

**AN EVALUATION OF THE ANIMAL HEALTH ACT NO.27 OF 2010**

**By**

**ANDIVWENJI PHIRI**

**(27004759)**



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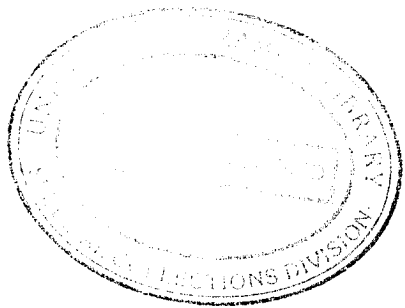
2012

A dissertation submitted to the University of Zambia in partial fulfillment of the requirements of Bachelor of Laws degree (LLB).

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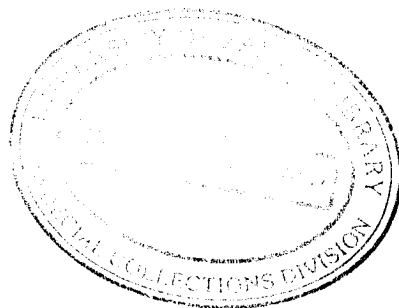
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## **ABSTRACT**

Owing to a number of disease outbreaks in the past years which has had a serious effect on the country's economy due to ineffectiveness ways of implementation of the laws governing animal health in the country. The government from 1996 embarked on reviewing the regulations to come up with new laws that will encompass modern problems. The Animal Health Act was enacted in the year 2010 to repeal and replace the Stock Disease Act of 1961.

The focus of this dissertation is to evaluate the laws regulating animal health in the recent past. There has been a problem of unfettered powers of the Director and the government not awarding compensation to the livestock farmers whose livestock has been slaughtered. These farmers lose their only means of livelihood without being compensated. The constitution under Article 16 provides for compensation if the government takes away their property. In instances where it is granted, it is either less than the value of the animal or the process of determination is inappropriate. The dissertation tries to assess the feasibility of the government awarding it to farmers.

The methodology that was used was primary information which was obtained from interviews with various stakeholders and also secondary information from the internet. It was found that under the Act, there has been a problem of policy making by the policy-makers which does not reflect the aspiration of the people and also lacked guidelines on how to implement them. There is no provision on how to award compensation, further some of the provisions under the Act created confusion on who is to perform which function. Due to the fact that the majority of the population is illiterate, there is no initiative to educate them by the government. This has been a major setback to the implementers in controlling or eradicating the notifiable disease in the country.

It was recommended that the certain provision of the Act should be amended, the department should have a legal department which will make haste the making and review of laws without delays. Furthermore, the provisions on delegated powers must state clearly which functions should be performed by the private or public veterinaries and those for the Ministry of Health and those of the Ministry of Agriculture and Livestock. There is need to engage the stakeholders when coming up with policies, enlighten them on the importance of reporting diseases outbreaks. Another inadequacy that needs to be addressed is creating room for transparency and accountability through the creation of an independent body that will be assisting either in hearing appeal cases from the Minister or in other matters.

In conclusion, it can be stated that the Act has been established to cater for the aspiration of the people. However, there is a lot that can be learnt from other jurisdiction. There is need for constant review of the regulations, insuring the participation of Stakeholders in policy making. Livestock plays a major role in international trade, the World Organization for Animal Health (OIE which stands for Office International Des Epizooties) and the World Trade Organization (WTO) has provided for international standards, rules and regulation for minimum standards for food safety and disease control of animals

## **DEDICATION**

To God the creator of my life, you have extolled my life on the palms of your mighty hands and I know this work is a part of my life you have inscribed. I will always adore and praise your Holy name. To my late Father, Mr. Jackson Phiri, it is only proper that this work stands as an attribute to your life. May your soul, rest in eternal peace.

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Farmers Licensing Ordinance

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The Animal Health Act (Draft) of 1996

The Animal Health Act of 2002 of South Africa

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The Constitution, Chapter 1 of the Laws of Zambia

The Control of Dogs Act, Chapter 247 of the Laws of Zambia

The Control of Dogs Ordinance of 1940

The Diseases of Animals Act, Chapter 37:01 of the Laws of Botswana

The Dogs and Pigs Ordinance of 1926

The Northern Rhodesia Farmers Union Incorporation (Repealed) Act of 1966

Public Health Act of 1964, Chapter 295 of the Laws of Zambia

Statutory Instrument No. 381 of 1965

The Public Health Ordinance of 1926

The Public Health Ordinance of 1930

The Stock Disease Act, Chapter 252 of the Laws of Zambia

The Tsetse Control Ordinance of 1941

Tsetse Control Act, Chapter 249 of the Laws of Zambia



## **LISTS OF CASES**

Minister of Agriculture and Another V Blueelliesbush Darry Farming (Pty) Limited and Another (2008) ZASCA 60

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## **LIST OF ACRONYMS**

BSAC:	British South African Company
DVO:	District Veterinary Officer
EEC:	European Economic Community
FNDP:	Fifth National Development Plan
GDP:	Gross Domestic Product
NALEIC:	National Livestock Epidemiology and Information Centre
OIE:	Office International Des Epizooties
SLIP:	Smallholder Livestock Investment Project
WTO:	World Trade Organization
UNZA:	University of Zambia

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# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.0 INTRODUCTION

This chapter gives an introduction to the research and generally gives the layout of the research. It also deals with the powers of the Director and the feasibility of compensation and other aspects of the research. These include the statement of the problem, objectives, the research questions, significance of the study, the methodology and the chapter lay out. Furthermore, it will consider facts that led to the enactment of the new Act and the repealing of the old Act.

Agriculture in Zambia has great potential for enhancing economic growth and reducing poverty. A well performing agricultural sector translates into significant improvements in the country's Gross Domestic Product (GDP). It also contributes to employment generation and broadens the country's tax base. It is in this regard that the Fifth National Development Plan (FNDP) positions the agricultural sector as one of the driving engines for the anticipated economic growth that is required to reduce poverty.<sup>1</sup>

The livestock sub-sector is also economically important in Zambia as it accounts for about 35 percent of the total agricultural production.<sup>2</sup> The main livestock produced are cattle, goats, pigs and poultry. However, livestock production remains far below its potential due to several factors that include outbreaks of diseases.<sup>3</sup> Traditional communal grazing has, in part, been blamed for

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<sup>1</sup> Fifth National Development Plan, *Agriculture section*. (2006-2010), 46-54.

<sup>2</sup> Interview: Joseph Samunite, February 08, 2012. Chief Livestock Officer, Ministry of Livestock and Cooperatives under the Department of Veterinary and Livestock.

<sup>3</sup> Interview: Caesar Lubaba (Dr), February 01, 2012. Principal Epidemiologist, National Livestock Epidemiology and Information Centre (NALEIC).

the frequent outbreaks of cattle diseases in many rural areas. The recurrence of drought has often depleted animal grazing resources and drinking water, thus affecting the productivity of the livestock sector. In the livestock sector, the main thrust will be to control livestock diseases of an epidemic nature and with trans-boundary (regional or international) significance.<sup>4</sup> The other area of emphasis will be restocking, stocking and increasing overall production, productivity and management of marketable livestock products, especially in the traditional sector.<sup>5</sup> Therefore, it is evident that there is need to find alternative measures of achieving the objectives outlined in the Fifth National Development Plan. Some of the measures which were embarked by the government were restructuring of the ministry concerned with livestock and enactment of a new Animal Health Act which was to be more of a hands-on.

The integration of veterinary and animal husbandry aspects in overall livestock production system was one of the alternative measures that were encouraged by the government as well as stakeholders<sup>6</sup>. Within the current mandate of the government department, effective management of existing government institutions provided the opportunity for increased performance and for the stimulation of the private sector. In particular, livestock-related government institutions that could operate in a commercial manner were either sold off to the private sector or to operate as autonomous trusts.<sup>7</sup> The redefinition of the roles of the public and private sectors was heavily emphasized in Zambia's livestock policy and was necessitated by an evaluation of the relative institutional capacities and comparative advantages of the public and private sector. Accepting that the public sector no longer had the financial capacity or physical resources to provide a

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<sup>4</sup> Fifth National Development Plan, *Agriculture section*. (2006-2010), 46-54.

<sup>5</sup> Ibid.

<sup>6</sup> Fifth National Development Plan, 45-47.

<sup>7</sup> Jesuits Centre for Theological Reflection, "*Behind the Borders: Sanitary and Physiosanitary Standards. Trade Agreements and Challenges to Zambia*," (November 2008). [http://www.Jctr/behind the borders/sanitary and physiosanitary standards. trade agreements and challenges to Zambia](http://www.Jctr/behind%20the%20borders/sanitary%20and%20physiosanitary%20standards.%20trade%20agreements%20and%20challenges%20to%20zambia). Accessed on October 26, 2011.



comprehensive range of livestock services to the farming community, a reallocation of responsibilities had become inevitable.<sup>8</sup>

Before 1991, the legislation was tailored to the provision of services by Government departments or state-owned enterprises. Clearly, the emergence of a range of other actors providing services has necessitated a change in the legislation governing these services. In Zambia, the parliamentary process for the creation of the Animal Health Act<sup>9</sup> (formerly the Stock Diseases Act)<sup>10</sup> showed the recognition of the importance of livestock within the overall agricultural system.<sup>11</sup>

Previously, livestock issues had been handled within an Animal Production and Health Branch of the Department of Research and Specialist Services. The proposed new department of Veterinary and Livestock Development emphasizes the role of co-ordination, inspection, monitoring and regulation in a linear and more cost-effective organization<sup>12</sup>. Through this department, core veterinary and tsetse control services are provided. Furthermore, there is monitoring, regulation and surveillance which are more emphasized. Policy and appropriate legislation formulated in an enabling environment for private sector development is created and research and extension are

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<sup>8</sup> Jesuits Centre for Theological Reflection, *"Behind the Borders: Sanitary and Physiosanitary Standards. Trade Agreements and Challenges to Zambia,"* (November 2008).[http://www.Jctr/behind the borders/sanitary and physiosanitary standards. trade agreements and challenges to Zambia](http://www.Jctr/behind%20the%20borders/sanitary%20and%20physiosanitary%20standards.%20trade%20agreements%20and%20challenges%20to%20zambia). Accessed on October 26, 2011.

