

FROM THE UNITED STATES TO PAKISTAN:  
CAN CLIMATE CHANGE PAVE THE WAY FOR AN  
INTERNATIONAL RIGHT TO ANIMAL RESCUE  
IN DISASTERS?

By  
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*Over 69% of the world's wildlife has been lost between 1970 and 2018. Catastrophic events like the Australian bushfires, the Amazon rainforest fires, and the ongoing floods in the United States have led to the deaths of several billion animals. Ongoing apocalyptic floods have put one-third of Pakistan underwater and led to the deaths of over a million livestock animals. Climate change, human rights, and animal rights have become so intertwined that all life—including human, nonhuman, and plant life—is on the brink of extinction.*

*If they die, we all die.*

– Yusuf Abdullahi, *Drought Kills in Kenya*<sup>†</sup>

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<sup>†</sup> Brian Inganga, *If They Die, We All Die: Drought Kills in Kenya*, AP NEWS (Nov. 7, 2021), <https://perma.cc/NFR6-64TQ> (accessed Feb. 3, 2023) (quoting Yusuf Abdullahi, a Kenyan man in the plight of ongoing drought who lost forty of his goats to hunger).

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## I. A Brief Introduction to the History of Natural Disasters and Animal Rescue

### A. *Noah and the Story of the Great Flood: The Origin of the Right to Animal Rescue in Disasters*

Christianity and Islam, two of the world's leading religions, speak in detail of the Great Flood.<sup>1</sup> The Great Flood was purportedly a global flood that drowned the planet around 7,500 years ago.<sup>2</sup> The Quran states that the flood caused the Earth to burst with water: "So We opened the gates Of heaven, with water Pouring forth. And We caused the earth To gush forth with springs. So the waters met (and rose) To the extent decreed."<sup>3</sup>

Islam and Christianity both teach that Noah rescued pairs of non-human animals alongside humans for the collective survival of life on Earth. In the Bible, God commanded Noah to rescue both animals and birds:

And of every living thing of all flesh, two of every *sort* shalt thou bring into the ark, to keep *them* alive with thee; they shall be male and female. Of

<sup>1</sup> See *Genesis* 6:17 (stating God's intention to destroy all life on Earth through a flood) (Authorized King James Version); *Sâffât* 3:77 (A. Yusuf Ali, trans.) (stating Noah's progeny would endure on Earth).

<sup>2</sup> James Trefil, *Evidence for a Flood*, SMITHSONIAN MAG. (Apr. 1, 2000), <https://perma.cc/A678-R4PS> (accessed Feb. 26, 2023).

<sup>3</sup> *Qamar* 1:11-12 (A. Yusuf Ali, trans.).

fowls after their kind, and of cattle after their kind, of every creeping thing on earth after his kind, two of every *sort* shall come unto thee, to keep *them* alive.<sup>4</sup>

In the selfsame day entered Noah, and Shem, and Ham, and Japheth, the sons of Noah, and Noah's wife, and the three wives of his sons with them, into the ark; They, and every beast after his kind, and all the cattle after their kind, and every creeping thing that creepeth upon the earth after his kind, and every fowl after his kind, every bird of every sort. And they went in unto Noah into the ark, two and two of all flesh, wherein *is* the breath of life. And they that went in, went in male and female of all flesh, as God had commanded him; and the LORD shut him in.<sup>5</sup>

Similarly, the Quran states that God commanded Noah to take a pair of every species, including nonhuman animals: "We said: 'Take into the Ark a pair of every species; and take your own family[.]'"<sup>6</sup>

The Bible says God created a hierarchy between the nonhuman animals vis-à-vis their cleanliness and commanded Noah to rescue them in a particular number of pairs:

Of every clean beast thou shalt take to thee by sevens, the male and his female : and of beasts that *are* not clean by two, the male and his female. Of fowls also of the air by sevens, the male and the female; to keep seed alive upon the face of all the earth.<sup>7</sup>

Lastly, the Bible states "[They] shall come unto thee[.]"<sup>8</sup> This meant that God guided the animals onto the Ark and saved them for their inherent value. God essentially rescued the animals himself.

The ancient parable of the Great Flood, which could have ended all life on Earth, raises a pertinent question for the twenty-first century: Why did God explicitly command Noah to rescue all species, including nonhuman animals? Was it because humanity cannot survive without nonhuman animals, because nonhuman animals have an inherent dignity that must be protected, or because nature—i.e., life—cannot exist without nonhuman animals?<sup>9</sup>

Section I of this Article highlights the history of natural disasters and animal rescue globally, starting with the Great Flood just discussed, over 7,000 years ago. Section II will examine legal developments that followed in the United States, the rationale behind such

<sup>4</sup> *Genesis* 6:19-20 (Authorized King James Version).

<sup>5</sup> *Genesis* 7:13-16 (Authorized King James Version).

<sup>6</sup> *Hûd* 4:40.

<sup>7</sup> *Genesis* 7:2-3 (Authorized King James Version) (stating God's command to take seven pairs of every clean animal, two pairs of every unclean animal, and seven pairs of every kind of bird).

<sup>8</sup> *Genesis* 6:20.

<sup>9</sup> Much of U.S. and international legal history has developed from the Christian-based teachings and theories of Thomas Aquinas. This discussion about the right of animal rescue thus began through a theological lens. See *St. Thomas Aquinas, Natural Law, and the Common Good*, CONST. RTS. FOUND. (2006), <https://perma.cc/Y4NY-5699> (accessed Feb. 12, 2023) (describing the influence of Thomas Aquinas' teachings on various governments). Despite differences in religion around the world, this Article argues for a global reaching right, not limited to a domestic scope.

efforts, and their efficacy. Section III will argue for an international right to animal rescue, borrowing from international environmental and human rights law as an adaptation measure to combat the sixth mass extinction. Section III will also discuss how the exacerbators of climate change, like Concentrated Animal Feeding Operations (CAFOs), elicit the need for a domestic right of animal rescue. Section IV reiterates the need for an international instrument that can legally bind sovereign nations to protect animals as an adaptation measure for combatting climate change and realize the human and nonhuman right of life and a healthy environment.

Given that climate change has impacted all life on Earth, contributing to billions of nonhuman animal deaths annually, human and environmental welfare concerns implicate animal welfare concerns, and vice versa. This Article will highlight the history of animal rescue in natural disasters, break down U.S. animal rescue laws, borrow from environmental and human rights law, and argue for an international right to animal rescue in disasters as an adaptation measure for combatting the human-driven sixth mass extinction.

*[I]n their behavior toward creatures, all men were Nazis. The smugness with which man could do with other species as he pleased exemplified the most extreme racist theories, the principle that might is right.*

– Isaac Bashevis Singer, *Enemies, A Love Story*<sup>10</sup>

#### B. *A History of Natural Disasters and Loss of Nonhuman Animal Life Post-2018*

In October 2022, Worldwide Fund for Nature (WWF) released their annual *Living Planet Report*, which cited, based on a scientific review of 32,000 species, a significant loss of 69% of wildlife globally from 1970 to 2018.<sup>11</sup> The report argues that biodiversity loss and climate change are “two sides of the same coin,” and that without keeping biodiversity loss in check, climate change cannot be effectively controlled.<sup>12</sup>

Unfortunately, since 1970 there has been a record loss of 94% of biodiversity in Latin America, followed by 66% in Africa, 55% in the Asian Pacific, 20% in North American, and 18% in Europe-Central Asia.<sup>13</sup> Described as the “Lungs of the Earth,” the Amazon rainforest is the most biodiverse place on Earth.<sup>14</sup> The cause of the extensive bi-

<sup>10</sup> ISAAC BASHEVIS SINGER, *ENEMIES, A LOVE STORY* 257 (1972). Singer was a Jewish man who immigrated from Poland shortly before World War II to avoid the growing threat of the Nazi movement.

<sup>11</sup> R.E.A. ALMOND ET AL., *LIVING PLANET REPORT 2022 – BUILDING A NATURE-POSITIVE SOCIETY* 32 (2022).

