

EXAMINING TAIWAN ANIMAL WELFARE LEGISLATION FROM THE EMPIRICAL PERSPECTIVE OF LAW ENFORCEMENT

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ABSTRACT

The article offers an overall examination of the animal welfare legislation and its enforcement mechanism in Taiwan based on both qualitative and quantitative research and corresponding investigations conducted in 2016 and 2017 respectively. With the mixed research methods and critical empirical points of view, the study focuses on exploring deficiencies and challenges of the law and law enforcement in practical terms. Also, it aims to provide not only suitable but also workable further recommendations for future legal reforms to improve animal welfare and the related legal regime in Taiwan.

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1 INTRODUCTION

Since the 1990s, along with the emerging animal welfare movement and under the enormous influence of animal welfare in a scientific era, many Asian countries have had laws in place for protecting animals.¹ Some other Asian countries have also gradually revised and updated their existing laws or formulated and promulgated new statutes, imposing stricter penalties for law violations in response to the changing public's attitude towards animals and the needs of corresponding social and legal reforms.² However, adopting a legal approach to protecting animals is still lacking in most Asian countries,³ and most existing laws and their animal welfare standards in these countries are also far lagging behind the minimum international standard.⁴ For example, in terms of providing the basic and necessary protection for animals, both the scope of statutory protection and the effectiveness of law enforcement under these laws are relatively limited and problematic,⁵ as shown by the Taiwan Animal Protection Law (TAP).⁶ Taiwan is one of the few Asian countries which has promulgated its general animal welfare legislation (the TAP) and criminalized the offences of animal cruelty.⁷ Despite being recognized as one of

¹ With an exception of Japan and the former British colonies which already had animal welfare laws in place as early as in 1973 and 1935 respectively due to either specific political reason or the influence of legal system from their British colonial heritage, many Asian countries have started formulating and promulgating the general animal welfare laws under the pressure of international society since 1990s, including south Korea in 1991, Taiwan in 1998, the Philippines in 1998, and Thailand in 2014. In other words, ever since then, it is also the commencement of emerging movement in Asia. The movement was deeply influenced by the development of animal welfare science since the concept of animal welfare—the Five Freedoms—has become the most accepted international animal welfare standards over the last twenty years and is adopted by both related international and national legislation and policies. Shih-Yun Wu, *Animal Welfare Legislation in Taiwan and China: Examining the Problems and Key Issues*, ANIMAL L., Vol. 23: 2 at 406-415 (2017); see generally BRUCE A. WAGMAN & MATTHEW LIEBMAN, *A WORLDVIEW OF ANIMAL LAW* (2011); Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* – (reprt. 2005); see generally THOMAS G. KELCH, *GLOBALIZATION AND ANIMAL LAW: COMPARATIVE LAW, INTERNATIONAL LAW AND INTERNATIONAL TRADE* (2011); see generally ANDREW LINZEY, *THE GLOBAL GUIDE TO ANIMAL PROTECTION* 19 (2013).

² For example, Japan, Taiwan, and South Korea started amending their existing laws in 1999, 2000 and 2007 respectively, while Malaysia replaced its old law with the newly passed Animal Welfare Act 2015 in 2015. WAGMAN & LIEBMAN, *supra* note 1, at 30-47; Wu, *supra* note 1, at 413-415.

³ Although China has released two versions of draft laws for protecting animals in 2009 and 2010 respectively, the possibility of enactment remains uncertain in the near future. See Amanda Whitfort, *Evaluating China's Draft Animal Protection Law*, 34 SYDNEY L. REV. 347, 347-49 (2012); Wu, *supra* note 1, at 418-421.

⁴ See generally Wu, *supra* note 1; WAGMAN & LIEBMAN, *supra* note 1, at 30-47; Alvin W. L. SEE, *Animal Protection Laws of Singapore and Malaysia*, Sing. J. L. Stud. 132, 132 (2013); Amanda S. Whitfort & Fiona M. Woodhouse, *Review of Animal Welfare Legislation in Hong Kong* 4-5 (June 2010) (unpublished manuscript, University of Hong Kong); Hitoshi Aoki, Centre for New European Research, 21st Century COE Programme, Hitotsubashi Univ., *Legal Culture Relating to Animals: A Comparison Between Japan and Europe* 6 (2007).

⁵ *Id.*

⁶ Wu, *supra* note 1, at 407; Shih-Yun Wu; Yi-Te Lai; Chang-Young Fei; De-Shien Jong, *Attitudes of Taiwan Veterinarians Towards Animal Welfare*, 24 Animal Welfare 223, 223 (2015).

⁷ [Animal Protection Act] (中華民國動物保護法) [(promulgated by the President, Nov 4, 1998), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0060027> (accessed March 27, 2020).

the few progressive and comprehensive laws for protecting animals in Asia,⁸ the TAP underwent frequent amendments since it had been put into effect in 1998 as a result of its inability in preventing animals from cruelty and, more importantly, its ineffectiveness of enforcing the law.⁹

Numerous studies have examined the problems and deficiencies of the laws for protecting animals in Taiwan and other Asian countries to bring forward workable suggestions for their future reform. Yet, very little research has been done on exploring these legal regimes and their enforcement mechanisms based on empirical studies and investigation; instead, much of the work has been devoted to rule-based research and analysis.¹⁰ Given that the development of the animal welfare movement and legislation in these countries is relatively short and still immature when compared to that in the Western world,¹¹ pertinent law enforcement data and information are either inadequate or unclear. There is a need to explore the law empirically by investigating the law enforcement in practical terms in gaining a systematic understanding of overall and internal issues. In addition to ensuring the effective statutory protection for animals, the major role of law enforcement is to identify practical problems and critical weaknesses of the law, thereby further providing more reliable and workable directions for corresponding reform in accordance with the conditions of individual society and culture.¹²

Accordingly, this study aims to bridge the research gap discussed above by examining the animal welfare legislation and its enforcement mechanism in Taiwan based on a comprehensive empirical legal study and corresponding investigations. The study not only provides a critical analysis and an empirical perspective for improving the animal welfare legislation in Taiwan but also offers comparable and reliable implications for other Asian countries with similar developmental situations in improving their animal welfare and relevant legal regimes.

2 ANIMAL WELFARE LAW IN TAIWAN

2.1 THE DEVELOPMENT OF THE LAW

Before the Taiwan Animal Protection Law (TAP) was passed in 1998, the enactment of the Wildlife Conservation Act (WCA) in 1989¹³ had been a critical starting point in the development of the animal welfare movement and legislation in Taiwan since the 1990s.¹⁴ It should be noted that the WCA was legislated and developed under international

⁸ Wu, *supra* note 1 at 430-431.

⁹ *Id.* at 444-47.

¹⁰ For example: Wu, *supra* note 1; SEE, *supra* note 4; Whitfort & Woodhouse, *supra* note 4; Aoki, *supra* note 4; Whitfort, *supra* note 3.

¹¹ Wu, *supra* note 1, at 413-15; Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part I*, 19 *Animal L.* 23, 26 (2012); Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part II*, 19 *Animal L.* 347, 353, 367-69 (2013).

¹² RADFORD, *supra* note 1, at 346-46; Wu, *supra* note 1, at 444.

¹³ [Wildlife Conservation Act] (中華民國野生動物保護法) [promulgated on June 23, 1989]. <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=M0120001> [<https://perma.cc/4MS8-H7LU>].

¹⁴ Govindasamy Agoramoorthy, *Enforcement Challenges of Taiwan's Wildlife Conservation and Animal Protection Laws*, 12 *J. INT'L WILDLIFE L. & POL'Y* (2009); Wu, *supra* note 1, at 414.

pressure and the threat of imposing economic sanctions as a result of the increasing development of a global environmental movement.¹⁵ Even though the legislative purpose of the law is to conserve wildlife and their habitats instead of preventing animals from cruelty and harm,¹⁶ the WCA is the very first legislation which specifically outlaws behaviors of killing and abusing animals with fairly severe criminal sanctions.¹⁷ The impact of its legislation on society gradually spread all over Taiwan, although the scope of statutory protection within its anti-cruelty provisions is relatively narrow and limited¹⁸ and there is still no law regulating any treatment of animals which is kept or controlled by human beings,¹⁹ As a result, it aroused the domestic awareness of animal and environmental protection and thereby led to the emergence of local advocacy groups, including those aiming at related animal protection issues. In other words, it was the commencement of a social movement for protecting animals in the country.²⁰

Against this background, with continuous advocacy and lobbying of local animal protection groups, the emerging animal welfare movement in Taiwan started growing rapidly during the 1990s.²¹ Various animal issues, especially the controversies which involved poor animal treatment and cruel practices, gradually started coming to public`s notice and further triggered a wider range of discussions in society, particularly stray animal issues.²² Initially, the stray animal problem was regarded as a mere common public health issue which may be prone to a potential risk of rabies epidemics to the public.²³ An enormous number of stray animals being caught and impounded were treated like “waste and garbage” in public shelters, as they were usually being “dealt with” by drowning or starving to death.²⁴ Without a comprehensive and well-operated control

¹⁵ Wu, *supra* note 1, at 414 and 416 (“[D]ue to rising domestic awareness of wildlife and environmental protection, threats of economic sanctions from other nations, and enormous international public pressure, countries outside the Western world began to formulate relevant domestic laws in accordance with these multilateral treaties and agreements....Similarly, Taiwan is not a member of the United Nations and is ineligible to be a party to CITES, but it enacted its Wildlife Conservation Act (WCA) in 1989 in order to seek more international recognition and support...”); Agoramoorthy, *supra* note 14, at 195 (“[I]n 1994, the United States imposed an embargo under the Pelly Amendment on Taiwan for discouraging trade in rhinoceros and tiger parts....It was the first time that such a sanction had ever been imposed under the Pelly Amendment. As a consequence, Taiwan swiftly responded by cracking down on the illegal trade of endangered species in the country.”)

¹⁶ Wildlife Conservation Act, art 1; Wu, *supra* note 1, at 416 (“This act has been enacted to conserve wildlife, protect species diversity and maintain the balance of natural ecosystems.”); Agoramoorthy, *supra* note 14, at 191.

¹⁷ Wildlife Conservation Act, art 42. However, the law only sanctions the violation of endangered animal cruelty with criminal penalties but punishes those who harm or abuse general animals with administrative penalties; see also Wu, *supra* note 1, at 443.

¹⁸ Wu, *supra* note 1, at 441-42 (“[T]he WCA only provides general wildlife protection in particular restricted areas determined by the competent authority; as for the statutorily protected animals, the WCA expressly excludes the application of its animal cruelty offenses to activities or conduct in several particular circumstances, including population control, academic research for educational purposes, and traditional cultural or ritual hunting, killing, or utilization needs of Taiwanese aborigines.”)

¹⁹ *Id.* at 416.

²⁰ *Id.* at 414-15.

²¹ *Id.* at 416.

²² *Id.* at 416-17.

²³ Wu, *supra* note 1, at 416-17; Agoramoorthy, *supra* note 14, at 202.

²⁴ Wu, *supra* note 1, at 417.

policy, the number of stray animals has never been decreased, and many companion animals continue being abandoned as a result of the poor public awareness of animal welfare and, more importantly, the absence of statutory requirements for responsible ownership.²⁵ This long-standing issue not only caused massive animal suffering²⁶ but also further led to severe public safety problems such as children being chased and attacked by stray animals on the street.²⁷ Moreover, the disclosure of the extremely brutal and inhumane manner used to deal with impounded stray animals gave rise to immense outrage and criticism in both domestic and international communities.²⁸ Eventually, the stray animal issue ended up becoming a critical turning point of promoting the legislation of the general animal protection law due to the increasingly urgent demand of solving public safety problems and the purpose of maintaining the national reputation.²⁹

The government's political-driven force of drafting animal welfare law was a mere attempt at reducing the dispute caused by the stray animal issue instead of an intention of providing overall statutory protection for animals.³⁰ Still, local animal protection groups were eager to seize the opportunity to come up with a comprehensive animal welfare law so as to provide a wider scope of protection for various categories of animals.³¹ In addition to different stances between the government and advocacy groups, various conflicts of interests also existed between different animal-related industries, businesses, and academic units.³² The conflicts as well as various versions regarding the draft law thereby led to five-year long negotiation and coordination among different parties and representatives involved until the first version of the Taiwan Animal Protection Law (TAP) was officially passed and put into effect in November 1998.³³

The TAP was composed of five substantive parts: general protection of animals, scientific applications of animals, management of pets, administrative supervision of animals, and penalties.³⁴ Its scope of statutory protection included several major categories of animals, including companion animals, farm animals, and laboratory animals.³⁵ Overall, the law was fairly comprehensive in regulating various issues related

²⁵ Such as the requirement of companion animal licensing, rabies vaccination, and relinquishment of unwanted animals to animal shelters.

²⁶ Wu, *supra* note 1, at 434-435; in contrast to other forms of animal cruelty offense, the establishment of animal abandonment offense does not require the concrete animal suffering caused by abandonment, since there is a very high possibility that animals will get hurt and suffer from any kinds of potential risk and dangerous conditions once they are abandoned on the street, such as suffering from hunger and coldness and being hit by vehicles.

²⁷ Wu, *supra* note 1, at 417.

²⁸ Wu, *supra* note 1, at 416-17; Agoramoorthy, *supra* note 14 at 202; Hsin-Yi Weng, Philip H. Kass, Lynette A. Hart, and Bruno B. Chomel, Animal Protection Measures in Taiwan: Taiwanese Attitudes Toward the Animal Protection Law and Animal Shelters, *JOURNAL OF APPLIED ANIMAL WELFARE SCIENCE*, 9(4), 315, 326 (2006).

²⁹ Wu, *supra* note 1, at 416-17; Weng et al., *supra* note 28, at 316.

³⁰ See Wu, *supra* note 1, at 417([A]ccording to meeting records of the first scrutiny conference for the animal protection draft law in the Legislative Yuan in 1997, the chairman specifically noted, "The main legislative purpose of the animal protection law should be the consideration of public health rather than that of something relevant to animal love or animal right.")

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See Wu, *supra* note 1, at 417; Agoramoorthy, *supra* note 14, at 199-201.

³⁵ See Wu, *supra* note 1, at 417.

to animals in captivity.³⁶ However, unlike most animal welfare legislation in the Western world, the legislative purpose of the TAP was not based on the essential concept of the modern animal welfare legislation, that is, preventing animals from unnecessary suffering.³⁷ Rather, it was done mainly in furtherance of administrative management and public health control, for example, the lessening of stray animal problems and regulating related management issues of companion animals.³⁸ Accordingly, either the nature or the structure of the early versions of the TAP was more like an animal management law instead of an animal welfare law.³⁹ This also led to the inability and ineffectiveness of the law in providing basic protection for animals, thereby causing frequent, ongoing amendments to the law in the following twenty-three years in response to persistent criticism for its deficiencies and the urgent demand for further legal reform from local animal protection groups.⁴⁰

The criminalization of animal cruelty offenses in 2007 demonstrated that the law has been gradually transformed from an animal management law into a genuine animal welfare law.⁴¹ However, it was not until 2015 that the law further penalized animal cruelty caused by neglect and expressly included a positive statutory duty of care towards animals,⁴² which enables the law to provide animals with actual protection.⁴³ This is because the role of modern animal welfare law not only aims to prevent animals from both deliberate cruelty and animal neglect, but also attempts to take positive action and intervene in the cases or situations in which animals are very likely to suffer from any forms of harm or pain due to owners' or keepers' carelessness and omission, instead of waiting until animals are actually inflicted with suffering.⁴⁴

2.2 ISSUES OF LAW ENFORCEMENT

Despite the tremendous improvement of the TAP in terms of its legal framework of animal cruelty and its scope of protection,⁴⁵ a variety of fundamental problems remain when it comes to effective and efficient law enforcement.⁴⁶ In addition to the severe issues of understaffing and overworking among law enforcement participants,⁴⁷ the enforcement

³⁶ Animal Protection Act, art. 3.1.1(Animal: a vertebrate, such as a dog or a cat, reared and tended by human as a pet, an economic animal or a laboratory animal.); also see Wu, *supra* note 1, at 417.

³⁷ RADFORD, *supra* note 1, at 241-258; Kate M. Natrass, “. . . und die Tiere” *Constitutional Protection for Germany’s Animals*, 10 ANIMAL L. at 289 (2004); Wu, *supra* note 1, at 425-431; ELLEN-MARIE FORSBERG, WORK RESEARCH INST., PRINCIPLES OF ANIMAL ETHICS IN SCANDINAVIAN ANIMAL WELFARE LEGISLATION AND GOVERNANCE 6 (2008), <https://reurl.cc/KrOrDp> (accessed October 28, 2021)

³⁸ See Wu, *supra* note 1, at 417.

³⁹ See Wu, *supra* note 1, at 448.

⁴⁰ *Id.* at 417-418.

⁴¹ *Id.* at 448.

⁴² Animal Protection Act, arts. 30.1.1 & 30-1.

⁴³ See Wu, *supra* note 1, at 448-449.

⁴⁴ See Wu, *supra* note 1, at 430-431; Whitfort, *supra* note 3, at 357.

