याला स्थापना गर्न बा मानु विक्रेताको काम गर्न तोकिए वमोजिमको ढांचामा इजाजतपत्र दिनेछ।</td>
<td>Sec 5(2): If an application is received under Sub-section (1) the prescribed officer shall make necessary inquiries on such application and <strong>may issue a license</strong> in the prescribed format for the establishment of a slaughterhouse or for selling meat.</td>
<td>Some words are missing and 'may' is incorrect. Remove 'may' and Add: &quot;and upon receiving prescribed fee shall issue......&quot;</td>
<td></td>
</tr>
<tr>
<td>5 दफा ५(१) (१) कृन्नु पशु वध गनुभन्दा अधि पशु वध्याला स्थापना भएको क्षेत्रमा पशु वध्याला पर र पशु वध्याला स्थापना नभएको क्षेत्रमा मानु सुपरीवेशको तोकिएको स्थापना त्यस्तो पशु जन्तुआनु पनि हुनेछ। पशु जांच गर्न विविध कार्या तोकिए वमोजिम हुनेछ।</td>
<td>Sec 8(1): (1) Any animal to be slaughtered shall be produced for ante-mortem examination at the slaughterhouse where such place is established and where slaughterhouse has hot yet been established at the site as no need to write 'ante-mortem' can remove this word replace ‘hot’ with 'not'</td>
<td></td>
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</tr>
<tr>
<td>No.</td>
<td>Section</td>
<td>Text</td>
<td>Notes</td>
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</tr>
<tr>
<td>6</td>
<td>दफा ९(१)</td>
<td>तर प्रचलित कानून वमोजिम नियेप्द गरिएका दिनमा पशु कधेक पाइने छैन।</td>
<td>Specified by the Meat Supervisor. The procedure for examination of animal shall be as prescribed.</td>
</tr>
<tr>
<td></td>
<td>Sec 9(1):</td>
<td></td>
<td>One line is missing.</td>
</tr>
<tr>
<td></td>
<td>&quot;However, in accordance to prevailing laws, the animals cannot be slaughtered on the prohibited days&quot;</td>
<td></td>
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<tr>
<td>7</td>
<td>दफा ११ : मासु विक्री गर्न नयाँ भन्ने :</td>
<td>Sec 11: Prohibition on the Sale of Meat: (1) No sale of meat of the animal other than as mentioned in Sub-section (1) of Section 2 shall be allowed. (2) No sale of meat of dead animal due to disease or any other cause shall be allowed. (3) No sale of meat with skin shall be allowed.</td>
<td>Section 2 does not have subsection as it provides the definition of meaning on various text by using the alphabet instead of numerical - a, b, c, d. If we translate it with the Nepali Act literally, the correct text will be ‘Section 2(a) Section 11(3) sale of meat with skin shall be prohibited’</td>
</tr>
<tr>
<td></td>
<td>(१) दफा २ को खण्ड (क) मा उल्लिखित पशु वाहेक अन्य पशुको मासु विक्री गर्न पाइने छैन।</td>
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<td>(२) रोग लागि बा नलागी कालान्तरका मरको पशुको मासु विक्रीमार्ग पाइने छैन।</td>
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<td>(३) छाना सहितको मासु विक्रीमार्ग पाइने छैन।</td>
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<tr>
<td>8</td>
<td>दफा १७ : उल्ल्घन गर्ने व्यक्तिलाई</td>
<td>Sec 17: (1) and (2) A person who violets</td>
<td>Spelling mistake replace with 'violate'</td>
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<tr>
<td>9</td>
<td>दफा १८ : यस ऐन वमोजिम नेपाल सरकारलाई प्राप्त अधिकार मध्ये केही अधिकार आवश्यकता अनुसार कुनै निष्कासनलाई प्रत्ययोजन गने सक्नेछ।</td>
<td>Sec 18:</td>
<td>after Government of Nepal add 'may'</td>
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<tr>
<td>10</td>
<td>दफा २०</td>
<td>(१) यस ऐन अन्तर्गतको कसौको तहिकाला मासु निरीक्षणले गन्न र</td>
<td>Sec 20: (1) The Meat Inspector shall initiate the investigation of the case under this Act</td>
</tr>
<tr>
<td>Section</td>
<td>Nepali Version of Act</td>
<td>English Version of Act</td>
<td>Revision and suggestions</td>
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<td>I</td>
<td>दफा ४(२): यस ऐन अन्तर्गतको मुद्दामा प्रमुख जिल्ला अधिकारीले विशेष अदालत ऐन, २०५९ वमोजिमको कार्यविधि अपनाउनेछ।</td>
<td>Sec 5 (2): The Chief District Officer shall, while initiating the proceeding and adjudicate a case, follow the procedure pursuant to Special Court Act,-</td>
<td>In pursuant to this Act, the Chief District Officer shall follow the procedures as prescribed under Special Court Act, 2059.</td>
</tr>
</tbody>
</table>