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.*

<sup>14</sup> Harsha Doriya, *Save the Lungs of Earth – Amazon Rainforest*, *WORLD ANIMAL PROT.* (Sept. 9, 2019), <https://perma.cc/CR4K-DBAB> (accessed Feb. 26, 2023).

odiversity loss in Latin America is due to deforestation of the Amazon rainforest.<sup>15</sup>

### 1. *Brazil: 2020*

The 2020 Brazilian Amazon rainforest fires decimated over 30% of the region's tropical wetland.<sup>16</sup> Before that, in 2019, almost seven million hectares of the Amazon—about the size of West Virginia—had burnt to a crisp.<sup>17</sup> Some of the main precursors of the fires were the executive government's policies on infrastructure and agricultural development in the Amazon.<sup>18</sup> Drought, a prevalent phenomenon in Western America and South Asia, aggravated the fires.<sup>19</sup> These fires destroyed the habitats of millions of animals and killed of nearly seventeen million nonhuman animals, including snakes, rodents, and small birds.<sup>20</sup>

### 2. *Kenya: 2022*

The ongoing Kenyan drought is the worst in over forty years.<sup>21</sup> In the last nine months, over 200 elephants, nearly 400 common zebras, and more than 500 wildebeests have died.<sup>22</sup> The issue was a hot-button topic at the Twenty-Seventh Conference of the Parties of the United Nations Framework Convention on Climate Change (COP 27) in November 2022 and was one of the key factors for the development of the Loss and Damages Reparation Fund.<sup>23</sup>

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<sup>15</sup> R.E.A. ALMOND ET AL., *supra* note 11, at 4, 10.

<sup>16</sup> Victoria Gill, *Brazil Wildfires Killed an Estimated 17 Million Animals*, BBC (Dec. 16, 2021), <https://perma.cc/CGP6-Q345> (accessed Feb. 3, 2023).

<sup>17</sup> *2020 Amazon Fire Season*, RAINFOREST FOUND. US, <https://rainforestfoundation.org/our-work/special-initiatives/2020-amazon-fires/> (accessed Feb. 26, 2023).

<sup>18</sup> Richard Schiffman, *Brazil's New President Vows to Save Amazon Forests*, SCI. AM. (Nov. 9, 2022), <https://perma.cc/KT2L-7EU4> (accessed Feb. 3, 2023).

<sup>19</sup> Gill, *supra* note 16.

<sup>20</sup> Deepa Shivaram, *Nearly 17 Million Animals Died in Wildfires in Brazil's Wetlands Last Year*, NPR (Dec. 17, 2021), <https://perma.cc/6HDL-ZDKK> (accessed Feb. 6, 2023).

<sup>21</sup> *Kenyan Drought Leads to Mass Animal Deaths as Compensation for Climate-Related Losses Becomes a COP27 Topic*, AUSTL. BROAD. CORP. NEWS (Nov. 4, 2022, 7:05 AM), <https://perma.cc/3CAW-32SP> (accessed Feb. 3, 2023).

<sup>22</sup> *Id.*

<sup>23</sup> Bilawal Bhutto Zardari, *The Loss and Damage Facility: A Step Towards Climate Justice*, U.N. CHRON. (Dec. 9, 2022), <https://perma.cc/TA58-6SZW> (accessed Feb. 6, 2023) (describing the purpose of the Loss and Damages Reparation Fund as “help[ing] developing countries deal with loss and damage resulting from the adverse impacts of climate change”); Remarks by H.E. Hon. William Ruto on behalf of Africa Group & Kenya at the 27th Conference of Parties, at 3 (Nov. 7, 2022) (describing how the 2022 floods were “evidence that climate change is directly threatening [Kenyan] people’s lives, health and future”).

### 3. *Nigeria: 2022*

The National Emergency Management Agency (NEMA) states that thirty-three out of thirty-six Nigerian states were affected by the ongoing 2022 floods.<sup>24</sup> Over 612 humans died, over one million people were displaced, and over 100,000 hectares of land—which greatly contributed to the nation’s food supply—were destroyed.<sup>25</sup> NEMA did not record data for the loss of nonhuman life, perhaps because no protocol to record such data exists.<sup>26</sup>

### 4. *Australia-New Zealand Bushfires: 2019 to 2020*

The Australian bushfires began in September 2019.<sup>27</sup> Due to increasing temperatures and drought in the previous few months, the fire quickly became uncontrollable.<sup>28</sup> The fire killed or displaced over three billion animals: 180 million birds, 51 million frogs, 143 million mammals, and a staggering 2.46 billion reptiles.<sup>29</sup> After nine consecutive months of effort, the fires were finally extinguished, but they had done irreversible damage.<sup>30</sup> The effects of the fires were felt in New Zealand: Transboundary pollution resulted in apocalyptic orange skies emerging over Auckland.<sup>31</sup> Scientists could not determine how many animals died due to the after-effects of the fires, which included the destruction of the animals’ habitats, food, and shelter.<sup>32</sup> In total, the fires destroyed at least 11.46 million hectares of habitat land.<sup>33</sup>

<sup>24</sup> NEMA: 33 Nigerian States Ravaged by Flood in Eight Months, THIS DAY (Sept. 6, 2022), <https://perma.cc/VZ72-L7D4> (accessed Feb. 27, 2023).

<sup>25</sup> Ayana Archie, *Flooding in Nigeria has Killed More than 600 People, the Government Says*, NPR (Oct. 17, 2022), <https://perma.cc/2BBJ-APSJ> (accessed Feb. 27, 2023).

<sup>26</sup> See Abdul Kezo, *Address by the Director General NEMA at the Emergency Technical Meeting on Flood Situation in Nigeria Held on 19th September, 2022 at NEMA Headquarters, Abuja*, NEMA NIGERIA (Sept. 20, 2022), <https://nema.gov.ng/address-by-the-director-general-nema-at-the-emergency-technical-meeting-on-flood-situation-in-nigeria-held-on-19th-september-2022-at-nema-headquarters-abuja/> (accessed Feb. 26, 2023) (explaining the primary goal of NEMA’s research and assistance is identifying human lives lost and preventing further loss over nonhuman lives).

<sup>27</sup> AUSTL. INST. HEALTH & WELFARE, AUSTRALIAN BUSHFIRES 2019–20: EXPLORING THE SHORT-TERM HEALTH IMPACTS 1–2 (2020), <https://perma.cc/UW66-RMYR> (accessed Feb. 27, 2023).

<sup>28</sup> *Id.*

<sup>29</sup> Daniel Vernick, *3 Billion Animals Harmed by Australia’s Fires*, WORLD WILDLIFE FUND (July 28, 2020), <https://perma.cc/KV4V-G29L> (accessed Feb. 1, 2023).

<sup>30</sup> *2019–2020 Australian Bushfires*, CTR. DISASTER PHILANTHROPY (Oct. 14, 2020), <https://perma.cc/8MGT-NB82> (accessed Feb. 1, 2023).

<sup>31</sup> Jim Salinger, *Australia’s Bushfires Mean New Zealand has Become the Land of the Long Pink Cloud*, THE GUARDIAN (Jan. 7, 2020), <https://perma.cc/D4JJ-HJKB> (accessed Feb. 1, 2023).

<sup>32</sup> *New WWF Report: 3 Billion Animals Impacted by Australia’s Bushfire Crisis*, WWF AUSTL. (July 28, 2020), <https://www.wwf.org.au/news/news/2020/3-billion-animals-impacted-by-australia-bushfire-crisis> (accessed Feb. 1, 2023).

<sup>33</sup> *Id.*

### 5. *Water & Oceanic Disasters: 2022*

In November 2022, torrential rains flooded the Wyangala Dam in New South Wales, Australia.<sup>34</sup> The town of Eugowra—only 220 miles from Sydney—was heavily affected, with over 140 emergency cases reported.<sup>35</sup>

In September 2020, the New Zealand ship, Gulf Livestock 1, sank during a typhoon, carrying forty-one crew members and 6,000 cattle.<sup>36</sup> In June 2022, a ship carrying 15,800 cattle—almost 7,000 more than its carrying capacity—from Sudan to Saudi Arabia sank in the Red Sea.<sup>37</sup> While New Zealand recently passed a ban on live animal export by sea, which took effect in April 2023, neither Sudan nor Saudi Arabia took similar measures.<sup>38</sup> Aquatic disasters are perhaps more tragic than land-based disasters because there are not yet tools to quantify the impact that cattle and other land animals have on aquatic life when they drown at sea.<sup>39</sup>

### 6. *United States: 2005 to 2022*

Hurricane Katrina was the first major disaster that led to the partial recognition of the right to animal rescue in the United States. When Hurricane Katrina hit, only humans were allowed on evacuation transport, not their companion animals.<sup>40</sup> The government was either

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<sup>34</sup> *Flash Floods Sweep Away Houses, Cars in Australian Town*, PHYS.ORG (Nov. 16, 2022), <https://perma.cc/7UZ9-EUDA> (accessed Feb. 1, 2023). Unfortunately, no information regarding animal evacuations was reported.

