



# Carnelian Journal of LAW & POLITICS

Vol. 3 No. 1, 2022

<https://carnelianjournal.com/>

## Towards A Universal Declaration on Animal Protection

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### Abstract

*The developments of the past three decades indicate distinct efforts at enjoining the international community to come to an agreement on a singular legal document that protects animals. Unfortunately, all efforts have remained on paper and have not acquired a normative force despite the increasing challenges that arise as a result of the absence of a uniform standard. The relationship between humans and animals has become increasingly complex and internationalized, the volume of trade in animals and animal products has skyrocketed, foreign direct investments have facilitated the activities of multinational institutions across the globe, and animal production chains are now extending further and further beyond the territories of many states. It becomes important to examine the various attempts at regulating all of these activities in one document.*

*This paper is based on the following arguments. First, the prevalence of piecemeal treaties existing have failed to further animal protection in a truly serious way. Secondly, at the domestic level, there exists a disparity in the different laws on animal protection that frustrate impact. Third, animal protection is a global issue that requires international regulation and attention. This paper builds upon the conception that animals are in fact, already holders of legal rights in themselves despite the strong objections of the ideal and frequent violations thereof. What is important to consider is that the law, being alive, is stretching its tentacles to regulate newer levels of human activity in diverse ways.*

**Keywords:** Animal rights; Welfare; Protection; Liberties

## Introduction

With legal animal rights on the horizon,<sup>1</sup> and the internationalization of activities that were before domestic,<sup>2</sup> it becomes crucial at a time like this for the enactment of a common standard on animal welfare for all nations. Despite a myriad of attempts at creating a single legal document that protects animals across all states, none have been of any significant impact.<sup>3</sup> This can be attributed to many reasons. First, that animal welfare legislation is primarily of unilateral character. Second, the difficulty in finding a singular source of international animal protection law. Third, the economic benefits that lie in poor conformity to animal welfare standards. Due to these reasons and more, coming to a consensus is a major challenge.

Intensive livestock farming is a major catalyst of global warming.<sup>4</sup> The COVID-19 pandemic might have originated from a market in Wuhan where the sale of wild animals—without adherence to minimum standards of food safety and animal welfare—is a major cause of zoonotic contaminations.<sup>5</sup> What is obvious is that singular activities of states have far-reaching effects on other states. The unilateral character of animal welfare legislations has rendered the international legal order somewhat paraplegic in addressing these concerns. States with robust animal welfare legislation include Canada,<sup>6</sup> USA<sup>7</sup> and New Zealand.<sup>8</sup> Many arguments have gone in favour of the “protection of animals from suffering and cruelty as a universal issue,” one that should be addressed in international agreements.<sup>8</sup>

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<sup>1</sup> Sakia Stucki, “Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights” (2020) 40(3) *Oxford Journal of Legal Studies* 553.

<sup>2</sup> Charlotte E. Blattner, *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and The Challenges of Globalization* (Oxford University Press 2019).

<sup>3</sup> Guillaume Futhazar, “Biodiversity, Species Protection, and Animal Welfare under International Law” in Anne Peters, *Studies in Global Animal Law* (Springer 2020) 95.

<sup>4</sup> Bruce Myers and Linda Breggin, “Tackling the Problem of CAFOs and Climate Change: A New Path to Improved Animal Welfare?” in Randall Abate, *What can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 117.

<sup>5</sup> Tommy Tsan-Yuk Lam and others, “Identifying SARS-CoV-2 Related Coronaviruses in Malayan Pangolins” (2020) 583 *Nature* 282. Available at <https://www.nature.com/articles/s41586-020-2169-0>.

<sup>6</sup> Section 446 of the Criminal Code of Canada prohibits anyone from wilfully causing animals to suffer from neglect, pain or injury.

<sup>7</sup> All states in the US have legislation on animal welfare although discrepancies exist in definitions and penalties. Section 4 of the Animal Welfare Act includes under the ‘Definition’ of physical, health, and behavioural needs: (a) proper and sufficient food, (a) proper and sufficient water, (b) adequate shelter, (c) opportunity to display normal patterns of behaviour, (d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress, (e) protection from, and rapid diagnosis of, any significant injury or disease; an amendment to which now recognises animals as sentient beings.

<sup>8</sup> Amy B. Draeger, “More than Property: An Argument for Adoption of Universal Declaration on Animal Welfare” (2007) 12 *Drake Journal of Agricultural Law* 297.