Some Public (Offense and Punishment) Act, 2027 (1970)

<table>
<thead>
<tr>
<th>Section</th>
<th>Nepali Version of Act</th>
<th>English Version of Act</th>
<th>Revision and suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>दफा २१ : मुद्दा हनें अधिकारी : यस ऐन अन्तर्गतको कसौं साम्यवही मुद्दा हनें र पुनर्विदेश सुन्ने अधिकारी तोकिए वमोजिम हुनेछ।</td>
<td>Sec 21: Judicial Authority: The Judicial and Appeal Hearing Authority for cases under this Act shall be as prescribed.</td>
<td>Replace ‘Judicial authority’ with ‘Authority hearing the case’ or ‘Adjudicating Authority’ Can replace ‘Appeal Hearing Authority’ with ‘adjudicating authority’ and adjudicating the appeal’ Replace ‘cases’ with ‘offences'</td>
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<td>2</td>
<td>दफा ५(३): उपरफा (९) वर्मोजिम तथा जिल्ला अधिकारीले गरेको निर्णय उपर पुनरावृत्ति हालातमा पुनरावृत्ति लागेछ ।</td>
<td>Sec 5(3): …shall lie… replace with 'shall be done'</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>दफा ६: … विभिन्न वर्मोजिम श्लोङ्गूलै मनाई पनि दिन सक्नेछ … कारण खोली पर्याटन खेला गरी … तर … यस्तो मुद्रामा पुनरावृत्ति सुन्ने अदालतबाट निर्णयमा तोके वर्मोजिम हुनेछ ।</td>
<td>Sec 6: … the Court of Appeal shall decide the matter in such case. In such a case the decision of Appellate court shall prevail or shall be final.</td>
<td></td>
</tr>
</tbody>
</table>

An Act Made to Provide Necessary Arrangement Relating to Nepal Veterinary Council

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>दफा ४(३): परिषदको व्यक्ति सरह चलाउने सम्पति पालन गर्न, उपभोग गर्न, वेचविष्णु गर्न या अन्य किसिमले व्यवस्था गर्न सक्ने ।</td>
<td>Sec 4(3): …dispose off… according to Nepali text word 'sale' can be used</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>दफा ९(३): जीविक पदार्थ, … चलना गर्न ।</td>
<td>Sec 9(c): … biologicals, animal feeds, chicks … replace with biological products replace with 'chicken'</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>दफा १०(५): परिषदको बैठकमा जडलिएको राय गर्न सक्ने । मत वर्तावर भएका बैठकको अध्यक्षता गर्न य्वक्ति निर्णायक मत दिन सक्नेछ ।</td>
<td>Sec 10(5): …equal of votes… replace with 'equal number of votes'</td>
<td></td>
</tr>
</tbody>
</table>
4. **Section 13(2):** ... दर्खास्त रीतिपर्यक्तको छ छैन...

