

Ensuring Animal Welfare in Zoos' Operations: A Comparative Note on Malaysian and Japanese Legislation

Kamal Halili Hassan

Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia; Email: k.halili@ukm.edu.my

Doi:10.5901/mjss.2016.v7n1p328

Abstract

This paper compares the operations of zoo regulations in Malaysia and Japan with special emphasis on animal welfare. Zoos are a major tourist attraction and house of various wildlife species either for display purposes or for animal performances. The main concern in this regard is the welfare of the animals in terms of their enclosures, diet, health, etc. The legislations of the two countries are examined to compare their similarities and differences. The methodological approach of this paper is purely legal and is limited to provisions in the relevant statutes. This study concludes that Malaysia has more comprehensive regulations on zoo operations compared to Japan.

Keywords: Zoos, animal welfare, Japan, Malaysia, law

1. Introduction

This paper compares zoo operations and animal welfare legislations in Malaysia and Japan as these two countries represent different ends of the development spectrum. While Malaysia is a developing country Japan has achieved developed status and it will be interesting to observe whether legislation on wildlife and in particular animal welfare in zoos is similar despite this difference. Alternatively, the issue is whether a developed country possesses superior legislation on wildlife compared to its developing counterpart.

The relevant legislation on zoo operations and animal welfare in Malaysia is the Wildlife Conservation Act 2010 (Act 716). However, it relates more to protection of wildlife in general as only a few of its provisions refer to zoo operations (Hassan, 2014). The Act empowers the Minister to make regulations which resulted in the enactment of the Wildlife Conservation (Operation of Zoo) Regulations 2012. To begin, Act 716 will be reviewed in terms of the relevant provisions on zoo operations. Under that Act "wildlife" means "any species of wild animal or wild bird, whether totally protected or protected, vertebrate or invertebrate, live or dead, mature or immature and whether or not may be tamed or bred in captivity". This broad definition includes wildlife in captivity and therefore it certainly includes animals kept in zoos.

In the case of Japan, there are several legislations concerning zoo operations and animal welfare (Shoji, 2007). A legal framework for animal welfare can be found in Law No.105 of 1973, the main purpose of which is to prevent cruelty to animals and ensure the suitable treatment and protection of animals. A statute entitled "Standards relating to the Keeping and Custody of Animals for Exhibition etc 1973" has been enacted for zoo operations. Other relevant legislations are the Wildlife Protection and Hunting Law, the Law for the Conservation of Endangered Species of Wild Fauna and Flora, the Nature Conservation Law, and the Natural Parks Law (Takahari, 2009).

2. Conceptual Definitions of Animal Welfare and Its Regulations

Although animals are previously managed in an ad hoc basis, the current movement is more towards regulation through legislation. To that end, various legislations were passed by the legislative body to ensure that animals, whether they are roaming in the wild, on the streets or kept in confinement, are not abused. In the case of animals housed in zoos which are meant for tourist attraction, the regulations are much more stringent (Hassan, 2014). Laws and regulations were enacted to impose responsibilities on organisations such as zoo operators in the treatment of animals (Hewson, 2003; Harrop, 1997; Radford, 2001; Veissier et al., 2008). Animal welfare supports the humane treatment of animals and organisations have a responsibility for animal care which they are housed in zoos (Yarrow, 2009). The champions of animal welfare allow that animals can be used for many purposes: animal show, scientific research, food, education, kept in zoos or sanctuaries as long as they are managed as humanly as possible (Hassan, 2015a; Hosey et al., 2013). Even their use for tourism is not prevented as long as the animals are treated according to good practices or regulations

(Hassan, 2015b; Kiley-Worthington, 1989).