<sup>35</sup> *Id.*; Scott Sistik, *Watch: Massive Amounts of Water Spill from Australian Dam Amid Torrential Rains*, FOX WEATHER (Nov. 14, 2022, 10:03 AM), <https://perma.cc/XYA7-EUGP> (accessed Feb. 27, 2023).

<sup>36</sup> Tess McClure, *New Zealand Bans Live Animal Exports from April 2023*, THE GUARDIAN (Sept. 28, 2022, 8:59 PM), <https://perma.cc/BZW7-35HS> (accessed Jan. 30, 2023).

<sup>37</sup> Agence France-Presse, *More Than 15,000 Sheep Drown After Live Export Ship Sinks in Sudan*, THE GUARDIAN (June 12, 2022, 7:54 PM), <https://perma.cc/4YF3-AJZV> (accessed Jan. 30, 2023); *Thousands of Sheep Drown as Sudan Ship Sinks*, THE JAKARTA POST (June 13, 2022), <https://perma.cc/JL6N-P673> (accessed Feb. 7, 2023).

<sup>38</sup> McClure, *supra* note 36. However, New Zealand live animal export by air is still allowed due to shorter air travel times. *Government Passes Bill to Ban Livestock Exports by Sea*, RNZ NEWS (Sept. 28, 2022, 7:37 PM), <https://perma.cc/UY39-XGRZ> (accessed Jan. 30, 2023).

<sup>39</sup> Cf. Lynley Tulloch, *Lost at Sea – The Cows Who Will Not Be Coming Home*, SCOOP (Sept. 6, 2020, 2:08 PM), <https://perma.cc/DN49-C29X> (accessed Feb. 27, 2023) (describing the animal cruelty aboard livestock shipping vessel and featuring photographs of deceased cows floating in the ocean); Naomi Larsson & Tom Levitt, *'Floating Feedlots': Animals Spending Weeks at Sea on Ships Not Fit for Purpose*, THE GUARDIAN (Jan. 26, 2020, 5:00 AM), <https://perma.cc/R4G2-5BXK> (accessed Feb. 9, 2023) (describing the improper shipping vessels used for livestock sea transport and how these pose a greater threat of sinking). Considering the lack of impact analysis, the right to international rescue for land disasters should also apply to underwater disasters.

<sup>40</sup> Cynthia F. Hodges, *Detailed Discussion of State Emergency Planning Laws for Pets and Service Animals*, ANIMAL LEGAL & HIST. CTR. (2011), <https://perma.cc/86FK-6VX3> (accessed Jan. 30, 2023).

“unwilling[] or [u]nab[le]” to provide aid for companion animals during the emergency.<sup>41</sup> As many as 600,000 animals were abandoned or stranded, needing rescue.<sup>42</sup> Unfortunately, help took too long and over 250,000 of those animals died.<sup>43</sup>

Amid the chaos, something extraordinary happened. Some people decided not leave their companion animals behind, choosing to forgo evacuation or rescue efforts that would have separated them.<sup>44</sup> Best Friends Animal Society (BFAS) was the first organization to arrive and the last to leave the affected areas of New Orleans;<sup>45</sup> during the course of its response efforts, BFAS rescued and relocated over 6,000 animals.<sup>46</sup>

Hurricane Katrina offered a humbling lesson to the animal welfare community and brought to the surface the strengths and weaknesses of the federal government in addressing the needs of animals in natural disasters. Fortunately, as the hurricane subsided, congressmen Tom Lantos, backed by several co-sponsors, sponsored H.R. 3858: The Pets Evacuation and Transportation Standards (PETS) Act.<sup>47</sup> The PETS Act requires state and local authorities to consider service animals in their emergency plans, then submit these plans for approval by the Federal Emergency Management Agency (FEMA).<sup>48</sup> FEMA then can give funds to support these approved plans, including to fund the construction of emergency rescue shelters and the availability of rescue and care for service animals during and following a disaster.<sup>49</sup>

In *Comer v. Murphy Oil USA, Inc.*, Katrina victims sued over thirty energy companies for their contributions to the global climate crisis.<sup>50</sup> The plaintiffs alleged that the companies contributed to the intensity of Hurricane Katrina through their climate impacts, notably in how their production processes increased water temperature which then raised the sea level.<sup>51</sup> Unfortunately, the district court dismissed the case under the political question doctrine and for lack of standing.<sup>52</sup> The Supreme Court later denied the plaintiffs’ petition for writ of mandamus.<sup>53</sup> Recently, this case has become relevant again as per-

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Francis Battista, *Animals in Disasters: How Katrina Changed Their World*, THE BEST FRIENDS BLOG (May 11, 2011), <https://perma.cc/5F2B-36PD> (accessed Feb. 3, 2023).

<sup>46</sup> *Id.*

<sup>47</sup> H.R. 3858, 109th Cong. (2005); *Cosponsors: H.R.3858 – 109th Congress*, CONGRESS.GOV, <https://perma.cc/8A4N-PYVQ> (accessed Feb. 6, 2023).

<sup>48</sup> Pets Evacuation and Transportation Standards Act of 2006, 42 U.S.C. §§ 5196(e)(4), (j)(2), (b)(g) (2010).

<sup>49</sup> 42 U.S.C. § 5196 (2021); 42 U.S.C. § 5170b.

<sup>50</sup> *Comer v. Murphy Oil USA*, 585 F.3d 855, 859 (5th Cir. 2009), *vacated*.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 860.

<sup>53</sup> *Comer v. Murphy Oil USA*, 607 F.3d 1049 (5th Cir. 2010), *mandamus denied sub nom. In re Comer*, 562 U.S. 1133 (2011).



sistent flooding has devastated areas across the United States. These floods are attributable to climate change, due to record rainfalls, storms, and hurricanes.<sup>54</sup>

Per the National Oceanic and Atmospheric Administration (NOAA), the total approximate cost of weather and climate change disasters in the United States from 1980 to 2023 has been a staggering \$2.475 trillion.<sup>55</sup> NOAA reported fifty-six weather and climate change disasters exceeding \$1 billion in damages in the United States from 2019 to 2021.<sup>56</sup> Additionally, on the human front, 485 human casualties from flooding were reported from 2018 to 2022.<sup>57</sup>

On the animal front, in 2018, Hurricanes Michael and Florence killed nearly 5.5 million farm animals.<sup>58</sup> Since 2013, more than 5.8 million farm animals have died because of barn fires.<sup>59</sup> In 2019, nearly one million animals died in the United States due to extreme weather conditions.<sup>60</sup> Farmed animals account for most of these animal deaths.<sup>61</sup> Instead of installing measures to protect their animals, farmers and ranchers are incentivized to let them die: From 2008 to 2021, the Livestock Indemnity Program (LIP) paid out over \$496 million to farmers and ranchers.<sup>62</sup> The LIP compensates farmers and ranchers for such farm animal deaths in an attempt to help defray the cost of replenishing their herds when livestock are killed by a natural disaster.<sup>63</sup> This program may play a role in the massive increase in animal deaths during natural disasters.<sup>64</sup> While no complete record of farm animal casualty for Hurricane Katrina exists, over 500,000 broiled chickens are reported to have perished in Carroll County, Georgia alone.<sup>65</sup>

The response to Hurricane Ian led to a less severe disaster for animals than Hurricanes Katrina, Michael, or Florence. Before Hurricane Ian made landfall, several nonprofit organizations, including the

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<sup>54</sup> Adam B. Smith, *2018's Billion Dollar Disasters in Context*, NOAA (Feb. 7, 2019), <https://perma.cc/EE5S-MS9X> (accessed Feb. 2, 2023).

<sup>55</sup> *Billion-Dollar Weather and Climate Disasters (2023)*, NOAA NAT'L CTR. ENV'T INFO. (NCEI), <https://perma.cc/K7WF-4K34> (accessed Feb. 27, 2023).

<sup>56</sup> *Hurricane Costs*, NOAA OFF. COASTAL MGMT., <https://perma.cc/7E5G-S4C8> (accessed Jan. 30, 2023).