   **Replace with ‘prescribed manner’ or ‘prescribed format’ or ‘given format’**

5. **Section 16(a):** ...His Majesty's Government or at least in the post of reader in the University.

   **the veterinarian must at least hold the position of a 'Lecturer' or 'Associate professor'**

6. **Section 16(b):** ...at least gazette first class...

   **Replace with second NOT FIRST veterinarian working as assistant professor**

7. **Section 21(5):** ...to deposit...

   **Error in grammar: replace with to be deposited**

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**Muluki Ain 2020**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td>चौथाया हराउने र पाउनेको</td>
<td>On lost and Found Quadruped</td>
<td></td>
</tr>
<tr>
<td></td>
<td>१ न. फलानाको हो भनी बाहा</td>
<td>Number 1: ...keep such quadruped after giving a</td>
<td>Replace ‘formal report’ with : First Information Report</td>
</tr>
<tr>
<td></td>
<td>हुन सकेन भने आफूँ पाएको पैतीय दिनभित्र निजको</td>
<td>quadruped after giving aformal reportto...</td>
<td></td>
</tr>
<tr>
<td></td>
<td>प्रहरी कायांय वा स्थानीय पन्नायकमा</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>जाइहरी लेखाई राख्नेछ</td>
<td></td>
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<tr>
<td>2</td>
<td>दूना २९(४): तरिको कोषमा प्राप्त हुन आएको रकम नेपाल अधिराज्यको</td>
<td>Number 2: …rest partners</td>
<td>Replace ‘rest’ with ‘other’</td>
</tr>
<tr>
<td></td>
<td>कुनै वाणिज्य वैक्रमा खाताखानी जम्मा</td>
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<tr>
<td></td>
<td>गाँठु पनेछ</td>
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</tbody>
</table>
## Local Administration Act, 2028 (1972)

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>दफा १ (११) नगरपालिका क्षेत्रमा गाई वस्तुको छाड छाडन हुनेछ र यसैले गाई वस्तुको छाड छाडन हुनेछ र मूल उपसागरको छाड छाडन हुनेछ।</td>
<td>Sec 9(11): No one shall let cattle roam free inside the Municipality area, and if a person let cattle on… and the proceeds of…</td>
<td>Replace ‘let cattle’ with ‘leave cattle unattended’ Replace ‘proceeds’ with ‘amount of money gained from’ (1) After goats add ‘included’ at the end. (2) replace ‘fleeing cattle’ word ‘unattended’ OR STRAY cattle</td>
</tr>
<tr>
<td>2</td>
<td>दफा १ (१२) तर छाड गाई वस्तुको छाड छाडन हुनेछ र मूल उपसागरको छाड छाडन हुनेछ।</td>
<td>Sec 9(12): …Court of Appeal</td>
<td>In Nepali text there is other provisions after…”Court of Appeal”, which is missing in the English text: Add: “Despite the fact that owner of freed unattended cattle receives ‘a clean sheet’ from the appellate court, if the auction or handover of the animal has already taken place in accordance to Sub-</td>
</tr>
</tbody>
</table>
National and International Legal Instruments Addressing Animal Welfare in Nepal

section 11 the decision of appellate court cannot have adverse effect on the situation retrospectively.”