## Research

With all nations in view, this research combines the relevant literature on animal rights jurisprudence, the various theories concerning legal personhood of animals (such as, new welfarism and utilitarianism), the literature on the role of international institutions in global governance, and an analysis of the various attempts at a universal declaration towards developing a solid framework for animal protection with viability in the context of domestic legislation, just like with human rights.

The following questions will form the basis of this paper:

- i. What is the current legal regime on animal protection internationally?
- ii. How successful have previous attempts at international animal protection laws been?
- iii. Is a *Universal Declaration on Animal Protection* the most effective framework for a common standard among states?

## Methodology

To answer these questions, the methodological approach we will be adopting is a combination of the doctrinal and analytical methodologies. This will entail initial literature review will be undertaken to understand the theoretical underpinnings of animal rights in general. This will culminate in a provisional framework to protect animals globally. In order to determine the success of the framework, it would depend on whether it contains principles that all peoples and all nations have the capacity to comply with.<sup>9</sup> Unlike other previous documents, this proposed framework takes cultural interests into consideration as well as peculiar legal conditions that must be met in order to have a binding force. In that regard, the feasibility of the framework will be assessed through interviews with industry reports and stakeholders in the international animal protection parlance.<sup>25</sup> This mixed methodological approach is indispensable in providing me with a very analytical perspective on balancing the competing interests and regulating animal protection with cultural considerations in view. This will in turn, direct me towards producing a well-informed and viable framework to protect animals on a global scale.

## Literature Review

The literature on animal rights jurisprudence is very rich.<sup>10</sup> In the beginning, Western thinkers like Bentham contended the need to determine the capacity of

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<sup>9</sup> Raffael Fasel, "Talking Animals, Law, Philosophy- and Beyond" (2017) 5(1) Global Journal of Animal Law 10. <sup>25</sup> Ethical issues and concerns will be addressed. Participants will be assured of utmost confidentiality. Participants prior consent will be sought.

<sup>10</sup> Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011).

animals to suffer when assessing the moral status of animals.<sup>11</sup> He drew a distinction between use and treatment.<sup>12</sup> The UK then pioneered the codification of animal welfare standards following some concerns raised about inhumane factory farming conditions.<sup>13</sup> This led to initiatives like the Brambell Report in 1965 adapted by the UK Farms Advisory Committee,<sup>14</sup> the 1968 UK Agriculture (Miscellaneous Provisions) Act, and then multilateral treaties pioneered by the European Convention for the Protection of Animals Kept for Farming Purposes.<sup>15</sup> In the 1980's a shift emerged from 'welfare' to a 'rights based' approach.<sup>16</sup>

Interestingly, whether animals have rights is still in debate. On one hand, Cupp among others argue that there is no allocation for animals as subjects of any legal system;<sup>17</sup> and as such, the usage of the term 'rights' is faulty and unnecessary.<sup>18</sup> On the other hand, Singer pioneered an argument in favour of rights for animals even though they are not able to enforce them alluding to children and the mentally disabled as possessors of human rights despite their limitations.<sup>19</sup> Other supporters of this view like Regan who, in *The Case for Animal Rights*<sup>20</sup> delve away from the utilitarian standpoint and tilt towards a deontological perspective assert that every form of exploitation of animals by humans must be prohibited.

Robert Garner propounded the *Ethics of Welfarism* on the notion that exploitation is inevitable but must be strictly regulated.<sup>21</sup> It does not recognise a minimum standard and it has not received enough critique.<sup>22</sup> This approach is underpinned by

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<sup>11</sup> Jeremy Bentham, "Duty to Minimize Suffering" in Andrew Linzey and Paul Clarke (eds.), *Animal Rights: A*

*Historical Anthology* (Columbia University Press 2004); Johannes Kniess, "Bentham on Animal Welfare" (2019) 27 *British Journal for the History of Philosophy* 556, 557.

<sup>12</sup> Bernard Foëx, "The Ethics of Animal Experimentation" (2007) 24 *Emergency Medical Journal* 750 (stated by Bentham in the known text in *Introduction to the Principles of Morals and Legislation*, "[t]he question is not, Can they reason? Nor, Can they talk? But, Can they suffer?").

<sup>13</sup> Edward Eadie, *Understanding Animal Welfare: An Integrated Approach* (Springer 2012) 26.

<sup>14</sup> Brambell Committee, *Report of the Technical Committee to Enquire into the Welfare of Livestock Kept under Intensive Conditions* Her Majesty's Stationery Office; London (1965) Command Paper 2836.

<sup>15</sup> See generally European Convention for the Protection of Animals Kept for Farming Purposes, October 3, (1976) E.T.S. 87.