<sup>9</sup> No.27 of 2010 of the Laws of Zambia.

<sup>10</sup> Chapter 252 of the Laws of Zambia.

<sup>11</sup> Jesuits Centre for Theological Reflection, *"Behind the Borders: Sanitary and Physiosanitary Standards. Trade Agreements and Challenges to Zambia,"* (November 2008).[http://www.Jctr/behind the borders/sanitary and physiosanitary standards. trade agreements and challenges to Zambia](http://www.Jctr/behind%20the%20borders/sanitary%20and%20physiosanitary%20standards.%20trade%20agreements%20and%20challenges%20to%20zambia). Accessed on October 26, 2011.

<sup>12</sup> Interview: Caesar Lubaba (Dr), February 01, 2012. Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

coordinated. The department combines both animal production and animal health disciplines which permits more streamlined services for farmers.<sup>13</sup>

## **1.1 FACTS THAT LED TO THE ENACTMENT OF THE NEW ACT**

The old Act (the Stock Disease Act)<sup>14</sup> was regarded as a dead Act due to the fact that most of the provisions in the Act had failed to give the industry a ‘full value’ in animal health policy decisions.

The new Act was to provide a comprehensive reform to regulate the health of animals more efficient and effective. There was great low productivity in the livestock sector due to livestock diseases which hampered the meat industry for a long time especially in the traditional sector.<sup>15</sup>

The government budgetary allocations for livestock disease control were severely constrained while the private sector was yet to fully service the traditional livestock sector due to a myriad of constraints such as the prevalence of animal diseases, the non availability of veterinary drugs and related high costs of the drugs. Further, there was the issue of inadequate livestock nutrition and water, lack of appropriate livestock research, inadequate livestock extension and health services as well as the lack of linkages between livestock research and livestock extension and poor animal husbandry practices or management and inadequate marketing infrastructure.<sup>16</sup> The Stock Disease Act was enacted a long time ago within the controlled economic dispensation and was inappropriate under a liberalized economic environment.

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<sup>13</sup> Jesuits Centre for Theological Reflection, *“Behind the Borders: Sanitary and Physiosanitary Standards. Trade Agreements and Challenges to Zambia,”* (November 2008).[http://www.jctr/behind the borders/sanitary and physiosanitary standards](http://www.jctr/behind%20the%20borders/sanitary%20and%20physiosanitary%20standards). Accessed on October 26, 2011.

<sup>14</sup> Chapter 252 of the Laws of Zambia.

<sup>15</sup> Dr. Aaron. S. Mweene, *“The Status of Cattle Disease in the Country,”* submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished),1-6.

<sup>16</sup> Martin C.Webber and Labaste Patrick, *“New from World bank Building Competitives in Africa’s Agriculture: A Growth to Value West’s Chain Concepts and Application”* (September 2010).<http://www.regoverningmarkers.org>. Accessed on October 11, 2011.

## **1.2 STATEMENT OF THE PROBLEM**

The research will focus on how effective and attainable compensation is under the Animal Health Act<sup>17</sup> in terms of when there has been an outbreak of a national disease of economic importance and there is no alternative way but to slaughter the animals. There have been problems of implementation of the provisions of the Act due to a number of shortfalls.<sup>18</sup> Under the Act, it is stated that the owner of the livestock will have to be compensated but the issue to consider is how this is calculated and who does the assessment of the damage suffered by the owner.<sup>19</sup> Looking at the provisions of the Act, the Minister has been granted discretionary powers to grant or withhold such compensation. Furthermore, the research will consider the Director's powers which are also immense under the Act. The research aims at analyzing how such powers can be curtailed through checks and balances. The Director's power should be curtailed due to the fact that his role as an administrator in decision making will affect an ordinary person.

## **1.3 OBJECTIVES**

The main objective of this research is to evaluate the law regarding animal health in particular to Part II, section 4 and Part X of the Act which looks at the establishment of the administrative body and compensation respectively. The study aims at making a contribution to the literature as little as been written on animal health. In addition, the study aims to bring out the attainability and feasibility of compensation bearing in mind the economic situation of our country Zambia. Bring out the potential problems and possible solutions to the problems. However, as already

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<sup>17</sup> No.27 of 2010 of the Laws of Zambia.

<sup>18</sup> Interview: Edwell Mwaanga(Dr), February 08, 2012. Lecturer at the University of Zambia (UNZA).School of Veterinary Medicine.

<sup>19</sup> Interview: Anne Songolo (Dr), October 29, 2012. Principal Veterinary Officer. Smallholder Livestock Investment Project (SLIP).

alluded to earlier, the research will mainly focus on the administrative body and the effectiveness of compensation under the Act. The research will also embark on a comparative study with other jurisdiction such as South Africa, Botswana and England and then give some of the shortfalls of the current Act,

### **1.3.1 RESEARCH QUESTIONS**

1. What was the basis of enacting the Animal Health Act?
2. What is the rationale for the establishment of the administrative body which is headed by the Director in the new Act?
3. Are the functions of the Director being balanced and checked?
4. What amounts to compensation under the Act?
5. How is compensation calculated under the Act?
6. Who is in charge of evaluating how much compensation to give to the owner of livestock?
7. Is this compensation extended to wild captive animals based on the definition of livestock given under the Act?
8. How many livestock owners have been compensated in the last 20years?

#### **1.4 RATIONALE AND JUSTIFICATION**

This research is mainly focus on determining the effect and accessibility of compensation, looking at the economic situation in Zambia, how viable can that be achieved.<sup>20</sup> In most instances, there is the issue of the government not having enough funds to cater for such emergencies and compensate the owners of the livestock. Some of the policies are weak in achieving their objectives.<sup>21</sup> It has been noted that compensation is only applicable to specific animals and only few livestock farmers has been compensated for their loss which they had incurred for the last 20 years. Moreover, compensating livestock owners whose animals have been slaughtered might be absolutely essential to arrest the spread of certain diseases which are of economic importance. In other jurisdictions, it has been shown that most farmers would report outbreaks knowing that they would be compensated. The study aims at providing solutions to the problems in relation to the Act.

#### **1.5 SIGNIFICANCE OF THE STUDY**

It is important to note that agriculture contributes about 18 percent to the economy of the country. In the past years, the number of outbreaks has increased so drastically due to the fact that most outbreaks are never reported by the livestock owner.<sup>22</sup> The reason for the low turnout of reported cases of outbreaks by the farmers to government is due to the fact that the government has not been giving compensation to those that had suffered lose from the diseases. If it gives out such compensation, this has been inadequate to indemnify an ordinary famer

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<sup>20</sup> Interview: Anne Songolo(Dr), October 29, 2012. Principal Veterinary Officer. Smallholder Livestock Investment Project (SLIP).

<sup>21</sup>Interview: Yona Sinkala (Dr),February 02,2012. Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC).

<sup>22</sup> Dr. Aaron. S. Mweene, "*The Status of Cattle Disease in the Country*," submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished),1-6.

whose livelihood depends on the livestock.<sup>23</sup> This has had an effect in the production of livestock such as beef production (which became scare in 2004 to 2005) and trade relations with other countries. The research aims at showing the significance of granting compensation to those that have incurred lose so as to eradicate or control diseases of national economic importance which plays a vital role in disease control. In addition, there is need for provisions in the Act to expressly provide the procedure on how compensation should be calculated basing on a named value. The Director must be monitored or assisted by an independent body that would provide impartiality.

**1.6 OPERATIONAL DEFINITION OF TERMS**

**Committee:** refers to the animal disease control Interdisciplinary Committee constituted in the under section 67 of the Act.<sup>24</sup>

**Compensation:** A pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by the destruction or disposed of. The payment an owner is given to make up for the injury suffered as a result of the killing of his livestock when there has been a national economic disease.<sup>25</sup>

**Director:** means the director responsible for veterinary services and includes the deputy director who as well is responsible for veterinary services.<sup>26</sup>

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<sup>23</sup> Dr. Aaron. S. Mweene, “*The Status of Cattle Disease in the Country,*” submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished),1-6.

<sup>24</sup> Section 2 of Animal Health Act no. 27 of 2010.

<sup>25</sup>The Gale Group, Inc, West’s Encyclopedia of American Law (July 2008).<http://www.thefreedictionary.com>. Accessed on October 26,2011.

<sup>26</sup> Section 2 of Animal Health Act no. 27 of 2010.

**Livestock:** means any breed or population of animal kept by a human being for useful or commercial purpose and includes domestic animals, semi-domestic animals and captive wild animals.<sup>27</sup>

**Management diseases:** these are disease whose control and prevention is the responsibility of the farmer. These diseases have effective treatments and vaccines that provide effective protection. It is therefore possible for a farmer to plan and implement preventive and control measures.<sup>28</sup>

**Diseases of Economic Importance:** these are diseases that present a sudden and major threat to livestock production in respect of food, fiber or animal traction power, public health and export of livestock or livestock products. The control of national economic importance is the responsibility of the government,<sup>29</sup> this is also referred under the act as notifiable diseases.

## **1.7 METHODOLOGY**

The study will be both qualitative and quantitative based on primary and secondary information. Primary information will be obtained from interviews with various stakeholders. Secondary sources will rely on information from authors. This will include textbooks, scholarly articles, magazine articles, government gazettes, statutes as well as the internet where textbooks and scholarly articles fall short.

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<sup>27</sup> Section 2 of Animal Health Act no. 27 of 2010.

<sup>28</sup> Muneka Malamo (Dr), *Case Presentation of the Minister of the Ministry Of Livestock and Fisheries Development*. Department of Veterinary Services. (Unpublished), 4.

<sup>29</sup> Muneka Malamo(Dr), *Training Manual for Provincial and District Veterinary Officers for Central and Southern Provinces in Disease Surveillance and Control*. (Unpublished), 4.

## **1.8 PROPOSED OUTLINED CHAPTERS**

### **CHAPTER TWO**

#### **HISTORICAL BACKGROUND OF THE ANIMAL HEALTH ACT**

This chapter will provide a historical background of the Acts in relation to animal health regulation.

### **CHAPTER THREE**

#### **THE POWERS OF THE DIRECTOR AND COMPENSATION UNDER THE ACT**

This chapter will focus on the main issues under research which are the powers of the Director were the research will aim at showing how the powers of the director are curtailed and how they are checked and the issue of compensation, is it extended to animals that are not domesticated but are kept. Furthermore, the chapter will look at what happens when the disease spreads to human beings.