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<tr>
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<tbody>
<tr>
<td>1</td>
<td>दफा २(ग) “पशु उत्पादन सामग्री” भन्नाले पशु स्वास्थ्यमा, कृत्रिम गर्भाधानमा बा जैविक पदार्थ उत्पादनमा उपयोग हुने प्रशोधित बा अप्रशोधित सामग्री सम्भनु पर्न।</td>
<td>Sec 2(c): &quot;Animal Production Inputs&quot; means processed or unprocessed material used in animal health or artificial insemination and other biological products.</td>
<td>biological products production</td>
</tr>
<tr>
<td>2</td>
<td>दफा २(घ) “क्वारेंटाइन अधिकार” भन्नाले दफा ५ वमोजिम नियुक्ति गरिएको क्वारेंटाइन अधिकार सम्भनु पर्न।</td>
<td>Sec 2(g): …the person specified…</td>
<td>…the person appointed…</td>
</tr>
<tr>
<td>3</td>
<td>दफा ३…कृत्रीम पनि क्षेत्रमा स्वास्थ्यको प्रकृतिको क्वारेंटाइन चेकपोस्ट स्थापना गर्नेछ।</td>
<td>Sec 3: …permanent Animal Quarantine</td>
<td>Delete 'animal' add 'nature'</td>
</tr>
<tr>
<td>4</td>
<td>दफा ६(२) उपदफा (१) वमोजिम क्वारेंटाइनमा राखिएका पशुको लागि आवश्यक पर्न दाना, पानी र सुरक्षाको व्यवस्था सम्भनित पैठाई कर्ताले गर्नु पर्नेछ।</td>
<td>Sec 6(2): feeding, watering…At his or her own cost</td>
<td>Not grammatically correct Can be written as providing food and water Delete ‘at own cost’ as it is not mentioned in Nepali</td>
</tr>
<tr>
<td>5</td>
<td>दफा ११ (ब) सङ्कारक रोग नम्रता शरीरक प्रमाणपत्र र स्वस्थना सम्भव्य प्रमाणपत्र उपलब्ध नगरार्थना</td>
<td>Sec 11(b) : of disease free and soundness certificate of animal,…</td>
<td>version of the Act.</td>
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<td>6</td>
<td>सूचना जारी गाई सलाम्ब : दफा १४ (१) तर परम्परादर्शिक चलियाएँको पूजाआजा बा धार्मिक अनुष्ठानका लागि नम्रई नहुने खबरी नयाँरेको भाले पशु पालन्दु पन्ने भएका त्यसौ पशुलाई गर्मियाँका गराउन नसकेम्याः अवस्थी राख्न उपदफा (१) मा लेखिएको नैं नैराज बाधा पुझ्याएको मानिने छ।</td>
<td>Sec 16: Notification may be issued16(1) Provided that, …unsaturated animals…festival,…male animals…</td>
<td>Notice may be issued Replace ‘unsaturated’ with not castrated male animals Delete ‘festival’, as in the Nepali version it is not mentioned. Only worship or rituals are mentioned. Remove ‘male’</td>
</tr>
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<td>7</td>
<td>दफा २१(१) ... मुझ्य हैने अधिकारी समध मुझ्य दायर ... (२) ... मुझ्य हैने अधिकारी समध मुझ्य दायर गर्या मुझ्यको तहिकात गाने कर्मभारीलो...</td>
<td>Sec 21: (१): …Judicial authority (२)The crime investigation personnel...Judicial Authority</td>
<td>Replace with ‘Adjudicating Authority’ Replace with ‘investigating officer’</td>
</tr>
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<td>8</td>
<td>दफा २२ : मुझ्य हैने अधिकारी : (१) ... मुझ्य हैने अधिकार...</td>
<td>Sec 22: Judicial Authority (१)...deal the case...</td>
<td>Replace with ‘adjudicating authority’ Can use word ‘hear the case’</td>
</tr>
<tr>
<td>9</td>
<td>दफा २२(२) ... कार्यालय प्रमुख...</td>
<td>Sec 22(2) Office in charge...deal with the Office chief</td>
<td>Replace ‘deal’ with ‘hear’</td>
</tr>
<tr>
<td>10</td>
<td>दफा २६ ... अधिकार मुझ्य हैने अधिकार बाहेर...</td>
<td>Sec 26: ...dealing of case... …Hearing of case…</td>
<td></td>
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<tr>
<td>11</td>
<td>दफा २८ (२) उपदफा (१)</td>
<td>Sec 28(2): …under Sub-section</td>
<td>After sub-section (1) add</td>
</tr>
<tr>
<td>12</td>
<td>दफा २६ (३) … कार्यालय प्रमुख आफिले…</td>
<td>Sec 28(3)…the Office Chief may…</td>
<td>‘of this section’ after may add ‘order’</td>
</tr>
<tr>
<td>13</td>
<td>दफा ३० … प्रशासित पशुजन्य पदार्थमा सक्रामक रोग लागिको आशंका…</td>
<td>Sec 30: …Contagious Disease add 'on processed animal products'</td>
<td></td>
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Annex 2: Minutes of Consultative Meeting on the draft of the legal study