<sup>16</sup> John Callicott, "Animal Liberation: A Triangular Affair" (1980) 2 *Environmental Ethics* 312.

<sup>17</sup> Richard Cupp, "Moving Beyond Animal Rights: A Legal/Contractualist Critique" (2009) 46 *San Diego Law Review* 27.

<sup>18</sup> David Schmahmann and Lori Polacheck, "The Case Against Animal Rights" (1995) 22 *Boston College Environmental Affairs Law Review* 747.

<sup>19</sup> Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (Harper Collins Publishers 1975) 23.

<sup>20</sup> Tom Regan, *The Case for Animal Rights* (University of California Press 1983) 243.

<sup>21</sup> Robert Garner, *Animals, Politics and Morality* (Manchester University Press 2004).

<sup>22</sup> Brian Favre, "Is There a Need for a New, An Ecological, Understanding of Legal Animal Rights?" (2020) 11(2) *Journal of Human Rights and the Environment* 297.

anthropocentric visions that are adversative to animal protection. The *New Welfarist* position coined by Francione is an attempt at reconciling the rights and welfarist approaches.<sup>23</sup> These reformists seek to put abolition as a long term goal but at the moment, exhaust resources on improving welfare conditions.<sup>24</sup> It has actually been embraced by several organizations in the realm of animal protection like PETA and Animal Compassion over Killing.

Some states have gone further alter laws to recognize rights for animals. The Supreme Court of India extracted a range of animal rights from the Prevention of Cruelty to Animals Act and, by reading them in the light of the Constitution, elevated those statutory rights to the status of fundamental rights.<sup>25</sup> This would be that they trump over other weaker rights and must in no circumstance be curtailed.<sup>26</sup> This has grand implications in how we view rights today. Another way to view animal rights is as liberties. Liberties are active rights that concern conduct and have no duty. This is obviously questioned because generally, duties are attached to rights. The only difference is that attaching legal duties to animals although not impossible, is silly and laughable.<sup>27</sup> The issue however is that animals possess a naked liberty which is unprotected and somewhat worthless without human intervention.<sup>28</sup> In consideration of state and federal legislation that seek to protect this liberties, although in a limited manner, it is safe to say that animals can claim these liberties against legal persons with duties.<sup>29</sup> This therefore questions the almost unquestionable notion that duties are corollaries of rights. MacCormick aptly states that to rest an account of claim rights exclusively on the concept that they exist only ‘when a legal duty is imposed by a law intended to benefit assignable individuals ... is to treat rights as being simply the ‘reflex’ of logically prior duties.’<sup>30</sup>

Australian philosopher Peter Singer is commonly understood to be the initial proponent of the idea that animals indeed have the same moral status as human

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<sup>23</sup> Gary Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press 1996) 36.

<sup>24</sup> Nicola Taylor, “Whither rights? Animal Rights and the Rise of New Welfarism” (1999) 3(1) *Animal Issues* 27.

<sup>25</sup> Supreme Court of India 7 May 2014, Civil Appeal no 5387 of 2014 [27] [56] [62ff]; *See further* Kerala High Court 6 June 2000, AIR 2000 KER 340 (expressing the opinion that ‘legal rights shall not be the exclusive preserve of the humans’, [13]); Delhi High Court 15 May 2015, CRL MC no 2051/2015 [3] [5] (recognizing birds’ ‘fundamental rights to fly in the sky’).

<sup>26</sup> Ronald Dworkin, ‘Rights as Trumps’ in Jeremy Waldron, *Theories of Rights* (Oxford University Press 1984) 153.

<sup>27</sup> Matthew Kramer, ‘Do Animals and Dead People Have Legal Rights?’ (2001) 14 *Canadian Journal of Law & Jurisprudence* 29.

<sup>28</sup> HLA Hart, ‘Legal Rights’ in HLA Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford University Press 1982) 172.

<sup>29</sup> Christine Korsgaard, ‘Fellow Creatures: Our Obligations to the Other Animals’ (Oxford University Press 2018) 116.