A clear conception of animal welfare is needed. The concept of wildlife has differed from early times to the present day. At the early stages of interest in wildlife, the term was restricted to animals that could be hunted for food or sport and to vertebrates or animals with a backbone, namely mammals and birds. The term transformed over time to include vertebrate as well as invertebrate animals. The current definition has been broadened to include plants (Yarrow, 2009) and, in the words of Daniel L. Hodges (2010), wildlife is a collective name for all living things. This article adopts the broad meaning of the term "wildlife" and includes all undomesticated animals and plants. The researcher opted for this definition in line with what is prevailing at the international level as in the Convention of International Trade in Endangered Species (CITES). The main subjects of this convention are the endangered fauna and flora species, and at the domestic level in Japan this is reflected in the Law for the Conservation of Endangered Species of Wild Fauna and Flora which is one of its major laws on wildlife. Accordingly, wildlife in the context of this article refers to all animals and plants not domesticated by humans including wild mammals, reptiles, birds, etc., and different kinds of plants. These could be found all over the earth such as in mountains, deserts, forests, oceans, seas, rivers, valleys, and puddles as well as in coastal waters and offshore (Hirata, 2005). This is also justified with the establishment of the marine protected areas (MPAs) which are defined as "any area of intertidal or sub-tidal terrain, together with its overlaying waters, and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment" (Hirata, 2005).

In the area of wildlife protection policy-making, there is a distinction among conservation, preservation, and management. Conservation relates to the effort toward the wise maintenance and use of wildlife as natural resources so as to make them available for future generations; in other words, leaving wildlife alone without human disturbance or manipulation. Preservation means doing something for wildlife to ensure it is protected, unspoiled, and untouched by humans (Yarrow, 2009). That is to say, preservation aims at maintaining the integrity of the ecosystem as exemplified by nature preserves or wilderness areas. On the other hand, management means controlling, directing, or manipulating wildlife to increase, reduce, or stabilize its population (Knight, 2007). Management deals with conservation based on science (Sano 2012). Conservation is said to be wider in scope and covers both preservation and management. On the other hand, the protection of wildlife relates to its conservation, preservation, management as well as its welfare, i.e., ending the suffering of wildlife. Thus the article is on the protection of wildlife in terms of its conservation, preservation, management, and welfare.

3. Malaysian Legislation on Wildlife Protection

One of the salient features of Act 716 is the requirement for permits and licences for the conservation and keeping of wildlife (Hassan, 2015). Although the Act refers to individuals, it may also apply to entities or zoo operators and is covered by Section 10. Section 10(1) states that no person shall operate a zoo or operate a wildlife exhibition unless he holds a permit granted under this Act. Further, sub-section (2) provides that where the zoo operations or wildlife exhibitions involve any totally protected wildlife, the person shall obtain a special permit. These are the only specific provisions regarding zoos in the parent Act. Further detailed provisions regarding zoo operations are spelled out in Regulations 2012.

Any person who operates a zoo or wildlife exhibition without a permit commits an offence and shall, on conviction, be liable to a fine not exceeding RM70,000 or to imprisonment for a term not exceeding 3 years or both (s.66). Further, any person who uses any totally protected wildlife for his zoo or wildlife exhibition without a permit commits an offence and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 2 years (s.72(1)).

The Act also provides for animal cruelty which in this context also applies to wildlife in zoos. It is an offence for any person to commit an act which can amount to animal cruelty such as beating, torturing, neglecting to supply sufficient food or water or keeping or housing any wildlife that cause unnecessary pain or suffering including housing any wildlife in premises which are not suitable for or conducive to the comfort or health of the wildlife. The penalty on conviction is a fine not less than RM5,000 and not more than RM50,000 or to imprisonment for a term not exceeding 1 year or both.

In Malaysia, there are 12 zoos and 21 permanent exhibitions being operated currently. Figure 1 shows the list of zoos and wildlife parks operated in Peninsular Malaysia.