### **CHAPTER FOUR**

#### **A COMPARATIVE STUDY WITH OTHER JURISDICTIONS**

This chapter will look at other jurisdictions. It will try and show how the animal regulations are implemented and curtailing the powers of the director. Show how the provisions of compensation are stipulated. It will then make a comparison with these jurisdictions (South Africa, Botswana and England).



## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSIONS**

This chapter will give recommendations and make conclusions on the matter at hand.

#### **1.9 CONCLUSION**

This chapter has dealt with the basic aspects of the research to be conducted and has given a introduction to the subject at hand. It has also highlighted the salient features of the subsequent chapters. It is the opinion of this chapter that it is important for the powers of director to be checked and balanced due to the fact that his decision affects the community. Under the Act, the principle of compensation is to help the government in disease control and also help sustain farmer economically. The issue to consider is it extended to animals that are not domesticated but are kept. Furthermore, the paper will try to analyze the feasibility of compensation, can the people who have contracted a national economic diseases be compensated by the government. Chapter two therefore outline the background of the regulations dealing with animal health.

# CHAPTER TWO

## **THE HISTORICAL BACKGROUND OF THE ANIMAL HEALTH ACT NO. 27 OF 2010**

### **2.0 INTRODUCTION**

This chapter gives a historical background of the regulations in relation to animal health and welfare from the early colonial days till to date. This is to give an insight of development and operation of animal welfare and regulations in the country.

### **2.1 Colonial Period: The Origin of Animal Health Regulations in Northern Rhodesia**

British influence was extended to Northern Rhodesia through concessions by the Lozi's. The two factors that led to the creation of the British South African Company (BSA co.) as an institution through which to extend British influence in Central Africa were, firstly, the persistent belief that vast deposits of gold lay ready for the miner in Central and southern Africa.<sup>30</sup> In such remarkable circumstances of minerals and especially copper exploration, a further reason directed towards Central Africa was the earlier travelers (that is, the Portuguese and later David Livingstone) the presence of minerals such as copper and gold.<sup>31</sup> The second was the impulse on Englishmen to acquire fresh pieces of land in Africa for the future development and link the south of Africa with the North and exclude all other European powers.<sup>32</sup> Private enterprise rather than any imperial grant was the factor chiefly responsible for the push into Central Africa. After the British government had annexed Bechuanaland in 1885 to prevent the German colony of South

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<sup>30</sup> Cunningham Simon, *The Copper Industry in Zambia: Foreign Mining Companies in a Developing Country*. (New York: Praeger Publishers, 1981), 26.

<sup>31</sup> Cunningham Simon, *The Copper Industry in Zambia*, 26.

<sup>32</sup> Bernard Robinson, James Gallagher and Andrew Denny. Africans & the Victorians. 1962 on page 224 in hall Zambia as quoted by John Sangwa in his dissertation on "*The Making and Remaking of the Constitutions in Zambia: The Need for a New Perspective*." (Unpublished).

West Africa and Boer colonies from uniting and so encircling Cape Colony, it would not have probably intervened if Germans, Boers and Portuguese had shown no interest in territories further north. The Cape colonialists were determined that no other power should possess the wealth of the area.<sup>33</sup>

The discovery of most of Zambia's mineral wealth was under colonial rule. In 1924, Northern Rhodesia became the direct responsibility of the crown and so to assist development, it had good reason to accept responsibility (risk) and undertake prospecting. Up to 1952 Northern Rhodesia had British Protectorate status and was regarded as something of an annex to Southern Rhodesia, a colony that attracted European settlement.<sup>34</sup> Most of the activities during the pre-colonial days were towards the extracting of minerals. This venture and desire led to a number of white settlers to settle in the Northern Rhodesia. However, little settler agriculture or industry developed in Northern Rhodesia with the exception of copper mining on the famous Copperbelt close to the Zairian border, since Southern Rhodesia proved more attractive to investors (when compared to Kenya, Uganda or Tanzania). Zambia's rural areas became suppliers of labour to the Copperbelt and Rand mines, as well as to Southern farms and factories.<sup>35</sup> Some of them started farming and kept livestock.<sup>36</sup> The laws that were applicable in the region were those enforced in Britain.

Wildlife became a resource of European conquest providing income (for example ivory and skins) and a cheap source of meat for the natives. Wildlife started competing for space and

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<sup>33</sup> This was under the premiership of Cecil Rhodes who was prepared to use his wealth acquired from diamond and gold finances of his exploration efforts in South Africa.

<sup>34</sup> Guy Scot, *Agriculture Transfer Motion in Zambia: Past Experience and Future Prospects* (September 2008). [http://www.useud.gov/pdf/PNABZ 993.pdf](http://www.useud.gov/pdf/PNABZ%20993.pdf). Accessed on March 10, 2012.

<sup>35</sup> Guy Scot, *Agriculture Transfer Motion in Zambia: Past Experience and Future Prospects* (September 2008). [http://www.useud.gov/pdf/PNABZ 993.pdf](http://www.useud.gov/pdf/PNABZ%20993.pdf). Accessed on March 10, 2012.

<sup>36</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

pasture, eradication of diseases associated with livestock became an urgent need. This served as a magnet to draw the hopeless European masses to this land of plenty, where with only a gun and an oxcart one could get rich quickly or find open spaces on which to settle a luxury in an overpopulated and class-conscious Europe.<sup>37</sup>

Furthermore, the railway line proved a profitable enterprise as it reduced the cost of transportation and in turn made commercial agriculture and mining economically possible. The European veterinarians settled in the region so as to control diseases and improve the productive efficiency of the livestock, hence, extended the application of the British laws to these areas.<sup>38</sup> The Headquarters of the veterinary association in Northern Rhodesia was located in *Mazabuka*. The following are the regulations operational at the time; The Cattle Ordinance of 1911 which was to regulate the control of diseases in cattle and the Ordinance was repealed in 1963. The Ordinance that was to deal with other diseases that are contagious was the Epidemic and Contagious Disease Ordinance which was repealed in 1930.<sup>39</sup> There were the Dogs and Pigs Ordinance and Public Health Ordinance of 1929. The Cattle Marketing and Control Ordinance also repealed in 1960, Cattle Slaughter (Control) Ordinance, the Tsetse Control Ordinance and the Control of Dogs Ordinance.<sup>40</sup> The Public Health Ordinance acted like the Principal

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<sup>37</sup> Guy Scot, *Agriculture Transfer Motion in Zambia: Past Experience and Future Prospects* (September 2008). <http://www.useud.gov/pdf/PNABZ 993.pdf>. Accessed on March 10, 2012.

<sup>37</sup> Interviewed: Isaac Phiri (professor) March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>38</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives. *It should be noted that most of these regulations were enacted so as to prevent the natives from keeping a lot of livestock. Furthermore, to prevent the spread of disease from the livestock kept by natives and those kept by settlers.*

<sup>39</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>40</sup> The Laws of Zambia, Chronological Tables of Proclamations, Ordinances, Acts and Applied Acts.vol.1(2006).

Ordinance for the rest, in the sense that all the other laws depended on it to operate effectively and sufficiently.<sup>41</sup>

### **2.3 Post Colonial Period**

Zambia attained its independence from Britain on the 24<sup>th</sup> of October, 1964. She experience three major phases of governance; the multiparty system from 1964 to 1972; the one party system from 1972 to 1991 under the rule of President Kenneth *Kaunda*; and back to multiparty system from 1991 and onwards. At independence, the new government viewed agriculture as a tool for social and economic development.<sup>42</sup> Agricultural policy in the period of *Kaunda*'s tenet was characterized by announcements every two or three years of some new "agrarian revolution" or other quick fix to correct the evident backwardness of the country relative to its former partners in the Federation.<sup>43</sup> The newly independent Zambia embarked on a vigorous campaign to stir the formation of co-operatives to stimulate rural development as most of the population lived in rural areas and lived mainly on farming. In 1961, Parliament enacted the Stock Disease Act that would regulate animal welfare in the country,<sup>44</sup> it also repealed the Cattle Disease Ordinance of 1911. Like most Zambian Acts, the Stock Disease Act was adopted from our former colonial master- Britain.

Therefore, the objective of the government was to work towards encouraging cooperatives. Under the colonial period, the natives were not considered to be farmers. In 1965, there was a

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<sup>41</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>42</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>43</sup> Guy Scot, *Agriculture Transfer Motion in Zambia: Past Experience and Future Prospects* (September 2008). [http://www.useud.gov/pdf/PNABZ\\_993.pdf](http://www.useud.gov/pdf/PNABZ_993.pdf). accessed on March 10, 2012.

<sup>44</sup> Gavin Thompson, *Fast Fact; African Farmers Missing Out on Global Livestock Revolution* (April 2008).<http://www.steps-centre.org/ourresearch/vetscience.html>. Accessed on March 05, 2012.

change in the operational definition of a farmer under the Farmers Licensing Ordinance<sup>45</sup> through Statutory Instrument No. 381 of 1965. Later in 1966, the Northern Rhodesia Farmers Union Incorporation (Repeal) was passed to abolish the colonial definition of a “farmer” so as to include natives to the definition.

Most of the British Ordinances in the first Republic were in-operational and there was need to enact new laws that were applicable to the African setup, it is important to note that most of the laws in the colonial days were for the benefit of the Europeans. However, the government of the day understood the value of controlling diseases in the country and the need for improving productivity. The enforcement mechanism under the regime of *Kaunda* was vigorous and effective. For instance, under the Dogs Act, an owner of a dog was expected to pay penalty fees if the dog is not vaccinated for or has rabies.<sup>46</sup> Veterinary control of rabies in Zambia consisted of vaccination of dogs and cats, surveillance of rabies carriers and the obliteration of infected or strayed dogs.<sup>47</sup> The national programme for dog rabies which started in 1984 was aimed at vaccinating over 80% of the canine population over a period of five to six years.<sup>48</sup> Its initial emphasis was on highly urbanized areas. The Department of Veterinary and Tsetse Control Services conducted serological surveys to establish the incidence of *brucellosis* in support of the ‘*brucellosis* control policy’ which included slaughtering of animals found positive in the commercial herds to establish brucellosis-free herds, calf hood vaccination using S19 vaccine

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<sup>45</sup> Section 3

<sup>46</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>47</sup> Gavin Thompson and Mary-Louise Penrith, *Technical Report to the Wildlife Conservation Society: Animal Health Policy Legislation and Trade on Beef in the Five Participation States in the Kavango\_ Zambezi Transfrontier Conservation Area* (August, 2009). [http://www.Wcs\\_ahead.org/./animal-health-policy-leg-trade-kaza-tad-index.pdf](http://www.Wcs_ahead.org/./animal-health-policy-leg-trade-kaza-tad-index.pdf). Accessed on February 23, 2012.