<sup>30</sup> Donald MacCormick, ‘Rights in Legislation’ in PMS Hacker and J Raz (eds), *Law, Morality, and Society: Essays in Honour of HLA Hart* (Oxford University Press 1977) 199.

beings in 1975 although not from a legal perspective.<sup>31</sup> Some academics wrongly assert that Singer formulated a legal animal rights position; he did not develop a legal theory of animal rights, and is himself quite critical of the rights framework in general.<sup>32</sup> His approach was rather utilitarian and not rights-based. Singer rather pushes for an equality of consideration of interests rather than an equality of rights. His approach is faulty because he positions suffering as the center and only basis for the consideration of the welfare of animals.<sup>33</sup> He also shares views on proximity to human intelligence as a basis for animal rights.<sup>34</sup>

Critical to this debate is the scholarship of Tom Regan who adopts an absolute approach to legal rights for animals as well. He rejects any policy that has the goal of improving animal welfare conditions, by claiming that ‘animal rights require empty cages, not larger cages’.<sup>35</sup> He is however aware of the possible impossibility of such a situation as he addresses them in the lifeboat cases by alluding to a scenario where four persons and one dog are on-board and one must be sacrificed to save the others, ‘it will always be the dog, even if it were a million dogs, they would still be the ones to be thrown overboard’.<sup>36</sup> He however maintains that in any case for animal rights in a legal system is also a case for human rights.<sup>37</sup>

This research examines the scope for legislative reform by interrogating the efficacy of a universal declaration in causing real change for animals. Very recently, a more comprehensive theory of legal personhood emerged with the description of animals as legal ‘beings’.<sup>38</sup> This rests on the notion that the inability of animals to have duties does not preclude them from being possessors of rights in themselves.<sup>47</sup> This approach is embraced in the drafting of a proposed universal declaration. The rights standpoint is based on the assumption that animals cannot be used by humans for the satisfaction of wants, while the animal welfare view advocates a beneficial use for humans while minimising suffering.<sup>39</sup> Notwithstanding the divergent views, it matters not what terminology is given; what is important is that animals have

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<sup>31</sup> Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (Harper Collins 1975) 23.

<sup>32</sup> Eugene C. Hargrove, *The Animal Rights/Environmental Ethics Debate: The Environmental Perspective* (State University of New York Press, 1992) 14.

<sup>33</sup> See Peter Singer, ‘The Significance of Animal Suffering’ (1990) 13 *Behavioral and Brain Sciences* 9.

<sup>34</sup> Peter Singer, ‘Chimpanzees Are People, Too’ *New York Daily News* (New York, 21 October 2014) <http://www.nydailynews.com/opinion/peter-singer-chimpanzees-people-article-1.1982262> accessed 27 February 2021.

<sup>35</sup> Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowman and Littlefield, 2005) 10.

<sup>36</sup> Tom Regan, ‘The Dog in the Lifeboat: An Exchange’ (1985) 32(7) *New York Revolution Books*, available at <https://www.nybooks.com/articles/1985/04/25/the-dog-in-the-lifeboat-an-exchange/>.

<sup>37</sup> Mark Rowlands, *Animal Rights: Moral Theory and Practice* (Palgrave 2009).

<sup>38</sup> Angela Fernandez, “Not Quite Property, Not Quite Persons: A ‘Quasi’ Approach for Nonhuman Animals” (2019) 5 *Canadian Journal of Comparative and Contemporary Law* 1. <sup>47</sup> Visa Kurki, “Legal Personhood and Animal Rights” (2021) 11(1) *Journal of Animal Ethics* 47.

<sup>39</sup> Bernard Rollin, “An Ethicist’s Commentary on Animal Rights Versus Welfare” (2002) 43 *Canadian Veterinary Journal* 913.

welfare interests that are protected by statute.<sup>40</sup> It is in light of this that this paper uses both terms interchangeably, depending on the emphasis sought to be made.

### **Universal Declarations and Other Attempts**

There are many major attempts at a universal declaration that codifies animal welfare interests. They demonstrate, at least, that the international community has a sense of commitment to improve animal welfare standards.<sup>41</sup> First is the 1978 Universal Declaration on Animal Rights (UDAR) drafted by Georges Heuse, through the Director-General of the United Nations Educational, Scientific and Cultural Organisation (UNESCO).<sup>42</sup> Second, under the auspices of the World Society for the Protection of Animals (WSPA) is the 2005 Universal Declaration on Animal Welfare, which draws on the foundations of the UDHR and the failed UDAR.<sup>43</sup> Third is the International Convention for the Protection of Animals drafted and proposed by David Favre in 1988 among many others.<sup>44</sup>

The failures of these legal instruments are proof that the international legal order is yet to be fully equipped with the ability to protect animals within its sphere.<sup>17</sup> It is important to consider that while there might not be evidence of customary law on animal welfare, the international landscape is marked by series of binding rules addressing animal welfare.<sup>45</sup> Therefore, drawing upon the trend of the UDHR, this will ensure to evade its weaknesses in the future drafts for animal protection.<sup>46</sup>

#### **1. United Nations Convention on Animal Health and Protection**

The United Nations Convention on Animal Health and Protection (UNCHAP) was initiated by the Global Animal Law GAL Association in 2019 under the auspices of prominent international animal lawyers.<sup>47</sup> It remains the most recent achievement aimed at enforcing legal rights of animals at the international level as it seeks to partner with the United Nations. They stress the need for a convention rather than

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<sup>40</sup> See generally Clare McCausland, “The Five Freedoms of Animal Welfare Are Rights” (2014) 27(4) *Journal of Agricultural and Environmental Ethics* 649.