Figure 1: List of zoos and wildlife parks in Peninsular Malaysia

No.	Name of premises	States
1	National Zoo	Selangor
2	Taiping Zoo & Night Safari	Perak
3	Melaka Zoo	Melaka
4	KL Bird Park	Kuala Lumpur Federal Territory
5	A'Famosa Safari Wonderland	Melaka
6	Taman Burung Labuan	Wilayah Persekutuan Labuan
7	Zoo Kemaman	Terengganu
8	Penang Bird Park	Pulau Pinang
9	Sunway Wildlife Interactive Zoo	Selangor
10	Langkawi Bird Paradise and Wildlife Park	Kedah
11	Bukit Merah Laketown (Ecopark and Orang Utan Island)	Perak
12	Jungle Safari, Bukit Gambang	Pahang

3.1 Malaysian Regulations on the Operations of Zoos

The main purpose of the Wildlife Conservation (Operation of Zoo) Regulations 2012 is to ensure the welfare of the animals or wildlife kept captive in zoos (Hassan, 2015). In ensuring such welfare, regard must be given to matters such as enclosures, cages, food, upkeep, health, etc of the wildlife. Under the 2012 Regulations, zoo operator means any individual, statutory body, company, association, or local authority owning or operating a zoo while zoo refers to any area or premise which keeps or places 50 or 100 or more wildlife whether for conservation, education, research, or recreational purposes, and is open to the public.

The 2012 Regulations repeat the provisions of the parent Act which requires a permit for zoo operations. Enclosures or cages are an important aspect in ensuring animal welfare in zoos and the Regulations state explicitly that their design must be appropriate to the natural behavior and basic needs of the wildlife. In fact, the design of the enclosure must first be submitted to the Director-General for approval. The Schedule to the Regulations provides the specifications of the enclosure such as the category of species it will house and its size and height. For reptilia and amphibians such as crocodiles and snakes, an additional condition is to provide a watery enclosure. Figure 2 shows the enclosure sizes for mammals as specified in the 2012 Regulations.

Figure 2: Enclosure Sizes for Mammals

Species category	Night stall size for one mammal (Length, m)	Night stall size for one mammal (Width, m)	Night stall size for one mammal (Height, m)	Minimum size for exhibit area (m ²)	Height for close exhibit (if applicable) (m)	Minimum size for non-exhibit area (m ²)	Increase in size of the night stall/area for each additional individual (%)
Very large carnivores (lion, tiger, cheetah)	4.0	3.0	3.0	500	4.0	50	10
Medium- large carnivores (leopard, panther, jaguar)	3.0	2.0	2.5	200	4.0	8	10
Large bear species (Asian black bear, giant panda)	4.0	3.0	3.0	300	4.0	30	10
Rhino, hippo, tapir	5.0	4.0	3.0	500	3.0	50	10
Large primates (orang utan, chimpanzees, gorillas)							
Elephants	8.0	6.0	6.0	1000	-	100	5

3.2 Malaysian Guidelines on Zoo Standards

The Ministry of Natural Resources and Environment has also issued a 'Guideline of Malaysian Zoo Standards.' Although it has no legal capacity, a court may take the guideline into account in deliberation in any given case. The guideline provides, among others, a zoo management plan, inputs or research on wildlife, veterinary services, conservation programmes, information for the public, visitors' facilities, emergency action plan, wildlife welfare, ensuring natural behavior and social life or wildlife and breeding control management. It takes into account all "best practices" as

implemented in many zoos around the world. For example, the zoo management and emergency action plan are essential in ensuring the safety of the zoo animals as well as visitors.

4. Japanese Law

Japanese wildlife management has attracted considerable criticism (Knight, 2007). The system is often described as being ad hoc and piecemeal and ineffective in protecting endangered species and their habitat. Likewise, existing regulations on zoos are also not comprehensive. The only standard or rather a guideline for this purpose is Law No. 105 of 1973 on "Standards relating to the Keeping and Custody of Animals for Exhibition etc 1976" which emphasizes on animal exhibitions. The management of zoos seems to fall within the control of their operators who often create their own guidelines. There are many zoos in Japan but the famous ones in the Tokyo Prefecture are the Edogawa City Natural Zoo, Inogashira Park Zoo, Tama Zoo, and Euno Zoo while the Osaka Prefecture has its Tennoji Zoo and Satsukiyama Zoo.