<sup>57</sup> *NWS Preliminary US Flood Fatality Statistics*, NOAA (July 11, 2022), <https://perma.cc/24VW-P94L> (accessed Jan. 30, 2023).

<sup>58</sup> *In Natural Disasters, Farm Animals Forsaken*, ANIMAL WELFARE INST. (2018), <https://perma.cc/Z4LZ-8ELN> (accessed Feb. 3, 2023) [hereinafter *Natural Disasters*].

<sup>59</sup> *More Than 681,000 Farm Animals Died in Barn Fires in 2021*, ANIMAL WELFARE INST. (Jan. 5, 2022), <https://perma.cc/829H-GM2N> (accessed Feb. 5, 2023).

<sup>60</sup> *Extreme Weather*, ANIMAL WELFARE INST., <https://perma.cc/K2AY-6VK2> (accessed Feb. 05, 2023).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Natural Disasters*, *supra* note 58.

<sup>65</sup> Diana L. Guerrero, *Hurricane Katrina's Animal Victims Report from the Field*, ARK ANIMALS (Sept. 8, 2005, 1:41 PM), <https://perma.cc/X475-WHPP> (accessed Feb. 3, 2023).

American Society for the Prevention of Cruelty to Animals (ASPCA), the Humane Society of the United States (HSUS), and BFAS, were already present in the area.<sup>66</sup> These organizations rescued animals and provided animal food and grants to affected local groups.<sup>67</sup> Over 40% of the people who did not evacuate reported staying because they did not want to leave their pets behind.<sup>68</sup> However, Hurricane Ian still killed hundreds of animals trapped on dairy farms.<sup>69</sup> Despite some improvements over past disasters, Hurricane Ian showed there is still a need to improve the legal system regarding animal rescue in disasters or create an alternative.

### 7. *Pakistan: 2022*

Pakistan has an abysmal track record when it comes to animal and human protection in disasters and has experienced a series of natural disasters since 2005.<sup>70</sup> A major earthquake in 2005, which measured 7.6 on the Richter scale, “killed 73,338 people, injured 128,304[,] and affected 3.5 million.”<sup>71</sup> Massive floods in 2010 caused “approximately 1,985 deaths, injur[ed] 2,946 persons, [and] affect[ed] 20 million people.”<sup>72</sup> The 2010 and 2015 heat waves killed over 2,000 humans and caused over 65,000 people to have heat strokes.<sup>73</sup> Most recently, the 2022 floods affected thirty-three million people, and killed over 1,700 humans and 1.2 million livestock animals.<sup>74</sup> The main rea-

<sup>66</sup> *Hurricane Ian Response: ASPCA Assists Animals Impacted by Storm*, ASPCA (Oct. 6, 2022), <https://perma.cc/B4ZQ-CB95> (accessed Jan. 30, 2023); *Hurricane Ian Response*, HSUS (Oct. 11, 2022), <https://www.humanesociety.org/hurricane-ian-response> (accessed Feb. 5, 2023); Kelli Harmon, *Helping Pets Impacted by Hurricane Ian*, BEST FRIENDS ANIMAL SOC’Y (Oct. 4, 2022), <https://perma.cc/4VZ9-YEF6> (accessed Feb. 3, 2023).

<sup>67</sup> *Best Friends’ Response to Hurricane Ian*, BEST FRIENDS ANIMAL SOC’Y, <https://perma.cc/Q2CR-JSHA> (updated Oct. 10, 2022) (accessed Jan. 30, 2023); *Hurricane Ian Response*, *supra* note 66; *Hurricane Ian Response: ASPCA Assists Animals Impacted by Storm*, *supra* note 66.

<sup>68</sup> Raychel Lean, *In Hurricane Ian Aftermath, Animal Lawyers Are Watching How a New Florida Law Will Play Out*, DAILY BUS. REV. (Oct. 17, 2022), <https://perma.cc/5MR9-H8MC> (accessed Feb. 1, 2023).

<sup>69</sup> Lloyd Sowers, *Dakin Dairy Farm Loses 250 Milk Cows After Hurricane Ian Hits Manatee County*, FOX 13 NEWS (Oct. 3, 2022), <https://perma.cc/5LJG-RZ7V> (accessed Feb. 1, 2023) (reporting that a Florida farmer lost over 250 milk-producing cows due to Hurricane Ian).

<sup>70</sup> *Id.*

<sup>71</sup> Khalid Rahim, *Brief History of Disasters and Its Management in Pakistan*, HILAL ENGLISH (Oct. 14, 2019), <https://perma.cc/3H7Y-WLSJ> (accessed Feb. 3, 2023).

<sup>72</sup> *Id.*

<sup>73</sup> Maria Saleem et al., *Heat Wave Killings in Pakistan and Possible Strategies to Prevent the Future Heat Wave Fatalities*, 1 RSCH. & REV. HEALTHCARE: OPEN J. 56, 57 (2018).

<sup>74</sup> *2022 Pakistan Floods*, CTR. DISASTER PHILANTHROPY (Jan. 31, 2023), <https://perma.cc/L3ER-PVCF> (accessed Feb. 3, 2023).

son for this is that Pakistan, like Nigeria and Kenya, is an underdeveloped country with a severely crippled economy.<sup>75</sup>

Although it is possible to predict disasters like this, the Pakistan government has failed to do so.<sup>76</sup> Per the Pakistan National Disaster Management (NDMA), damages to infrastructure during the ongoing Pakistani floods total upwards of 1.4 million partial destructions and nearly 900,000 full destructions.<sup>77</sup> The NDMA did not record data regarding wild animal deaths.<sup>78</sup> Fortunately, a few nonprofit organizations, including the Charity Doings Foundation and Comprehensive Disaster Response Services, rescue animals in the flood zones and provide animal feed and emergency veterinary services during these situations.<sup>79</sup>

WWF's 69% wildlife loss figure, put in the context of the global natural disaster discussed in this Section, creates a grim picture for the future and demands an immediate solution.<sup>80</sup> Because natural disasters occur across the globe, animal protection is also required across the globe. A route for providing such animal protection could build on existing domestic rights to animal rescue, but an international right to animal rescue must also be considered. There are several international theories that support the establishment of such an international right to animal rescue, including the rights of future generations (intergenerational equity), the right to culture for Indigenous communities, and the cooperative approaches to climate change, biodiversity loss, and pandemic prevention. The following Section discusses the legal developments relating to the right to animal rescue in the United States, which could provide guidance for establishing an international right to animal rescue.

*The worst sin toward our fellow creatures is not to hate them, but to be indifferent to them: that's the essence of inhumanity.*

– George Bernard Shaw, *The Devil's Disciple*<sup>81</sup>

<sup>75</sup> *List of 152 Developing Countries*, WORLD DATA, <https://perma.cc/SZ3K-PMVR> (accessed Feb. 27, 2023).

<sup>76</sup> See Ilan Kelman, *Pakistan's Floods are a Disaster – But They Didn't Have to Be*, PREVENTIONWEB (Sept. 20, 2022), <https://perma.cc/E3K8-GK6U> (accessed Feb. 27, 2023) (explaining the ways the government could preemptively mitigate the damage of such major natural disasters).

<sup>77</sup> *NDMA Floods (2022) SITREP*, NAT'L DISASTER MGMT. AUTH. (Oct. 27, 2022), <https://perma.cc/3CYQ-5J5B> (accessed Mar. 9, 2023) [hereinafter *NDMA Floods SITREP*].

<sup>78</sup> *Id.* (reporting livestock, housing, bridge, and road loss, but reporting nothing about wild animal deaths). The term “livestock” only refers to farmed animals, including cattle and goats, with the exception of poultry. *Livestock*, BRITANNICA, <https://perma.cc/HEV4-NEGC> (accessed Feb. 27, 2023).

<sup>79</sup> *Project Bayzabaan*, CHARITY DOINGS FOUND., <https://perma.cc/SS9Q-5P87> (accessed Feb. 28, 2023); *Benji Project for Animal Welfare and Rescue*, COMPREHENSIVE DISASTER RESPONSE SERV., <https://perma.cc/FC5Q-3GZL> (accessed Feb. 28, 2023).

<sup>80</sup> ALMOND ET AL., *supra* note 11.