<sup>41</sup> Saba Pippia, “Formation of Animal Law as an Autonomous Branch of International Law” (2019) MPIL Research Paper Series No. 2019-07.

<sup>42</sup> Jean-Marc Neumann, “The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species” (2012) 19 *Animal Law* 91, 95.

<sup>43</sup> World Society for the Protection of Animals (WSPA) (2013) *Universal Declaration on Animal Welfare* [online]. Available at: <http://wspa-international.org/wspaswork/udaw/Default.asp>; M Gibson, “The Universal Declaration of Animal Welfare” (2011) 16(2) *Deakin Law Review* 539.

<sup>44</sup> Available at <https://www.animallaw.info/treaty/international-convention-protection-animals>.<sup>17</sup> Steve White, “Into the Void: International Law and the Protection of Animal Welfare” (2013) 4(4) *Global Policy* 391.

<sup>45</sup> Anne Peters, “Global Animal Law: What It Is and Why We Need It” (2016) 5 *Transnational Law* 9.

<sup>46</sup> See Eric Engle, “Universal Human Rights: A Generational History” (2006) 12 *Annual Survey of International and Comparative Law* 219; see Nsongurua Udombana, “Mission Accomplished? An Impact Assessment of the UDHR in Africa” (2008) 30 *Journal of Public Law and Policy* –for an impact assessment in Africa.

<sup>47</sup> For a full list, see *GAL Expert Group*, Global Animal Law <http://www.globalanimallaw.org/experts/index.html> accessed 13 July 2021.

a declaration because they seek a hard law status for animal protection law. Rather than following the principles laid down in the UDHR, the UNCHAP adopts the pattern of the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biodiversity. They refer and build upon the ICAP and the initial draft of the UDAW. The UNCAP is distinct in that it build its premise on a foundation of One Health and more specifically, it is expected to serve as a binding law for all states.<sup>48</sup> The drafters argue quite persuasively that since there is a UN Framework for global issues like human rights and environmental protection, there also needs to be one for animal welfare. It consists of four parts: preamble, objective, principles and implementation. Article 7 of the draft mandates contracting parties to develop national strategies for animal health, welfare and protection. By relying on SDGs, this draft gains traction seeing as the SDGs extend in relevance to regional and national governments. However, the risk in this is that not one of the seventeen goals directly relate to animal welfare.<sup>49</sup> This was however noted by the UN to be a failure on its part to include it in a 2019 UN Global Sustainable Development Report.<sup>50</sup>

## **2. International Convention for the Protection of Animals**

The International Convention for the Protection of Animals (ICAP) was initiated by renowned professor, David Favre in 1988 as the drafting chairman. It remains a proposed umbrella treaty that deals with different aspects of animal issues that are captured in attached protocols on transportation of animals, methods of taking wildlife and protection from cruel treatments. The drafts have been deliberated upon at two separate conferences. The first in July 1986 at Geneva and the second in November 1987 at London. It was still concluded by the Committee in 1990 that the draft Convention was still suitable for protecting the welfare of animals although it is not certain that that would be the position today. The draft has not come far in protecting animal rights among contracting parties.

## **3. Universal Declaration on Animal Welfare**

The Universal Declaration on Animal Welfare (UDAW) was created in 2005 under the auspices of the World Society for the Protection of Animals (WSPA) although the organization is now known as World Animal Protection (WAP). The full title was ‘A Universal Declaration of Animal Rights, adopted from the International League of Animal Rights and Affiliated National Leagues in the Course of an International Meeting on Animal Rights in London, September 1977’.

The UDAW is laden with faults. It stresses that all animals have equal rights. How could that be possible? It would mean that a lion would possess the same legal status

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<sup>48</sup> Elien Verniers and Sabine Brels, ‘UNCAHP, One Health, and the Sustainable Development Goals’ (2021) 24(1) *Journal of International Wildlife Law and Policy* 38.

<sup>49</sup> Independent Group of Scientists appointed by the Secretary-General, *Global Sustainable Development Report 2019: The Future is Now- Science for Achieving Sustainable Development (GSDR)* (2019) 117 <https://sustainabledevelopment.un.org/gsdr2019>.