⁴⁵ See Wu, *supra* note 1, at 431-433 & 448.

⁴⁶ *Id.*, at 444-447.

⁴⁷ *Id.* at 446. (“[T]here were only 114 local inspectors assigned all over Taiwan in 2014, and only 63 of them were full-time dedicated personnel, which showcases Taiwan’s difficulty in having enough manpower to

mechanism of the law has not been amended in line with the transformation of the law as mentioned above even though frequent law amendments have been made.⁴⁸ This may result from the relatively short-term development of local animal welfare movement and corresponding legal regime. For example, the law still does not assign the police as one of its competent enforcement authorities but merely demands them to provide assistance when necessary even after the criminalization of animal cruelty offense in 2007, which is, however, not compulsory.⁴⁹ Accordingly, both administrative and criminal provisions of animal cruelty under the TAP are implemented merely by local animal protection inspectors,⁵⁰ yet the law does not further grant them correspondingly necessary powers and instruments for enforcing the law. For example, inspectors lack the authority of taking necessary judicial measures to investigate criminal cases of animal cruelty – these are absolute statutory powers and instruments of law enforcement belonging to the police only, hence the name “police power”.⁵¹ Such a deficiency of an enforcement operation would inevitably affect the efficiency and capability of the law and thereby lead to the inability of the law to a certain extent,⁵² since “an effective operation of enforcement mostly depends on key enforcement participants with skills and competences through cooperation, including inspectors, police officers, prosecutors, veterinarians and supervisory board members.”⁵³

Moreover, unlike many other anti-cruelty laws in western countries and their former colonies⁵⁴ which generally criminalize behaviours of animal cruelty caused by either deliberate intent or neglect,⁵⁵ the TAP is one of the few animal protection laws that penalizes different levels of general animal cruelty offences with both criminal sanctions and administrative punishments.⁵⁶ The rationale behind this double-track mode for

carry out adequate regular and irregular inspections of slaughterhouses, pet shops, or any other establishments where animals are held captive)

⁴⁸ *Id.* at 446.

⁴⁹ Wu, *supra* note 1, at 446. Animal Protection Act, art. 23.6. (Municipal or city/county police forces assisting animal protection inspectors’ performing duties shall have had relevant technical training.)

⁵⁰ See Wu, *supra* note 1, at 445-446. Animal Protection Act, art. 23.

⁵¹ Police Power Exercise Act [中華民國警察職權行使法] (<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080145>) (accessed March 29, 2020), art. 2 (“[p]olice power” refers to identity verification, forensic identity testing, data collection, notification, detention, dispersion, direct imposition, the seizure, custody, sale, auction, destruction, use, disposal, restricted use of objects, entering a residence, building, public place, and public-accessible place or other necessary concrete measures for the police to carry out their tasks in accordance with law for the purpose of fulfilling their statutory missions.)

⁵² Wu, *supra* note 1, at 446.

⁵³ Helena Striwing, *Animal Law and Animal Rights on the Move in Sweden*, 8 ANIMAL L. 93, 101 (2001); Also see Wu, *supra* note 1, at 446.

⁵⁴ For example, the former colonies of the UK: Hong Kong, Singapore, and Malaysia.

⁵⁵ Basically, anti-cruelty laws in most of the common law jurisdictions outlaw animal mistreatment with criminal penalties, while in civil law jurisdictions, many countries such as the Nordic Nations and France criminalize animal neglect but some provide administrative penalties for the violation of animal cruelty laws, including Germany; also see RADFORD, *supra* note 1, at 195-258; WAGMAN & LIEBMAN, *supra* note 1, at 142-146; SEE, *supra* note 4, at 130; Whitfort & Woodhouse, *supra* note 4, at 7; Elaine L. Hughes & Christiane Meyer, *Animal Welfare Law in Canada and Europe*, 6 ANIMAL L. 23, 59-63 (2000); FORSBERG, *supra* note 37, at 21. Striwing, *supra* note 53, at 95-96.

⁵⁶ Animal Protection Act, arts. 25 & 30. For example, according to the German Animal Welfare Act section 17 & section 18(1), the law also outlaws different levels of animal cruelty offences with both criminal and

penalizing animal cruelty offences is basically varying degrees of condemnation between intentional cruelty and animal neglect in society, and it is similar to how western jurisdictions judged and condemned animal cruelty caused by different levels of motivations in the 19th century.⁵⁷ Thus, most of the early western anti-cruelty laws required proven deliberate intention as one of the essential factors for determining successful prosecution or conviction of the offences until approaching the 20th century.⁵⁸ In other words, animal cruelty caused by an animal owner's negligence or omission is generally not considered as that immoral as that caused by a deliberate intent, although animal suffering arising from a result of indifference, omission or ignorance may not necessarily be less than that caused by intentional mistreatment.⁵⁹ As a consequence of lacking an awareness of the significance of responsible owners' care duties towards animals in society,⁶⁰ the TAP still did not outlaw any animal neglect cases that were deemed completely unacceptable and immensely criticized by society until 2015.⁶¹

Notably, criminal penalties for animal cruelty could be increased or decreased with different degrees of liability involved, depending on the amount of unnecessary suffering inflicted on animals as well as the unacceptable level of a reasonable adult's behaviors regarded by society.⁶² However, the TAP still adopts the double-track mode (criminal and administrative penalties) for penalizing animal cruelty offenses caused by different intents of inflicting pain and harm.⁶³ In short, the law aims to punish those irresponsible behaviours of animal owners or keepers for minor offences with administrative penalties instead of minor criminal sanctions. It is not clear whether such a double-track mode for penalizing deliberate cruelty and animal neglect is more effective or would lead to more difficulties and problems of law enforcement when

administrative penalties. <https://www.animallaw.info/statute/germany-cruelty-german-animal-welfare-act> (accessed March 29, 2020).

⁵⁷ RADFORD, *supra* note 1, at 222-226; Wu, *supra* note 1, at 431-32.

⁵⁸ *Id.* (“As [t]he leading English case *Ford v. Wiley* decided in 1889, the court pointed out that determining whether the offense of cruelty has been committed was no longer solely based on the defendant's own view or knowledge, but on whether the court considered the conduct objectively justifiable under a reasonable and prudent person's standard. Likewise, modern case law also endorses such reasoning and proposition. In the 1949 case of *Easton v. Anderson*, the Scottish High Court adopted a similar approach, since ‘the proved circumstances would have conveyed such knowledge to any normal and reasonable person.’”)

⁵⁹ Even in many Asian countries, the deliberate offense of cruelty is still the only type of general cruelty that has been outlawed; Wu, *supra* note 1, at 431-434.

⁶⁰ Here refers to a *passive* animal owner's responsibility, which is required for those who are in charge of animals, as owners or keepers need to provide any basic care necessary for animals, including food, shelter and medical treatment needed so as to prevent them from unnecessary suffering. Thus, the establishment of such a requirement as so-called animal neglect offence needs to prove that there is some unnecessary suffering involved. In contrast, an animal owner's positive duty goes further by requiring animal owners or keepers to provide a certain degree of satisfactory care for animals; however, the infringement of a positive care duty towards animals does not require a result of unnecessary suffering as a liable element. Furthermore, the difference between responsibility and positive duty can also be regarded as the differentiation between animal cruelty offence and animal welfare infringement; also see RADFORD, *supra* note 1, at 261-288; Wu, *supra* note 1, at 412 & 430-34.

⁶¹ Animal Protection Act, art 30; Wu, *supra* note 1, at 432-33.

⁶² RADFORD, *supra* note 1, at 224-234, 241-258; Wu, *supra* note 1, at 426 & 432.

⁶³ Animal Protection Act, art 25 (Criminal penalties for general deliberate animal cruelty offence resulting in deaths or severe injuries of animals) & art 30.1.1 (Administrative penalties for animal neglect and deliberate animal cruelty with relatively less severe injuries)

compared with the single-track criminal penalty mode adopted by most western legal regimes. A number of studies suggest that the adoption of administrative penalties or a double-track system is more efficient in enforcing anti-cruelty law than that of solely criminal sanction involving time-consuming procedures of judiciary judgement.⁶⁴ However, when it comes to a suitable penalty scheme and an effective deterrence to law violations, other factors affecting the efficiency and effectiveness of the law enforcement also need to be taken into account. Typical examples include assigned competent authorities and law enforcement participants involved, such as the police, animal welfare inspectors and animal protection groups, and their competences under different legal regimes.⁶⁵ In other words, when determining an effective penalty mode, one should not merely consider cost-effective means of enforcement by overlooking the nature of law, corresponding enforcement mechanism, social condition and governmental resources. Given the need of exploring these vital and practical issues of law enforcement stated above, including the pros and cons of different penalty modes and enforcement mechanism while taking the existing social and practical factors into account, further understanding of related issues are fundamental and necessary for improving animal welfare and corresponding legal regime in Taiwan. This study, therefore, aims to answer the research questions which are formulated in accordance with the issues discussed above as follows:

- 1) What are the problems and key issues of the definition and liable criteria of animal cruelty offences under the TAP from the perspective of law enforcement?
- 2) What are the specific difficulties and practical challenges of implementing the law under the enforcement mechanism of the TAP, including its new enforcement schemes?
- 3) What are other practical problems or challenges in relation to law enforcement of the TAP?

3 RESEARCH METHODOLOGY

The qualitative method was adopted as a main approach for investigating and answering the research questions as noted, as the aim of qualitative research is to explore in depth the latent meaning and reason behind individual experience or social phenomena.⁶⁶ In addition the primary qualitative approach, this study also includes an analysis of the representative data collected from a quantitative survey so as to provide a comprehensive

⁶⁴ Hughes & Meyer, *supra* note 55 at 72; Danielle Rebecca Duffield, Instant Fines for Animal Abuse? The Enforcement of Animal Welfare Offences and the Viability of an Infringement Regime as a Strategy for Reform 8 (2012) (unpublished Master's thesis, University of Otago National), <http://www.otago.ac.nz/law/research/journals/otago043939.pdf> [<https://perma.cc/KB8Z-CZK7>] (accessed Apr 19, 2020) at 66.

⁶⁵ Duffield, *supra* note 64, at 14-19.

⁶⁶ Lisa Webley, Qualitative Approaches to Empirical Legal Research, Oxford Handbook of Empirical Legal Research 1st Edition, Oxford University Press, Editors: Peter Cane and Herbert M. Kritzer, Chapter 38 at 1-January 2010; Bayens, Gerald J. & Roberson, Cliff, Criminal Justice Research Methods: Theory and Practice, Second Edition. 25-26 (2010)

analysis with diversified, reliable and valid data.⁶⁷ Accordingly, the in-depth interviews and mail survey were conducted separately and independently by the two authors in 2016 and 2017. The results of in-depth interviews would be analyzed and discussed within all discussion sections in Chapter 5 while the data collected from the mail survey would be included in several discussion sections that involve measurable enforcement issues, including sections 5.2.2 to 5.3.2. All aspects of the empirical study and its fieldwork adhere to the guidelines of the National Advisory Board on Research Ethics relating to research in the humanities and social and behavioral sciences. Participation in this empirical research would be voluntary and based on informed consent.⁶⁸

3.1 RECRUITMENT AND PARTICIPANTS

3.1.1 IN-DEPTH INTERVIEWS

There was a total of 22 local competent authorities of law enforcement all over Taiwan. The local enforcement authorities in different administrative regions established the Animal Disease Control Center, the City Animal Protection Office, the City Government Animal Protection Office, or Health Inspection Office in accordance with the respective status and structure of local governments. According to the pre-investigation for understanding the current processes of law enforcement of animal cruelty offences, animal welfare inspectors are responsible for investigating animal cruelty cases and making initial decisions in discretion. These include whether to impose administrative penalties or not and transferring any likely criminal cases to prosecutors if suspects are found liable for intentional cruelty or other criminal offences under the law, such as the consumption of dog or cat meat. However, it should be noted that the entire operation mentioned above is directed by supervisors of animal welfare officers. In other words, any decisions of administrative discretion are made in cooperation of both supervisors and inspectors. In light of this mode of internal operation of law enforcement, the target participants of the interviews would include both animal welfare inspectors and their supervisors – all of them have been engaging in law enforcement of animal cruelty offences for at least one year from seven selected local competent authorities located in main three administrative regions of the country.⁶⁹ Twenty-three animal welfare inspectors in total from these selected competent authorities participated in the interviews. According to the interview schedule arrangements, each interview lasted one to two hours and was conducted face-to-face in the offices of the local enforcement authorities. All the interviews were conducted by the first author to ensure the consistency in the types of questions asked. Immediately before the interviews, each interviewee was reminded of reading and signing a consent form which specifically emphasized the principle of strict anonymity of interviewees.

⁶⁷ Bayens & Roberson, *supra* note 66, at 25.

⁶⁸ ETHICAL PRINCIPLES OF RESEARCH IN THE HUMANITIES AND SOCIAL AND BEHAVIOURAL SCIENCES: <http://www.tenk.fi/en/ethical-review-in-human-sciences> (accessed May 2, 2020)

⁶⁹ They are the northern part, the middle part, and the southern part of Taiwan.

3.1.2 MAIL SURVEY

The quantitative survey would target a wider range of law enforcement participants from all of the 22 competent authorities in Taiwan. Apart from animal welfare inspectors who are mainly in charge of investigating animal cruelty offences (the narrow definition of animal welfare officers), the participants would also include other law enforcement officers (the broad definition of animal welfare officers) who are mainly responsible for implementing other duties under the animal protection law such as animal rescue, animal seizure and management, animal shelter and adoption, etc., as well as supervising the animal welfare officers. A total of 342 valid responses from 430 questionnaires were sent by surface mail after follow-up calls had been made to all the local competent authorities involved for increasing the response rate.

3.2 RESEARCH DESIGN AND DEVELOPMENT

3.2.1 IN-DEPTH INTERVIEWS

The framework and the questions of the in-depth and unstructured interviews were developed and formed in light of the research questions as noted. Apart from the practical issues of law enforcement and enforcement mechanism, the interviews included the application of the statutory provisions and standards in terms of the implementation of the law. Therefore, the outline of the interviews consisted of the four main themes relating to law enforcement as follows:

1. The interpretation of the current statutory standards

The questions concerning this theme focus on how law enforcement participants interpret the current the statutory scope of protection and the standards of animal cruelty offences. What difficulties or problems they have been encountering when they enforce the law in light of these criteria?

2. The issues of enforcement mechanisms

The questions for this theme are about how enforcement participants think of employing different modes of penalty, including the currently adopted double-track penalty mode from the perspective of law enforcement. The issues of assigning enforcement authorities and their enforcement powers and instruments would be included in the questions planned.

3. The practical issues of the manpower and training

The interviewees would be asked about not only the severe problems of understaffing but also the required qualifications and training of animal welfare inspectors.

4. Other relevant issues

The interviewees were allowed to bring forward any idea and opinion they would like to talk about during the process of interviews, providing their views were related to law enforcement issues.

3.2.2 MAIL SURVEY

The standardized questionnaire for the mail survey focused on a series of prominent measurable issues concerning law enforcement in practical terms. Accordingly, the questionnaire comprised 22 quantitative questions within three sections in relation to the issues of manpower, enforcement mechanisms and instruments, as well as professional ability and training. We used a five-point Likert scale for letting respondents choose their answers in reflecting their attitudes toward these issues, and the ratings were scored from 1 (strongly disagree) to 5 (strongly agree).

3.3 DATA HEADING AND ANALYSIS

3.3.1 IN-DEPTH INTERVIEWS

The transcripts of the recordings in the interviews were produced and sent to all the interviewees for correcting any factual errors. The data analysis was conducted after all the interviewees had returned the revised transcripts or confirmed that there was no need for any revision. Thematic analysis would be employed for the data analysis, since it is a foundational method of qualitative analysis for identifying, analyzing and reporting patterns (themes) within data, enabling us to organize the data minimally but describe the data set in rich detail.⁷⁰ The data analysis was performed by the two authors to allow cross-validation of the emerging themes of the texts. The transcripts of interview recordings were analyzed independently by each of the authors to identify the key themes first and then discuss them with each other until there was no substantial difference in the themes. All the transcripts of interview recordings were analyzed and coded on the basis of meaningful units of the sentences which consisted of relevant concepts, opinions, actions, events, etc. The most relevant codes would be identified, reexamined and grouped into a variety of categories, while any unnecessary codes would be dropped before collating codes into potential themes. The key themes and subthemes of the texts were finally created, defined, and named after the process of reviewing all candidates' themes and generating a thematic map of the analysis.⁷¹

3.3.2 MAIL SURVEY

The quantitative data collected from the questionnaires of the mail survey were analyzed by the statistical software SPSS 22.0, while statistically significant differences in mean values of Likert scale choices associated with demographic variables (content of enforcement duties) were investigated by using chi-square tests.

⁷⁰Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), at 78-79. <https://doi.org/10.1191/1478088706qp063oa>.

⁷¹*Id* at 86-93.