<sup>81</sup> GEORGE BERNARD SHAW, *THE DEVIL'S DISCIPLE* act 2, sc.1.

## II. Legal Developments in Relation to Animal Rescue in the United States and Lessons for Other Nations

### A. *The PETS Act and State-Level Developments: All Bark, No Bite*

During Katrina, as many as 600,000 starving and frightened animals were abandoned or stranded.<sup>82</sup> Of those animals, 250,000 died, and only 26,000 were eventually rescued.<sup>83</sup> A poll published a year after Hurricane Katrina revealed that 61% of Americans would not leave their pets behind in a disaster.<sup>84</sup> This unprecedented situation made it clear that the lack of animal rescue parameters puts human lives at risk.<sup>85</sup> Congress passed the PETS Act in 2006 to “re-evaluate . . . polic[ies] regarding the evacuation of pets during disasters and other emergencies,” and to avoid deaths and dangerous situations for humans who choose to forgo evacuation to stay with their animals.<sup>86</sup> The act directs FEMA to develop emergency preparedness plans to accommodate people with companion or service animals at all stages of a disaster.<sup>87</sup> FEMA may also issue funds to states to carry out these efforts.<sup>88</sup>

However, the PETS Act has been criticized for being “administratively burdensome.”<sup>89</sup> When a state’s veterinary machinery is overburdened, it must make an official complaint by “inviting” Veterinary Medical Assistance Teams (VMATs).<sup>90</sup> The Department of Health and Human Services must then approve the complaint.<sup>91</sup> Additionally, the PETS Act is meant to protect humans with animals rather than the animals themselves, the guidelines issued to states are centered around protecting public human health.<sup>92</sup> Thus, the Act has also been criticized for focusing more on the “assessments of animals’ medical needs and treatment, disease surveillance, public health assessments, the provision of food and water, and euthanasia rather than on search and rescue of animals.”<sup>93</sup> The emergency plans do not require provi-

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<sup>82</sup> Sunny Weber, *The Story of Hurricane Katrina, The Disaster that Motivated the Book, “Hurricane Dog: A Tale of Betrayal, Redemption & Change,”* SUNNY WEBER – AUTHOR, SPEAKER, BEHAVIORIST (Feb. 2, 2019), <https://perma.cc/Y3RA-2LSN> (accessed Feb. 28, 2023); Hodges, *supra* note 40.

<sup>83</sup> Weber, *supra* note 82.

<sup>84</sup> Russ Mead, *Are Government Officials Ready to Evacuate and Shelter Animals in Disasters?*, ANIMAL L. COAL. (Aug. 30, 2008), <https://perma.cc/NLX9-UPS9> (accessed Feb. 28, 2023).

<sup>85</sup> Hodges, *supra* note 40.

<sup>86</sup> *Id.*; Marita Mike et al., *Katrina’s Animal Legacy: The PETS Act*, 4 J. ANIMAL L. & ETHICS 133, 136 (2010).

<sup>87</sup> Hodges, *supra* note 40.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

sions about rescuing animals from the disaster itself.<sup>94</sup> This makes the PETS Act merely a stop-gap measure without any teeth.

Over thirty states have passed laws or administrative plans to address animal welfare in disasters.<sup>95</sup> These laws have different procedural and substantive protections, but they share fundamental similarities: companion animal care, animal response teams, and sheltering and identifying recovered animals.<sup>96</sup> Laws at the state level are further divided into categories, with a few states requiring actionable steps in addition to considering animals in disaster rescue policies.<sup>97</sup> Louisiana is one of these states, requiring specific steps to rescue and evacuate animals. Louisiana law requires that animals be safely kept in carriers and provided transportation during a disaster, provides identification systems for pet recovery post-disaster, and provides guidance to pet owners to develop their own rescue plans.<sup>98</sup> However, in Oregon, Nevada, Illinois, New Jersey, and Virginia, the protections are merely aspirational.<sup>99</sup> For example, in Virginia, emergency response plans must simply “address the needs of individuals with household pets and service animals in the event of a disaster.”<sup>100</sup>

Some state laws mainly deal with plans for developing guidelines and for coordination amongst the government and volunteer organizations, animal rescue groups, veterinarian groups, and other concerned stakeholders.<sup>101</sup> For example, Florida recently enacted two emergency disaster statutes.<sup>102</sup> Under the statutes, the state must develop effective strategies in coordination with the Department of Agriculture and Consumer Services and the Department of Education.<sup>103</sup> Counties must designate shelters for pet rescue and follow FEMA guidelines.<sup>104</sup> Additionally, Florida’s agricultural response teams must oversee, develop, train, and support the counties in performing emergency functions.<sup>105</sup>

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<sup>94</sup> *Id.*

<sup>95</sup> See *Map of States with Disaster Planning Laws*, ANIMAL LEGAL & HIST. CTR., <https://perma.cc/947P-EYDH> (accessed Feb. 28, 2023) (mapping states with laws or emergency plans “that provide for the evacuation, rescue, and recovery of animals in the event of a disaster as of 2016”) [hereinafter *Map of States*].

<sup>96</sup> Hodges, *supra* note 40.

<sup>97</sup> See *generally id.* (describing the key elements of state disaster plans which address animal welfare).

<sup>98</sup> LA. STAT. ANN. § 29:726(20a) (2022).

<sup>99</sup> VA CODE ANN. § 44-146.18 (2021); NEV. REV. STAT. § 414.095 (2007); IL ST. CH. 20 § 3305/4 (2006); N.J. REV. STAT. App. A:9:43-1 (2019); OR. REV. STAT. ANN. § 401.975, § 401.977 (2009).

<sup>100</sup> VA CODE ANN. § 44-146.18 (2021).

<sup>101</sup> See *Map of States*, *supra* note 95 (showing U.S. states with emergency preparedness laws and plans); Hodges, *supra* note 40 (describing how Alabama, Arizona, Idaho, Massachusetts, New Mexico, North Carolina, Rhode Island, Tennessee, and Virginia have such laws).

<sup>102</sup> FLA. STAT. § 252.3568–252.3569 (2022).

<sup>103</sup> FLA. STAT. § 252.3568 (2022).

<sup>104</sup> *Id.*

<sup>105</sup> FLA. STAT. § 252.2569 (2022).

A handful of states protect animals based on categorization, such as: “domestic pets, livestock, zoo and exotic animals, wildlife, poultry, fish, exhibition (racing) animals, and laboratory and research animals.”<sup>106</sup> Where Illinois provides shelter, food, water, and veterinary care to *all* displaced animals, South Carolina provides such services only for displaced pets.<sup>107</sup> Arizona specifically excludes commercial farmed animal protections.<sup>108</sup> In instances that affect human public health, Arizona laws allow the state to assist with emergency response for wildlife protection.<sup>109</sup>

*The question is not, Can they reason? nor Can they talk? but, Can they suffer? Why should the law refuse its protection to any sensitive being?*

– Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*<sup>110</sup>

### B. Garden-Fresh Legal Developments in the United States: A Message of Hope

In 2021, the Providing Responsible Emergency Plans for Animals at Risk of Emerging Disasters (PREPARED) Act was introduced to the House of Representatives.<sup>111</sup> The Act built on lessons learned from both natural and man-made disasters, and directed “covered persons,” including “research facilit[ies], dealer[s], exhibitor[s], intermediate handler[s], carrier[s], [and] federal research facilit[ies],” to develop concrete contingency plans.<sup>112</sup> In addition to “covered persons,” the Act applies to all facilities regulated by the Animal Welfare Act (AWA), which includes zoos, research facilities, and livestock operations.<sup>113</sup> The plans must outline specific tasks, create a chain of command, develop training for personnel communication, mandate specific steps in the event of a disaster, and must be reviewed annually as well.<sup>114</sup>

In terms of legal development, 2022 was a great year for animal rescue in disasters. In October 2022, Congress passed the Planning for Animal Wellness (PAW) Act, which acknowledged the deficiencies in the PETS Act and mandated FEMA to create expert working groups to develop animal emergency plans.<sup>115</sup> The PAW Act aimed to foster collaborations addressing the needs of household pets and service or cap-

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<sup>106</sup> Hodges, *supra* note 40.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 144 (Jonathan Bennet ed., 2017).

<sup>111</sup> H.R.1442, 117th Cong. (2021).