Date: March 31, 2016; Time: 10:30 a.m.; Venue: The Bakery Café, Harihar Bhawan

Organizer: Animal Nepal (with support of Donkey Sanctuary UK)

Chair: Dr. Dhan Raj Ratala

Chief Guest: Dr. Ram Krishna Timilsena

Program:

Opening by President of Animal Nepal: Ms. Pramada Shah

Ms. Shah personally greeted the Chair, the Chief Guest and all the guests. She talked about the work Animal Nepal is involved in and why the law review was conducted. She requested all the parties involved to create a Humane Society for Animals and consider humane ways for livestock development since the Ministry for Livestock Development is promoting livestock rearing and farming. She also mentioned that working animals (particularly equines) have limited protection under the law. She further stated that Animal Nepal was hopeful for positive legislations as well as co-operation between all the concerned stakeholders including the Government Bodies, Non-Governmental Organizations as well as the Donor Agencies and International Non-Governmental Organizations.

Introduction of the study by Mr. Bikalpa Rajbhandari:

In this section Mr. Rajbhandari gave an introduction to the study. He explained the significance of the paper, the structure of the consultation and division of the topics under the report.

Presentation of report by Ms. Shubhecha Tewari

In this section Ms. Tewari provided a presentation on the study itself; she began by explaining the limitations of the study (domestic land animals, animal welfare) and defining

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77Most of the feedback provided at this meeting, found in the minutes was incorporated into the final study, thus attached as an Annex. Additionally, the minutes provide the reader the perspective of the Government and NGOs on animal welfare and the laws addressing animal welfare.
animal welfare. She then examined the national and international legal instruments that are applicable to Nepal, in respect to animal welfare. She analysed the contradiction within national legislation, the gap between the law and its intention, and gap between national legislation and international obligation. She also pointed out that the law seemed to protect a certain group of domestic animals (cattle and meat production animal) more than others. She discussed how companion, entertainment and draught animals are less protection by legislation and required more (legal) focus in the future from both bio-centric and human-centric perspective. She ended the presentation with a few recommendations; the most significant being - to establish a Committee under Section 27 of Animal Health and Livestock Services Act.

Feedback and Discussion

Mr. Bishewoshar Koirala, from District Development Committee, stated that in an era where human rights are not being protected to the full extent, speaking for animal welfare is a commendable act. He suggested that the review must include practical solutions in its recommendation and practicality must be considered when addressing gaps. He further recommended that future consultations like this should have included a representative from Law Ministry because this was regarding legislation.

Mr. Umesh Dahal from Animal Health Directorate stated that Department is working on the Animal Welfare Act. He stated that the Draft Act was unavailable because it was in a crude form. He appreciated the presentations and especially the analysis of both national and international legal instruments.

He further stated that the Welfare Committee as mentioned under the Section 27 of Animal Health and Livestock Services Act is in the process of formation and is to be included in the Animal Welfare Act.