4 RESULTS

4.1 GEOGRAPHIC INFORMATION OF THE INTERVIEWEES AND RESPONDENTS

4.1.1 IN-DEPTH INTERVIEWS

As 23 animal welfare inspectors in total participated in the interviews, it would be sufficient to reach an adequate sample size of quantitative data and achieve data saturation, thereby being applicable to a larger sample size of law enforcement participants than that of previous investigations.⁷² Among the interviewees, the percentages of male and female were 70% and 30% respectively. More than 80% of them have been engaging in related law enforcement for more than three years, and 26% of them have been dedicated to animal protection duties for more than 10 years. In addition, the percentages of animal welfare inspectors and their supervisors were 74% and 26% respectively.

4.1.2 MAIL SURVEY

There was a total of 342 valid responses from the questionnaires sent, with the response rate being 89% and its gender percentages of males and females being 58% and 42% respectively. Among them, the percentages of animal welfare inspectors and other animal welfare officers were 48% and 52% respectively, while those of animal welfare officers (narrow and broad definitions included) and their supervisors were 73% and 27% respectively.

4.2 SUMMARY OF THE RESULTS

4.2.1 IN-DEPTH INTERVIEWS

Generally, most of the animal welfare inspectors and their supervisors agreed that the statutory provisions need to be further amended in providing more comprehensive protection for animals. However, they also have encountered a certain degree of difficulties when applying the statutory provisions under the existing double-track penalizing mode, with particular regard to distinguishing between intentions of deliberate cruelty and neglect. Despite the problems of the double-track penalizing mode, nearly half of the interviewees were still in favor of penalizing different levels of animal cruelty

⁷² Guest et al. (2006) proposed that saturation often occurs around 12 participants in homogeneous groups, while Crouch & McKenzie (2006) propose that less than 20 participants in a qualitative study can help mitigate some of the bias and validity threats inherent in qualitative research. Overall, the “sweet spot” sample size for many qualitative research studies is 15 to 20 homogeneous interview participants; Guest, G., Bunce, A., & Johnson, L., How many interviews are enough? An experiment with data saturation and variability. *Field Methods*, Vol. 18, No. 1, 59–82 (2006); Crouch, M., & McKenzie, H., The logic of small samples in interview-based qualitative research. *Social Science Information*, 45(4), Volume: 45 Issue: 4, 483-499 (2006).

offences with both criminal and administrative sanctions. Yet, almost all of them believed the police are more suitable for being in charge of investigating animal cruelty offences and taking up related law enforcement than the administrative competent authorities. The results revealed the major issue of the lack of adequate powers and corresponding instruments for implementing the law. As for other practical issues of law enforcement, most law enforcement participants relatively agreed with various severe problems within the existing enforcement mechanism, including the issues of understaffing and overworking, the difficulties of cooperating with other interest groups as well as the problems of training and recruitment of animal welfare inspectors.

4.2.2 MAIL SURVEY

According to the results of the mail survey as shown in Table 1, most of the respondents also disagreed that they have sufficient powers and corresponding instruments for their law enforcement duties (Q² & Q⁵; Table 1) Moreover, similar to the results of the interviews, the data of the survey also suggested that most law enforcement participants fairly agreed with various practical problems within the existing enforcement mechanism, including the issues of understaffing and overwork, the difficulties of cooperating with other interest groups, as well as the problems of the training and recruitment of animal welfare officers (Q¹, Q⁴, Q⁶-Q¹³, Q¹⁴-Q²²; Table 1) Notably, both animal welfare inspectors and other animal welfare officers from the mail survey had similar opinions on various practical issues. Although only the results of 2 out of 22 questions reveal statistical differences (Q²&Q⁵; Table1), inspectors being in charge of investigating animal cruelty offences and taking up related law enforcement still had slightly more negative attitudes towards the practical situations than officers who were responsible for other law enforcement duties. This disparity of attitudes may imply that the actual situations of performing the law enforcement duties in relation to animal cruelty are more difficult and severe than those of performing other law enforcement tasks.

Overall, although the two investigations aim to explore the problems and difficulties of law enforcement from different perspectives, both interviewees and respondents from the in-depth interviews and mail survey have shown similar trends and attitudes towards various practical issues. This provides reliable and valid bases of the current practical challenges which need to be further addressed. Within the following sections of findings and discussion, the findings of the interviews would be discussed on the basis of the key themes and subthemes with quotations of the most representative opinions identified. The results of the mail survey as shown in Table 1 would also be discussed in the corresponding discussion from sections 5.2.2 to 5.3.2.

Table 1. Mean Likert scale choices in response to statements about various practical issues of the law enforcement

Statements about work loading and work achievement	Animal Welfare Inspectors	Other Animal Welfare Officers
1. There is enough workforce to carry out statutory duties of the law.	1.53	1.70

2. Law enforcement officers have enough time to conduct statutory duties of the law.	1.72	1.86
3. The public appreciate the effort made by law enforcement officers.	2.07	2.23
4. The qualification of law enforcement officers should be limited to veterinarians.	2.62	2.66
Statements about enforcement instruments and cooperation	Animal Welfare Inspectors	Other Animal Welfare Officers
5. Law enforcement officers have authority to implement the law.	2.05	2.24
6. The police would assist the investigation of animal cruelty cases.	2.19	2.52
7. Other related administrative authorities (the police, fire service or environmental protection units) would assist the law enforcement ones.	2.07	2.39
8. Wildlife conservation officers would assist the law enforcement ones concerning wildlife related offences.	2.23	2.50
9. Competent authorities have good relationships with the animal protection groups.	2.28	2.57
10. Competent authorities have close cooperation with the animal protection groups.	2.38	2.65
11. Competent authorities would exchange information with other governmental units or animal protection groups.	2.76	2.85
12. Local competent authorities subsidize animal protection groups for implementing the relevant tasks of the law.	2.37	2.60
13. Local official veterinarians would assist with relevant duties of law enforcement.	2.00	2.37
Statements about professional training and ability	*Animal Welfare Inspectors	*Other Animal Welfare Officers
14. Animal welfare inspectors have been trained with courses relating to animal medical treatment and rescue.	2.62	2.67
15. Animal welfare inspectors have been trained with courses relating to animal welfare.	2.71	2.73
16. Animal welfare inspectors are able to apply the knowledge of animal welfare in their duties.	2.67	2.71
17. Animal welfare inspectors have been trained with courses relating to the animal protection law and its relevant decrees and rules.	2.91	2.90

18. Animal welfare inspectors are able to apply the knowledge of the animal protection law and its relevant decrees and rules in their duties.	2.91	2.92
19. Animal welfare inspectors have been trained with courses relating to investigation of cases.	2.63	2.60
20. Animal welfare inspectors are able to apply the knowledge of statutory inspection and criminal investigation in their duties.	2.42	2.57
21. Animal welfare inspectors have been trained with courses relating to psychology of animal cruelty behaviors.	2.47	2.54
22. Animal welfare inspectors receive on-the-job training relating to the implementation of practical duties.	2.65	2.66

*Animal Welfare Inspectors, falling within the narrow definition of AWO, are in charge of investigating animal cruelty offences and taking up related law enforcement, while other AWOs are law enforcement officers who are responsible for other enforcement duties under the animal protection law.

5 FINDINGS AND DISCUSSION

5.1 THE ISSUES OF STATUTORY CRITERIA

5.1.1 THE SCOPE OF PROTECTION

The definition of "animal" under The Taiwan Animal Protection Law is "a vertebrate, such as a dog and a cat, and other animals reared or tended by humans as a pet, an economic animal or a laboratory animal."⁷³ In light of the literal interpretation of this definition, only animals kept to serve a certain purpose for the use of humans or kept under some certain control of human beings for a certain period of time can benefit from the statutory protection, including wildlife in captivity.⁷⁴ In other words, neither wildlife nor domestic animals are included as protected animals unless they are in a states of confinement.⁷⁵ While given the special status of dogs and cats under the law and in practical terms, this definition of protected animals under the TAP usually extends to any dogs and cats, including those that are ownerless.⁷⁶

⁷³ Animal Protection Act, art. 3; However, The latest scientific studies have proved that some of the invertebrate species are capable of feeling pain and suffering as humanity do, and several legal regimes thus further proscribe specific cruelty practices associated to invertebrates, yet considering that animal welfare and its relevant social consensus have not yet well developed at the moment in Taiwan, the law limiting its scope of protection to vertebrates may still be acceptable but not certainly necessary; Lynne U. Sneddon et al., *Defining and Assessing Animal Pain*, 97 ANIMAL BEHAVIOUR 201, 206, 212 (2014); also see Wu, *supra* note 1, at 422-423.

⁷⁴ *Id.* law, art. 3; Wu, *supra* note 1, at 422-424.

⁷⁵ *Id.*

⁷⁶ The legislative purpose of the TAP was mainly for dealing with severe problems of stray animals (dogs and cats) instead of preventing all animals from mistreatment or abuse; Wu, *supra* note 1, at 416-18; also see Ming-Chiang Lin, *The Fundamental Issue of Legal Systems of Animal Protection, Democracy - Human*

“...except for stray animals (dogs and cats), if there is no one feeding, taking care of or being responsible for an animal, basically it does not come within the range of statutory protection under the TAP....” (Interview 12)

“Basically, they are the same (being reared or tended), and the only difference is whether it is a registered animal or not.... If an animal is a registered pet, we would regard it as being ‘reared’ but if we find out a fact that an animal is being taken care of by someone, and it is not a registered animal, we would consider it to be ‘tended’.” (Interview 7)

In light of either the literal or practical interpretation of the definition of “protected animals” under the TAP, there is no substantial difference between the definition of animals “reared” by humans and that of animals “tended” by them.⁷⁷ Accordingly, only legally or practically “owned” animals can be regarded as protected animals under the law. For example, if someone catches a sparrow outside a restricted region and willfully tortures it just for fun, such a perpetrator can be exempted from any liability simply because a sparrow is considered to be wildlife in the wild. Although the Taiwan Wildlife Conservation Act (WCA) to a certain extent provides protection by prohibiting any disturbing behaviors and cruelty against the wildlife,⁷⁸ the scope of its protection only covers general wildlife living in certain restricted regions. Wildlife in national parks is a typical example in addition to the listed endangered species and some protected wildlife.⁷⁹ This means that basically, most of the commonly seen wildlife, non-captive or ownerless animals are not under the protection of either the TAP or the WCA.⁸⁰

“I absolutely agree that these animals (general wildlife) are supposed to be protected. For example, some persons would intentionally and cruelly destroy nests of birds and thereby cause injuries or even deaths of broods. But both the existing TAP and WCA fail to provide any protection for animals under the circumstances like this....If the TAP can extend its scope of protection or the WCA can extend it, I’ll absolutely support....” (Interview 9)

“Based on my experience of enforcing the WCA, I think the most severe problem in Taiwan is that only owned animals deserve something, while ownerless animals are nothing....” (Interview 8)

When it comes to such an enormous loophole in providing comprehensive protection for all animals which can also suffer from any pain and harm, many of the animal welfare inspectors also express their concerns. In this regard, most of the

Rights - Justice—Essays in Honor of Professor Dr. Jyun-hsyong Su for His 70th Birthday (2005), Angle publishing, at 727–67; also see Wu, *supra* note 1, at 424.

⁷⁷ Animal Protection Act, art. 3.

⁷⁸ Wildlife Conservation Act, arts. 3, 10, 16; Wu, *supra* note 1, at 422.

⁷⁹ *Id.* Act, arts. 10, 16; Wu, *supra* note 1, at 441-442.

⁸⁰ Wu, *supra* note 1, at 425.

inspectors and supervisors also agreed that the law should be further amended for mending such a deficiency:

"... but this (the protection of wildlife) has nothing to do with the TAP, as the protection of the wildlife belongs to the WCA.... The WCA should not only protect those endangered species but also all other general wildlife, so the government should further amend the law." (Interview 22)

However, the majority of them tended to be in favor of amending the WCA instead of the TAP. Indeed, the current scope of protection under the WCA is also fairly narrow and limited.⁸¹ However, the purpose of the WCA is mainly to preserve wildlife and their habitat as natural resources instead of protecting wildlife from suffering or harm by humans⁸², while the TAP, as general animal welfare legislation, should undoubtedly aim to prevent all animals from unnecessary suffering.⁸³ More importantly, in light of the rationale and principle of modern anti-cruelty laws, as long as humans can exercise any power over an animal, they have an obligation not to abuse it.⁸⁴

"...the purpose of the TAP is to maintain animal welfare, so it is not reasonable if the law only protects dogs, cats or any owned animals.... As long as there was a fact of animal cruelty, no matter that animal is ownerless or not, the law should have provided protection...." (Interview 10)

Accordingly, the definition of protected animals should not be limited to animals being in the states of confinement or under control for a certain period of time by humans.⁸⁵ In other words, the requirement of "being reared" or "being tended" by humans within this definition under the TAP is totally not necessary.⁸⁶ The state of "merely being captured" should be sufficient to bring animals within the scope of protection in light of the objectives of modern animal welfare legislation.⁸⁷ As a result, not only captured wildlife but also ownerless or missing domestic animals can certainly benefit from the statutory protection, and this cannot be fulfilled by the mere amendment of the WCA.

Moreover, it should also be noted that once the scope of protection under the TAP has been expanded for preventing captured wildlife from mistreatment and abuse, the governing range of statutory protection for the wildlife under the TAP and the WCA would inevitably overlap each other and thereby cause certain controversies regarding which law should be applied.⁸⁸ This suggests that the two laws need to be simultaneously amended in terms of their statutory scope of protection.⁸⁹ The WCA should expressly include the protection for general wildlife outside the specific protective regions and

⁸¹ Wildlife Conservation Act, arts. 10, 16; Wu, *supra* note 1, at 441-442.

⁸² Wildlife Conservation Act, art. 1; Wu, *supra* note 1, at 422.

⁸³ See RADFORD, *supra* note 1, at 195-258. Wu, *supra* note 1, at 425-426.

⁸⁴ RADFORD, *supra* note 1, at 210-14; also see Wu, *supra* note 1, at 425.

⁸⁵ RADFORD, *supra* note 1, at 213-14; also see Wu, *supra* note 1, at 425.

⁸⁶ Animal Protection Act, art. 3. Wu, *supra* note 1, at 425.

⁸⁷ Wu, *supra* note 1, at 425; See RADFORD, *supra* note 1, at 212-14.

⁸⁸ Animal Protection Act, arts.1 & 3; Wildlife Conservation Act, arts.1,10, 16.

⁸⁹ *Id.*

proscribe or limit any activity or behavior that may disturb and influence the ecological system or wildlife conservation, such as illegal hunting and life release instead of animal cruelty. As for the TAP, however, any animal cruelty offence, including wildlife mistreatment, should be unitedly outlawed within the scope of statutory governance under the TAP.

“...the definitions of protected animals under the TAP and the WCA need to be expressly distinguished if we are going to amend the provisions of the TAP; otherwise, it is going to cause the difficulties of applying the laws ...” (Interview 13)

5.1.2 THE DEFINITION OF CRUELTY

Before the animal cruelty offense was criminalized in 2007,⁹⁰ the TAP not only had specifically imposed the tangible liability of “preventing the animal from harassment, abuse or injury” on animal keepers since its enactment in 1998,⁹¹ but also had explicitly required that “one must not harass, abuse or injure any animal” since 2001.⁹² However, in addition to several specific types of animal cruelty such as animal abandonment and failure of providing necessary medical treatment,⁹³ the law neither provided any clear definitions of “abuse” or “harassment” nor stated what liability a violation would establish under the law.⁹⁴ Not only was this against the principle of legal certainty, but also resulted in further difficulties of law enforcement owing to problems of law interpretation and enforcement discretion in the first decade after the TAP had come into effect.⁹⁵ It was not until 2008 that the meaning of “cruelty” under the TAP was further amended and expressly defined as “using violence, improper drug or other means— beyond what is necessary to rear, tend or dispose of an animal — to harm an animal or cause it to be unable to perform physical functions properly”.⁹⁶ Yet, such a definition only focuses on prohibiting behaviors of causing animals’ physical injuries and dysfunction, paying much less attention to preventing an animal from other different degrees or forms of suffering, such as starvation or excessive heat and cold.⁹⁷

“If an animal has been suffering from starvation for almost one month and thus becomes fairly skinny, but it does not cause a vital organ failure of the animal... although it is extremely cruel and totally not acceptable, you just cannot do anything for it....” (Interview 8)

“I knew there was a case which has been dealt with by other local competent authorities recently: an owner seemed to use something like stun baton to hit

⁹⁰ Animal Protection Act, art. 25; Wu, *supra* note 1, at 418.

⁹¹ *Id* law, art. 5; Wu, *supra* note 1, at 429.

⁹² *Id* law, art. 6; Wu, *supra* note 1, at 429.

⁹³ *Id* law, arts. 29, 30. Wu, *supra* note 1, at 429.

⁹⁴ Wu, *supra* note 1, at 429.

⁹⁵ *Id.*

⁹⁶ Animal Protection Act, art. 3.