<sup>112</sup> *Id.*

<sup>113</sup> *Support the PREPARED Act (H.R. 1042)*, ASPCA, <https://perma.cc/6NUU-C3V4> (accessed Feb. 3, 2023).

<sup>114</sup> H.R.1442, 117th Cong. (2021).

<sup>115</sup> 42 U.S.C. § 5196 (2022).

tive animals in the event of a disaster, as well as to review best practices and federal guidance for disaster response.<sup>116</sup>

In natural disasters, inhumane killing methods are incentivized, and farmers are compensated for producing the limp, dead bodies of their livestock.<sup>117</sup> Large, high-density farms—CAFOs—are environmentally hazardous, emit massive quantities of methane, and are a ripe bed for the spread of zoonotic diseases.<sup>118</sup> American taxpayers pay for the environmental costs of CAFOs and the LIP compensation that CAFOs and other livestock producers receive.<sup>119</sup> Therefore, under the current commercial livestock system, the industry only profits and takes none of the losses associated with disasters.<sup>120</sup> In November 2022, Senator Cory Booker introduced the Industrial Agriculture Accountability (IAA) Act to the Senate.<sup>121</sup> The IAA Act is a refined version of the Farm Systems Reform Act—introduced a year prior by Senator Booker—which sought to place a moratorium on new factory farms and phase out the largest existing ones.<sup>122</sup> Since 2008, farmers and ranchers have received over \$500 million in compensation under the LIP.<sup>123</sup> The IAA Act aims to reverse this incentive and impose the cost of the losses onto the commercial livestock industry.<sup>124</sup> Additionally, the Act aims to eliminate inhumane killing methods, such as ventilation shutdowns and sodium nitrate poisoning, by setting up a new office under the USDA to collect annual fees from large meat producers to fund more humane culling methods.<sup>125</sup>

The IAA Act would also require factory farms to develop emergency preparedness plans for natural disasters, as many animal deaths occur inside CAFOs during disasters.<sup>126</sup> During Hurricanes Michael and Florence, a total of 5.5 million animals died, including 3.4

<sup>116</sup> *Id.*

<sup>117</sup> *Disaster Assistance Livestock Indemnity Program*, U.S. DEPT. OF AGR., <https://perma.cc/TK97-F5DP> (accessed Mar. 3, 2023).

<sup>118</sup> Austen Dip, *Why are CAFOs Bad for the Environment?*, ACTION CLIMATE EMERGENCY (Aug. 6, 2021), <https://perma.cc/T3M2-ML44> (accessed Mar. 3, 2023); Yaqiong Guo et al., *Association of Common Zoonotic Pathogens with Concentrated Animal Feeding Operations*, 12 FRONTIERS MICROBIOLOGY (2022).

<sup>119</sup> Marina Bolotnikova & Kenny Torrella, *Sen. Cory Booker has a Plan to Stop Taxpayer Bailouts of Big Meat*, VOX (Nov. 22, 2022) <https://perma.cc/HHG5-98ZQ> (accessed Mar. 3, 2023).

<sup>120</sup> *Id.*

<sup>121</sup> Agriculture Accountability Act of 2022, S.5138, 117th Cong. (2022), <https://perma.cc/U7XW-CNWH> (accessed Feb. 3, 2023).

<sup>122</sup> Farm System Reform Act of 2021, S.2332, 117th Cong. (2021), <https://perma.cc/ZRQ7-XTVN> (accessed Feb. 3, 2023).

<sup>123</sup> *Emergency and Disaster Preparedness for Farm Animals Act*, ANIMAL WELFARE INST., <https://perma.cc/RA5L-4YDH> (accessed Jan. 29, 2023) [hereinafter *Emergency and Disaster*].

<sup>124</sup> Agriculture Accountability Act of 2022, *supra* note 121. See also Bolotnikova & Torrella, *supra* note 119 (“This bill would help ensure that those profiting from industrial agriculture also take responsibility for the true costs they currently impose on society. . .”).

<sup>125</sup> Bolotnikova & Torrella, *supra* note 119.

<sup>126</sup> *Id.*

million chickens and 5,500 pigs, and numerous CAFO manure pits overflowed and polluted waterways.<sup>127</sup> The IAA would connect animal rights with workers' rights, directing the Department of Labor to enforce new protections for farm workers involved in emergency response and ban prison labor in disaster response.<sup>128</sup> While a huge step forward, these interventions are domestic; to prevent future disasters and the spread of zoonotic diseases, such as COVID-19, international animal protection intervention is needed now more than ever.<sup>129</sup>

*You have just dined, and however scrupulously the slaughterhouse is concealed in the graceful distance of miles, there is complicity.*

– Ralph Waldo Emerson, *Fate*<sup>130</sup>

### III. International Developments in Relation to Animal Rescue in Disasters

#### A. *The Adaptation Measure Must Be International, Not Domestic*

Under a purely anthropocentric lens, the only way to save human lives is to care for and zealously guard the rights of animals and nature. Over 69% of the world's wildlife has been lost,<sup>131</sup> global warming continues, floods occur more frequently, and zoonotic diseases loom. Domestic measures, regardless of their strength, cannot significantly decrease the possibility of a human-caused sixth mass extinction. International intervention can be an adaptation measure that effectively slows—or controls—climate change.

The economic divide between the Global North and the Global South also demands an international instrument for facing climate change. The Convention on Migratory Species (CMS), the Convention on Biological Diversity (CBD), and the Convention on International Trade in Endangered Species (CITES) have acknowledged that economic disparities inhibit a cooperative climate change effort; in this vein, many countries likely do not have the domestic resources to rescue animals from natural disasters.<sup>132</sup>

<sup>127</sup> *Id.*; *Emergency and Disaster*, *supra* note 123.

<sup>128</sup> Bolotnikova & Torrella, *supra* note 119 (“Last year, an incarcerated man in Colorado working on a cull operation became the first American to contract the highly pathogenic H5N1 bird flu.”).

<sup>129</sup> David Rising, *COVID-19 has Now Killed 6 Million People as Pandemic Enters its Third Year*, L.A. TIMES (Mar. 7, 2022), <https://perma.cc/E7UF-Q4ST> (accessed Jan. 31, 2023); UNEP & INT'L LIVESTOCK RSCH. INST., PREVENTING THE NEXT PANDEMIC – ZOO-NOTIC DISEASES AND HOW TO BREAK THE CHAIN OF TRANSMISSION, 39–40, 45 (July 6, 2020).

<sup>130</sup> Ralph Waldo Emerson, *Fate*, EMERSON CTR., <https://perma.cc/R6RC-NY2E> (accessed Mar. 9, 2023).

<sup>131</sup> ALMOND ET AL., *supra* note 11.

<sup>132</sup> U.N. Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 1651 U.N.T.S. 356; U.N. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 143; U.N. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 244.



Moreover, natural disasters are a transboundary concern. Animals have inherent value that mandates global protection rather than domestic. Some theories posit that if China took effective measures to protect animal lives in its borders, the COVID-19 pandemic may not have originated there.<sup>133</sup> Zoonotic diseases similar to COVID-19 could emerge from countries that have similarly abysmal standards for animal living conditions.<sup>134</sup> The lack of positive animal protection measures is a precursor to more natural disasters and pandemics. The need for animal protection measures is supported by the precautionary principle of international law, which encourages nations to err on the side of caution when drafting laws in the absence of scientific certainty.<sup>135</sup>

Based on scientific knowledge and the interrelatedness of protecting animals and combating climate change, one effective mechanism to address this issue is to create an international right to animal rescue from natural disasters.

### B. Phase Out All Major Precursors to Natural Disasters

In conjunction with an international right to animal rescue, any activities that are scientifically proven precursors to more natural disasters need to be phased out. The most significant of these precursors are CAFOs because of their dual relation as (1) a precursor to slaughter and (2) a site of mass killing during natural disasters, which further increases the need for an international right to animal rescue.<sup>136</sup> CAFOs on average generate urine and feces equivalent to the quantity produced by 16,000 humans, emit greenhouse gases that exacerbate climate change, and are hazardous to human and animal health, through the emission of ammonia, hydrogen sulfide, and methane.<sup>137</sup> The air around CAFOs is filled with disease-carrying bacteria and pathogens, and the animal carcasses inside attract rats and other vermin.<sup>138</sup> These environmental hazards also impact the neighborhood communities adjacent to CAFOs.<sup>139</sup> Therefore, under U.S. law, CAFOs arguably violate equal protection and could be sued for relocation costs.<sup>140</sup>

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<sup>133</sup> See generally Brianna Grant, *How the COVID-19 Pandemic Impacts Animals*, THE HUMANE SOC'Y OF THE U.S. (Dec. 15, 2020), <https://perma.cc/GRE2-KR9W> (accessed Mar. 3, 2023) (arguing that COVID-19, in part, started and spread to humans because of inhumane animal living conditions).