Dr. Ram Krishna Timilsena, ex-registrar of Supreme Court, Principle of National Law College, showed his appreciation for the study; confirmed the content of the report to have held correct information and analysis. He followed this comment with a few recommendations for the final report:

1. Report must begin with positive language. Animal welfare, though systematically began from Western Hemisphere, was initiated from Oriental Philosophy. The concept from Muluki Ain from Jung Bahadur’s era must be incorporated.
2. The Civil Code and Penal Code Drafts which are in the Parliament must be taken into consideration. Civil Code has provision for animals and Penal Code has provisions for punishment in case of cruelty.

3. The Jurisdictions of the Federal and Local Governments (as per the new Constitution) must be examined. It is the Central Government which makes the policy. It must be distinguished what the central Governments should do and what the local Governments should do. On the issue regarding domestic animals the jurisdictions must be given to local Governments.

In general, regarding animal welfare in Nepal, he felt that there should be further elaborate laws/rules/policies related to animal welfare; laws should have provisions regarding policies to assure animal welfare. There must be strategic planning and dedicated annual budget to provide for animal welfare. There should be provisions of sanctions as well as incentives. We are talking of Voiceless Creatures therefore who would act on behalf of the animals? He felt, the doctrine of Parents Patriae – State as the parents of the animals must be followed. How to address this issue? The solution is to open jurisdiction/creation of locus standi.

He felt it was important to decide whether the approach regarding animal welfare is to be Human Centric or Bio Centric. This notion of Animal Welfare must be connected with WTO/UN/Human Health/Ecosystem.

Dr. Sri Ram Adhikari from NSPCA Nepal stated that notification to the WTO must be given by the Government of Nepal regarding its new Acts considering animal health and animal welfare; only than is it possible to implement the Act.

Dr. Narayan Sharma, from Department of Livestock, stated that NGO’s and Governmental agencies must collaborate. He suggested that further consultation between the stakeholders regarding concrete law on animal welfare should take place. He proposed to work together to create a draft Animal Welfare Law. He reiterated, thus established the importance of the recommendation to create a registration system. He suggested micro-chipping animals to deter abandonment of animals. He claimed that the new Animal Welfare Act must have a provision establishing a duty of care on owners.

Recommended the Nepal Government Agencies to follow OIE standard as they are based on scientific evidence. Animal welfare during transportation should be considered a priority.
Legislation should be drafted or amended to end animal cruelty. National Laws should be in compliance with International Laws. The Animal Welfare Law should have the input of stakeholder (including legal stakeholders). He recommended for the NGO sector to be more involved in awareness raising campaigns and advocacy. Was positive on Government’s and NGO’s collaboration for implementation of legislation and advocacy work.

Dr. Narayan Ghimire, from Nepal Veterinary Council, stated that the Government is on a 3 months target to review the existing laws. The Government plans to have adopted new laws for animal welfare within one year.

He stated that the laws must be community based laws in order to be enforceable by relevant authorities. There must be awareness campaigns and active advocacy. Any draft must include input from experts from the veterinary field. Welfare certificate system should be established. Animal Welfare must be looked as a body that embodies Animal Health, Human Health and Animal Welfare. He also stated that it is necessary to define the words within the definition of animal welfare (for example words such as animals, healthy, etc). Furthermore, he requested the Government officials’ present to be serious and keep animals in mind while formulating legislation regarding them. Toward the end of his feedback he suggesting that NGOs should be involved in the working group to provide input, and this must be done in haste.

Dr. Ram Krishna Timilsena further added that concerned agency for instance the Law Ministry must be responsible and the leading organization. Other NGOs and Government agencies (veterinary related) must be included under the team which is responsible for drafting process of the law.

Ms. Pramada Shah shared her experience of working with the anti-domestic violence legislative committee in Nepal. The relevant Ministry had formed a drafting committee for legislation on anti-domestic violence that she was involved in (to provide input from the NGO sector). She recommended that similar committee be formed under the Ministry of Livestock Development, to expedite the law making process at the earliest.