⁹⁷ Wu, *supra* note 1, at 429.

his dog... of course, the dog must be in pain and terrified at the moment when being hit, but the electricity was not strong enough to cause the death or even any wound of that dog. Although it is totally not acceptable, I doubt that it can be penalized....” (Interview 16)

In addition to the evidence of deliberate intention, a successful criminal prosecution or verdict under the TAP mostly depends on whether animal cruelty has caused severe injuries "leading to mangled limbs, vital organ failure, or death of an animal"⁹⁸ instead of “causing animals any unnecessary suffering”. The latter has a much wider modern meaning, including any degrees and forms of both physical and mental suffering or distress.⁹⁹ It should be noted that even after animal neglect was outlawed in 2015, the TAP still adopts this relatively narrow standard of cruelty in establishing an administrative liability,¹⁰⁰ in that only those who commit animal cruelty leading to visible physical damage or injuries would be accountable for criminal or administrative liabilities based on different kinds of intent.¹⁰¹ However, as animals can always suffer from severe and intensive pain apart from those visible physical injuries or wounds, the definition of cruelty like this would narrow down the scope of protection under the law.¹⁰² Therefore, a much broader definition of cruelty would be needed to provide more comprehensive protection.¹⁰³ It is particularly essential for animal neglect cases, since several common types of suffering are usually invisible harm and distress (e.g. starvation) resulting from consequences of ignorance, indifference, neglect and omission of providing basic or necessary care for animals.¹⁰⁴ Although many of the interviewees also agreed that the existing definition of animal cruelty is relatively limited and narrow and thereby needs further amendment, they also brought forward several practical issues of adopting other more flexible standards based on the level of pain animals suffer, such as “unnecessary suffering”.

"I think it would be very awesome if we are able to evaluate mental conditions of animals in light of relevant standards or bases (plural of basis) which can specifically illustrate what would cause mental injury or any other harm.... Given the current provisions of the law, it is quite unlikely that we are able to evaluate these."(Interview 17)

“Indeed, the current standard is very narrow and limited, but it can be easily applied since there is a very specific standard...a broader and flexible standard would sometimes cause some difficulties of implementing the law,

⁹⁸ Animal Protection Act, art. 25.

⁹⁹ RADFORD, *supra* note 1, at 241–57; Wu, *supra* note 1, at 429.

¹⁰⁰ Animal Protection Act, art. 30.

¹⁰¹ *Id.* art. 25(criminal liability), art. 30 (administrative liability).

¹⁰² Such as mental distress and other forms of physical harm like visceral injury; also see RADFORD, *supra* note 1, at 241–57; Hughes & Meyer, *supra* note 55.

¹⁰³ Since ([i]t can be applied to a wider variety of different cases and can extend the scope of protection beyond physical injury to other physical and mental distress.), Wu, *supra* note 1, at 429.

¹⁰⁴ Wu, *supra* note 1, at 429-430.

because you do not have a precise rule to follow and have to evaluate it in light of your own experience or feeling.” (Interview 13)

"In terms of law enforcement in Taiwan, it is quite difficult to judge it with the level of pain. I don't think we have enough social consensus like other foreign countries." (Interview 5)

The concept of unnecessary suffering is a long-established legal standard in determining animal cruelty.¹⁰⁵ It has been widely adopted by not only most of the western animal welfare legal regimes and their former colonies,¹⁰⁶ but also by many international governmental or non-governmental organizations such as the EU and OIE.¹⁰⁷ Compared with the relatively narrow standard of animal cruelty adopted under the TAP, the concept of unnecessary suffering can be applied to a wider variety of different cases and can extend the scope of protection beyond physical injury to other physical and mental distress.¹⁰⁸ However, in spite of the more comprehensive protection against unnecessary suffering by the definition of animal cruelty, several concerns for adopting the standard still need to be further addressed in Taiwan or other countries with similar developmental stages of animal protection legal regimes. First of all, whether pain and suffering has been inflicted is a question of *fact*, based on the scientific understanding of animal behavior, physiology, and ethology, and neither the severity nor duration of suffering inflicted on animals is a determining factor.¹⁰⁹ In other words, any degrees or forms of pain and suffering, including mental distress, would be included within this definition.¹¹⁰ However, the lack of experts of animal welfare and related expertise in identifying animals' precise physical and mental conditions without visible injuries would be indeed a difficulty for the current law enforcement mechanism, since animal welfare and its related education, including the most critical veterinary professional education, are still not yet well developed in Taiwan.¹¹¹

Secondly, determining whether suffering is unnecessary or unsound is the major challenge while adopting the standard, since it inevitably involves a balancing exercise that ought to take into account of all the circumstances.¹¹² They include whether

¹⁰⁵ RADFORD, *supra* note 1, at 241-42; Wu, *supra* note 1, at 426.

¹⁰⁶ RADFORD, *supra* note 1, at 241-258; Hughes & Meyer, *supra* note 55; Striwing, *supra* note 53; Natrass, note 37; Whitfort & Woodhouse, *supra* note 4; SEE, *supra* note 4.

¹⁰⁷ RADFORD, *supra* note 1, at 241; Wu, *supra* note 1, at 426.

¹⁰⁸ RADFORD, *supra* note 1, at 242-43; Wu, *supra* note 1, at 426.

¹⁰⁹ RADFORD, *supra* note 1, at 241-243; Wu, *supra* note 1, at 426-427.

¹¹⁰ Also see RADFORD, *supra* note 1, at 241-57; Hughes & Meyer, *supra* note 55.

¹¹¹ See Wu et al., *supra* note 6 at 223; Wu, *supra* note 1, at 446.

¹¹² RADFORD, *supra* note 1, at 241-42; this is also the so-called utilitarian balancing exercise between human interests and animal welfare based on animals' legal status as property as well as welfarism which has been criticized by the inherent value theory—animal rights activists' or abolitionists' notion that any human use of animals is unacceptable and ought to be prohibited, since animals have their own right to live naturally and deserve protection regardless of their species and value to humans as a resource. They believe that animals can never gain sufficient protection under the law if their legal status cannot be changed or even reappraised. Indeed, ([d]ifferent extents of the standard of balancing conflicting interests between animals and humans in defining the necessity of exploiting or even abusing animals are always the critical dilemma and challenge of animal protection regimes; their development and improvement still mainly depend on domestic animal welfare movements and their influence on society, public consensus, and

the suffering could have been reasonably avoided or reduced, whether the suffering was in pursuit of an adequate and reasonable purpose, and whether the suffering involved was balanced against the purpose and the means—that is, “there must be a proportion between the object and the means.”¹¹³ Simply put, the balancing exercise of “unnecessary suffering” would involve a fairly complicated discretion which requires much more comprehensive examination and judgement in determining whether it can be considered cruelty or not.¹¹⁴ Compared to prosecutors and courts, administrative authorities finds it seemingly more challenging and demanding to execute such a balancing exercise of different legal concepts and standards, since the professionals of the majority of law enforcement officers in the local competent authorities are municipal veterinarians.¹¹⁵ It should be also noted that with the exception of deliberate animal cruelty offences leading to animals’ deaths and severe physical injuries, most types of the general animal cruelty offences are penalized by the local competent authorities with administrative sanctions instead of criminal sanctions through judicial procedures.¹¹⁶

Accordingly, broader standards such as the concept of “unnecessary suffering” in determining cruelty would be more desired for covering a much wider range of situations of animal suffering.¹¹⁷ More critically, certain degrees of clearly related criteria or guidelines would also be indispensable and necessary for the current developmental condition of animal welfare in the country.¹¹⁸ Given the feature of the rule of the civil law system,¹¹⁹ the essential and basic definition of “unnecessary suffering” as mentioned needs to be expressly specified within corresponding provisions such as animal cruelty offences under Animal Welfare Act 2006 UK.¹²⁰ Moreover, corresponding and detailed criteria or formulas of the abstract legal concept should be further issued by relevant decrees. Not only do they provide specific and clear references and sources for identifying and interpreting animal cruelty offences,¹²¹ but also enable the standards to be amended flexibly in light of the development of science and the changing social

relevant legislation. However, under the current legal structure, the challenge of improving and promoting the statutory protection in practical terms is still based on how to expand the definition of suffering in light of scientific developments and narrow the allowed standard of necessity in causing animal suffering.) Wu, *supra* note 1, at 428-29; also see Gary L. Francione, ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 1–169, 210–29 (2008); David Bilchitz, *Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals*, 25 South Afr. J. Hum. Rts. 38, 38–72 (2009); David Favre, *Living Property: A New Status for Animals Within the Legal System*, 93 Marq. L. Rev. 1021, 1021–71 (2010); Hughes & Meyer, *supra* note 55, at 55–56; Elisa Aaltola & Birgitta Wahlberg, *Nonhuman Animal: Legal Status and Moral Considerability*, 4 RETFAERD: NORDIC J. L. JUST. 83 (2015).

¹¹³ RADFORD, *supra* note 1, at 245–247.

¹¹⁴ *Id.* at 241-258.

¹¹⁵ Wu, *supra* note 1, at 446.

¹¹⁶ Animal Protection Act, arts. 25, 30, 30-1.

¹¹⁷ Wu, *supra* note 1, at 429-30.

¹¹⁸ *Id.*

¹¹⁹ Since ([u]nlike common law systems in which the decision of each new case is determined in accordance with precedents, the result of any case in a civil law system is purely decided on the basis of the provisions of the applicable code.) Wu, *supra* note 1, at 425.

¹²⁰ Animal Welfare Act, c. 45, § 4(3) (UK); also see Wu, *supra* note 1, at 427.

¹²¹ Wu, *supra* note 1, at 429-30.

attitudes towards the treatment of animals.¹²² Notably, the liable criteria of “unnecessary suffering” and the allowed standards of necessity in causing animal suffering mostly depend on the development of animal welfare movements in society and its corresponding social consensus. Thus, adopting the concept of “unnecessary suffering” as one of the statutory criteria in determining cruelty should be applicable for any countries with any developmental levels of animal welfare, including Taiwan and other Asian countries.¹²³ However, as mentioned earlier, the capability of administrative authorities for applying the standard and determining the liability of animal cruelty offences under the existing double-track penalty system must be further addressed. It would also be one of the major challenges of law enforcement for these non-western countries.¹²⁴

5.1.3 THE REQUIREMENT OF INTENT

The Taiwan Animal Protection Law (TAP) had criminalized deliberate animal cruelty as early as 2007¹²⁵; however, the importance of proscribing animal neglect offences remained ignored by the law.¹²⁶ This caused a substantial portion of animal cruelty cases going unpunished because such suffering inflicted on animals was the “mere” result of ignorance or omission, not an intent to inflict cruelty.¹²⁷ It was not until 2015 that the TAP officially outlawed an owner’s omission or negligence leading to animal cruelty with both administrative penalties and criminal sanctions.¹²⁸

"True, after the law has been amended, we can now punish those irresponsible animal owners... for example, some owners left their dogs alone at home for quite many days during vacation, but they did not provide enough food and water or ask some others to help take care of the animals. Some animals thus starved to death." (Interview 2)

"Most of the cases I coped with were caused by neglect, about 70 to 80 percent of them being this kind.... In practical terms, it was very difficult to identify the suspect's intent, even though we believed that this owner did it intentionally...." (Interview 8)

Similar to the findings in other studies which demonstrated that most of the animal cruelty cases were caused by neglect or omission of animal owners or keepers,¹²⁹ the

¹²² Since corresponding decrees can be issued by the competent authorities without going through the complicated and time-consuming procedure of legislation. [Taiwan Administrative Procedure Act] (中華民國行政程序法) (Promulgated by the Presidential Decree on February 3, 1999) art. 150. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030055> (accessed Feb. 27, 2020)

¹²³ Wu, *supra* note 1, at 427-29.

¹²⁴ *Id.* at 446.

¹²⁵ *Id.* at 432.

¹²⁶ *Id.* at 432-33.

¹²⁷ *Id.* at 433.

¹²⁸ *Id.* at 433; Animal Protection Act, arts. 25, 30, 30-1.

¹²⁹ Whitfort, *supra* note 3, at 357; SEE, *supra* note 4, at 130; Whitfort, Amanda, Fiona Woodhouse, Shuping Ho, and Marsha Chun, A Retrospective Analysis of Typologies of Animal Abuse Recorded by the SPCA, Hong Kong. *Animals* 11, no. 6 (2021): 1830, at 4.

majority of the interviewees also indicated the percent ratio of the cases of deliberate cruelty to animal neglect they have been dealing with is 20-30% to 70-80%. This is the reason why it is so essential to proscribe any negligent behavior or omission leading to animal suffering.¹³⁰ Indeed, the requirement of proving an offender's *mens rea* (a guilty mind) in establishing animal cruelty offences, namely the evidence of his or her deliberate intention of inflicting suffering on animals,¹³¹ had been the major barrier to successful convictions or even prosecutions of suspects, since it would impose enormous burdens on prosecutors or authorities for effectively proving any deliberate intents of an individual suspect.¹³² Such a required standard, also known as *the subject test* for determining the liable mental factor of animal cruelty offences, would narrow down the range of governing behaviors of those who keep or control animals and thus limit the enormous scope of statutory protection.¹³³ As far back as the nineteenth century, most western jurisdictions have long appreciated the inherent disadvantages of such a statutory requirement in determining animal cruelty liability and its failure of providing basic statutory protection for animals.¹³⁴ Consequently, most of the western animal protection legal regimes nowadays have excluded the requirement of proving an offender's *mens rea* (a guilty mind) in establishing animal cruelty offences. Instead, they have and expressly included the liability of cruelty caused by neglect or omission of an animal owner or keeper, such as a failure to provide sufficient food, water, shelter, or any necessary care for his or her animal.¹³⁵ However, given the limited development of animal welfare movement and legal regimes in other parts of the world such as Asia, the majority of Asian countries with animal welfare laws, including Taiwan before 2015, still ignore the significance of forbidding animal neglect and exempt suspects from any liability for related behaviors.¹³⁶

Notably, with the exception of repeat offenses,¹³⁷ the liability of general animal neglect offences under the TAP is an imposed administrative penalty.¹³⁸ Given that there is no specific standard for determining negligence liability within the provisions of Administrative Penalty Act,¹³⁹ the standard of negligence liability under the Criminal Code could be applied for determining whether a suspect is liable or not as an owner or

¹³⁰ Wu, *supra* note 1, at 432, as ([i]mposing such liabilities arising from negligence and omission by animal owners or keepers as a result of indifference, ignorance and failure of meeting any necessary and accepted standards of care for an animal is significant and indispensable in terms of providing animals with minimum standards of reasonable protection).

¹³¹ ([T]his statutory evidence requirement of deliberate intention is the minimum standard for mental factors and is solely based on an offender's own view of treating an animal.), Wu, *supra* note 1, at 431.

¹³² RADFORD, *supra* note 1, at 223; Hughes & Meyer, *supra* note 55, at 61; Whitfort, *supra* note 3, at 363.

¹³³ Wu, *supra* note 1, at 431.

¹³⁴ RADFORD, *supra* note 1, at 225, 227, 228. For example, *Ford v. Wiley* (1889) 23 QBD 203 (UK). *Easton v. Anderson* (1949) JC 1, 6 (Scot.).

¹³⁵ RADFORD, *supra* note 1, at 233–34; Hughes & Meyer, *supra* note 55, at 63; Whitfort, *supra* note 3, at 348.

¹³⁶ Wu, *supra* note 1, at 431.

¹³⁷ Animal Protection Act, art. 30.2

¹³⁸ *Id* law, art. 30.1.

¹³⁹ [Administrative Penalty Act] (中華民國行政罰法), art. 7. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030210> (Promulgated by the Presidential Decree on February 5, 2005) (accessed Feb 27, 2020)

keeper.¹⁴⁰ According to the interviewees, this is also the applicable standard in determining negligence liability in practical terms.

“... either an offender fails to exercise the duties that he or she should or could have exercised in the circumstances, or an offender is aware of the consequences of his conduct despite the fact that he firmly believes it will not happen.” (Interview 5)

"According to the general expectation of conduct under the circumstances for a normal person in our society, we generally expect an owner to take care of his (or her) animals. One commits an administrative offence if he or she fails to do so and thereby causes the death or injury of the animal." (Interview 5)

Accordingly, the standard of determining animal neglect arising from negligence, ignorance, indifference or omission under the TAP in practical terms is similar to what has been adopted by most of the western animal welfare legal regimes for establishing animal cruelty offenses, and this is also known as *the objective test*.¹⁴¹ Contrary to the application of the subjective test, when the objective test is performed, courts or authorities would hold an offender accountable for mistreating the animal if he or she *actually knew or at least should have known or ought to have been aware of* the implications of his or her conduct leading to the likely outcome of the animal suffering.¹⁴² The standard for determining a mental liability factor is set in reference to what a normal or reasonable person would be expected to do in society instead of being based on subjective experience or knowledge of an individual offender,¹⁴³ since "the proved circumstances would have conveyed such knowledge to any normal and reasonable person."¹⁴⁴ Therefore, the objective test can also be adopted as a suitable criterion for establishing animal neglect offences in a country with any developmental levels of animal welfare.¹⁴⁵

As noted, the TAP penalizes deliberate animal cruelty and severe animal neglect respectively with both criminal sanctions and administrative penalties, collectively known as the double-track penalty mode.¹⁴⁶ Thus, the local competent authorities need to identify whether a case is caused intentionally or not at the first place

¹⁴⁰ “[A] conduct is committed negligently if the actor fails, although not intentionally, to exercise his duty of care that he should and could have exercised in the circumstances. A conduct is considered to have been committed negligently if the actor is aware that his conduct would, but firmly believes it will not, accomplish the element of an offense.”, [Criminal Code of the Republic of China] (中華民國刑法), art.14. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001> (Promulgated by the Presidential Decree on September 1, 1928) (accessed Feb 27, 2020)

¹⁴¹ RADFORD, *supra* note 1, at 233–34; Hughes & Meyer, *supra* note 55, at 63; Whitfort, *supra* note 3, at 348.