<sup>48</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives

produced by the Central Veterinary Research Institute, slaughter of all positive animals from other herds, control of breeding stock and improved animal husbandry.<sup>49</sup>

*Kaunda's* government understood the importance of compensating farmers and livestock owners in controlling and eradicating diseases of economic importance. It was during this period were most farmers would get compensated. It was easy and viable for an owner who had had his livestock slaughter in the process of combating a disease to get compensation. There was also classification of diseases to make it easier to deal with outbreaks for each disease.

#### **2.4 The Second Republic and onwards**

By 1991, Zambia was ranked as one of the poorest countries in the world, exhibiting an economy which was heavily dependent on production of a single commodity (copper) and perhaps it was because of this that the economy continued to be one of the weakest. Copper exports generally accounted for not less than 85% of the total exports contributed to the Gross National Product (GDP) and represented an important source of budgetary revenue.<sup>50</sup> This is not to say the country lacked other resources; the country has always been rich in agricultural, forestry, tourism, fishing and human resources. Zambia had since then been striving for diversification in the economy by moving from heavy dependence on copper exports but this effort has been hindered by various factors including insufficient incentives for non-traditional exports, price controls, subsidies reliance on exchange and trade restrictions, to mention but a few.

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<sup>49</sup> L.M. Tutchi, *Epidemiology, Prevention and Control of rabies and brucellosis in Zambia*. In *Proceedings of the International Conference on epidemiology, control and prevention of rabies and brucellosis in Eastern and Southern African countries, Gaborone, Botswana, 23-25 November*. (Paris: Editions Foundations Marcel-Merieux, Lyons, (1988).

<sup>50</sup> *Zambian Co-operative Federation Limited "Co-operatives in Zambia: A Background Information and Policy Document"* Lusaka (1991), 4.

The MMD government's economic policies introduced in the early 1990's represented a radical departure from the policies of its predecessor. In its *Policy Framework Paper* (1992)<sup>51</sup> the new government under Frederick *Chiluba* emphasized on the need to transform the country into a liberal market economy. The new measures introduced the removal of all subsidies, low inflation and extensive privatization of State owned or controlled companies

The new Government had a liberal approach and free market and oriented coalition of anti-*Kaunda* forces. This process, though it had many features unique too Zambia, can be regarded as part of the same process of transition to an open society that had taken place in so many countries in Eastern Europe and Africa since the end of the Cold War. The economic programme is familiar: removal of exchange and other price controls; tight budgetary discipline; promotion of foreign investment and those mentioned above. In Zambia, as in some other countries, it goes under the name of the Structural Adjustment Programme.<sup>52</sup>

Before 1991, legislation was tailored to the provision of services by Government departments or state-owned enterprises. Clearly, the emergence of a range of other actors providing services has necessitated a change in the legislation governing these services.<sup>53</sup> In Zambia, the parliamentary process for the creation of the Animal Health Act (formerly the Stock Diseases Act), the Veterinary Drugs Act (formerly the Pharmacy and Poisons Act) and the Veterinary and Para-Veterinary Professions Act (formerly the Veterinary Surgeons Act) was in motion. The Zambia Wildlife Act of 1998 was enacted although it does not refer to animal health or disease control in

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<sup>51</sup> Zambian Co-operative Federation Limited "Co-operatives in Zambia: A Background Information and Policy Document" Lusaka (1991), 3.

<sup>52</sup> Guy Scot, *Agriculture Transfer Motion in Zambia: Past Experience and Future Prospects* (September, 2008), <http://www.useud.gov/pdf/PNABZ 993.pdf>. Accessed on March 10, 2012.

<sup>53</sup> Keith Sones and Andy Catley, *Primary Health Care in the 21<sup>st</sup> Century: Shaping the Rules, Policies and Institutions* (October, 2011).<http://www.primaryhealthcareinthe21stcentury.com>. Accessed February 24, 2011.



game parks. A range of Acts concerning other aspects of the livestock industry was to be reviewed.<sup>54</sup>

*Chiluba's* government was guilty of the failure to manage agricultural and the changes it need to undergo. There was relaxation of the enforcement of the laws in the sector. Further, compensation was never implemented except in 1992-93 when there was an outbreak of African Swine Fever in trying to control the spread of the disease to other parts of the country.<sup>55</sup> The country saw the spread of the African Swine Fever across Luangwa district for the first in history. Transportation of livestock from restricted areas became rampant during *Chiluba's* reign.<sup>56</sup> It also became common for the government not to compensate the farmers who had their animals slaughter and this led to the spread of many diseases in the country that could have been controlled. Furthermore, this affected the trading sector in livestock and livestock products with other countries.<sup>57</sup>

There was no new regulation enacted to accommodate the free market economy, the few amendments made in 1994 did not amount to substantial changes to the old Act. In 1995, the government introduced a bill in parliament which was to repeal and replace the Stock Disease Act but unfortunately it did not pass through to become an Act.<sup>58</sup>

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<sup>54</sup> Keith Sones and Andy Catley, *Primary Health Care in the 21<sup>st</sup> Century: Shaping the Rules, Policies and Institutions* (October, 2011).<http://www.primaryhealthcareinthe21stcentury.org/> Accessed February 24, 2011

<sup>55</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives. The farmers that were compensated were those between the area of state lodge and *Namwendwa* farm.

<sup>56</sup> Government Gazette from 1991-1993.

<sup>57</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

<sup>58</sup> The Animal Health Act (draft) of 1996 to amend the stock diseases Act (1964) Chapter 252 of the Laws of Zambia.

sThe “New Deal Government” of President Levy *Mwanawasa* which came into office in 2001 strove to transform the economy from dependence on a single commodity to others such as tourism and agriculture. It tried to bring sanity to the livestock sector by appointing the civil servants in the Ministry of Agriculture and Cooperatives that had the expertise and competence in animal welfare and health.<sup>59</sup> It aimed at eradicating and control of diseases of economic importance that affected the country’s economy, the health of the people and trade relations with other countries.

In addition, there was a growing concern by stakeholders regarding the regulations on animals,<sup>60</sup> the private sector wanted to fully participate in the regulations and animal welfare. The animal health Act was enacted in 2010 but it is yet to be enforced due to the delay in establishing the Regulations by the Minister of Agriculture and Livestock, the Regulations that are enforced are those under the old Stock Disease Act.<sup>61</sup> There was systematic application and enforcement of these Regulations and provisions of the Act in both *Mwanawasa* and *Rupiah Banda’s* regime, a comprehensive understanding of importance of diseases control in the country and the role compensation plays in the matter.

Government entered into agreements with the private sectors when it was unable to compensate the livestock owners after slaughtering. There was subrogation, in that the private enterprise will compensate the amount to the farmer and get the carcass. In addition, a number of projects were set up to deal with disease control such as Smallholder Livestock Project (SLIP) and National Livestock Epidemiology and Information Centre (NALEIC) and many others.’’

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<sup>59</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives

<sup>60</sup> Interviewed: Isaac Phiri (Professor). March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives

<sup>61</sup> Julia Day, *Animal Health Policy-Legislation* (October, 2009). <http://www.Wcs-ahead.org/.../animal-health-policy-leg-trade-kaza-tad-index.pdf>. Accessed on February 23 2012

## **2.5 Conclusion**

This chapter apart from laying the foundation of this research has given a background of the origins of animal welfare and regulations. The law has undergone significant changes over the years influenced by the policies of subsequent governments. It can be seen that the history of these regulations in this country is not a long one and can point to a single event which triggered their development. The Zambian society, as evidenced by rural communities has been organized on the concept of cooperation in agriculture. The traditional community was a mutual aid society. It was organized to satisfy basic human needs of all its members. The above description of the traditional way of life in Zambia was largely accurate but there were obviously questions to be answered as to whether this alone could be the basis for a successful development in the country. In times when there is outbreak of a disease of national economic importance, the regulations outlined how such situations could be handled. Furthermore, there has always been a wakeup call of the importance of controlling or eradicating diseases of economic important diseases, hence the enactment and amending of most of the laws dealing with animal health.

position like many other people due to the fact that law which they determine is frequently complex and uncertain.<sup>65</sup>

### **3.1.2 The Director**

The Stock Disease Act was enacted to regulate, prevent and control livestock diseases. It was also enacted to regulate the importation and movement of stock and other specified articles and to further provide for the quarantine of stock in certain circumstances and any matter that are incidental to the Stock Diseases Act. Under section 2 of the Act, the word Director was defined as “Director of Veterinary Services and includes the Deputy Director of Veterinary Services.”<sup>66</sup>

The Act has included the establishment of an administrative body headed by the Director which is an achievement. It has tried to define their powers and functions of the administrative body and provide for the prevention and controlling of animal diseases. The quarantine of animals was also provided for in the Act, furthermore, it is to regulate the importation and exportation of animals, animal products, animal byproducts, articles and animal feed and lastly establish the Animal Diseases Control Fund. The other aim of the Act was to repeal and replace the Stock Diseases Act of 1961. The new Act in interpreting the term ‘Director’ has adopted the construal of a Director from the repealed Act, section 2 still defines the Director as the “Director responsible for veterinary services, and includes the Deputy Director responsible for veterinary services.”<sup>67</sup>

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<sup>65</sup> William Wade and Christopher Forsyth, *Administrative Law*, 9th ed. (New York: Oxford University Press, 2004), 5.

<sup>66</sup> The Stock Disease Act Chapter 252 of the Laws of Zambia.

<sup>67</sup> The Animal Health Act no. 27 of 2010.