Dr. Dhan Raj Ratala, Chairperson of Nepal Veterinary Council

In 2055 B.S. there was a concept of Animal Welfare Act, but that was not passed for various reasons. The Government institutions have been unable to implement Section 27 of Animal
Health and Livestock Services Act, yet are hopeful. The main obstacles that exist are political agendas between the parties and personal issues between members.

He felt that their needs to be a focus on animal’s well-being. He spoke about how abandoned animals could be used in a productive manner and should be the focus of the Government; he also exclaimed the livestock industry to be a priority. He stated that the Central Government makes the guiding principles and local administration implements it. Laws must take into consideration societal and cultural values. He claimed that OIE guidelines are not absolutely applicable, nonetheless implementation of OIE standards to a certain extent is necessary. All the arguments for change in current laws (such as public health concerns) must be backed by scientific evidence. The Chief question is how to ensure implementation. He suggested that this meeting must have follow ups; further discussions must incorporate the obligation of local authorities and practical solutions for the implementation of laws.

Mr. Khushi Lal Shah, from Directorate of Livestock Market Promotion, suggested that preference must be given to local language. There should be more advocacy and awareness campaigns at local level. Economic profit based animal farming must be considered when conducting such a review.

Dr. Sulekha Sharma, from Pashu Kalyan Sanchar Nepal, stated that there is a need of an act to deal with present issues/problems. Economic based approach need to be considered when conducting reviews such as this one.

Ms. Sangeeta Sapkota, from Animal Welfare Network Nepal, stated that due to the lack of legislations and also limitation to enforce the law by the NGO sectors, the ability of the NGO sector to act upon incidences of animal abuse was severely hampered. AWNN welcomes the draft animal welfare law.

End of consultation, Thank you speech by Vice President of Animal Nepal:

Ms. Shristi Singh Shrestha thanked everyone for taking the time out of their day to attend this event. She stated that this is a very important gathering and a sensitive subject that we are dealing with. We are struggling for our identity as land of Buddha and peaceful nation, and we do not incorporate animals within that circle of peace and welfare, we will be termed as hypocrites. It is a difficult journey but together we can make it through and emerge stronger and kinder.
### Stakeholders (that attended the meeting)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
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<tbody>
<tr>
<td>Ms. Sangeeta Sapkota</td>
<td>Animal Welfare Network Nepal</td>
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<tr>
<td>Dr. Narayan Prasad Ghimire</td>
<td>Nepal Veterinary Council</td>
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<tr>
<td>Mr. Bisheswor Koirala</td>
<td>District Development Committee Lalitpur</td>
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<tr>
<td>Dr. Narayan Prasad Sharma</td>
<td>Department of Livestock Services</td>
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<tr>
<td>Mr. Khushilal Shah</td>
<td>Directorate of Livestock Market Promotion</td>
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<tr>
<td>Dr. Dhan Raj Khaba</td>
<td>Nepal Veterinary Council</td>
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<tr>
<td>Mr. Umesh Dahal</td>
<td>Animal Health Directorate</td>
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<tr>
<td>Dr. Ram Krishna Timilshina</td>
<td>National Law College</td>
</tr>
<tr>
<td>Dr. Pranav Raj Joshi</td>
<td>Bhaktapur Animal Welfare Society</td>
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<tr>
<td>Dr. Gaurav K.C</td>
<td>Save the Animal Nepal</td>
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<tr>
<td>Mr. Sandeep Joshi</td>
<td>Bhaktapur Animal Welfare Society</td>
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<tr>
<td>Dr. Roshika Shrestha</td>
<td>Department of Livestock Services</td>
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<tr>
<td>Dr. Sulekha Sharma</td>
<td>(Government official)</td>
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<tr>
<td>Mr. Bikram Khatri</td>
<td>(Government official)</td>
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<tr>
<td>Mr. Niraj Gautam</td>
<td>The Jane Goodall Institute Nepal</td>
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<tr>
<td>Dr. Shreeram Adhakari</td>
<td>(Government official)</td>
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