<sup>50</sup> *Ibid.*

as a worm. The preamble of the first edition of the document states that the ignorance of the natural rights of animals leads man to commit ‘crimes against animals’. Animals are not holders of natural rights in the sense that animals do not possess rights of their own that they can enforce by virtue of being animals. While they do need legal rights, they need a separate and unique category of specific rights- not natural rights. Trying to build animal rights on the foundation of human rights must be avoided at all costs. Little wonder the draft is yet to achieve any normative status. Other arguments are that the UDAW is not strong enough to achieve its principles in the desired way. They stress on the need to protect rights rather than welfare. Similarly, it is clear that the welfare approach is not antithetical to the rights based approach and in most circumstances, mean the same thing in practice.

#### **4. The Universal Charter of the Rights of Other Species**

It contains 19 articles and aims to serve as a cohesive international document that protects animals at all levels. It states ‘other species’ to mean ‘all sentient species apart from human beings.’ The Charter expressly recognizes the fundamental right of animals to live free from all harm caused to them by human beings and goes further to impose a responsibility on human beings to strive towards its realisation. It provides for penalties to be borne by perpetrators in proportion to the degree of sentience that is injured. Although no specific penalties are listed in the draft, it states that such penalties must be done approximate to what would be the case should it have been done to a human being. It vests on human beings a moral responsibility to avoid harming animals either directly or indirectly. It prohibits the sale or breeding of non-commercial animals for the purposes of unnecessary slaughter, experimentation and other forms of exploitation. It is however unclear in defining how wide or narrow the confines of necessary slaughter would be. However, it clearly recognizes that until alternatives to meat are developed in future years, animals slaughtered for that purpose must be kept into adulthood and should be protected from suffering distress of stress in the process of extermination. This provision impliedly puts human consumption as a justification for slaughter and in practice, takes the entire document about many steps back as justification is usually under very lax regulations. Also, it states expressly in article 7 that other species have a right to the protection of their habitats and as such, human activities must consciously and deliberately minimize the risk of violating those habitats. This is particularly significant because of the interdependency of rights in general and specifically affirming the right to a safe habitat is important for achieving the purpose of any animal rights law instrument.

#### **5. Animal Charter of Rights and Freedoms**

The Animal Charter of Rights and Freedoms<sup>51</sup> is a proposed animal rights law by the Animal Justice –a Canadian animal rights group. is an initiative of one of the

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<sup>51</sup> Animal Charter of Rights and Freedoms: <https://animaljustice.ca/charter>

foremost animal advocacy group in Canada – Animal Justice UK. The document is a very brief document, fashioned after the likeness of the Canadian Charter of Rights and Freedoms with eleven short articles. The central purpose of the Animal Charter is to establish legal personhood, fundamental freedoms, and legal rights for all sentient nonhuman animals. Less than a page, the Charter contains salient provisions worth examining. For example, the second section describes the legal status of animals as ‘persons’. This seemingly elevates animals to the status of human beings under the law and it is unclear if that is the goal of animal rights law. Similarly, the fourth fundamental freedom in article 6 states that animals in the wild have the right to be free from human intervention or exploitation. That provision might need to be refined seeing that certain animals would not thrive naturally without human intervention like in the case of naturally caused fire disasters. Also, it indirectly refers to a category of animals –animals under human care- as having the right to be free from pain and injury. This is a good provision that can be adopted by a model animal rights law because of its structure and direct conferment of rights to a specific group just as it does with animals in the wild. What is better is that if any intervention must be done, the welfare of the animal must take the front seat. The Animal Charter is however likely to fail in its aspiration to attain the status of a federal animal law that it was originally intended for as it lacks one of the core requirements- penalties. For example, section 4 provides that animals under human care have the right to be free from abuse and neglect but fails to actually impose a duty on their owners to protect these rights. It therefore seems like a weak right that only stipulates what ought to be rather than changing what is which is very common to many proposals.

## **6. Universal Declaration on Animal Rights**

It was originally drafted in 1978 and proclaimed at the UNESCO headquarters in Paris however not by the UNESCO itself and was later revised in 1989 by the International League of Animal Rights.<sup>52</sup> It remains a proposed inter-governmental agreement that seeks to recognize the sentience of all animals and equal claims of existence by all species. This declaration is proposed to be adopted by the United Nations and is aimed at encouraging domestic legislation to improve animal laws within its borders to reflect the provisions of the declaration as it states that the specific legal status of animals and their rights must be recognized by law. Significantly, article 9 stipulates the massacre of wild animals and biotopes and any act that compromises the survival of a wild species as tantamount to genocide- a crime against the species. While it does not expressly ban experiments on animals, it states that it is a violation of the rights of the species and that replacement methods must be developed. It also stipulates that any necessary killing of an animal must be painless, instantaneous, and cause no apprehension. In its preamble, it relies on the common origin of all species and considers that any animal with a nervous system has specific rights. In the last article, it emphasizes humane education in education

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<sup>52</sup> Declaration on Animal Rights: <http://www.declarationofar.org/text/Sign.php#>

and schooling authorities which is a clause that a model animal welfare law might want to borrow.