The Director's main functions have been expressly provided for in a single section unlike in the repealed Act where the functions were contained in various provisions of the Act.<sup>68</sup> Furthermore, the only provision which was explicitly stated for was under section 9 subsection 5 stating that the proceedings in respect of an offence under section 9 shall not be taken without the written consent of the Director.<sup>69</sup>

The new Act has given the Director with skillful personnel under his department to fully administer the Act. He has been given the power to delegate his functions to persons of his choice.<sup>70</sup> He is also in charge of veterinary services, control of animal diseases and vectors and establishing and maintenance of the national veterinary laboratory, means of analyzing animal products and samples.<sup>71</sup> He must ensure the acts and things incidental to the Act are conducive for the execution of the functions of his department. Additionally, the Director has the obligation of categorizing diseases into lists for he must maintain in accordance with the criteria prescribed under the Act.<sup>72</sup>

It is evident from the wording of various sections in the Act that the Director and his department have been given mandatory and discretionary powers in performing their duties. The issue that arises is guarantee that the Director will use his powers appropriately. It must be noted that the special attention and analysis has to be made with due respect to whether there are means of ensuring that the Director adheres to his statutory functions as provided for under the Act.

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<sup>68</sup> Interview: Caesar Lubaba (Dr), February 01 2012. Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

<sup>69</sup> Section 9 of Chapter 252 of the Laws of Zambia.

<sup>70</sup> Section 9

<sup>71</sup> Section 2 (e)

<sup>72</sup> Section 4 (2)

From the provisions of the Act, the eradication of a disease of national economic importance or notifiable disease is depended upon the functions of the Director. There is a need to ensure that the general principles formulated under the laws followed and no one is made to endure injustice for the decision pursuant to the Act.<sup>73</sup> There is the inherent tendency of power to expand itself as an administrator might lose sight of the objective or essence of power vested in him.<sup>74</sup> In as much as the Minister of Agriculture and Cooperatives makes consultations with the Director when making certain decisions, there is no explicit provision under the Act which stipulates that the Director will also make such consultations with any other person.<sup>75</sup> Furthermore the consultations are not mandatory, it is at his discretion to make such consultations.<sup>76</sup> Under Part XI of the Act: “A person aggrieved with any decision made by an officer or Director under this Act may, within seven days of the date of the decision, lodge with the Minister an appeal against the order”.<sup>77</sup>

There is right of appeal against a decision made by the Director on the destruction or disposal of an animal, animal product or animal by-product declared by a veterinary officer to be infected with a disease that is considered as a disease of economic importance.<sup>78</sup> Such a right will not arise when an officer could also make an order for the destruction or dispose of an animal, disposal of an animal feed imported, compounded, mixed or manufactured if it is contrary to the

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<sup>73</sup> These are diseases that present a sudden and major threat to livestock production in respect of food, fiber or animal traction power, public health and export of livestock or livestock products. The control of national economic importance is the responsibility of the government; furthermore, these diseases are not native to the country and are common to both human beings and animals. They spread rapidly with serious socio economic consequences.

<sup>74</sup> William Wade and Christopher Forsyth, *Administrative Law*, 9th ed. (New York: Oxford University Press, 2004), 5.

<sup>75</sup> Interview: Caesar Lubaba (Dr), February 01, 2012. Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

<sup>76</sup> Interview: Caesar Lubaba (Dr), February 01, 2012. Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

<sup>77</sup> Section 72(1)

<sup>78</sup> Section 72 (2)

provisions of the Act or any other law.<sup>79</sup> This provision does not make an officer liable for any decision he has made for such a person, his decision would have been made for the good of the public and ensuring the implementation of government policies and not to be blocked by unnecessary appeals from the public. If one has to make an appeal to the Minister pursuant to section 72 (1), there is a requirement that the appeal should be in writing and must contain all the grounds on which the appeal is based on.<sup>80</sup> This means that the appellant should specify as to why he or she is appealing against the decision of the Director. A person can also appeal against the Minister to the High Court<sup>81</sup> within a stipulated time limit upon which if not complied with then the appeal will be statute barred.<sup>82</sup> However, it has been argued that the department of livestock should have a body that can hear appeals on decisions made by the Director and the Minister before appealing to the High Court.<sup>83</sup> In the Act, the appeals against the Director's decisions are to the Minister placing the Minister in the same position with Courts having original jurisdiction. One thing to note is that the role of the courts as an independent system in providing justice is the best method is rather costly and lengthily unlike administrative process.<sup>84</sup>

### **3.2 Compensation**

Compensation can be defined as a pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by the destruction or dispose off.<sup>85</sup> Under

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<sup>79</sup> Section 72 (2) (b) (c)

<sup>80</sup> Section 72 (3)

<sup>81</sup> Section 72 (4)

<sup>82</sup> Interview: Yona Sinkala (Dr), February 02, 2012. Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC).

<sup>83</sup> Interview: Edwell Mwaanga, February 08, 2012. lecturer at the University of Zambia, School of Veterinary Medicine

<sup>84</sup> Interview: Edwell Mwaanga, February 08, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine

<sup>85</sup> The Gale Group, Inc, *West's Encyclopedia of American Law* (May 2008). <http://www.thefreedictionary.com>. Accessed October 26, 2011.

the Act, there is no definition given under section 2 which provides for the interpretation of words used in the Act. Nevertheless, compensation can be defined as the payment given to an owner of destroyed livestock to make up for the injury suffered as a result of the killing of the livestock when there has been an outbreak of a disease of national economic importance. Under the Act<sup>86</sup> the Minister in Part X of the Act has been given wider discretionary powers dealing with compensation, in that, he has to regulate the procedure, criteria and determine the compensation to be given to the owner of the livestock.

The question to consider is how notifiable diseases are controlled. In most cases, the Ministry of Agriculture and Cooperatives through the department of livestock comes up with a policy to eradicate or control the outbreak of a disease.<sup>87</sup> Compensation will be only granted to a person who is considered under the Act as an owner of livestock. The word ‘owner’ under the Act includes a person for the time being having the management, custody or control of such an animal and in relation to any land or place. It includes any person who is either a lessee or licensee and has the charge, control and management or occupation of such land or place.<sup>88</sup> The phrasing of owner of the livestock includes the caretaker in game resorts, a lessor and licensor, therefore, there is need to be vigilant when it comes to compensating any person. In section 70 of the Act, the owner has a duty to make a claim of compensation to the Director only and the unfettered powers of the Minister are employed when making orders for payment.<sup>89</sup> The livestock is only slaughtered when a court order has been obtained from the High Court in cases when there are no outbreaks but just a control measure. The claim must be in a prescribed form and

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<sup>86</sup> Section 69

<sup>87</sup> Interview: Yona Sinkala (Dr), February 02, 2012. Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC).

<sup>88</sup> Section 2

<sup>89</sup> Section 70



manner. In certain instances, an officer may make an order for slaughter without obtaining a court order.<sup>90</sup>

Failure to comply with the provision means that compensation will not be granted to a person claiming for it. It is at the Minister's discretion to order payment of compensation to the owner of an animal, animal product, animal by-product, article or animal feed which was destroyed or disposed of.<sup>91</sup> Under the Act, where there is physical evidence that the animal, animal product, animal by-product, article or animal feed which was destroyed or disposed of as a consequence of the exercising powers conferred under the Act, can be regarded as a condition on which reimbursement will depend on.<sup>92</sup> Subsection 3 of section 70 looks at how the amount of compensation is to be determined. It is important to note that no allowance for loss of profit occasioned by breach of contract or loss of production or any other consequential losses shall be made to an owner.<sup>93</sup>

Additionally, compensation is made when there has been a disease of economic importance that threatens the growth of the economy of a country or is a public concern in that it affects both animals and human beings. Furthermore, the disease should spread rapidly and wipe out all the animals if not controlled.<sup>94</sup> There are other instances in which compensation will arise, for example, where the livestock was erroneously killed or the death was due to testing of new vaccine and sometimes due to deliberate killing.<sup>95</sup> Compensation is usually granted based on a value

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<sup>90</sup> "officer" means a veterinary officer, livestock officer, veterinary assistant or animal scientist employed by the Government as stipulated in Section 2 of the Act.

<sup>91</sup> Section 70 (2)

<sup>92</sup> Section 70 (3)

<sup>93</sup> Section 70 (3)

<sup>94</sup> Interview: Joseph Samunete , February 08, 2012.Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

<sup>95</sup> Interview: Joseph Samunete , February 08, 2012.Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

which is known by the Officers. According to Joseph *Samunete*, what is considered is the age and the potential of the animal had it survived. It is given after the laid down procedure has been followed and no irregularities must be found on the owner of the livestock.<sup>96</sup> For instances, where a person grows, sells or offers for sale, transports or distributes in any manner an animal, animal product or animal by-product or article knowing that the animal, animal product or animal by-product or article is infected with a disease.<sup>97</sup>

The procedure starts when an owner of the animals makes such a claim to the Director, who will make recommendations to the Minister for payment orders. Usually, the claim must be made to the Director because he has to analyze it, after which it is presented to the Minister for payment orders. The Minister is expected before making the orders of payments to tabulate them to parliament for approval.<sup>98</sup>

In Zambia, it is very common practice for farmers and livestock owners not to surrender their livestock for slaughter or make reports on suspected diseases among their animals. In such cases, the Director will still make the order for the slaughter regardless but no orders for compensation to those owners of animals who obstinately did not participate in enforcing measures to control the outbreaks.<sup>99</sup> The section that expressly stipulates situations where compensation will be withheld by the Minister is Section 71. It states that “the Minister may withhold compensation in whole or in part if there is some dispute or doubt arising from the claim or in certain instances

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<sup>96</sup> Interview: Caesar Lubaba (Dr), February 01, 2012. Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

<sup>97</sup> Section 71 (c)

<sup>98</sup> Interview: Yona Sinkala (Dr), February 02, 2012. Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC).

<sup>99</sup> Interview: Joseph Samunete, January 27, 2012. Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

where the owner has committed an offence or offences under the Act".<sup>100</sup> Doubts or disputes will arise based on the instances contained in section 71 under the Act.