¹⁴² RADFORD, *supra* note 1, at 223; Hughes & Meyer, *supra* note 55, at 57; Whitfort, *supra* note 3, at 348; Wu, *supra* note 1, at 432.

¹⁴³ *Id.*

¹⁴⁴ Mike Radford, *Toward a Better Understanding of Animal Protection Legislation*, in VETERINARY ETHICS: AN INTRODUCTION, 40, 41–42 (Giles Legood ed., 2011).

¹⁴⁵ Wu, *supra* note 1, at 434.

¹⁴⁶ Animal Protection Act, arts. 25, 30.

before deciding whether to impose an administrative penalty directly or to refer the case to prosecutors' offices for further investigation.¹⁴⁷ In this regard, some interviewees brought forward several issues and difficulties that they often encounter when executing their law enforcement operations:

"... No matter what, we are not as professional and well-trained as judicial officers are when identifying liable elements. A legal regime like this, however, requires us to predetermine what category of a case belongs to, and I think it is not that appropriate, in particular when it comes to any possibility of criminal liability involved." (Interview 5)

"...Generally, many competent authorities would refer those relatively severe animal neglect cases to prosecutors in the first place instead of imposing administrative penalties directly...." (Interview 4)

In addition to the relatively strict requirement for establishing criminal animal cruelty offences,¹⁴⁸ the double-track penalizing mode is another major factor that also results in the majority of the animal cruelty cases ending up not being prosecuted in Taiwan. This is because most of the cases delivered to prosecutors are "mere" animal neglect (administrative liability)¹⁴⁹ but not deliberate cruelty (criminal liability).¹⁵⁰ The common feature of these unprosecuted animal neglect cases is that these cases are, generally, fairly severe animal neglect leading to the deaths or injuries of animals, and are often considered as severe as those deliberate cases. This problematic operation of the double-track penalizing mode can be explained as follows – it is a kind of hidden mechanism for avoiding mistaking any possible criminal liability for an administrative offence by administrative agencies themselves. Generally, judicial decisions made by prosecutors or the court is much more reliable and convincing to society when compared with those made by administrative authorities, in particular when a case involves any outrageous and immoral behaviors against the social norm.

"...The public trust more in any decisions made by the judicial system but not the government." (Interview 7)

Another likely explanation is that there is a certain disparity between the statutory requirement of mental liability factors in establishing criminal offences and the understanding and interpretation of the facts delivered by the local competent authorities, and here is an example:

"... since that case was long-term neglect, I thought the offender did it intentionally, obviously, but the prosecutor did not agree with my judgement;

¹⁴⁷ *Id.* law, arts. 25, 30, 30-1.

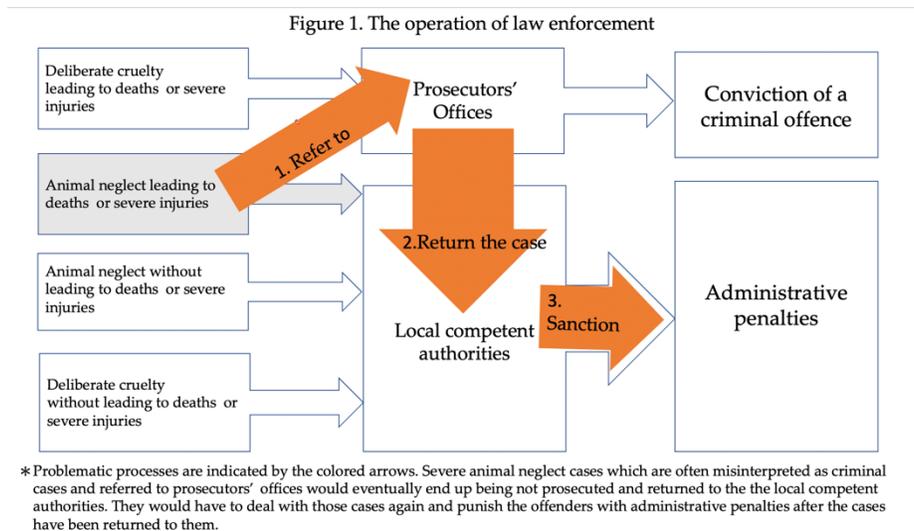
¹⁴⁸ *Id.* arts. 25 & 30.

¹⁴⁹ *Id.* art. 30.

¹⁵⁰ *Id.* art. 25.

he thought it was animal neglect. Eventually, we punished him with the most severe administrative penalty...." (Interview 6)

This disparity between the requirements of the provisions and the interpretations of enforcement authorities, in some sense, may also demonstrate that most of the law enforcement participants consider that the severity of animal neglect is not always less than that of deliberate cruelty. Thus, they tend to consider many of those severe cases of neglect leading to deaths or severe injuries of animals to be deliberate cases and thus refer them to the prosecutors' offices. Notwithstanding that it is the issue of misinterpretation of the provisions among the local competent authorities, the problematic operation of the law enforcement mentioned above would inevitably lead to the waste of both administrative and judicial resources, thereby largely decreasing the administrative efficiency of the competent authorities. Most of the animal neglect cases should have been penalized directly with administrative sanctions as required by the law without going through unnecessary judicial procedures.¹⁵¹ More importantly, this phenomenon reveals not only the problems of the current enforcement mechanism but also the difficulties of applying the double-track penalty mode mentioned earlier. The problematic operation of the law enforcement as discussed above is demonstrated in Figure 1.



5.2 THE ENFORCEMENT MECHANISMS

5.2.1 THE MODES OF PENALTY

Unlike most other anti-cruelty laws under both common and civil law systems,¹⁵² The Taiwan Animal Protection Law (TAP) mainly adopts administrative penalties instead of

¹⁵¹ *Id* art. 30.1.

¹⁵² WAGMAN & LIEBMAN, *supra* note 1 at 139-183; RADFORD, *supra* note 1 at 195-258; Duffield, *supra* note 64 at 9-13; Striwing, *supra* note 53, at 95-100 (2001); Hughes & Meyer, *supra* note 55, at 66; Natrass, *supra* note 37 at 290; Alvin W. L. SEE, Challenges in the Enforcement of Animal Protection Laws in

criminal penalties for sanctioning animal cruelty caused by neglect or omission.¹⁵³ Although the TAP does criminalize animal cruelty offences, the offences have to fulfil different factors respectively in establishing three types of criminal liabilities under the law. The first type of the criminal offences is deliberate animal cruelty leading to severe injuries or deaths of an animal,¹⁵⁴ and the second type of them is the offences caused by the specific means, including medications or weaponry that would lead to multiple injuries or deaths of animals.¹⁵⁵ The last type of the offences is repeat offending of other animal neglect offences or animal welfare infringements within 5 years, such as inhumane slaughter and failing to provide necessary medical treatment for sick animals.¹⁵⁶ In other words, with the exception of these three specific types of animal cruelty offences, other categories of general animal cruelty offences like animal neglect are only being regarded as merely administrative but not criminal.¹⁵⁷

The adoption of such a double-track penalty mode for penalizing general animal cruelty with both criminal and administrative penalties has its historical background of the development of the law.¹⁵⁸ The initial legislative purpose of the TAP was merely to deal with the controversial issues of stray animals instead of preventing animals from unnecessary suffering.¹⁵⁹ Against this legislative background, the initial nature of the law was more like an animal management law rather than an animal welfare law.¹⁶⁰ This can, to a certain degree, explain why initially the violation of general animal cruelty provisions would only be made into administrative offences but not criminal offences.¹⁶¹ Also, this may be the reason why administrative penalty was still adopted as the main approach for punishing animal neglect in 2015 even if the law had criminalized the serious intentional offences since 2007.¹⁶² In addition to the historical background, another possible reason behind the adoption of the double-track penalty scheme is that the government intends to deal with those “less condemnable” misconduct cases as minor offences with administrative penalties.¹⁶³

Singapore, Research Collection School of Law at 13 (2014), available at http://ink.library.smu.edu.sg/sol_research/1304.

¹⁵³ Wu, *supra* note 1 at 442-443; Animal Protection Act, art. 30.

¹⁵⁴ *Id.* law, art. 25.

¹⁵⁵ *Id.* law, art. 25-1. Notably, this is one of the new amended provisions passed in 2017.

¹⁵⁶ *Id.* law, art. 30.

¹⁵⁷ In addition to general animal neglect offences, there are several specific types of animal neglect and institutional animal cruelty which are also sanctioned with administrative means, such as animal fighting and abandonment; *Id.* law. arts. 27, 29,30.

¹⁵⁸ Wu, *supra* note 1, at 416-418.

¹⁵⁹ *Id.*

¹⁶⁰ Wu, *supra* note 1, at 448.

¹⁶¹ Wu, *supra* note 1, at 416-418.

¹⁶² Animal Protection Act, arts. 25 & 30. It was not until 2007 that the TAP further criminalized deliberate animal cruelty leading to severe injuries or deaths, but the law still chose to adopt the administrative penalty mode for penalizing intentional behaviors without causing animals’ severe injuries or deaths.

¹⁶³ Other studies, however, recommend adopting such a double-track penalty mode for releasing the heavy burden of investigation and prosecution which are carried out by private charities instead of police and other administrative authorities. Please see Duffield, *supra* note 64, at 65-67.

“I think it is fairly appropriate to punish offences with criminal and administrative penalties with different levels of cruelty, and I think it should be a very reasonable mechanism.” (Interview 9)

“...penalizing deliberate cruelty with criminal sanction is reasonable, but it is too much to deal with animal neglect with criminal charges. It is too much. It is not reasonable to prosecute someone who accidentally hurts his or her animal while taking care of it.” (Interview 24)

Indeed, different penalty schemes have their own roles and functions, which are chosen and adopted in light of respective legislative purposes of laws.¹⁶⁴ For example, the role of the criminal law is to prohibit types of immoral behaviors or activities that are fairly unacceptable by society at large, including murder, robbery and sexual assault.¹⁶⁵ By contrast, infringement schemes or administrative penalties ought to be adopted for addressing various misconduct cases which usually raise relatively minor concerns to society, such as speeding or other traffic violations.¹⁶⁶ Generally, animal neglect appears to be relatively less immoral and condemnable when compared to deliberate misconduct, and proving an offender’s *mens rea* (a deliberate intent) used to be one of the necessary requirements to establish the animal cruelty offences.¹⁶⁷ However, it remains fairly problematic to categorize all kinds of animal neglect as less condemnable misconduct and thus penalize them with a completely different penalty scheme, in particular for cases that result from severe negligence or lead to serious consequences. As discussed above, these severe types of animal neglect which are still administrative penalty cases are often referred to the prosecutors’ offices by many local authorities.¹⁶⁸ The phenomenon of this problematic operation of law enforcement to a certain extent demonstrates that such administrative offences as animal neglect are not always deemed as “less condemnable” or “less unacceptable” in practical terms.¹⁶⁹ After all, whether a case is condemnable enough to be imposed with a severer penalty or penalty scheme has to depend on individual cases involving different situations, rather than the two roughly simplified classifications of ill-treatments.¹⁷⁰ That is, not only perpetrators’ motives but also real effects of misconduct or omissions ought to be taken into account in determining the levels of severity of the offences and penalty schemes.¹⁷¹

“Whether society can accept the criminalization of all types of animal cruelty is still uncertain, but from the perspective of protecting animals, we certainly hope that all of those severe cases involving animals getting killed or severely injured can be dealt with (with criminal sanctions).” (Interview 20)

¹⁶⁴ Duffield, *supra* note 64, at 22 & 49-50; WAGMAN & LIEBMAN, *supra* note 1, at 139-142.

¹⁶⁵ *Id.* at 22.

¹⁶⁶ *Id.* at 49-50.

¹⁶⁷ Duffield, *supra* note 64, at 9-12; RADFORD, *supra* note 1, at 222-223.

¹⁶⁸ Please see Figure 1.

¹⁶⁹ *Id.*

¹⁷⁰ RADFORD, *supra* note 1 at 195-258.

¹⁷¹ However, in cases involving animal neglect, omission or abandonment of animals, the court or the authorities would focus more on the actual consequences caused by the offences than the perpetrators’ motives. Please see WAGMAN & LIEBMAN, *supra* note 1 at 145; Radford, *supra* note 1, at 195-258.

"...I think it is more appropriate to use any criminal penalties to punish (any animal cruelty cases), since anyway they all involve something related to life. They should be dealt with by criminal law." (Interview 5)

This recognition of the severity of animal neglect or omissions is also the common ground that justifies the criminalization of all types of general animal cruelty in most animal protection legal regimes in western countries and their former colonies.¹⁷² It reflects the seriousness of the offences which are publicly regarded, as they are the most common type of animal cruelty.¹⁷³ Notwithstanding that most convictions of animal cruelty offences, including those relatively serious ones, often end up being imposed mere criminal fines in many legal regimes,¹⁷⁴ the deterrence and mechanism of criminal penalties are considered to be the most proper and effective measures that prevent animal cruelty offences from being committed.¹⁷⁵ With the effect of prosecution, defendants are not able to avoid time, inconvenience and embarrassment of appearing before a court, nor are they able to escape without a criminal record if they are successfully convicted.¹⁷⁶ Besides, from the perspective of law enforcement, as criminal offences are generally enforced by the police, not other administrative authorities, more powerful instruments and resources would be used for conducting corresponding police investigations if the offences are criminal cases.¹⁷⁷ This is particularly important in a country like Taiwan, since most of the animal cruelty offences under the TAP, which are administrative offences, are enforced by the administrative authorities, not the police.¹⁷⁸

"[...] I think it would be better if all the (animal cruelty) offences can be punished with criminal penalties, so the police must be involved in law enforcement[...]" (Interview 6)

"It seems to be more effective if we adopt the criminal penalty mechanism to deal with (the offences) ... Its enforcing power is much stronger than the power initiated by administrative institutions." (Interview16)

¹⁷² RADFORD, *supra* note 1, at 233–34; Hughes & Meyer, *supra* note 55, at 63; SEE, *supra* note 4, at 139; Whitfort, *supra* note 3, at 348; Wu, *supra* note 1, at 432; Duffield, *supra* note 64, at 9–12. Duffield, *supra* note 64, at 27–31; JOAN SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW, at 23 (Andrew Linzey & Priscilla Cohn eds., 2011).

¹⁷³ Wu, *supra* note 1, at 431; SEE, *supra* note 4, at 130. Whitfort, *supra* note 3, at 357.

¹⁷⁴ Duffield, *supra* note 64, at 27–31; Hughes & Meyer, *supra* note 55, at 68; Striwing, *supra* note 53, at 94; SEE, *supra* note 4, at 131.

¹⁷⁵ SEE, *supra* note 152, at 12–13; Duffield, *supra* note 64, at 45–46; WAGMAN & LIEBMAN, *supra* note 1, at 139.

¹⁷⁶ Duffield, *supra* note 64, at 45.

¹⁷⁷ Duffield, *supra* note 64, at 26. Notably, the law enforcement of the animal cruelty laws in the UK and its former colonies such as Australia, New Zealand, and Canada is mainly carried out by their approved private charities like the RSPCA and SPCA which are provided with more law enforcement power. However, not all of the animal protection groups in these countries have the same statutory power as the police in enforcing the laws; Duffield, *supra* note 64, at 14–16, and RADFORD, *supra* note 1, at 363–364.

¹⁷⁸ Wu, *supra* note 1, at 445–446.