<sup>134</sup> *Id.*

<sup>135</sup> Irum Ahsan & Saima Amin Khawaja, *Environmental Law Principles: Precautionary Principle*, ASIAN DEV. BANK (Dec. 14, 2016), <https://perma.cc/7FFX-LSR6> (accessed Feb. 2, 2023).

<sup>136</sup> *Why are CAFOs Bad?*, SIERRA CLUB MICH. CHAPTER <https://perma.cc/6M8K-8897> (accessed Feb. 5, 2023).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> See, e.g., John DiBari, *How the Sandoval Ruling Will Affect Environmental Justice Plaintiffs*, 76 ST. JOHN'S L. REV. 1019, 1020, 1030, 1043 (2012) (describing how the

*Never, never be afraid to do what's right, especially if the well-being of a person or animal is at stake. Society's punishments are small compared to the wounds we inflict on our soul when we look the other way.*

– Martin Luther King, Jr.<sup>141</sup>

C. *Borrowing from Environmental Law: Controlling the Precursors and Invoking Human Rights*

In *Native Village of Kivalina v. ExxonMobil Corp.*, a Native Alaskan village of around 400 residents sued for the costs of their relocation necessitated by the impacts of severe coastal erosion from sea level rise.<sup>142</sup> The plaintiffs sued twenty-four major multinational fossil fuel companies for their relocation costs, which were estimated to be as high as \$400 million.<sup>143</sup> The U.S. District Court for the Northern District of California barred the plaintiffs' claim on the basis of the political question doctrine.<sup>144</sup> Appeal was denied, and the U.S. Supreme Court denied certiorari.<sup>145</sup>

An Inuit community filed a similar case at the Inter-American Commission on Human Rights (IACHR) in 2005.<sup>146</sup> The Plaintiffs alleged that the United States caused global warming, which has led to Arctic ice caps melting.<sup>147</sup> In so doing, the plaintiffs argued the United States had violated their cultural right to live in the Arctic.<sup>148</sup> Although the plaintiffs lost, the case established the possibility of connecting human rights with environmental rights for future cases.<sup>149</sup>

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use of the Equal Protection Clause in environmental justice contexts and siting and housing relocation costs); David A. Dana & Deborah Tuerkheimer, *After Flint: Environmental Justice as Equal Protection*, 111 Nw. UNIV. L. REV. 93, 93, 95, 100, 102 (2017) (describing the application of the Equal Protection Clause in actions challenging the underenforcement of environmental laws and regulations).

<sup>141</sup> Goodreads, *Martin Luther King Jr.*, <https://www.goodreads.com/quotes/7528172-never-never-be-afraid-to-do-what-s-right-especially-if> (accessed Feb. 5, 2023). There is debate as to whether Martin Luther King, Jr. actually made this statement. See Dan Farber, *What Martin Luther King DIDN'T Say*, LEGAL PLANET (Jan. 19, 2014), <https://perma.cc/6JNE-X2BB> (accessed Mar. 10, 2023) (“First, no source is ever given for the quote. It doesn’t appear in the King digital archives.”).

<sup>142</sup> *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F.Supp. 2d 863, 865 (N.D. Cal. 2009).

<sup>143</sup> *Id.* at 869, 871.

<sup>144</sup> *Id.* at 878.

<sup>145</sup> *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F.Supp 2d 863 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012); *Native Village of Kivalina v. ExxonMobil Corp.*, CLIMATE CASE CHART (2008), <https://perma.cc/UZ9J-XBC5> (accessed Feb. 12, 2023).

<sup>146</sup> *Sheila Watt-Cloutier et al. v. The United States of America*, CLIMATE RTS. & REMEDIES PROJECT (Nov. 16, 2007), <https://perma.cc/YJ89-ECP7> (accessed Mar. 3, 2023).

<sup>147</sup> SHEILA WATT-CLOUTIER, THE RIGHT TO BE COLD: ONE WOMAN’S FIGHT TO PROTECT THE ARCTIC AND SAVE THE PLANET FROM CLIMATE CHANGE 236–37 (2018).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at xxiii.

Despite these outcomes, similar plaintiffs in coastal nations—like Egypt, which may be underwater in eighty years<sup>150</sup>—could make a comparable case, given the impact of advanced science in international environmental law. This legal avenue is an especially attractive option, considering the recent issuance of the UN Resolution on the right to a healthy environment and the UNEA Resolution on One Health—which directs the UNEP to develop a report on the interconnectedness of human, animal, and environmental rights.<sup>151</sup> An international case for the global banning of CAFOs is therefore a potential reality.

In *Massachusetts v. EPA*, Massachusetts sued the EPA over its failure to regulate motor vehicle exhaust emissions.<sup>152</sup> The state argued that, under the Clean Air Act, the EPA must regulate any air pollutant which could endanger public health or welfare.<sup>153</sup> This case provided two landmark victories. First, it created a *parens patriae* standing capacity—standing that allows a sovereign plaintiff to sue over the transboundary impacts of climate change.<sup>154</sup> This standing can be applied in cases of interstate pollution under the principle of extraterritoriality.<sup>155</sup> Second, it required the EPA to regulate carbon dioxide emissions under the Clean Air Act.<sup>156</sup> *Parens patriae* standing expounds the public trust doctrine, binds individual states to hold other states accountable, and can be a crucial piece in the implementation of an international instrument on the right to animal rescue in disasters.<sup>157</sup>

<sup>150</sup> Nadia Colombe Gbane, *Egypt: Alexandria Expected to Sink by 2100*, AFRICANEWS (Mar. 3, 2022), <https://perma.cc/A4W5-9FPA> (accessed Feb. 6, 2023).

<sup>151</sup> G.A. Res. 76/300 (July 28, 2022); ONE HEALTH INITIATIVE, ONE HEALTH JOINT PLAN OF ACTION (2022-2026): WORKING TOGETHER FOR THE HEALTH OF HUMANS, ANIMALS, PLANTS, AND THE ENVIRONMENT 1, 3 (WHO, FAO, UNEP, & World Organisation for Animal Health eds., 2022).

<sup>152</sup> *Massachusetts v. EPA*, 549 U.S. 497, 505 (2007).

<sup>153</sup> *Id.* at 497.

<sup>154</sup> *Id.* at 519, 521.

<sup>155</sup> Natalie Collins, *On the Borderline: Pakootas, NAFTA, and the Problem of Transboundary Pollution*, 47 *ECOLOGY L. Q.* 251, 282 (2020) (detailing a case where a U.S. town was successful in achieving *parens patriae* standing against a Canadian polluter, but also noting that the likelihood of this standing being granted may not be high). See also *Extraterritoriality*, MERRIAM-WEBSTER.COM, <https://perma.cc/JM79-G5K5> (accessed Mar. 3, 2023) (defining “extraterritoriality” as “an exemption from the application or jurisdiction of local law or tribunals”).

<sup>156</sup> *Massachusetts*, 549 U.S. at 528 (“On the merits, the first question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a ‘judgment’ that such emissions contribute to climate change. We have little trouble concluding that it does.”).