The Act states that compensation will not include any profit or loss that the owner might have suffered due to the outbreak of the disease. It will also not be granted if a farmer on his own accord slaughters his own animals for the purposes of eradicating a disease without any officer's authorization.<sup>101</sup> The *Chisamba* incident is one example where the government refused to compensate a farmer after he had slaughtered his own animal on his own accord. In cases of management diseases, the government will not order compensation to the owner who loses his livestock due to such a disease. Such diseases are at the control and prevention of the farmer or livestock owner.<sup>102</sup> These kinds of diseases have effective treatments and vaccines that provide effective protection and eradication for an ordinary farmer. It is therefore possible for a farmer to plan and implement preventive and control measures unlike in cases of diseases of national economic importance.<sup>103</sup> Furthermore, compensation will not be granted to an owner of a dog in situations where there has been an outbreak of rabies as well as in instances where a dog of over the apparent age of four months is found without a badge or a collar bearing its owners name and address and has been destroyed by an officer or by the owner or occupier of the farm of which the dog is found straying.<sup>104</sup>

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<sup>100</sup> Section 71 (a) & (b)

<sup>101</sup> Interview: Joseph Samunete , January 27, 2012. Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

<sup>102</sup> Interview: Joseph Samunete , January 27, 2012, Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

<sup>103</sup> Muneka Malamo(Dr), Case Presentation to the Minister of the Ministry of Livestock and Fisheries Development. Department of Veterinary Services (Unpublished), 4.

<sup>104</sup> Section 14 of the Control of Dogs Act, Chapter 247 of the Laws of Zambia. Still the Government will not grant compensation in cases of trypanosomiasis in dogs (section 30).

The other issue to consider is whether compensation can be extended to the owner of wild captive animals found in game reserves and zoological areas. The definition of livestock in the Act includes “any breed or population of animals kept by a human being for useful or commercial purpose or includes domestic animals, semi-domestic animals and captive wild animals.”<sup>105</sup> The Act also has provided a wider meaning for the word ‘animals’ to include the members of the Phylum Chordata, a bee, a butterfly and other insects used in the production of animal products and also the carcass for such animals”. This means that even the owners of wild captive animals in game resorts and reserves can claim compensation if their animals are slaughtered due to an outbreak of a notifiable disease and the government has to pay compensation either in monetary value or restock the reserve.<sup>106</sup> In The Tsetse Control Act, it is expressly stated that the owner of the private land will not be compensated for any damages or loss suffered whilst implementing the Act in controlling or preventing the spread of tsetse flies.<sup>107</sup> With regards to game parks, there is a policy in which the government of Zambia allows nature to take its course,<sup>108</sup> no compensation will be granted to the body authorized to manage the area.

### **3.3 Conclusion**

To sum up, the issue of compensation plays a critical role in the eradication of diseases in the country. It acts as a motivation for farmers and livestock owners to report diseases that are of national economic importance, thereby, assisting the government in achieving its objective of disease control. It has been the policy of the state since the Second Republic to ensure that the

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<sup>105</sup> Section 2

<sup>106</sup> Interview: Joseph Samunete , January 27, 2012.Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

<sup>107</sup> Section 6 of Chapter 249 of the Laws of Zambia

<sup>108</sup> Interview: Caesar Lubaba(Dr),February 01,2012.Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC).

country does not depend on one commodity in attaining economic growth. During *Mwanawasa's* reign, his mandate was to make agriculture as one of the sectors that contribute greatly to the growth of the economy. Seeing that the livestock subsector is also economically important in Zambia as it accounts for about 35% of the total agricultural production, there was need to see to it that *notifiable* diseases are controlled and if possible eradicated. Many policies were implemented such as the 'winter maize project'. Establishing the SmallHolder Livestock Investment Project (SLIP) and National Livestock Epidemiology and Information Centre (NALEIC) which are mandated to promote investment and investigate and control diseases outbreaks respectively. The administration of the Act has been placed in the Director and his department.

# **CHAPTER FOUR**

## **A COMPARATIVE STUDY WITH SOUTH AFRICA, BOTSWANA AND ENGLAND**

### **4.0 INTRODUCTION**

This chapter will try to look at other jurisdiction (South Africa, Botswana and England) to show how the animal health regulations are implemented in this jurisdiction. The Chapter will consider how the powers vested in a body authorized to administer the Animal Health regulations for each country and see how such powers are curtailed. Then paper will consider the provisions dealing with compensation, show how it is calculated, determined and the criteria used. The Chapter will then make a comparison by outlining what the *Zambian Act* is deficient in.

#### **4.1.0 BOTSWANA**

In Botswana, the backbone of animal disease control is the Diseases of Animal Act which was enacted on 28 January 1977. The Act provides for the prevention and control of animal diseases, regulation of imports and exports and also the movements of animals and any animal products under certain circumstances. It further provides for the regulation of the quarantine of animals.<sup>109</sup> The Act together with other Acts in the country works at effectively in ensuring that notifiable diseases in the country are either eradicated or control.

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<sup>109</sup> Chapter 37:01 of the Laws of Botswana.

#### **4.1.1 Administrative bodies**

The Ministry of Agriculture has the authority to conduct and regulate animal health and animal welfare.<sup>110</sup> This includes zoonoses control which is carried out within the Animal Health and Production Department of the Ministry of Agriculture under the direct supervision of the Director for Disease Control. The controlling authority for the export of meat from Botswana is under the Ministry of Agriculture through the Director of Animal Health and the Production and staff of the Abattoir Hygiene and Quality Control Division of this department. There is also the Veterinary Officers in the European Economic Community (EEC) approved export abattoirs which supervise all hygiene aspects of abattoir operations.<sup>111</sup> All the aforementioned Departments work towards enhancing health policies for animal health and the safety of the public. The veterinary inspectorate has a staff of qualified meat inspectors, auxiliary personnel and has available facilities of the National Veterinary Laboratory and vital facilities for prevention of diseases.

There is also a control of Municipal Abattoirs which is the responsibility of the individual, local authorities and meat inspection performed by the health inspectors of the Ministry of Health.<sup>112</sup> It is evident that the administering of the provisions of the Act has been alienated to specific bodies with expertise and specific functions.

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<sup>110</sup> Gavin Thompson and Mary-Louise Penrith, *Technical Report to the Wildlife Conservation Society: Animal Health Policy Legislation and Trade on Beef in the Five Participation States in the Kavango-Zambezi Transfrontier Conservation Area (August 2009)*.<http://www.wsc-ahead.org/.../animal-health-policy-leg-trade-kaza-tad-index.pdf>. Accessed on February 23, 2012.

<sup>111</sup> Gavin Thompson and Mary-Louise Penrith, *Technical Report to the Wildlife Conservation Society: Animal Health Policy Legislation and Trade on Beef in the Five Participation States in the Kavango-Zambezi Transfrontier Conservation Area (August 2009)*.<http://www.wsc-ahead.org/.../animal-health-policy-leg-trade-kaza-tad-index.pdf>. Accessed on February 23, 2012.

<sup>112</sup> Gavin Thompson, *Fast Fact: African Farmers Missing Out on the Global Livestock Revolution* (April 2008).<http://www.steps-centre.org/ourresearch/vetscience.html>. Accessed on March 05, 2012.

#### **4.1.2 Compensation**

Compensation is dealt with under section 14 of the Act<sup>113</sup>, the section is headed as indemnity and payment of compensation. Like most regulations in other jurisdictions on animal health, there is a provision which excludes the liability of the state: “no action shall lie against the Government, the Director, any Department Officer or any person authorized by the Director for any act done in good faith under this Act or any act done in good faith in connection with the diagnosis, control, prevention or treatment of disease.”<sup>114</sup> It should be noted that the exclusion of liability under the Act has been extended to products that are used in the preparation of biological products.

Compensation is awarded in instances where once slaughter of animals has been ordered, it will result in injustice or loss. An animal will be slaughtered in most cases if it is found or suspected of being infected with a notifiable disease which is a threat to public health or the economy of the country. It is stated in the Act that:

“no compensation shall be payable in respect of any animal slaughtered for the purpose of the control of disease except in case of an animal which when slaughtered is found not to be infected or likely to spread infection of any disease or when animals which may be infected with disease are slaughtered in order to prevent the further spread of such disease.”<sup>115</sup>

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<sup>113</sup> Chapter 37:01 of the Laws of Botswana.

<sup>114</sup> Section 14(1)

<sup>115</sup> Section 14(2)



From the above provision, compensation will be extended to those animals slaughtered accidentally either through vaccine try outs or just by accident. The government has a mandate to indemnify the owner of the slaughtered animal for the loss suffered.

## **4.2 SOUTH AFRICA**

The regulation dealing with animal health in country is the Animal Health Act no.7 of 2002.<sup>116</sup> The objectives of the Act are to provide for the measures of promoting animal health and control of animal disease; to assign executive authority with regard to certain provisions of the Act to provinces. It further aims at regulating the importation and exportation of animals and things.<sup>117</sup> It also provides for the establishment of the animal schemes and provide for matters incidental to matters of animal health.

### **4.2.1 Administrative bodies**

The Ministry of Agriculture is responsible for animal health, all animal health policies and deliveries in the country. According to section 1 of the South African Act, the term ‘department’ refers to the ‘Department of Agriculture’. The Director General and other Staff in his department are in charge of administering and implementing the affairs of the Act. This department comprises of people with relevant skill, knowledge and experience and also those people from across the spectrum of interests in animal health.

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<sup>116</sup> The Animal Health Act of South Africa.

<sup>117</sup> The Animal Health Act of South Africa.

#### 4.2.2 Compensation

Under section 21 of the Act, an owner of a slaughtered or destroyed animal can make an application for compensation to be indemnified for the loss suffered.<sup>118</sup> The owner of the livestock must make the application in a prescribed form and manner for the government to indemnify him. When considering payment, the National Executive Officer may take into consideration other factors such as the value of the animal before it was slaughtered or destroyed, the amount that maybe insured incidental to the animal and the amount that has been accrued to the owner of the livestock.<sup>119</sup> The Act has made provision for the basis in which compensation will be calculated. It is expressly outlined that compensation usually is assessed based on market value of that animal before it is slaughtered.<sup>120</sup> What is considered when analyzing how much should be paid out to the owner is the market value of that animal before the animal is killed. This implies that the condition of the animal at the time of slaughter will be considered regards of whether it was valuable or worthless at the time.

Furthermore, the Act has provided for instances were compensation will not be awarded to the livestock owner. It also provides for other instances where it is left to the discretion of the Nation Executive Officer to fix the amount he deemed applicable in the situation.<sup>121</sup> Where the destruction or disposal of the animal or thing that has been connected with the commission of an offence in terms of the Act or in respect of which such an offence has been committed, no compensation will be paid to the owner.