On the other hand, however, adopting administrative penalty schemes can also realize the goals of prosecution, including holding people accountable for their misconduct, promoting their senses of responsibilities and educating people about unacceptable behavior in society.¹⁷⁹ Furthermore, unlike a prosecution which is time-consuming and resource-intensive, administrative penalty schemes can encourage compliance with the law by imposing instant and efficient financial penalties.¹⁸⁰ The effectiveness and efficiency of administrative penalty schemes, to a certain extent, can also be supported by the deterrence theory, including both general and specific theories.¹⁸¹ According to the general deterrence theory, people will be persuaded not to violate the law if they believe that non-compliance will be detected and they will get punished severely and swiftly. Namely, it is the impact of the threat of legal punishment on the public at large.¹⁸² As for a specific deterrence effect, it can be seen as the impact of the actual legal punishment on those who break the law, since they will be less likely to repeat violations after being punished.¹⁸³ Compared to prosecution and sentencing, the establishment and punishment of administrative offences would be much swifter, though penalties are comparatively less severe. Yet, deterrence is achieved primarily through adequate enforcement, but not necessarily by severity of penalties.¹⁸⁴ That is, with fully adequate law enforcement, the effectiveness of imposing administrative penalties may not be necessarily less than that of criminal sanctions when it comes to encouraging compliance with the law.¹⁸⁵

“There are so many cases in prosecutors’ offices and courts and it takes so long to process all the cases....As the law also has administrative penalties, we can let the offenders know what consequences they have to face for their behaviors within a very short period of time.” (Interview14)

“The standard of imposing administrative penalties is much lower than that of criminal penalties, so it does not need to take that much time or effort to do the investigation and collect evidence (for imposing administrative penalties). That can make those perpetrators be responsible for what they have done wrong more swiftly.” (Interview 21)

Notwithstanding that adopting an administrative penalty mode has its merits in terms of efficient law enforcement, there are two main restrictions which need to be

¹⁷⁹ Duffield, *supra* note 64, at 34.

¹⁸⁰ *Id.*

¹⁸¹ Mark C. Stafford, Eric M Warr, A Reconceptualization of General and Specific Deterrence, *Journal of Research in Crime and Delinquency*, Volume: 30, Issue: 2, May1993 at123-135; D. Zaal, D. *Traffic Law Enforcement: A review of the literature.* Report no. 53. Monash University, Accident Research Centre, Clayton, Victoria (1994); Mäkinen, T., Zaidel, D.M., Andersson, G., Biecheler-Fretel, M.B., Christ. R., Cauzard, J.P., Elvik, R., Goldenbeld, C., Gelau, C., Heidstra, J., Jayet, M.-C., Nilsson, G., Papaioannou, P. Rothengatter, T., Quimby, A., Rehnova, V. and Vaa, T. *Traffic Enforcement in Europe: effects, measures, needs and future.* Final report of ESCAPE. VTT, Espoo (2003).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Hughes & Meyer, *supra* note 55, at 66; Wu, *supra* note 1, at 444.

¹⁸⁵ Duffield, *supra* note 64, at 37-40; Hughes & Meyer, *supra* note 55, at 66; Wu, *supra* note 1, at 444.

taken into account when applying an infringement scheme. First of all, it ought to be adopted for addressing minor misconduct according to the nature of administrative penalties.¹⁸⁶ As discussed above, it is still debatable in determining whether a misconduct, apart from severe deliberate animal cruelty, repeat offences or the offences caused by specific means, can be seen as minor offences or not in light of the social consensus toward the treatment of animals in Taiwan, with particular regard to severe animal neglect cases.¹⁸⁷ Secondly, in considering whether the offences are suitable to be subject to administrative penalties, one must determine whether they involve *straightforward issues of fact*.¹⁸⁸ Given the nature and procedure of imposing administrative penalties, the local competent authorities need to practice discretion and issue instant fines based on a matter of fact as to whether an infringement has been committed.¹⁸⁹ Accordingly, corresponding liable standards of administrative offences have to be as concrete as possible so that administrative authorities can exercise their discretion based on a matter of fact without conducting extra investigations and inquiries.¹⁹⁰ For example, most traffic infringements such as speeding and illegal parking are the typical types of administrative offences, as their detection is clear-cut or can even be automated – people have exceeded the speed limit or they have not.¹⁹¹ This can explain why the existing general animal cruelty provisions, which are mainly administrative offences, define animal cruelty on the basis of such a relatively concrete standard as “the death or severe injuries of an animal” instead of other more general standards like “unnecessary suffering”.¹⁹² However, such a concrete standard would largely limit the scope of animal protection, since it cannot be applied to a wide variety of different situations based on our developing understanding of animal welfare science. Moreover, it would largely exempt many cruelty cases that do not lead to visible injuries of animals.¹⁹³

Notably, several common types of animal neglect and omissions do not require any actual injury or suffering to be caused in establishing the administrative offences under the TAP.¹⁹⁴ These specific types of animal cruelty offences of strict liabilities include abandonment of and failure to provide necessary medical treatment for an injured or sick animal – they can, to some extent, supplement the limited protection within the animal cruelty provisions.¹⁹⁵ However, the problem of this approach lies in the

¹⁸⁶ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, *The Infringement System: A Framework for Reform, Study Paper/ ISSN 1174-9776 ISBN 1-877316-05-9*, <http://www.lawcom.govt.nz>.

¹⁸⁷ Animal Protection Act, arts. 25, 25-1, 30.

¹⁸⁸ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, at 1-24.

¹⁸⁹ Duffield, *supra* note 64, at 32-35.

¹⁹⁰ Duffield, *supra* note 64, at 32-35; Wu, *supra* note 1, 429-430.

¹⁹¹ Duffield, *supra* note 64, at 35 & 53.

¹⁹² RADFORD, *supra* note 1, at 196. Wu, *supra* note 1, at 430. In particular for most of the non-western countries, the term ‘unnecessary suffering’ is not only unfamiliar but also fairly abstract when it comes to legal concepts and liability standards.

¹⁹³ RADFORD, *supra* note 1, at 196; Wu, *supra* note 1, at 429-431. However, as noted by Wu, *supra* note 1, at 429-431 “[N]otwithstanding the wide adoption of the standard of liability of “unnecessary suffering” under many legal regimes, the degree and scope of the applications accorded by laws or interpreted by courts and the acceptability of activities and businesses involved in animal cruelty still vary significantly among jurisdictions in light of the various degrees of their development of the animal protection movement and social consensus.”

¹⁹⁴ Wu, *supra* note 1, at 434-435.

¹⁹⁵ Wu, *supra* note 1, at 434-435; Animal Protection Act, arts. 5, 11, 29, 30.

fact that it still fails to provide comprehensive protection for preventing animals from all forms of undesirable action and treatment.¹⁹⁶ Thus, well-constructed general animal cruelty provisions with broader scope of protection remain much more desirable and necessary.¹⁹⁷ That is, if the law intends to broaden its scope of protection for animals, it inevitably has to include unnecessary suffering or any similar abstract concepts as a statutory standard of defining cruelty that can be applied to all kinds of animal cruelty cases.¹⁹⁸ Accordingly, an administrative penalty mode appears not to be the most suitable penalty scheme for any general types of animal cruelty offences (including animal neglect) in providing animals with more comprehensive protection.¹⁹⁹ More critically, both the statutory definition of cruelty and subjective liability would involve corresponding exercise of judgment of complicated legal concepts and criteria, which should be processed through prosecution and trials in determining liabilities through criminal penalty mode.²⁰⁰

Apart from the above restrictions for adopting an administrative penalty scheme within the general animal cruelty provisions, penalizing different types of animal cruelty that have the same nature of offences with two entirely distinct penalty schemes appears to be fairly problematic.²⁰¹ As noted, with the double-track penalty mode, the competent local authorities have to predetermine whether to impose administrative penalties directly or refer the potential criminal cases to the prosecutors' office in the first place.²⁰² This exercise of discretion involves a lot of complicated legal concepts and standards which seem to be fairly demanding and challenging for the administrative authorities.²⁰³ It would inevitably cause significant difficulties and confusions of law enforcement for most animal protection inspectors who are municipal veterinarians.²⁰⁴ As a result of this problematic operation of law enforcement, many severe animal neglect cases which are administrative offences have to be processed through both of the penalty systems, which is, however, entirely unnecessary.²⁰⁵ Moreover, the problematic double-track penalty mode as noted would also conflict with one of the main reasons suggested for adopting administrative penalties within general animal cruelty provisions, and that is to reduce the burden of prosecution related processes.²⁰⁶ The mode also largely wastes

¹⁹⁶ Wu, *supra* note 1, at 434; Hughes & Meyer, *supra* note 55, at 52.

¹⁹⁷ Wu, *supra* note 1, at 422-434; Radford, *supra* note 1, at 241-258; Hughes & Meyer, *supra* note 55, at 52-54.

¹⁹⁸ *Id.*

¹⁹⁹ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, at 1-24; Wu, *supra* note 1, at 422-434; Radford, *supra* note 1, at 241-258; Hughes & Meyer, *supra* note 55, at 52-54.

²⁰⁰ Wu, *supra* note 1, at 422-434; Radford, *supra* note 1, at 195-258; Hughes & Meyer, *supra* note 55, at 52-63.

²⁰¹ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, at 1-24; Wu, *supra* note 1, at 422-434; Radford, *supra* note 1 at 241-258; Hughes & Meyer, *supra* note 55, at 52-54.

²⁰² Animal Protection Act, arts. 25 & 30. Please also see Figure 1.

²⁰³ Wu, *supra* note 1, at 425-434; RADFORD, *supra* note 1 at 195-258; Hughes & Meyer, *supra* note 55, at 52-63.

²⁰⁴ See Wu, *supra* note 1, at 446.

²⁰⁵ Animal Protection Act, arts. 25 & 30. Please also see Figure 1.

²⁰⁶ Duffield, *supra* note 64, at 36-43; Hughes & Meyer, *supra* note 55, at 72-73.

administrative resources and decrease administrative efficiency in dealing with the offences.²⁰⁷

"You should use the same standard to judge (any animal cruelty). Of course, there are different levels of severity of offences, but you should evaluate and penalize them with one set of criteria of the penalty scheme." (Interview 1)

"The liability standards between administrative and criminal penalty systems are totally different, and similar offences can be punished with totally different levels of penalty modes. That is very confusing and unclear... I think it is better to adopt a unified standard."(Interview 7)

Accordingly, given the nature of the offences and the need of providing more comprehensive protection and effective operation of law enforcement, general animal cruelty offences caused by any levels of intent should be subject to criminal sanctions.²⁰⁸ However, minor criminal penalties such as small fines can be imposed on less condemnable general animal cruelty cases. Besides, in order to reduce the burden of prosecution, it is suggested that the law can still adopt administrative penalties for dealing with common and specific types of minor animal neglect or animal welfare infringements, for example, the offences of abandonment and the violations of statutory care duties toward animals under the existing TAP.²⁰⁹ The law needs to stipulate more concrete and clear standards in establishing such liabilities so that the local competent authorities can apply the provision and exercise their discretion without difficulties.²¹⁰ On the other hand, although criminal sanctions should be adopted as the main penalty mechanism for general animal cruelty offences, an administrative penalty scheme still plays a significant and necessary role for regulating so-called institutionalized cruelty practices in premises like livestock farms, laboratories and zoos.²¹¹ As institutionalized cruelty in most cases can hardly be penalized by general animal cruelty provisions, a certain degree of the minimum standard for humane treatment towards animals should be required under the law or related decrees.²¹² However, the violations of animal welfare infringements by corporate entities for their commercial use of animals should be punished with more severe administrative penalties, including higher monetary penalties and revoking

²⁰⁷ Please also see Figure 1.

²⁰⁸ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, at 1-24; Wu, *supra* note 1, at 422-434; RADFORD, *supra* note 1, at 241-258; Hughes & Meyer, *supra* note 55, at 52-54.

²⁰⁹ Animal Protection Act, arts. 29, 30, 30-1; Wu, *supra* note 1, at 434-435: As these administrative offenses do not require any results of injuries or suffering to be caused by misconduct or omissions in establishing liabilities, the authorities can impose penalties according to a matter of fact, for example, when an animal is found on the street without the presence of its owner. As for the violations of care duties towards animals, the provision can also allow the authorities to take action to protect animals before they suffer from actual pain and harm, such as issuing a warning notice before imposing a penalty.

²¹⁰ Duffield, *supra* note 64, at 49-50; Law Commission, Wellington 2005, at 1-24.

²¹¹ Wu, *supra* note 1, at 427-429; for example, without certain degrees of animal welfare standards, many cruel practices which are commonly being operated in the livestock industry can hardly be considered to be unacceptable misconduct in light of both unnecessary suffering standards and the objective test for determining objective and subjective liabilities; see also RADFORD, *supra* note 1, at 195-258.

²¹² Wu, *supra* note 1, at 427-429; Hughes & Meyer, *supra* note 55, at 63-64.

licenses of business practice or operation.²¹³ For example, The New Zealand Animal Welfare Amendment Bill 2010 prescribes a relatively higher penalty standard for the law violation by a body corporate.²¹⁴ Unfortunately, such a comprehensive administrative penalty regime for various kinds of institutionalized cruelty or animal welfare infringements is still lacking under the TAP, including the humane treatment of animals in husbandry, transport, research, entertainment and animal culling for disease control.²¹⁵

5.2.2 ENFORCEMENT AUTHORITIES

In addition to the central competent authorities,²¹⁶ the law enforcement of Taiwan Animal Protection Act (TAP) is solely implemented by administrative agencies of different local governments, including city animal protection offices or animal disease control centers in different municipalities.²¹⁷ Thus, according to the law, the law enforcement of animal cruelty offences is carried out by municipal veterinarians working in the local competent authorities as animal protection inspectors.²¹⁸ Remarkably, the law is still silent on assigning any formal law enforcement duties to the police even after the criminalization of deliberate animal cruelty offences since 2007.²¹⁹ Instead, the police merely play an assistant role in enforcing the law when there is a need requested by any local competent authorities, while this assistance is not an obligated statutory duty that they have to fulfill.²²⁰ For example, the police usually provide so-called safety protection for animal protection inspectors when they are enforcing the law and conducting corresponding criminal investigations, as many crime scenes would involve many dangerous situations. With an increasing social consensus for protecting animals,²²¹ the police seem to be more willing to provide directly pertinent assistance for investigating the offences, such as providing CCTV footage and driving license information related to crime scenes or suspects. However, such willingness of assistance from the police remains relatively uncertain, which still depends on the attitudes of different local governments towards animal protection issues (Q6: 2.19; Table 1). Neither is the cooperation between the local competent authorities and the police a regular and systematic law enforcement mechanism, and similar results can be found in both in-depth interviews and mail survey

²¹³ In this regard, some other scholars suggest a stricter restriction on commercial use of animals. For example, “Drs. Aaltola and Wahlberg claim that animals can be used only under certain restricted conditions based on the principles of necessity and precaution, while Professors Hughes and Meyer suggest that if these commercial activities are not able to be viable when using current practices without causing avoidable animal suffering, then “alternatives must be developed.”; Wu, *supra* note 1, at 428; please also see Hughes & Meyer, *supra* note 55, at 58, and Elisa Aaltola & Birgitta Wahlberg, *Nonhuman Animal: Legal Status and Moral Considerability*, 4 RETFAERD: NORDIC J. L. JUST. 83 (2015).

²¹⁴ Duffield, *supra* note 64, at 12.

²¹⁵ Wu, *supra* note 1, at 427-429 & 448.

²¹⁶ Namely the Council of Agriculture of the central government. Please see Animal Protection Act 2021, art 2.

²¹⁷ *Id.* law, art 2.

²¹⁸ Wu, *supra* note 1, at 446.

²¹⁹ Animal Protection Act, art 23; Wu, *supra* note 1, at 446.

²²⁰ *Id.*

²²¹ Wu, *supra* note 1, at 416-418 & 448-490.

(Q7: 2.07; Table 1). Thus, both effectiveness and efficiency of such a law enforcement mechanism remain problematic providing the police merely serve as assistants in law enforcement under the law,²²² since the exclusive law enforcement powers and instruments, collectively known as “police power”, are necessary and indispensable for investigating and collecting criminal evidence.²²³

“The most common situation is that they only provide administrative assistance, and basically this administrative assistance is to protect the safety of law enforcement officers. As for further investigations, the relevant assistance provided by the police is very limited.” (Interview 10)

“[...] but the difference is that the situations or the atmosphere varies between different municipalities. It depends on the attitudes of local governments or parliaments towards animal protection. If mayors are more concerned about animal protection issues, the attitudes of the police would be more friendly and more willing to help out when there is a need.” (Interview 16)

“[...] Yeah, it was very helpful when they were willing to provide assistance we requested. For example, they could help retrieve personal information of suspects, such as their driving license records and also the relevant CCTV footage relating to the offences.” (Interview 12)

Despite the critical role of the police in law enforcement, this police power is rarely actualized in the UK and its former colonies such as Canada, Australia, and New Zealand.²²⁴ Although the police have theoretical inspection powers under the laws, the animal cruelty offences in these countries are mostly enforced or even prosecuted by private charities or administrative authorities, not the police.²²⁵ For example, in New Zealand, its private charity (the SPCA) focuses on enforcement relating to companion animals and small-scale livestock operations, whereas the administrative authority (the MPI) focuses on enforcement relating to large-scale livestock operations.²²⁶ Still, the role of the MPI or other government agencies remains fairly limited when compared to that of the SPCA.²²⁷ Such a charity-based enforcement mechanism has its historical background of development. In 1822, the very first animal cruelty law (Martin’s Act) was passed in England, while there was no formal institution or organization in charge of the law

²²² Wu, *supra* note 1, at 446.

²²³ Police Power Exercise Act, art. 2.

²²⁴ Duffield, *supra* note 64, at 14-16; RADFORD, *supra* note 1, at 40-47 & 380-381; Hughes & Meyer, *supra* note 55, at 26-27 & 69-72.