<sup>157</sup> See Allan Kanner, *The Public Trust Doctrine, Parens Patriae, and the Attorney General as Guardian of the State’s Natural Resources*, 16 *DUKE ENV’T L. & POL’Y F.* 57, 111–12, 104 (2005) (“[T]he doctrine of *parens patriae* may provide states with standing to sue for damage to a broader range of resources than the public trust doctrine, because the former doctrine does not require the resources to be associated with property that is owned by the state. For example, in *Georgia v. Tennessee Copper Co.*, although the State of Georgia was able to bring a successful *parens patriae* case to enjoin a copper company from discharging air pollutants that were destroying privately owned forests, the action

In *Juliana v. United States*, twenty-one youth plaintiffs sued the government for declaratory and injunctive relief, demanding a declaration from the United States that it had violated its fiduciary relationship with its citizens by allowing fossil fuel industries to damage the atmosphere.<sup>158</sup> The plaintiffs argued for this fiduciary relationship as ‘atmospheric trust litigation,’ arising from the public trust doctrine and the international responsibility of sovereign nations for to preserve natural resources.<sup>159</sup> The plaintiffs also argued their case on the grounds of intergenerational equity, a principle that acknowledges that climate change impacts age groups differently—the youth face far greater deleterious impacts.<sup>160</sup> As of the publication of this Article, this case has effectively been dismissed.<sup>161</sup>

*The greatness of a nation can be judged by the way its animals are treated.*<sup>162</sup>

#### D. Developments in International Animal Law

At the international level, the United States was one of the leading forces behind the Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP).<sup>163</sup> The CAP aimed to control the spread of COVID-19 and prevent other pandemics by advocating for animal protection given their connection to public health and the environment.<sup>164</sup> CAP could fill the gap in the definition of disasters under disaster relief laws so as to include all man-made

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may have failed if it had been brought under the public trust doctrine because the lands involved were not owned by the state.”) (explaining that in *Louisiana v. Texas*, Louisiana “sought to enjoin a quarantine maintained by Texas officials, which placed limitations on trade between Texas and the port of New Orleans . . . . Although Louisiana was denied relief, a line of cases developed in which states were permitted to represent the interests of their citizens in enjoining public nuisances, including the discharge of sewage, flooding, water pollution, diversion of water, and air pollution”).

<sup>158</sup> *Juliana v. United States*, 217 F.Supp.3d 1224, 1233 (D. Or. 2016).

<sup>159</sup> *Id.* at 1255.

<sup>160</sup> *Id.* at 1267.

<sup>161</sup> Most recently, the petition for rehearing en banc, following the remand of the case with instructions to dismiss, was denied. *Juliana v. United States*, 986 F.3d 1295, 1296 (mem.) (9th Cir. 2021); *Juliana v. United States*, 947 F.3d 1159, 1175 (9th Cir. 2020).

<sup>162</sup> This quote has been popularly misattributed to Gandhi. Paul Knight, *Letter: Quote from Humphrey, not Gandhi*, THE COLUMBIAN (Nov. 11, 2016), <https://perma.cc/KT3U-8VPX> (accessed Feb. 2, 2023). In actuality, Hubert Humphrey made a similar statement during a speech reflecting on how the government treats its people. *Id.* Humphrey’s original statement was “that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy and the [disabled].” 123 CONG. REC. 37287 (daily ed. Nov. 4, 1977) (speech by Vice President Hubert H. Humphrey).

<sup>163</sup> *Convention on Animal Protection: A Global Treaty for Animal Welfare, Public Health, and the Environment*, YALE L. SCH., <https://perma.cc/M8JR-M8VP> (accessed Feb. 1, 2023).

<sup>164</sup> *A New International Treaty for Animal Welfare and Pandemic Prevention*, CONVENTION ON ANIMAL PROT. (2022), <https://perma.cc/YF8E-W8TV> (accessed Feb. 2, 2023).

disasters in the legal definition as well, such that COVID-19 and other future zoonotic pandemics could be seen as natural disasters.<sup>165</sup> Regardless, preventing pandemics is an added side benefit of rescuing animals from natural disasters.<sup>166</sup> CAFOs become a breeding ground for pathogens and bacteria that may enter our bodies through the air we breathe, stemming from the animals' feces, which is exacerbated by natural disasters.<sup>167</sup> In the case of disasters such as floods, animal bodies drown and become a similar breeding ground for pathogens.<sup>168</sup>

The UN's October 2021 Resolution on the right to a healthy environment is another international development that is indirectly linked to animals.<sup>169</sup> Because the right to a healthy environment implies the extension of that right to nonhuman animals as a measure to prevent zoonosis and other issues, the resolution should also extend to nonhuman animals.

Another example is the UN Environment Assembly resolution adopted in Kenya in March 2022. The resolution stated that in order to

acknowledg[e] that animal welfare can contribute to addressing environmental challenges, promot[e] the "One Health" approach, and achiev[e] the Sustainable Development Goals . . . [the Environment Assembly] [r]equest[ed] the Executive Director of the United Nations Environment Programme . . . to produce a report . . . on the nexus between animal welfare, the environment, and sustainable development . . .<sup>170</sup>

*My sincere hope is that the arc of justice bends toward the animals.*  
 – Joyce Tischler, *Changing the Dialogue about Elephants*<sup>171</sup>

#### IV. Is an International Right to Animal Rescue Possible?

As of the publication of this Article, no binding international instrument based in protecting animal lives for their inherent value exists.<sup>172</sup> On the other hand, many international instruments protect

<sup>165</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5122(2) (2022).

<sup>166</sup> See *5 Reasons We Need Wildlife in Order to Survive*, GREENPEACE USA (Mar. 3, 2021), <https://perma.cc/AP39-N7QG> (accessed Feb. 2, 2023) (describing why protecting biodiversity is important for the human race to survive) [hereinafter *We Need Wildlife*].

<sup>167</sup> *Why are CAFOs Bad?*, *supra* note 136.

<sup>168</sup> Steven Wing et al., *The Potential Impact of Flooding on Confined Animal Feeding Operations in Eastern North Carolina*, ENV'T HEALTH PERSP. 387 (2002).

<sup>169</sup> G.A. Res. 48/13, U.N. Doc. A/HRC/RES/48/13, at 1–3 (Oct. 8, 2021).

<sup>170</sup> G.A. Res. 5/1, U.N. Doc. UNEP/EA.5/Res.1, at 1 (Mar. 2, 2022).

<sup>171</sup> Joyce Tischler, *Changing the Dialogue about Elephants*, 33 QUINNIPIAC L. REV. 485, 514 (2015) (paraphrasing an original quote from Rev. Theodore Parker).

<sup>172</sup> *Treaties*, GEO. L. (Nov. 29, 2022, 12:49 PM), <https://perma.cc/B8PY-S2E5> (accessed Feb. 2, 2023). See Katie Surma, *Two Towns in Washington Take Steps Toward Recognizing the Rights of Southern Resident Orcas*, INSIDE CLIMATE NEWS (Dec. 6, 2022), <https://perma.cc/RR8J-R9MS> (accessed Jan. 30, 2023) (explaining that under the rights of nature, which is quickly becoming settled law in international environmental law, animals can get their rights recognized starting from the domestic to the international arena).

animal life indirectly by explicitly protecting human life. The theories enshrined in these instruments include the precautionary principle, cooperative combatting of interstate pollution, intergenerational equity, One Health, *parens patriae*, incorporation of human rights into environmental law, the right to a healthy environment, and the living trust relationship with nature and animals.

When put together, these theories illuminate the need for a rights-based stewardship model that builds on domestic practices, one which ultimately could pave the way to a global practice of zealously safeguarding nature and all its subsets, including all nonhuman animal life. Most of these theories cannot be effectively realized without an international right to animal rescue in disasters. For example, if animals continue to be left to die in CAFOs or floods during disasters, the climate crisis continues to be fueled and the right to a healthy environment remains out of reach. However, to get to the international level, uniform state practice on the domestic front—where both developed and underdeveloped countries include animal protection in their disaster management laws—is required.<sup>173</sup>

As floods and other natural disasters continue to kill millions of animals and threaten further biodiversity loss, an international right to animal rescue must be created to save nonhuman animals and humans alike. At this crucial juncture, the survival of humanity depends on how effectively humans protect their furry friends.<sup>174</sup>

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<sup>173</sup> See *Animals in Disaster*, WORLD ANIMAL PROT., <https://perma.cc/5TUV-9Q4S> (accessed Feb. 2, 2023) (discussing the need for animal protections during natural disasters). See, e.g., Altamush Saeed, *Animal Welfare in Natural Disasters, an Amendment to Pakistan's National Disaster Management for Protecting Animals in Natural Disasters*, <https://perma.cc/V94Y-457E> (accessed Mar. 6, 2023) (exemplifying grassroots advocacy in Pakistan for an amendment to the country's National Disaster Management plan).

<sup>174</sup> See *We Need Wildlife*, *supra* note 166 (explaining how the survival of the human race depends on the protection of biodiversity). See also *2023 U.S. Animal Kill Clock*, ANIMAL CLOCK, <https://perma.cc/2TML-QBRD> (accessed Feb. 2, 2023) (recording the number of animals killed in the United States every day).