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<sup>118</sup> Section 21(4)

<sup>119</sup> Section 21(2)

<sup>120</sup> Section 21(2)(a)

<sup>121</sup> Section 21(2)(a)

It should be noted that any person whose interest are affected by the decision, direction, action or omission made by the Nation Executive Officer, Provincial Executive officer, an authorized person or assignee. Such a person may appeal against such a decision, direction, action or omission to the Minister or MEC of the relevant province as the case maybe.<sup>122</sup>

The provision has tried to encompass decisions, directions, actions or omissions made by any person under control or direction of such person under this Act (delegations of functions to other persons). An aggrieved person has a choice on who should hear his appeal which is more of an assurance of receiving justice.

An appeal referred to above must be lodged in a prescribed manner within a prescribed period after payment of prescribed fees for such an appeal. The Act has made provision for the appeal to be investigated and the decision be made by the appeal board. The Minister or the MEC has authority to appoint the members of the appeal board and designate one of the members as chairperson of the appeal board.<sup>123</sup> It is required for the appeal board to have at least three persons who have adequate skills suitable for deciding on the appeal concerned. If a person has a direct or indirect interest in the outcome of the appeal, he or she must not be appointed as member of the appeal board. If such a person is appointed, he or she must ascetic himself or herself or be disqualified and the Minister or MEC may appoint another person to replace them.<sup>124</sup> The prescribed period required under section 22 allows for the continuity of the administrative body to functions properly and implement the provisions of the Act without unnecessary disturbances. Moreover, the section allows

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<sup>122</sup> Section 22

<sup>123</sup> Section 22(2)

<sup>124</sup> Section 22(3)

for transparency through accountability and attainment of justice through impartiality of the members of the appeal board.

It is also required that the all the members of the appeal board to constitute a quorum must be present when making a decision. In certain instances, the decision of the majority of the members is therefore the decision of Chairperson and this is usually in cases of equality of votes.<sup>125</sup> Generally, it is expected that the appellant who has made an appeal to request to the appeal board or be requested to be heard or questioned at the inquiry. The process allows for the appellant to have a legal representation if he so wish.<sup>126</sup> The decision can either be confirmed, set aside or amended, as long as it is deemed fit by the board. The Act provides that the written judgments of the decision must be furnished to the MEC or Minister by either the appellant, National Executive Officer, Assignee or authorized person.<sup>127</sup> The judgment should contain reasons for the decision, especially if it is set aside.<sup>128</sup> Any amount that has been used through the process must be refunded to the appellant. In the case that the decision is amended, any portion of the amount that was not considered will therefore be determined.

It is imperative to note that determination and payment of fees and other amounts payable under the Act is determined by the Minister in concurrence with the Minister of Finance.<sup>129</sup> However, there are exceptions to that, that is, any amount that is fixed under any provisions by the National Executive Officer. The fees and amount that have been determined and are in any regulations or direction made or given under the Act, these must

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<sup>125</sup> Section 22(6)(b)

<sup>126</sup> Section 22(7)(b)

<sup>127</sup> Section 22(9)

<sup>128</sup> Section 22(9)

<sup>129</sup> Section 22

within sixty days after becoming recoverable or having been determined but not so mentioned or fixed as contemplated in the subsection must or within sixty days after the debtor concerned has made in a prescribed manner been notified of the amount due be paid in the prescribed manner.<sup>130</sup> This implies that if the notification is vital and if not done in the required manner, then no amount will be paid and if paid, such payment will be considered null and void.

### **4.3 ENGLAND**

The Act that regulates animal health in the country is the Animal Health Act of 1981. It was repealed and replaced by the Animal Health Act of 2002. The Act has tried to encompass the modern requirements under international laws regulating animal health and welfare.

#### **4.3.1 Administrative bodies**

The Act does provide for a body to administer the affairs of the Act. This is, however, contained in various provisions of the Act and not in a particular part or section of the statute. The Minister of Agriculture, Fisheries and Food together with the Secretary of the State are mandated to run the affairs of the Act.<sup>131</sup> Subsection 7 of section 34, provides for further powers of the Minister as follows:

“for prescribing the mode of ascertainment of the value of the animal slaughtered or liable to be slaughtered at their direction; for regulating applications for and the mode of payment of compensation; for prescribing and regulating the destruction,

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<sup>130</sup> Section 22

<sup>131</sup> The Animal Health Act of England.

burial, disposal or treatment of carcasses of animals slaughtered at their direction and they may by order provide that subsection”<sup>132</sup>

Despite that fact that the Act has given the Minister vast powers, his decisions are subjected to other bodies or personnel such as the Minister of Finance or the Secretary of the State in implementing the provisions of the Act.

#### **4.3.2 Compensation**

It is stated in the Act that the Minister notwithstanding anything in the Act, may reserve for observation and treatment of an animal liable to be slaughtered at his direction but subjected to payment of compensation by him in case of actual slaughter.<sup>133</sup> This imply that where an animal has actually been slaughtered at the Minister’s direction, the carcass of the slaughtered animal shall belong to the Minister and shall either be buried, sold or otherwise be disposed of by him or as he directs<sup>134</sup> and this depends on the condition of the animal or carcass and other circumstances.

The provisions in the Act have also given the Minister ownership of the animal, once it is found to be infected with a notifiable disease and the owner of the animal has already been indemnified. Therefore, if the carcass or animal is sold, all the proceeds from that sell will be state money. If it happens that the money received on the sale of the carcass or animal exceeds the amount paid as compensation to the owner of the slaughtered animal, the Minister shall pay that excess to the owner after deducting reasonable expenses.<sup>135</sup> The

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<sup>132</sup> Section 34(7)

<sup>133</sup> Section 34(1)

<sup>134</sup> Section 34 (2)

<sup>135</sup> Section 34(3)

reasonable test is applied in analyzing what will amount to reasonable expense to any reasonable man.

The Minister takes in to consideration the fact whether the animal was insured or not. This is similar to a provision in the South African Act.<sup>136</sup> If the owner of the slaughtered animal has insured his animal, the amount of compensation paid out to him may be deducted by the insurer from the amount of money payable under the insurance.<sup>137</sup>

It is possible under the Act to have the animal buried on any ground occupied by the owner of the animal suitable in that behalf or any common or unenclosed land under the Minister's direction as a way of disposing that animal. Further, the Minister has the discretion to withhold compensation in part or whole.

#### **4.4 A Comparative Analysis By Way Of Showing Lessons That Could Be Learnt From Other Jurisdictions**

Although the new Animal Health Act 2010 encompasses most of the items necessary for a functional animal health veterinary structure, there are a number of lessons that could be learnt and incorporated in our system. In the case of Botswana, the powers of controlling animal disease in the country have been designated to specific departments. For instances, the controlling authority for export of meat from the country is through the Director of Animal Health and Production in the Ministry of Agriculture and the Staff of the Abattoir Hygiene and Quality Control Division.<sup>138</sup> Furthermore, there is zoonoses control carried

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<sup>136</sup> Section 21(2) of the Animal Health Act of South Africa.

<sup>137</sup> Section 34(5) of the Animal Health Act of England.

<sup>138</sup> Gavin Thompson and Mary-Louise Penrith, *Technical Report to the Wildlife Conservation Society: Animal Health Policy Legislation and Trade on Beef in the Five Participation States in the Kavango-Zambezi Transfrontier*

out by different departments having specific qualifications and expertise and this has extended to both the municipal and local authorities dealing with disease control at such level. It can be argued that there is clear cut of functions between Ministries(which are the Ministry of Health which comes in on matters incidental to public health and the Ministry of Agriculture on animal health).thereby, providing for an effective control and possible eradication of notifiable diseases in the country.

Under the South African Act, the Ministry of Agriculture through the Director and his Department has the mandate to administer the Act. The layout of administrative body is similar to that of the Zambian Act but the difference is in the composition of the administrative body which includes people from across the spectrum of interests in animal health, the private sector.<sup>139</sup> The most important thing to learn from the South African Act is the provisions concerning compensation. The Act expressly stipulates how compensation should be determined, when it should be awarded and also the basis on which it should be calculated. It also provides for who does the determination and factors that would be taken into consideration in accessing the amount to be paid out to the livestock owner.<sup>140</sup> The case of **Minister of Agriculture and Another V Blueliesbush Darry Farming (Pty) Limited and Another**,<sup>141</sup> illustrate instances when an administrative person or body is likely to abuse or misinterpret their powers and provisions of the Act. The case further gives an illustration on problems of not stipulating in the Act on how compensation should be calculated. With regards to the appeal process, unlike the

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*Conservation Area (August 2009).* <http://www.wsc-ahead.org/.../animal-health-policy-leg-trade-kaza-tad-index.pdf>. Accessed on February 23, 2012.

<sup>139</sup> Section 1 of the Animal Health Act of South Africa.

<sup>140</sup> Section 21

<sup>141</sup> (2008) ZASCA 60



Zambian situation, an aggrieved person can make an appeal to either the Minister or the MEC. The appeal is, however, determined by an independent body selected by the Minister or the MEC bringing in impartiality, transparency and justice.

The English Act is very similar to the South African Act, what this Act can add up the South African Act is the need to allow for consultations with a number of stakeholder and other personals. Most decisions are made after several consultations and this is expressly provided for in the Act rather than relying on practice as in the Zambia case. The Minister is expected to present a report to parliament annually on how funds have been carried out specifically under the Animal health Act.<sup>142</sup> The issue of compensation and the important role it plays is taken seriously. In the case of **R (Patridge Farms Limited) V Secretary of the State for Environment, Food and Rural Affairs**,<sup>143</sup> brought about a comprehensive solution to a problems of national importance which was not disproportionate and which did not offend Community law, and which fell within the broad margin of appreciation available to the Secretary of State. This is a good illustration of policymakers being considerate of the community's aspiration.

#### **4.5 Conclusion**

From the information outlined above, it can be argued that there a number of issues that our government can learn from other jurisdictions on the control or eradication of notifiable diseases. In South Africa, transparency, impartiality, justice and serving the ordinary people were factors that were in the minds of the drafters of the Act. Justice can only be attained if a needs or claims of a person are met. In the Zambian situation, how can

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<sup>142</sup> Section 80 of the Animal health Act of England.