### **7. Rose's Law (Animal Bill of Rights)<sup>53</sup>**

This is a proposed law that seeks to use civil engagement and civil disobedience to force respect and equality of all species. The drafters rest on the notion that animal welfare legislation has failed and provided very little relief for animals and has in turn, actually increased animal suffering. The bill enshrines six rights including the right to have interests represented in court and the right to be rescued from situations of distress and exploitation. What is significantly interesting about this bill is its brevity and the inclusion of the right not to be owned. This might not necessarily be a fundamental right considering the fact that there are specific categories of animals that require being owned in order to flourish and enjoy inherent value e.g. companion pets like dogs. Probably, a model animal rights law might fashion out a structure of ownership that does not violate its rights. Supporters of this bill threaten to stage the largest ever coordinated mass civil disobedience for animal rights should nothing be done in due time.

### **International Law and Animal Rights**

The starting point for a meeting point for animal protection and international law is on the basis that there is a consensus that animals should be treated humanely. So long as that exists, an international regime exists because that basis is common to all nations and peoples. Such sameness can be attributed to a particular source of international law- general principles.<sup>54</sup> Other developments have put animal law in a position that requires a separate set of laws and regulatory principles in international law.<sup>55</sup> International law in relation to animal protection may arise as a separate branch entirely.<sup>56</sup> Many have suggested that nature itself is a legal person as a matter of necessity.<sup>57</sup> This shows how flexible the human concept of rights is as it should be able to meet up with human standards and new developments.

Closely linked to animal protection in the international sphere is biodiversity conservation. Many studies have emerged over rights including the butterfly effect and invasive species.<sup>58</sup> It includes a broad range of issues especially when human safety is prioritized over cruel acts to animals and danger of extinction as is the case

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<sup>53</sup> Rose's Law (Bill of Rights): <https://www.roseslaw.org/>

<sup>54</sup> Article 38(1)(c), Statute of the International Court of Justice.

<sup>55</sup> Caley Otter, Siobhan O'Sullivan and Sandy Ross, 'Laying the Foundations for an International Animal Protection Regime' (2012) 2(1) *Journal of Animal Ethics* 53.

<sup>56</sup> See Saba Pipia, 'Emergence of Global Animal Law as a Separate Branch of International Law' (2020) 16 *Animal & Natural Resource Law Review* 171.

<sup>57</sup> See generally, Michelle Maloney, 'Environmental Law: Changing the Legal Status of Nature: Recent Developments and Future Possibilities' (2018) 49 *Law Society of New South Wales Law Journal* 78.

<sup>58</sup> James Olmstead, 'The Butterfly Effect: Conservation Easements, Climate Change, and Invasive Species' (2011) 38(1) *Boston College Environmental Affairs Law Review* 41.

over certain species of sharks in beaches in Australia.<sup>59</sup> The studies are quite a number and so it is important to clarify this work is limited to animal rights in international law.

Despite the risks of fragmentation between how different states might interpret a universal declaration, Kelch notes that, there is a need for animal law to come of age in our globalized world, and the global nature of modern animal law must be embraced and pursued in a ‘unified’ and ‘cross-culturally’ understandable manner as a strategy to promote the global interests of animals.<sup>60</sup> The relationship of man with animals has gotten increasingly complex over the years. The reviewed literature on the different parts of this work reveal the changes in thoughts as emerging legal issues arise as well as the loopholes that are not so obvious which this research aims to fill. Many are beginning to challenge the criminality of bestiality<sup>61</sup> and its rationale,<sup>62</sup> among many other concepts including the implications of climate change on earth. The scope of this work is limited to specific issues relating to the viability, importance and necessity of a global animal rights regime to the exclusion of all other related issues that may arise in the course of this work. What is important to note is that society can change who a legal person is and also that the different categories of legal persons have different categories of rights. The next chapter then examines, in a practical fashion, various domestic and international efforts at protecting animal rights.