²²⁵ *Id.*

²²⁶ Duffield, *supra* note 64, at 15.

²²⁷ *Id.* “[H]owever, in practice the MPI’s enforcement role is limited, with only eleven inspector positions for New Zealand’s 28 million farm animals. Moreover, neither the MPI nor any other government agency enforces the Animal Welfare Act with respect to New Zealand’s five million companion animals; this remains the almost exclusive domain of the SPCA.”

enforcement until the establishment of the SPCA in 1824.²²⁸ In fact, the Metropolitan Police was not established until 1829 and most of the prosecutions were initiated by private individuals.²²⁹ Even though the police play a relatively limited role in enforcing animal cruelty laws, this long-established enforcement mechanism granted private charities a comparatively high degree of inspection powers and instruments needed for criminal investigation and law enforcement. For example, the SPCA inspectors in New Zealand were provided with wide powers of inspection and arrest for the offences.²³⁰ To some extent, the role of the police or other governmental agencies is seemingly able to be replaced fully or partly with private charities under such an enforcement mechanism.²³¹ Thus, the lack of the (partial) involvement of governmental agencies, including the police, seems not to hinder the operation of law enforcement at large.²³² Nevertheless, such a charity-based enforcement mechanism still has its problems and difficulties of law enforcement.²³³ In addition to the appropriateness of private charities in charge of the enforcement of a public law at their own discretion, the limitation that resources are mostly relied on private donations is the main challenge of law enforcement.²³⁴

Unlike the charity-based enforcement mechanism in the UK and its former colonies, law enforcement in most of the countries under civil law systems is operated by the police and other administrative authorities.²³⁵ For example, in Sweden, the police are entitled to decide whether to initiate a primary investigation when a suspicious incident is reported to them and take any necessary action to secure animals' well-being.²³⁶ In addition to being in charge of animal cruelty cases which are usually criminal offences, the police are also obliged to provide necessary assistance to the local competent authorities for enforcing the law.²³⁷ That is, both police and administrative authorities play equally significant roles in law enforcement.²³⁸ Although most of the offences or

²²⁸ Duffield, *supra* note 64, at 16; RADFORD, *supra* note 1, at 40-42; Hughes & Meyer, *supra* note 55, at 26-27.

²²⁹ Duffield, *supra* note 64, at 16; RADFORD, *supra* note 1, at 40.

²³⁰ Duffield, *supra* note 64, at 221; However, the structure of charity-based enforcement mechanisms and the corresponding enforcement powers granted to private charities vary among different countries, for example, in Singapore: “[t]he SPCA’s function is mainly to persuade the Agri-Food & Veterinary Authority (AVA) to prosecute and to supply relevant data for the purposes of investigation and prosecution. Although the AVA and the SPCA have worked closely in combating animal cruelty, there were many instances where the two could not come to agreement in terms of enforcement policies.”, SEE, *supra* note 152, at 4.

²³¹ Duffield, *supra* note 64, at 17-18; RADFORD, *supra* note 1, at 363-364 & 380-381; SEE, *supra* note 152, at 4.

²³² *Id.*

²³³ Duffield, *supra* note 64, at 21-24; RADFORD, *supra* note 1, at 42; Hughes & Meyer, *supra* note 55, at 72.

²³⁴ Duffield, *supra* note 64, at 20-23.

²³⁵ Duffield, *supra* note 64, at 14-16; RADFORD, *supra* note 1, at 40-47 & 380-381; Hughes & Meyer, *supra* note 55, at 26-27 & 69-72; Striwing, *supra* note 53, at 101-104. Similar provisions can also be seen in the animal welfare legislation in other Nordic countries. For example, Finnish Animal Welfare Act (247/1996, amendments up to 1430/2006 included): Section 39:(1) “If there is a reason to suspect that an animal is cared for, treated or used in a way that violates this Act or provisions or regulations issued under it, the State Provincial Office, municipal veterinarian, municipal official responsible for the supervision of health protection, police and animal protection supervisor have the right to perform an inspection.”

²³⁶ Striwing, *supra* note 53, at 99-100.

²³⁷ *Id.*

²³⁸ Striwing, *supra* note 53, at 101-102.

infringements in animal protection laws under civil law systems are administrative offences, many of them still possess the nature of offences that is related to violence such as animal neglect and institutional cruelty practices.²³⁹ Therefore, the law enforcement of both criminal and administrative offences would require frequent involvement of the police, in particular for a country like Taiwan. As indicated by both mail survey and in-depth interviews, most of the law enforcement officers in Taiwan did not think they have enough authority to implement the law (Q5: 2.05; Table 1). According to them, the local competent authorities do not have the powers to access most of the information related to case investigations, nor are the police obligated to provide this necessary assistance.²⁴⁰ Although the TAP does empower the authorities to take action under several conditions so as to prevent animals from further suffering or harm, such as confiscating abused animals, these enforcement powers or instruments can be operated only after a conviction on indictment or determination of penalties.²⁴¹ Thus, it is much desired that both the police and local competent authorities ought to be granted with more equal enforcement powers to conduct investigations or even intervene cases at an early stage.²⁴² Otherwise, these enforcement issues would not only lead to enormous problems and difficulties of investigating and collecting evidence but also cause abused animals to keep suffering or suffer even more in this situation. Moreover, as a result of the lack of sufficient evidence, many cases can hardly be further prosecuted or even be dealt with, and only administrative penalties can be issued.

“...If we consider the factors that cause the offences, certainly the police should be in charge of that (the law enforcement) ...those who would abuse animals may have a tendency to use violence or have other problems, so it would be much better if the police could engage in it.” (Interview 4)

“Animal cruelty leading to deaths and animal cruelty leading to severe injuries are criminal offences. The penalties of them are also increased to a two-year imprisonment... We, as animal protection inspectors, are not granted such powers for conducting so-called criminal investigations. Thus, we are not able to collect any or enough evidence for prosecuting many cases.” (Interview 3)

On the other hand, the issues of investigation and collecting evidence are also the key reasons nearly all the interviewees strongly agreed: the police ought to be in charge of the law enforcement of all types of animal cruelty, including those administrative offences.²⁴³ According to them, the police not only have the adequate powers and instruments to enforce the law, but also possess a certain degree of influence

²³⁹ Wu, *supra* note 1, at 425-429.

²⁴⁰ Animal Protection Act, art 23; Wu, *supra* note 1, at 446.

²⁴¹ *Id.* law, arts 32, 33, 33-1.

²⁴² RADFORD, *supra* note 1, at 375-378; Striwing, *supra* note 53, at 99-100.

²⁴³ Animal Protection Act, art. 30.

that enables them to enforce the law more effectively. For example, the public are more willing to comply with an investigation if it is carried out by the police but not the administrative authorities, since the police generally have more powerful and righteous social images as enforcers when it comes to criminal-related investigations. Non-policary inspectors in countries with charity-based enforcement mechanisms also have this kind of powerful social image that enables them to enforce laws more effectively and efficiently. However, what is different from Taiwan is that these countries have a long developmental history of animal protection movements and legal regimes.²⁴⁴ More critically, the laws in these countries also provide the non-policary inspectors with sufficient powers and instruments of law enforcement, which has established their powerful and righteous law enforcement images and impacts as law enforcers.²⁴⁵

“When it comes to efficiency, of course the police are more likely to get to the crime scene in the first place and collect evidence.... the public usually are more willing to follow the police order. Thus, they (the police) can be in charge of the front line of law enforcement, which would be more helpful for case investigation.” (Interview 11)

“... We needed him (a witness) to provide relevant information to us, but for protecting that perpetrator, he was not willing to do so. It was not until the police came that he told everything he knew, and everything we needed for investigating the case” (Interview 7)

From another perspective, the tasks of enforcing animal cruelty law demand numerous skill sets due to the multiple requirements, including criminal investigation and mitigating animals' suffering.²⁴⁶ Yet, most of the official inspectors who are veterinarians not only lack corresponding law enforcement power but also do not possess relevant knowledge and training related to criminal investigation (Q¹⁹ : 2.63; Q²⁰ : 2.42; Table 1).²⁴⁷ That is, unless both comprehensive training and sufficient legal powers can be granted to official inspectors, the police are still the most qualified and competent enforcer for the animal cruelty offences.²⁴⁸ However, the effectiveness and efficiency of investigating criminal related cases conducted by official inspectors instead of the police are still questionable.²⁴⁹ Accordingly, given the current developmental stage of the legal regime in Taiwan, the TAP ought to expressly include the police as the official competent authorities for conducting investigations, collecting evidence, and arresting suspects for animal cruelty cases. As for the local competent authorities (municipal veterinarians), in

²⁴⁴ Duffield, *supra* note 64, at 8-20; RADFORD, *supra* note 1, at 33-95.

²⁴⁵ Duffield, *supra* note 64, at 14-19; RADFORD, *supra* note 1, at 40-48 & 363-364.

²⁴⁶ Duffield, *supra* note 64, at 23.

²⁴⁷ For example, as Mrs. Striwing noted (*supra* note 53, at 102): “[A]n efficient and effective investigation includes the appropriate understanding of crime scene processing by securing evidence and observing factors that provide clues to the dynamics of the incidents or the true range and permanency of previous neglect. This also requires autopsies to be conducted in order to establish the true nature of the neglect (e.g. starvation resulting from a caretaker not providing the animal with a sufficient food supply) An important part of the investigation is the performance of a skillful interrogation [....].”

²⁴⁸ Striwing, *supra* note 53, at 102-106.

²⁴⁹ *Id.*

addition to animal protection inspection and follow-up visits, they can provide professional assistance for safeguarding the minimum standard of animal welfare during the process of law enforcement.²⁵⁰ Moreover, they can serve as expert witnesses for analyzing relevant evidence and conduct autopsies so as to establish the nature of the offences, which is also one of the most critical parts of effective and efficient investigation.²⁵¹ In other words, given this complexity of mixed duties and enforcement role, the cooperation between the local competent authorities and the police or even other administrative agencies is certainly necessary and needs to be promoted (Q7 : 2.07; Q8: 2.23; Table 1).²⁵² More critically, as the law has criminalized severe deliberate animal cruelty offences since 2007 and further imposed criminal penalties on several specific offences in 2017, it is problematic to still exclude the police as the competent authorities of the TAP.²⁵³

“Animal cruelty is just like other criminal offences, so I think it should also be dealt with by the police, since they have those powers and capabilities.... Or you (the law) can grant us, as the animal protection inspectors, the powers we need, so that we are more capable of (enforcing the law). For example, we can use those (enforcement) instruments granted by the criminal procedural law....” (Interview 5)

“Indeed, it is really challenging and difficult for our administrative personnel, since we do not have those knowledge and expertise (of criminal investigation), nor do we have relevant training..., What we can do is to provide professional opinions on veterinary forensic sciences, while the police or prosecutors can be in charge of investigating and arresting suspects....” (Interview 3)

5.3 OTHER PRACTICAL ISSUES

5.3.1 UNDERSTAFFING AND OVERWORK

Apart from the lack of law enforcement resources as discussed above, manpower and its corresponding overwork are also severe issues of the law enforcement (Q¹: 1.53; Q²: 1.72; Table 1).²⁵⁴ These issues have become even worse particularly after the passage of the 2015 amended law without increasing corresponding manpower in supporting the law enforcement.²⁵⁵ Under the 2015 amendment, the TAP not only penalizes animal neglect but also includes a positive statutory duty of care towards animals.²⁵⁶ This means that the workload of local inspectors will substantially increase, as their duties would involve more

²⁵⁰ Striwing, *supra* note 53, at 102-106.

²⁵¹ *Id.* at 102. For example, “[W]hen under pressure, some suspects deceptively assert that the animal was properly fed but because of some sudden unknown illnesses, it became incapable of utilizing the nourishment. Fortunately, autopsies can refute such statements [....].”

²⁵² Wu *supra* note 1, at 446; Striwing, *supra* note 53, at 101-106.

²⁵³ Animal Protection Act, arts. 25, 25-1, 30 & 30-1.

²⁵⁴ Wu et al., *supra* note 6, at 226; Wu, *supra* note 1, at 446-447.

²⁵⁵ Wu, *supra* note 1, at 446-447.

²⁵⁶ Animal Protection Act, arts 30 & 30-1.

investigations, follow-up visits and formal cautions messages issued to those who do not take care of their animals properly.²⁵⁷ Furthermore, the issue may remain even after the law further assigns the police official duties for enforcing the animal cruelty law, since both administrative authorities and the police have multiple duties and enormous workload that also need to be handled.

Thus, in order to relieve the understaffing and overwork issues and reduce corresponding enforcement difficulties under the new amendment law, the amended TAP has also introduced two additional and optional enforcement schemes to assist the personnel with increasingly demanding tasks.²⁵⁸ These include, first of all, authorizing the local authorities to delegate relevant inspection tasks to third-party agencies, legal entities, groups, or individuals, such as animal welfare groups.²⁵⁹ Secondly, local authorities can also reward the public for encouraging them to help discover any violations of the law.²⁶⁰ However, whether the new enforcement participants are competent enough to perform inspection duties or assist the law enforcement under these new enforcement mechanisms is another matter.²⁶¹ According to the results of the mail survey which was conducted one year after the enforcement schemes had been introduced, most of the respondents, unfortunately, held a relatively uncertain or even unresponsive attitude towards the cooperation between the local competent authorities and animal protection groups (Q⁹: 2.28; Q¹⁰:2.38; Q¹¹: 2.78; Table 1). Similar results can also be found from in-depth interviews which were conducted two years after the enactment of the amended law: most interviewees did not think that the new scheme of encouraging the public to be part of the law enforcement is workable, at least under the current structure of the new enforcement scheme.²⁶²

5.3.1.1 INVOLVEMENT OF ANIMAL PROTECTION ORGANIZATIONS

There is no doubt that animal protection organizations play a key and significant role in promoting animal welfare in every sense.²⁶³ In addition to being the major driving force that promotes the development of local animal welfare movements and related social or legal reforms, the involvement of animal protection organizations in law enforcement also brings considerable advantages.²⁶⁴ For example, they not only have their sole concern for animals but also have particular expertise in relation to animals and animal welfare.²⁶⁵ This is probably also the main reason why the legislators intended to introduce part of the charity-based enforcement mechanism into the TAP for relieving severe understaffing and overwork issues, and improve the efficiency of law enforcement. However, most of the interviewees argued that it would cause many problems if animal protection groups take part in law enforcement and they enforce the law by their own standards or their own

²⁵⁷ Wu, *supra* note 1, at 446-447.

²⁵⁸ Wu, *supra* note 1, at 446-447. Animal Protection Act, arts. 23 & 33-2.

²⁵⁹ Animal Protection Act, art. 23.

²⁶⁰ *Id.* law, art. 33-2.

²⁶¹ Wu, *supra* note 1, at 446-447.

²⁶² Animal Protection Act, art. 33-2.

²⁶³ Radford, *supra* note 1, at 40-48 & 363-364; Wu, *supra* note 1, at 410; Hughes & Meyer, *supra* note 55, at 26-29. Duffield, *supra* note 64, at 15-19.

²⁶⁴ *Id.*

²⁶⁵ RADFORD, *supra* note 1, at 364.

interpretations of the statutory standards. Unlike animal protection organizations in the Western world and its former colonies, most organizations in Taiwan may still lack a certain level of knowledge and understanding about the TAP and related decrees, as most of them solely aim for rescuing stray animals without getting much involved in relevant policy planning or legal reforms.²⁶⁶

The long-existing difficulties and conflicts of communication regarding interpretations of the statutory standards between local authorities and animal protection organizations are also the main reasons that made most interviewees fairly doubt the feasibility of this new enforcement mechanism. Notably, the majority of the local competent authorities are not confident in this new enforcement mechanism involving animal welfare organizations and thereby hesitate to adopt it.²⁶⁷ There are, however, still two local authorities which have a relatively positive attitude towards the new enforcement mechanism. The two local competent authorities are also working on developing or promoting corresponding training programs for those likely law enforcement participants from different animal protection organizations. Overall, whether the local authorities have decided to adopt the new enforcement mechanism or not, they have all agreed that as long as animal protection organizations are qualified and competent enough through necessary training, their involvement would be helpful for relieving the understaffing and overwork issues.

Although animal protection organizations are only authorized to conduct a limited range of legal duties without the right to issue penalties, they can help to do follow-up visits for minor cases and educate owners on how to take care of animals properly.²⁶⁸ That is to say, providing proper and sufficient training programs for animal welfare organizations is the key to ensuring that the new enforcement scheme works and succeeds, since it enables them to better understand the statutory standards, cooperate with the authorities and communicate with the public.²⁶⁹ This suggests that the central authorities should further provide unified comprehensive guidelines for all local competent authorities to plan and prepare their training programs under diverse conditions or with diverse needs in different regions. This would also help promote the adoption of the new enforcement scheme by the local competent authorities and thereby relieve the understaffing and overwork issues.