<sup>143</sup> (2008) EWHC 1645

justice prevail if the legal recourse process is depended on the same person who caused the injustice. The Acts discussed above from different jurisdictions have shown how each Act embraces different principles and the circumstances that are considered when implementing them. Emphasis should be at the district level, which is controlled by the District Veterinary Officer (DVO) for each district.

# **CHAPTER FIVE**

## **CONCLUSION AND RECOMMENDATION**

### **5.0 INTRODUCTION**

Compensation plays an important role in the control and eradication of diseases of economic importance in a country to ensure effective and actual measures which must be implemented. This Chapter seeks to offers solutions to the matter discussed in the preceding Chapters. It is hoped that the work will serve its purpose of adding to the literature on veterinary legislation in Zambia.

### **5.1 GENERAL CONCLUSION**

The focus of the paper was on evaluating the laws relating to animal health, particularly the Animal Health Act of 2010. The paper gave a historical background of the Act dating back from the colonial days till to date. It has shown the evolution of the animal health regulations in each regime after attaining independence, taking into account the ideologies of each regime. From the first republic and the second republic, everything was driven by the ideology of humanism. The legislature when making laws, the laws were reflecting the ideologies of the regime. In the third, the state was drawn by liberalization, unfortunately, the animal health regulations implemented were those enacted in the first and second. Although in 1996, an attempt was made to enact one that would reflect the current economy and ideology of the country in the third republic. Unfortunately, the draft Act never come to see the light of the day. The Stock Disease Act of

1961<sup>144</sup> was still enforce until in the year 2010 when it was repealed and replace by the Animal Health Act.<sup>145</sup>

Furthermore, the paper has tried to analyze the feasibility of compensation. It has taken in to account the fact that over 80% of cattle production belongs to the traditional section in the country.<sup>146</sup> It should be noted the persistent disease outbreaks in the country has had a heavy toll on the economy in terms of lack of export markets for livestock and its products.<sup>147</sup> Looking at the fact that most of these traditional farmers are illiterate, in most cases, compensation is never given and if given, it is less than the value of the animal slaughtered. A farmer will not bother to sue for it or challenge the amount paid put unless for the commercial farmers. The end result is that most traditional farmers will not report any disease outbreak. Furthermore, in certain instances, they would hide their animals that are eligible for slaughter. Even though, the policies on compensation have tried to thrive for international standards, the economy of the country has been an impediment to its attainability and implementation. Therefore, can be concluded that in as much as there is a provision in the Act on compensation, it has not been feasible due to the fact that the majority of livestock owners are in the traditional sector who have no access to it as alluded to earlier.

From a comparative study with other jurisdictions, the paper has shown that there a number of shortfalls in the Act which must be addressed by the drafters. For example, the legal recourse in the Act for compensation, the process does not guarantee justice. This will further be discussed in the part for recommendation.

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<sup>144</sup> Chapter 252 of the Laws of Zambia

<sup>145</sup> No 27 Of 2010 of the Laws of Zambia

<sup>146</sup> Ministry of Agriculture, 2000 Annual Report.

<sup>147</sup> Dr. Aaron.S. Mweene, "The Status of Cattle Disease in the Country," Dean of School of Veterinary Medicine. submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished), 1-6.

## **5.2 RECOMMENDATIONS**

### **DELAY IN THE IMPLEMENTING THE LAWS**

It is evident from the provisions of the Act that it has take in most of the things necessary for the functional animal health veterinary system. Nevertheless, there is yet to be implemented the rules that govern the provisions of the Act. There is no list of diseases indicating which ones are notifiable and which ones are not.

For the shortfall, the Regulations must include the list categorizing each disease and also take into account detailed rules of imports and exports of veterinary products. In addition to the list, there should also be a list of animals on how they can be evaluated at market value. (For example, a calf, and cow cannot be evaluated in the same manner)

### **NEED FOR A CLEAR CUT RESPONSILITY**

Under the Public Health Act of 1964<sup>148</sup> the Ministry of Health regulates the aspect of veterinary public health. The Animal Health Act of 2010<sup>149</sup> has provision requiring for the establishments of slaughterhouses and other food chain facilities, inspection and control. The problem is the issue of ambiguity and uncertainty on who should do what and where each ministry's responsibility ends. There is no chain of reporting or command in inspecting the safety of the animal product. This has hampered the authorities responsible for both public and animal health not to effectively control diseases, protect the public and enable the country to have access to a wider market for its livestock and livestock products.

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<sup>148</sup> Chapter 295 of the Laws of Zambia

<sup>149</sup> No. 27 of 2010 of the Laws of Zambia

It can be recommended that a formal agreement for the division of responsibility be made between the Ministries. It should be outlined in either the regulations or the Act which diseases should be handled to which ministry. Meat inspection in abattoirs should be left to the veterinarians and not the Council Workers and Environmental Health Workers. Further, an amendment is to be made so there is an inclusion of the necessary chain of command with regards to safety of animal products. This would provide public health safeguards to consumers of these animal products.

## DEVELOPING POLICIES THAT MEET THE ASPIRATION OF THE PEOPLE

In most cases, the policies that are made do not reflect the aspiration of the people,<sup>150</sup> the policies are usually weak and uniform. They are more targeted at controlling rather than prevention. Moreover, the bureaucracy involved in the operations of the action plan is lengthy in events of outbreaks.<sup>151</sup> This has created a problem of not effectively controlling the spread of diseases. What would work for one district might not work in another district, the uniformity of policies should be done away with. Another issue is lack of guidance from policymakers, the policymakers are not technical person and the policies they come up with are not clear and in certain instances<sup>152</sup> the Stakeholders are never consulted in policy formulation.

It is recommended that during the policy development phase, both the policy makers, implementers and the stakeholders share the same vision. Each district should have its own breakdown policy as each district has its own problems, hence the need for specific solutions.

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<sup>150</sup> Interview: Dr Yona Sinkala, Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC), February 01, 2012.

<sup>151</sup> Dr. Aaron.S. Mweene, "*The Status of Cattle Disease in the Country*," submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished),1-6.

<sup>152</sup> Interview: Dr Yona Sinkala, Principal Epidemiologist. National Livestock Epidemiology Information Center and Vice President for the Veterinary Association (NALEIC), February 01, 2012.

There is a need for a routine implementation of disease control and not wait for outbreaks to implement control measures.

#### NEED FOR AN INDEPENDENT BODY

The Minister and Director have wider discretionary powers under the Act and there is no independent body that will balance these powers and offer guarantee for impartiality.

An independent body must be provided for either in the Act or the Regulations. This would ensure that justice is attained as justice delayed is justice denied. The current process is long and expensive for an ordinary farmer. The Act should have a provision for the procedure on how and at what value compensation will be calculated. The Regulation or Act should also state which animal will not qualify for compensation as the current position creates confusion in determining eligibility as one would consider an owner of a slaughtered dog to be eligible for compensation.

#### ENLIGHTENING THE PEOPLE

Due to lack of knowledge, control measures in the country are not observed uniformly. That is to say some adhere to the prescribed disease control practice while others may opt not to do anything.<sup>153</sup> For instance, section 58 of the Animal Health Act is more applicable to commercial farmers than traditional farmers. Most of the animals in the villages graze within the prohibited two hundred meters of the public road and yet no one has been convicted for not complying with the provision.

There is need for community enlightening at district levels so as to involve all stakeholders. As well as sensitizing the local people on the common diseases with regards to their transmission

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<sup>153</sup>Dr. Aaron.S. Mweene, "*The Status of Cattle Disease in the Country*," submitted to the Committee on Agriculture and Lands of the Zambian Parliament.(Unpublished),1-6.

and on strategies of their control. There is need for eradicating the idea which still lingers in their minds of free disease control services offered by the government. They will be able to know about the importance of have their animals dipped, report diseases and knowing about compensation will be incentive to most of them for reporting outbreaks.

## DELEGATED POWERS and SELECT PROVISIONS

Under the Act, there are provisions that allows for delegation of certain defined functions.<sup>154</sup> However, there is confusion between the powers of the Veterinary Officers and Officers and the vast territory covered by the state employed Veterinary Para-professionals on how to provide veterinary services.

There is need for provisions that delegate appropriate veterinary functions to both within the Department and to the private registered veterinarians. Furthermore, to provide for competency requirements which are necessary to performs certain delegated official regulatory responsibility. The term ‘veterinary services’ must be defined to clear up the confusions created in the Act whereby it cannot be distinguished between private and public services. The inconsistency of the use of the word ‘officer’ must be addressed through specifying one way of using it.

Certain provisions are repeated across the Act or could be found in the several parts of the Act. For example, the provision on the declaration of an animal disease and the application of emergency measures in section 31 and section 64, this should be addressed by assigning the provisions on one section.

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<sup>154</sup> Section 5,6,9 and 19



### **5.3 CONCLUSION**

In conclusion, it can be stated that the Act has been established to cater for the aspiration of the people. There is need for constant review of the regulations, insuring the participation of Stakeholders in policy making. Livestock plays a major role in international trade, the World Organization for Animal Health (OIE which stands for Office International Des Epizooties) and the World Trade Organization (WTO) has provided for international standards, rules and regulation for minimum standards for food safety and disease control of animals.

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## **INTERVIEWS**

Interview with Lubaba, Caesar( Doctor) on February 01,2012.Principal Epidemiologist. National Livestock Epidemiology and Information Centre (NALEIC)

Interview with Mwaanga Edwell on February 08, 2012. Lecturer at the University of Zambia in the School of Veterinary Medicine.

Interview with Phiri Isaac (professor) on March 14, 2012. Lecturer at the University of Zambia, School of Veterinary Medicine and former Permanent Secretary in the Ministry of Agriculture and Cooperatives.

Interview with Samunate, Joseph on February 08,2012.Chief Livestock Officer. Ministry of Livestock and Development under the Department of Veterinary and Livestock.

Interview with Sinkala, Yona (Doctor) on February 02, 2012. Principal Epidemiologist National Livestock Epidemiology and Information Centre (NALEIC) and Vice President for Veterinary Association of Zambia.

Interview with Songolo, Anne on October 29, 2012. Principal Veterinary Officer. Smallholder Livestock Investment Project (SLIP).

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