Early legislation on animal welfare did not refer to animals housed in zoos but to overall activities related to wildlife such as hunting. The key legislation in Japan is the Wildlife Protection and Hunting Law (WPHL) which seeks to protect birds and mammals and to control pests through the implementation of wildlife protection projects and hunting control. The legislation lists out about 50 game species that are allowed to be hunted while the rest are protected species. The Law also designates hunting and non-hunting zones.

The issue of wildlife sustainability is linked to the development of national parks in Japan. Due to the demand from tourism, national or natural parks have been built in many parts of Japan. As a result, it has wiped out many wildlife and their habitats. There are 28 national parks and 55 quasi national parks which cover about 14% of the land area in Japan. The Natural Parks Law of 1957 superseded the Natural Park Laws of 931. Criteria were set to underline the selection of natural parks which emphasize on scenic beauty and not on the conservation of wildlife. Some of the natural parks, however, do keep wildlife but not in large numbers. In short, the legislation does not adequately address conservation of wildlife in Japan.

Modern regulations on zoo operation and animal welfare in Japan can be found in several legislations, the primary legislation being the Protection and Control of Animals (Law No.105 of 1973). Although it does not specifically provide for animal welfare in zoos, the provisions are applicable to such a situation. In general, the Law states that all people must not only refrain from killing, injuring and inflicting cruelty upon animals, they must also treat animals properly, taking their natural habits into account (Article 2). This provision is also applicable to operators in the keeping and treating of animals in zoos. Interestingly, to create awareness among the Japanese on good treatment of animals, the Law specifically provides for a special occasion called "be kind to animals" week (Article 3) during which the government and local public bodies are required to hold appropriate functions (Article 4).

The Law also obligates the animal owner to ensure its health and safety in a proper manner (Article 4). Likewise the Law requires the local authorities to regulate the methods concerning the care and custody of animals. In this regard, zoo operators have the same obligation as they are mostly located in local authorities, prefectures, and cities. Interestingly, this Law gives special emphasis to dogs and cats as Articles 7-9 specifically deal with these two animals. The Law imposes a financial penalty of not more than 30,000 yen on those who ill-treat or abandon their animals.

There is a section entitled the "Standards relating to the Keeping and Custody of Animals for Exhibitions" (Notification No. 7 - February 10, 1976). The standards outlined are not comprehensive and have many loopholes. For example, there are no provisions on the standards, measurements, or inspections procedures in ensuring the welfare of animals in zoos (Gripper, 1996), and operators make their own guidelines in managing them. In December 1976, a published set of guidelines was issued for the keeping of animals for display purposes. The guidelines, however, are very small standards of signs which state the enclosures sizes as:

Bear	4x4x3 meters
Lion	3x4x3 meters
Hyena	2x3x3 meters
Gorilla	5x5x3 meters

Enclosures are accommodations for the animals and they must be appropriate to their habitual natures and behavior. The author observed during his visit to Tennoji Zoo, Osaka in 7 August 2014 that the animal enclosures were of various sizes. Although some of the enclosures were rather small for the animals, most were of proper sizes according to the normal standards as practiced internationally. However, the enclosures lacked the characteristics of the natural surroundings or

habitats of the animals in the wild. Overall, there were not many animals in the zoo. One obvious example of non-observance of animal welfare was that the animals such as the black bear, white bear, spotted hyena, panther, and lion were housed alone without partners of the opposite sex which deprived them of natural cohabitation opportunities.