Despite the attempts outlined above, none have achieved a binding status in international law.<sup>63</sup> In turn, the absence of formal international statutory instruments has been shown to lead to regulatory ambiguity among domestic animal welfare laws. Together, they raise two foundational questions: what are the problems with domestic animal law? And in the absence of statutory instruments, what would a universal declaration on animal protection look like? Given the scope of this research, we go further to consider briefly how African and other indigenous cultures can accommodate animal welfare as a matter of global concern. Meanwhile, in Nigeria –like many other countries in Africa, the animal protection regime is very unstructured.<sup>64</sup> What is available are vague constitutional provisions and criminal code sections that criminalise bestiality and animal cruelty with laughable penalties

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<sup>59</sup> Arie Trouwborst, ‘Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species’ (2014) 2 Cornell International Law Journal 41.

<sup>60</sup> Thomas G. Kelch, ‘CITES, Globalization, and the Future of Animal Law’ in Randal S. Abate (eds), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute, 2015) 269, 291 (emphasis added).

<sup>61</sup> Cf Michael Roberts, ‘The Unjustified Prohibition against Bestiality: Why the Laws in Opposition Can Find No Support under the Harm Principle’ (2009)

<sup>62</sup> Antonio Haynes, ‘The Bestiality Proscription: In Search of a Rationale’ (2014) 21 Animal Law Review 121.

<sup>63</sup> Saba Pipia, ‘Emergence of Global Animal Law as a Separate Branch of International Law’ (2020) 16 Animal and Natural Resource Law Review 171.

<sup>64</sup> Commendable developments include Egypt’s 2014 Constitution establishing the duty to perform kind treatment to animals under Article 45.

below a dollar.<sup>65</sup> Nonetheless, regional developments in the African Union also reflect a growing commitment by the member states to animal welfare.<sup>66</sup> For example, the recently adopted executive summary of the Animal Welfare Strategy for Africa (AWSA) by the African Union Interafrican Bureau for Animal Resources (AU-IBAR) aimed towards implementing the 2030 Agenda for Sustainable Development in Africa in relation to animal protection.<sup>67</sup> It is safe to say that a future of animal welfare is emerging for African states. The problem would be if these states disregard law as culture and simply lift the provisions of other regional laws into their domestic regimes. Among many other options, a universal declaration is likely to be able to offer some answers to the apparent challenges outlined in the research questions.

The activities of the Nonhuman Rights Project in the USA have also paved the way for landmark developments in animal rights. Significant is the case of Happy, a 50-year-old Asian elephant held in captivity since 1977 under harsh conditions. Her case became the first where the highest court of any English-speaking jurisdiction will hear a habeas corpus case brought on behalf of an entity that is not a human being. An amicus brief filed by Nussbaum argues that ‘the law requires reformation to protect our modern scientific and philosophical understanding that many animals can live their own meaningful lives and that the court should reform the law in this case’.<sup>68</sup> Therefore, with cases like this in view, legal animal rights are evolving into a tangible reality.<sup>69</sup>

## Conclusion

We propose a universal declaration for many reasons. First, because of its non-binding character. Second, because of the global reach possessed by the United Nations and third, its ability to crystallise into hard law over time. However, critical questions linger. Is international law prepared for such developments? Is a universal declaration the best option to achieve said goals? Under what circumstances can states be held liable for breach of such standards? By answering these questions, among a host of others, future research will further existing knowledge on global animal law to build on a common standard of achievement of animal protection for

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65 A Shoyombo and others, “Animal Rights Policy in Nigeria: The Way Forward” (2019) 14(22) *Journal of Engineering and Applied Sciences* 8439.

66 See generally Nsongurua Udombana, *The African Union in International Law Selected Studies* (John Archers 2020) for recent trends in international institutional law in the AU.

67 Available online at

[https://rafrica.oie.int/wpcontent/uploads/2019/05/awsa\\_executive\\_summary\\_layout\\_eng\\_2017.pdf](https://rafrica.oie.int/wpcontent/uploads/2019/05/awsa_executive_summary_layout_eng_2017.pdf).

68 Lauren Choplin, “World-Renowned Philosopher Martha Nussbaum Supports New York Elephant Rights Case” (*Nonhuman Rights Blog*, 24 August 2021)

<https://www.nonhumanrights.org/blog/martha-nussbaumelephantrights/> accessed 1 September 2021.

69 Similar amicus brief filed by Harvard’s Professor Christine Korsgaard is available at <https://www.nonhumanrights.org/content/uploads/Christine-M.-Korsgaard-Amicus-Brief-Happy-Case.pdf>.

all peoples and all nations –the absence of which has caused the jeopardy in which we find ourselves.