“... but there is a certain level of a gap between us and them (animal protection organizations) regarding how we identify and judge a case. That is, they always think we do not understand the law, because we do not penalize many cases which are deemed liable in their eyes. For example, I put my dog in my yard on a leash. Even if that leash is pretty long, they still think it is animal cruelty. We often have to argue with them regarding standards like these.” (Interview 6)

²⁶⁶ RADFORD, *supra* note 1, at 40-48 & 363-364; Hughes & Meyer, *supra* note 55, at 26-29. Duffield, *supra* note 64, at 15-19; Shih-Yun Wu, Animals in China—Law and Society, 2 GLOBAL J. ANIMAL L. 20, 23 (2016); also see DEBORAH CAO, ANIMALS IN CHINA: LAW AND SOCIETY, at viii–ix (Andrew Linzey & Priscilla Cohn eds., 2015).

²⁶⁷ Animal Protection Act, art. 23.

²⁶⁸ *Id* Law, art. 33-2; also see Wu. *supra* note 1, at 446-447.

²⁶⁹ *Id*.

“...around twenty percent of cases are severe, while 80 percent of cases are minor. Yeah, those minor cases usually take most of our time.... If they (animal protection organizations) could perform well, that part would be very helpful.... They need to have enough time and willingness to receive the training, and I think that this is a very critical factor...yes, then if they can pass this threshold (training program), I think it would be much easier (to enforce the law) afterward.” (Interview 16)

“...they may not be able to deal with those severe cases, but they can help to educate animal owners or to track some cases for a long period of time, that is, they can have complementary partnership and cooperation with the authorities....” (Interview 11)

5.3.1.2 REWARD POLICY FOR THE PUBLIC

In response to the understaffing and overwork issues as well as the loophole of the corresponding inspection and law enforcement, the 2015 amendment introduced the reward policy for the public as the other new enforcement mechanism under the TAP.²⁷⁰ However, nearly all of the interviewees do not think that the current content of the reward policy is actually practical or workable in terms of relieving the manpower issue. According to the 2015 amendment and the corresponding decree issued under the law, the local authorities may offer rewards to the public who help discover any violation of the law.²⁷¹ However, such a reward policy without any restricted conditions may give rise to two aspects of problems.²⁷² First of all, unlike reporting suspicious criminal offences to the police, a person reporting administrative offences to the local competent authorities is not required to leave personal and contact information nor is this person liable to any likely false accusations.²⁷³ This may lead to the possible problem of false reports, which would cost local competent authorities plenty of administrative resources and manpower for conducting unnecessary pre-investigations for those reports. Secondly, if any local competent authorities adopt the reward policy, the funding used for rewarding the public is collected from fifty percent of fines or more imposed on those who violate the law.²⁷⁴ Considering the fact that local competent authorities also have limited funding and resources, offering rewards to all kinds of violations under the law without any further restrictions would inevitably cause a massive burden on their existing law enforcement.²⁷⁵

²⁷⁰ Animal Protection Act, art. 33-2.

²⁷¹ *Id.* law, art. 33-2; [Regulations of Bulk Reward for Reporting Cases of Violation of Animal Protection Law] (檢 舉 違 反 動 物 保 護 法 案 件 獎 勵 辦 法), art.5 <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=M0130043> (accessed April 1, 2020).

²⁷² *Id.*

²⁷³ [Guidelines for Follow-ups of Criminal Cases Reported to the Police] (警察機關受理民眾刑案報案作業要點), art. 4 [<http://www.rootlaw.com.tw/LawArticle.aspx?LawID=A040040111010100-0840616>] (accessed April 1, 2020); Criminal Code of the Republic of China, arts.169 & 171.

²⁷⁴ Regulations of Bulk Reward for Reporting Cases of Violation of Animal Protection Law, art. 5.

²⁷⁵ Wu, *supra* note 1, at 446-447.

When it comes to the current law enforcement, what local competent authorities actually need is to have more resources or manpower for helping them not only to discover violations of several particular offences such as animal cruelty but also, more importantly, to secure or collect evidence for proving the offences.²⁷⁶ Therefore, given the limited resources as well as the actual and urgent needs for supporting the law enforcement, the reward offered should be restricted to those who not only help discover but also provide actual evidence leading to convictions of specific types of major offences. In this regard, most of the interviewees also suggested that only those reporting and providing actual evidence leading to convictions of general animal cruelty offences should be prioritized for reward.²⁷⁷ Yet, there is a lack of adequate manpower for inspecting and investigating not only animal cruelty offences but also animal welfare infringements regularly or irregularly, and this has been one of the main challenges for the law enforcement of the TAP.²⁷⁸ Thus, this point also suggests that apart from reporting general animal cruelty offences, reporting other major animal welfare infringements should be also be considered a reward target for encouraging the public to report them and provide relevant evidence.²⁷⁹ The involvement of either animal protection organizations or the public, to a certain extent, may provide assistance with the law enforcement in relieving the understaffing and overwork issues. However, the lack of enforcement powers and instruments is still the main resource problem of enforcing the animal cruelty law, and this problem needs to be addressed.

“... That is, we should utilize this (the funding) very carefully instead of offering rewards for reporting any kind of cases.... As for demanding cases or those who can provide useful evidence, we should prioritize and reward them....” (Interview 3)

“I don’t think the purpose of the rewarding is to encourage the public to report those minor infringements such as walking a dog without a leash but to report those severe offences like animal cruelty.” (Interview 11)

“Often those who report some minor cases just want to make someone they do not like run into trouble...kind of revenge matters, so I think most of the inspectors would agree that we should put our resources on rewarding those significant offences instead of offering rewards to all kinds of infringements.” (Interview 16)

²⁷⁶ Striwing, *supra* note 53, at 102-106.

²⁷⁷ The general animal cruelty offences include deliberate animal cruelty and animal neglect; Animal Protection Act, arts. 25, 25-1, 30 & 30-1.

²⁷⁸ Wu, *supra* note 1, at 444-447.

²⁷⁹ These animal welfare infringements include, for example, include abandonment, failure to seek necessary medical treatment for an injured or sick animal, inhumane slaughter, poor transportation, etc. Please also see Wu, *supra* note 1, at 434-440.

5.3.2 TRAINING AND RECRUITMENT

Effective and efficient law enforcement requires animal protection inspectors to possess sufficient knowledge and numerous skills in coping with the complexity of their duties and fulfilling the enforcement role.²⁸⁰ As official enforcers for animal cruelty offences under the TAP only include animal protection inspectors who are mostly veterinarians from local competent authorities, they have to be in charge of not only investigating criminal cases but also safeguarding animal welfare during their enforcement.²⁸¹ This means that there is an urgent need to require all inspectors to receive sufficient and ongoing training of pertinent knowledge and skills such as criminal investigation, animal welfare and the application of the law in performing their daily enforcement duties.²⁸² Remarkably, the results of the survey demonstrated that most of the enforcement participants have not received adequate training related to various aspects of the law enforcement, including those regarding animal welfare (Q¹⁴: 2.62; Q¹⁵: 2.71; Q¹⁷: 2.91; Q²¹: 2.47; Q²²: 2.65; Table 1), nor were they confident about their capabilities and expertise of enforcing the law, in particular with regard to criminal investigation (Q¹⁶: 2.67; Q¹⁸: 2.91; Q²⁰: 2.42; Table 1). Although animal protection inspectors are mostly veterinarians, most of them do not receive much animal welfare related education or training due to a dearth of animal welfare courses in Taiwanese formal veterinary education.²⁸³ Consequently, in addition to the scarcity of criminal investigation training, most of the enforcement participants also lack adequate knowledge related to animal welfare – this is a fairly severe issue in terms of achieving the goal of safeguarding the basic well-being of animals during the process of law enforcement.²⁸⁴

On the other hand, notwithstanding that many interviewees agreed that they do need to take more courses or receive some training related to law enforcement, the overworking problem resulting from the understaffing issue also prevented them from having time or energy to receive the necessary training. Thus, they mostly have to learn how to enforce the law from the experience of other senior inspectors, which is, however, is not always workable due to the high turnover rate. In addition to the difficulties of enforcing the law as discussed earlier, the lack of strong passion and motivation caused many law enforcement participants to quit their jobs easily or switch to other positions in other local competent authorities. It should be noted that most of the official enforcement participants are municipal veterinarians, and they are assigned the statutory duties as inspectors by local competent authorities instead of applying for the positions themselves.²⁸⁵ Thus, in comparison with enforcement participants in other countries

²⁸⁰ Duffield, *supra* note 64, at 23-24; Striwing, *supra* note 53, at 101-106; Wu, *supra* note 1, at 444-447.

²⁸¹ Wu *supra* note 1, at 444-447.

²⁸² Duffield, *supra* note 64, at 23-24; Striwing, *supra* note 53, at 101-106; Wu, *supra* note 1, at 444-447.

²⁸³ Wu, *supra* note 1, at 446; Wu et al., *supra* note 6, at 223.

²⁸⁴ Duffield, *supra* note 64 at 23-24; Hughes & Meyer, *supra* note 55, at 70-71.

²⁸⁵ After passing the national examination of civil servants and becoming official or municipal veterinarians, the ministry of civil service will be in charge of assigning positions and institutions (central or local competent authorities) for official veterinarians. The content of the national examination of official or municipal veterinarians is more related to animal diseases and public health control but not animal welfare or animal protection, [Regulations for Allocation of Candidates Passing Civil Service Examination] (公務人員考試及格人員分發辦法), arts. 4-7. <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=So100002> & [Advanced Level Examination Regulations for Veterinarians as Specialized Professional and Technical

such as those with charity-based mechanisms, inspectors in Taiwan seem to have a bit less passion and motivation for their enforcement duties. This may also be one of the main reasons that leads to the high turnover rate and further results in the understaffing issue apart from the difficulties of enforcing the law, in particular when they can hardly gain the sense of accomplishment from performing the enforcement duties (Q³: 2.07; Table 1). According to the interviewees, many of them often feel frustrated about their work and the situations of the law enforcement.

“Yes, we need some more training, but the thing is that we do not have time or energy after getting off from work every day, too exhausting...” (Interview 17)

“...what I have just said is that municipal veterinarians who just started their job (as inspectors) do not possess the expertise or skills related to the law enforcement, so it is really demanding and challenging for them (to perform the law enforcement duties). But if they are interested in law like some of us, they may be able to become more interested in (the expertise and skills) and gradually have more training...” (Interview 3)

"The main factor is still the public (leading to the high turnover). That is, there are plenty of cases, and the public and their complaints or accusations are usually so emotional or irrational that they really frustrate us pretty much...." (Interview 11)

"Yes, our inspectors have to constantly be assigned new tasks, a lot of (tasks)....until he (or she) could not take it anymore, then he (or she) will quit the jobs....the turnover rate is that high, which means that inspectors can hardly accumulate their experience....Yeah, I think most of them can serve in their positions for two or three years at most, and I always see new faces whenever I go to a meeting." (Interview 12)

Accordingly, there are two aspects of practical issues that have to be further addressed when it comes to effective and efficient law enforcement. First, to relieve the issues of high turnover rate and understaffing, the current recruitment policy of animal protection inspectors needs to be further reformed. As many of the interviewees noted, the position of animal welfare inspector should not be limited to official or municipal veterinarians, and the similar result can also be found from the survey (Q⁴: 2.62; Table 1). As Duffield notes: “[...] inspectors are essentially ‘part policeman, part vet, and part social worker’²⁸⁶, and performing enforcement tasks under any animal welfare legislation would require rich knowledge and skills in different professional fields such as law, veterinary medicine, education, psychology, and communication.”²⁸⁷ Thus, as long as

Personnel] (專門職業及技術人員高等考試獸醫師考試規則), art. 6. <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=R0040040> (accessed April 1, 2020).

²⁸⁶ Duffield, *supra* note 64, at 23.

²⁸⁷ Duffield, *supra* note 64, at 23-24; Striwing, *supra* note 53, at 101-106; Wu, *supra* note 1, at 444-447; Hughes & Meyer, *supra* note 55, at 70-71.

sufficient training can be provided and received, it is not necessary to limit the job offer only to official or even municipal veterinarians. More importantly, having a strong passion for and commitment to the law enforcement duties should be the basic requirement of the recruitment. The recruitment policy and mechanism from some experienced and well-respected animal protection groups such as the RSPCA can be taken into account for planning a new recruitment policy and a specific national examination for recruiting official inspectors.²⁸⁸ For this reason, we also suggest that not only should corresponding courses and training as noted be provided, but also the qualifications and competency of law enforcement participants be reviewed before they perform the officially assigned duties. Before more workable recruitment policy and mechanism are created, these requirements of training and competency review should also be applicable to all current law enforcement participants, including municipal veterinarians as well as animal protection groups working under the new enforcement schemes.²⁸⁹

"It is not necessary to require an inspector to have any specific educational backgrounds. As long as he (or she) can pass the examination, then he (or she) is qualified enough (to serve in the position) As far as I know many inspectors in other countries do not necessarily have to be veterinarians or have any specific backgrounds. Thus, those who come and apply for the position would be those who really want to work on it...." (Interview 16)

"We should have a specific national examination for recruiting animal protection inspectors other than that for official veterinarians. Anyone who has relevant educational backgrounds can take that examination. After all, it (the law enforcement) involves law and many other areas of expertise. In this way, we can gradually establish more stable human resources...." (Interview 3)

6 CONCLUSION

Along with the development of active local animal welfare movement and related legal reform for more than two decades, the general animal welfare law in Taiwan has been successfully transformed from an animal management law to genuine animal protection legislation.²⁹⁰ Although substantial progress has been made from the perspectives of both legislation or law enforcement, the degree and scope of the statutory protection under the TAP remain relatively narrow and limited in terms of its definitions of protected animals as well as animal cruelty.²⁹¹ Legal standards like "unnecessary suffering" and "the objective test" for determining animal cruelty liability can be adopted in a country with any developmental stages of animal protection.²⁹² As these criteria can provide a broader

²⁸⁸ The recruitment of RSPCA inspectors: <https://www.rspca.org.uk/utilities/jobs/becomeaninspector/information>. (accessed April 3, 2020).

²⁸⁹ Animal Protection Act, art. 23; Wu *supra* note 1, at 446-447.

²⁹⁰ Wu, *supra* note 1, at 448.

²⁹¹ *Id.*, at 429-431; please also see Animal Protection Act, art. 23.

²⁹² *Id.*, at 425-434.

range of protection for animals, the adoption of them should be a workable direction of the future legal reform.²⁹³ However, the challenge for a country like Taiwan to implement these legal standards still lies in whether there are suitable corresponding law enforcement mechanisms for applying and exercising these abstract legal standards and discretion respectively. This is also the major issue of the law enforcement we have found from the investigations, that is to say, the enforcement mechanisms of the TAP have not been transformed simultaneously in accordance with the development of the law over two decades.

Moreover, the identification and discretion of all animal cruelty offences, including animal neglect, would inevitably involve relatively complicated legal standards and notions. Whether it is appropriate to sanction the offences with administrative penalties by administrative agencies is questionable.²⁹⁴ Likewise, related criminal investigations of animal cruelty offences would require stronger enforcement powers and instruments to secure and collect evidence.²⁹⁵ Yet, the absence of the police as one of the assigned official competent authorities has been a huge barrier to effective and efficient law enforcement.²⁹⁶ The lack of sufficient and necessary enforcement powers and instruments and even corresponding training has also led to much more difficult situations and problems for local competent authorities and inspectors to perform their duties. These challenges and difficulties of law enforcement, as well as the problematic recruitment policy of inspectors, have also led to such further issues as high turnover rate and severe understaffing and overworking. All these practical law enforcement issues would inevitably decrease the capacity and effectiveness of the law, and urgent reforms are required for addressing them from empirical points of view, since the role of effective law enforcement is the key to ensuring the minimum and basic protection for animals.²⁹⁷

In addition to a necessary reform of the law and its enforcement mechanism, as noted by most interviewees before the end of the interviews, the key idea that they thought of for improving animal welfare regimes still rests in education for increasing the public awareness of animal protection. Indeed, legislation is also part of the public education that not only influences people's attitudes, but also has an impact on their behaviors by both restricting unacceptable behaviors or activities and conveying righteous or ethical concepts.²⁹⁸ However, for countries like Taiwan which has a comparatively young and immature legal regime of animal protection, introducing animal welfare education for not only the public but also related professionals such as veterinarians and law enforcement participants is also the fundamental and essential step for improving animal welfare and making the corresponding legal regime function.²⁹⁹ Legislation is the basic and necessary measure for protecting animals effectively, while it cannot be executed without an applicable law enforcement mechanism and a certain

²⁹³ Wu, *supra* note 1, at 425-431.

²⁹⁴ *Id.*

²⁹⁵ Striwing, *supra* note 53, at 102-104.

²⁹⁶ Wu, *supra* note 1, at 446.

²⁹⁷ RADFORD, *supra* note 1, at 345-46.

²⁹⁸ Wu, *supra* note 1, at 449-450.

²⁹⁹ Wu, *supra* note 1, at 446-447; Wu et al., *supra* note 6, at 225-227.

degree of social consensus and awareness of animal protection and associated concepts.³⁰⁰

³⁰⁰ RADFORD, *supra* note 1, at 345-392.