5. Conclusion

Based on the above discussion, it can be concluded that Malaysia has more comprehensive regulations on zoos compared to Japan. Zoos in Malaysia are more regulated whereas those in Japan are more self-regulated. Malaysia has special regulations on zoo operators, namely the Wildlife Conservation (Operation of Zoo) Regulations 2012 which has detailed provisions aimed at protecting animal welfare. In addition, many aspects of animal welfare are provided for such as enclosures, diet upkeep, health, etc. Being a regulation, the Wildlife Conservation (Operation of Zoo) Regulations 2012 has legal standing and any violation can be subject to legal action including prosecution. The Japanese counterpart lacks regulations on zoo operations and consequently animal welfare is less protected. As mentioned before, zoos in Japan operate on the principle of self-regulation and individual prefectures have the liberty to make their own regulations on them.

6. Acknowledgement

I would like to thank the anonymous reviewers for their comments that improved this article. This article is supported by the Japanese Sumitomo research grant, reg. no: 138425. I would also like to express my appreciation to Universiti Kebangsaan Malaysia for their assistance in this research.

References

- Shoji, K., (2007). Japanese concept and government policy on animal welfare and animal experiments, AATEX 14, Special Issue, Proceeding 6th World Congress on Alternatives & Animal Use in the Life Sciences. August 21-25, 179-181.
- Yarrow, G., (2009). Wildlife and wildlife management, *Clemson Extension, May*, Fact Sheet 36, p 2.
- Harrop, SR., (1997) Dynamics of wild animal welfare law. *Journal of Environmental law*, 9: 287-302.
- Hassan, K.H., (2014). Occupational and animals safety in zoos: A legal narrative. *Am. J. Anim. Vet. Sci.*, 9: 1-5.
- Hassan, K.H., (2015a). Application of the Wildlife Conservation 2010 (Act 716): The Malaysian Experience, *American Journal of Animal and Veterinary Sciences*, 10(1): 43-46..
- Hassan, KH., (2015b) Tourism and wildlife legislation: Welfare issues of animals in zoos and national parks, Proceedings of the International Conference on Natural Resource, Tourism and Service Management, 14 – 16 April 2015. 177-182.
- Hewson, C.J., 2(003) What is animal welfare? Common definitions and their practical consequences. *Can. Vet. J.*, 44: 496-499.
- Hirata, K., Why Japan supports whaling. *Journal of International Wildlife Law and Policy*, vol. 8, 2005, p 135.
- Hodges, D.L., (2010). What is wildlife?, *mrhodges.net*, <http://www.mrhodges.net/wildlife/wld1010/wldover.pdf> (Accessed 9 November 2014), 2010, p 2.
- Hosey, G., V. Melfi and S. Pankhurst, (2013) *Zoo Animals: Behaviour, Management and Welfare*, Oxford: Oxford University Press.
- Kiley-Worthington, M., (1989) Ecological, ethological and ethically sound environments for animals: Toward symbiosis. *J. Agric. Ethics*, 2: 323-247.
- Knight, C., (2007). The system of wildlife management and conservation in Japan, with particular reference to the Asiatic bear, *New Zealand Journal of Asian Studies*, vol. 9 (1) p 65.
- Radford, M., (2001) *Animal welfare law in Britain: regulation and responsibility*, UK: Cab Direct.
- Sano, Y., (2012). Japan's Wildlife management: actors and policies, *Ritsumeikan Journal of Asia Pacific Studies*, vol. 31, p 9.
- Shoji, K., (2007). Japanese concept and government policy on animal welfare and animal experiments, AATEX 14, Special Issue, Proceeding 6th World Congress on Alternatives & Animal Use in the Life Sciences. August 21-25, 179-181.
- Takahashi M.A., (2009). Overview of the structure and the challenges of Japanese wildlife law and policy. *Biodiversity Conservation*, 142(9): 1958-1964.
- Veissier I, Butterworth A, Bock B, Roe E., (2008) European approaches to ensure good animal welfare, *Applied Animal Behaviour Science*, 113(4): 279-297.
- Yagi, N et al., (2010). Marine protected areas in Japan: Institutional background and management framework, *Marine Policy*, www.iccaconsortium.org, (Accessed 3 November 2014), p 1.
- Yarrow, Greg (2009) Wildlife and wildlife management, *Clemson Extension*, Fact Sheet 36, May.